

State DUI Laws: Vermont

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: No

Felony Conviction for Repeat Offenses: Yes

Vermont Statutes Annotated

§ 1134. Motor vehicle operator; consumption or possession of alcohol

(a) A person shall not consume alcoholic beverages while operating a motor vehicle on a public highway. As used in this section, "alcoholic beverages" shall have the same meaning as "intoxicating liquor" as defined in section 1200 of this title.

(b) A person operating a motor vehicle on a public highway shall not possess any open container which contains alcoholic beverages in the passenger area of the motor vehicle.

(c) For the purposes of this section, "passenger area" shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(d) A person who violates subsection (a) of this section shall be fined not more than \$ 500.00. A person who violates subsection (b) of this section shall be fined not more than \$ 25.00. A person convicted and fined for an offense under subsection (a) of this section shall not be subject to prosecution for the same actions under subsection (b) of this section.

23 V.S.A. § 1200. Definitions

As used in this subchapter,

(1) "Alcohol concentration" means

(A) the number of grams of alcohol per 100 milliliters of blood; or

(B) the number of grams of alcohol per 210 liters of breath.

(2) "Drug" means regulated drug as defined in section 4201 of Title 18.

(3) "Evidentiary test" means a breath or blood test which indicates the person's alcohol concentration or the presence of other drug and which is intended to be introduced as evidence.

(4) "Intoxicating liquor" includes alcohol, malt beverages, spirituous liquors and vinous beverages, as defined in section 2 of Title 7, and any beverage or liquid containing any of them.

(5) "Law enforcement officer" means a law enforcement officer who has been certified by the criminal justice training council pursuant to section 2358 of Title 20.

(6) "Vehicle" means a motor vehicle as defined in section 4 of this title, and when on a public highway:

(A) a snowmobile as defined in section 3201 of this title; and

(B) an all-terrain vehicle as defined in section 3501 of this title.

(7) "Highway" shall be defined as in subdivision (13) of section 4 of this title, except that for purposes of this subchapter, "highway" does not include the driveway which serves only a single-family or two-family residence of the operator. This exception shall not apply if a person causes the death of a person, causes bodily injury to a person, or causes damage to the personal property of another person, while operating a motor vehicle on a driveway in violation of section 1201 of this subchapter.

23 V.S.A. § 1201. Operating vehicle under the influence of intoxicating liquor or other substance; criminal refusal

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person's alcohol concentration is 0.08 or more, or 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of this title; or

(2) when the person is under the influence of intoxicating liquor; or

(3) when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely.

(b) A person who has previously been convicted of a violation of this section shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway and refuse a law enforcement officer's reasonable request under the circumstances for an evidentiary test where the officer had reasonable grounds to believe the person was in violation of subsection (a) of this section.

(c) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway and be involved in an accident or collision resulting in serious bodily injury or death to another and refuse a law enforcement officer's reasonable request under the circumstances for an evidentiary test where the officer has reasonable grounds to believe the person has any amount of alcohol in the system.

(d) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(e) A person may not be convicted of more than one offense under this section arising out of the same incident.

(f) For purposes of this section and section 1205 of this title, the defendant may assert as an affirmative defense that the person was not operating, attempting to operate, or in actual physical control of the vehicle because the person:

- (1) had no intention of placing the vehicle in motion; and
- (2) had not placed the vehicle in motion while under the influence.

23 V.S.A. § 1202. Consent to taking of tests to determine blood alcohol content

(a) (1) Implied consent. -- Every person who operates, attempts to operate, or is in actual physical control of any vehicle on a highway in this state is deemed to have given consent to an evidentiary test of that person's breath for the purpose of determining the person's alcohol concentration or the presence of other drug in the blood. The test shall be administered at the direction of a law enforcement officer.

(2) Blood test. -- If breath testing equipment is not reasonably available or if the officer has reason to believe that the person is unable to give a sufficient sample of breath for testing or if the law enforcement officer has reasonable grounds to believe that the person is under the influence of a drug other than alcohol, the person is deemed to have given consent to the taking of an evidentiary sample of blood. If in the officer's opinion the person is incapable of decision or unconscious or dead, it is deemed that the person's consent is given and a sample of blood shall be taken.

(3) Evidentiary test. -- The evidentiary test shall be required of a person when a law enforcement officer has reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title.

(4) Fatal collision or incident resulting in serious bodily injury. -- The evidentiary test shall also be required if the person is the surviving operator of a motor vehicle involved in a fatal incident or collision or an incident or collision resulting in serious bodily injury and the law enforcement officer has reasonable grounds to believe that the person has any amount of alcohol or other drug in his or her system.

(b) If the person refuses to submit to an evidentiary test it shall not be given, except as provided in subsection (f) of this section, but the refusal may be introduced as evidence in a criminal proceeding.

(c) A person who is requested by a law enforcement officer to submit to an evidentiary test or tests has a right as herein limited to consult an attorney before deciding whether or not to submit to such a test or tests. The person must decide whether or not to submit to the evidentiary test or tests within a reasonable time and no later than 30 minutes from the time of the initial attempt to contact the attorney. The person must make a decision about whether or not to submit to the test or tests at the expiration of the 30 minutes regardless of whether a consultation took place.

(d) At the time a test is requested, the person shall be informed of the following statutory information:

(1) Vermont law authorizes a law enforcement officer to request a test to determine whether the person is under the influence of alcohol or other drug.

(2) If the officer's request is reasonable and testing is refused, the person's license or privilege to operate will be suspended for at least six months.

(3) If a test is taken and the results indicate that the person is under the influence of alcohol or other drug, the person will be subject to criminal charges and the person's license or privilege to operate will be suspended for at least 90 days.

(4) A person who is requested by a law enforcement officer to submit to an evidentiary test or tests has the limited right to consult an attorney before deciding whether or not to submit to such a test or tests. The person must decide whether or not to submit to the evidentiary test or tests within a reasonable time and no later than 30 minutes from the time of the initial attempt to contact the attorney regardless of whether a consultation took place. The person also has the right to have additional tests made by someone of the person's own choosing at the person's own expense. The person shall also be informed of the location of one or more facilities available for drawing blood.

(5) A person who is requested by a law enforcement officer to submit to an evidentiary test administered with an infrared breath-testing instrument may elect to have a second infrared test administered immediately after receiving the results of the first test.

(6) If the person refuses to take an evidentiary test, the refusal may be offered into evidence against the person at trial, whether or not a search warrant is sought. The person may be charged with the crime of criminal refusal if the person:

(A) has previously been convicted of a violation of section 1201 of this title; or

(B) is involved in an accident or collision resulting in serious bodily injury or death to another, in which case the court may issue a search warrant and order the person to submit to a blood test, the results of which may be offered into evidence against the person at trial.

(e) In any proceeding under this subchapter, a law enforcement officer's testimony that he or she is certified pursuant to section 2358 of Title 20 shall be prima facie evidence of that fact.

(f) If a person who has been involved in an accident or collision resulting in serious bodily injury or death to another refuses an evidentiary test, a law enforcement officer may apply for a search warrant pursuant to Rule 41 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an evidentiary test. If a blood sample is obtained by search warrant, the fact of the refusal may still be introduced in evidence, in addition to the results of the evidentiary test. Once a law enforcement official begins the application process for a search warrant, the law enforcement official is not obligated to discontinue the process even if the person later agrees to provide an evidentiary breath sample. The limitation created by Rule 41(g) of the Vermont Rules of Criminal Procedure regarding blood specimens shall not apply to search warrants authorized by this section.

(g) The defender general shall provide statewide 24-hour coverage seven days a week to assure that adequate legal services are available to persons entitled to consult an attorney under this section.

23 V.S.A. § 1203. Administration of tests; retention of test and videotape

(a) A breath test shall be administered only by a person who has been certified by the Vermont criminal justice training council to operate the breath testing equipment being employed. In any proceeding under this subchapter, a person's testimony that he or she is certified to operate the breath testing equipment employed shall be prima facie evidence of that fact.

(b) Only a physician, licensed nurse, medical technician, physician's assistant, medical technologist, or laboratory assistant acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the presence of alcohol or other drug. This limitation does not apply to the taking of a breath sample.

(c) When a breath test which is intended to be introduced in evidence is taken with a crimper device or when blood is withdrawn at an officer's request, a sufficient amount of breath or blood, as the case may be, shall be taken to enable the person to have made an independent analysis of the sample, and shall be held for at least 45 days from the date the sample was taken. At any time during that period the person may direct that the sample be sent to an independent laboratory of the person's choosing for an independent analysis. The department of health shall adopt rules providing for the security of the sample. At no time shall the defendant or any agent of the defendant have access to the sample. A preserved sample of breath shall not be required when an infrared breath-testing instrument is used. A person tested with an infrared breath-testing instrument shall have the option of having a second infrared test administered immediately after receiving the results of the first test.

(d) In the case of a breath test administered using an infrared breath testing instrument, the test shall be analyzed in compliance with rules adopted by the department of health. The analyses shall be retained by the state. A sample is adequate if the infrared breath testing instrument analyzes the sample and does not indicate the sample is deficient. Analysis of the person's breath or blood which is available to that person for independent analysis shall be considered valid when performed according to methods approved by the department of health. The analysis performed by the state shall be considered valid when performed according to a method or methods selected by the department of health. The department of health shall use rule making procedures to select its method or methods. Failure of a person to provide an adequate breath sample constitutes a refusal.

(e) [Repealed.]

(f) When a law enforcement officer has reason to believe that a person may be violating or has violated section 1201 of this title, the officer may request the person to provide a sample of breath for a preliminary screening test using a device approved by the commissioner of health for this purpose. The person shall not have the right to consult an attorney prior to submitting to this preliminary breath alcohol screening test. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made and whether to request an evidentiary test and shall not be used in any court proceeding except on those issues. Following the screening test additional tests may be required of the operator pursuant to the provisions of section 1202 of this title.

(g) The office of the chief medical examiner shall report in writing to the department of motor vehicles the death of any person as the result of an accident involving a vehicle and the circumstances of such accident within five days of such death.

(h) A Vermont law enforcement officer shall have a right to request a breath or blood sample in an adjoining state or country under this section unless prohibited by the law of the other state or country. If the law in an adjoining state or country does not prohibit an officer acting under this section from taking a breath or blood sample in its jurisdiction, evidence of such sample shall not be excluded in the courts of this state solely on the basis that the test was taken outside the state.

(i) The commissioner of health shall adopt emergency rules relating to the operation, maintenance and use of preliminary alcohol screening devices for use by law enforcement officers in enforcing the provisions of this title. The commissioner shall consider relevant standards of the National Highway Traffic Safety Administration in adopting such rules. Any

preliminary alcohol screening device authorized for use under this title shall be on the qualified products list of the National Highway Traffic Safety Administration.

(j) A videotape made of the alleged offense and subsequent processing may be erased or destroyed by the law enforcement agency no earlier than 90 days after final judgment, or, if no civil or criminal action is filed, no earlier than 90 days after the date the videotape was made.

(k) A copy of a videotape made of the alleged offense shall be provided to the defendant within ten days after the defendant requests the copy and pays a \$ 15.00 fee for its reproduction. No fee shall be charged to a defendant whom the court has determined to be indigent.

23 V.S.A. § 1203a. Independent chemical test; blood tests

(a) A person tested has the right at the person's own expense to have someone of the person's own choosing administer a chemical test or tests in addition to any administered at the direction of the law enforcement officer under section 1203 of this title. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission in evidence of the test taken at the direction of an enforcement officer unless the additional test was prevented or denied by the enforcement officer.

(b) Arrangements for a blood test shall be made by the person submitting to the evidentiary breath test, by the person's attorney or by some other person acting on the person's behalf unless the person is detained in custody after administration of the evidentiary test and upon completion of processing, in which case the law enforcement officer having custody of the person shall make arrangements for administration of the blood test upon demand but at the person's own expense.

(c) If after reasonable efforts the person is unable to arrange transportation necessary to obtain the blood test upon completion of processing, the law enforcement officer shall provide or arrange transportation to a facility available to administer the test unless, for good cause, the officer is unable to do so. This subsection shall only apply if the person was tested with an infrared testing device.

(d) The physician, licensed nurse, medical technician, physician's assistant, medical technologist or laboratory assistant drawing a sample of blood shall use a sample collection kit provided by the department of health or another type of collection kit. The sample shall be identified as to donor, date and time, sealed and mailed to the department of health where it shall be held for a period of at least 45 days from the date the sample was taken. At any time during that period the person may direct that the sample be sent to an independent laboratory of the person's choosing for an independent analysis. The department of health may recover its costs of supplies, handling and storage.

(e) The person requesting the sample is responsible for the costs of transportation, drawing the sample and subsequent analysis. If the facility where the sample is drawn is unable to obtain payment from the person at the time the sample is drawn or within a reasonable time thereafter, the facility shall be entitled to reimbursement from the office of the defender general. The office of the defender general may recoup those costs and the court may impose conditions of release or probation for that purpose.

(f) The facility, physician, licensed nurse, medical technician, physician's assistant, medical technologist, or laboratory assistant drawing blood shall in no manner be liable in any civil or criminal action except for negligence in drawing the blood.

23 V.S.A. § 1203b. Duty to report blood test results

(a) Notwithstanding any law or court rule to the contrary, if a health care provider who is providing health services to a person in the emergency room of a health care facility as a result of a motor vehicle accident becomes aware as a result of any blood test performed in the health care facility that the person's blood alcohol level meets or exceeds the level prohibited by law, the health care provider shall report that fact, as soon as is reasonably possible, to a law enforcement agency having jurisdiction over the location where the accident occurred.

(b) Any person who in good faith reports the results of a blood test pursuant to the provisions of subsection (a) of this section shall be immune from any civil or criminal liability which might otherwise be incurred or imposed as a result of making a report.

(c) Any person who violates subsection (a) of this section shall be fined not more than \$ 500.00.

(d) A report made under this section, the fact that a report was made and the results of the blood test which required the report shall not be admissible in any criminal case without the consent of the person whose blood was tested.

(e) A report made under the provisions of this section shall not be considered a waiver of the patient's privilege.

(f) As used in this section:

(1) "Health care facility" shall be defined as provided in 18 V.S.A. § 9432(7).

(2) "Health care provider" shall be defined as provided in 18 V.S.A. § 9432(8).

(3) "Health services" shall be defined as provided in 18 V.S.A. § 9432(9).

(g) Health care facilities have a responsibility to ensure that all health care providers who work in the health care facility and may provide health care to a person injured as a result of a motor vehicle accident are aware of their responsibilities under this section. Every health care facility that provides health care to persons injured as a result of motor vehicle accidents shall:

(1) adopt a policy that implements this section;

(2) provide a copy of the policy to all health care providers who work in the health care facility who may provide health care to a person as a result of a motor vehicle accident; and

(3) conduct an educational and training program within one month of the effective date of this section for all such health care providers currently working at the facility and, for all such health care providers hired thereafter, within one month of their employment.

23 V.S.A. § 1204. Permissive inferences

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating, attempting to operate or in actual physical control of a vehicle on a highway, the person's alcohol concentration shall give rise to the following permissive inferences:

(1) If the person's alcohol concentration at that time was less than 0.08, such fact shall not give rise to any presumption or permissive inference that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

(2) If the person's alcohol concentration at that time was 0.08 or more, it shall be a permissive inference that the person was under the influence of intoxicating liquor in violation of section 1201(a)(2) or (3) of this title.

(3) If the person's alcohol concentration at any time within two hours of the alleged offense was 0.10 or more, it shall be a permissive inference that the person was under the influence of intoxicating liquor in violation of section 1201(a)(2) or (3) of this title.

(b) The foregoing provisions shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor, nor shall they be construed as requiring that evidence of the amount of alcohol in the person's blood, breath, urine or saliva must be presented.

23 V.S.A. 1205. Civil suspension; summary procedure

(a) Refusal; alcohol concentration of 0.08 or more; suspension periods. -- Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person refused to submit to a test, the commissioner shall suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of six months and until the person complies with section 1209a of this title. Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was 0.08 or more at the time of operating, attempting to operate or being in actual physical control, the commissioner shall suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of 90 days and until the person complies with section 1209a of this title.

(b) Form of officer's affidavit. -- A law enforcement officer's affidavit in support of a suspension under this section shall be in a standardized form for use throughout the state and shall be sufficient if it contains the following statements:

(1) The officer is a certified law enforcement officer.

(2) The officer who administered the test was certified to operate the testing equipment.

(3) The officer had reasonable grounds to believe the person was operating, attempting to operate or in actual physical control of a vehicle in violation of section 1201 of Title 23 (noting the time and date of operating, attempting to operate or being in actual physical control).

(4) The officer informed the person of his or her rights under 23 V.S.A. § 1202(d).

(5) The officer obtained an evidentiary test (noting the time and date the test was taken) and the test indicated that the person's alcohol concentration was 0.08 or more, or the person refused to submit to an evidentiary test.

(6) The officer complied with the Soldiers and Sailors Civil Relief Act (50 U.S.C. § 501 et seq.).

(7) The officer confirmed the person's correct mailing address.

(c) Notice of suspension. -- On behalf of the commissioner of motor vehicles, a law enforcement officer requesting or directing the administration of an evidentiary test shall serve notice of intention to suspend and of suspension on a person who refuses to submit to an evidentiary test or on a person who submits to a test the results of which indicate that the person's alcohol concentration was 0.08 or more at the time of operating, attempting to operate or being in actual physical control of a vehicle in violation of section 1201 of this title. The notice shall be signed by the law enforcement officer requesting the test. The notice shall also serve as a temporary operator's license and shall be valid until the effective date of suspension indicated on the notice. At the time the notice is given to the person, the person shall surrender, and the law enforcement officer shall take possession and custody of, the person's license or permit and forward it to the commissioner. A copy of the notice shall be sent to the commissioner of motor vehicles and a copy shall be mailed or given to the defendant within three business days of the date the officer receives the results of the test. If mailed, the notice is deemed received three days after mailing to the address provided by the defendant to the law enforcement officer. A copy of the affidavit of the law enforcement officer shall also be mailed first class mail or given to the defendant within seven days of the date of notice.

(d) Form of notice. -- The notice of intention to suspend and of suspension shall be in a form prescribed by the supreme court. The notice shall include an explanation of rights, a form to be used to request a hearing, and, if a hearing is requested, the date, time and location of the district court where the person must appear for a preliminary hearing. The notice shall also contain, in boldface print, the following:

(1) You have the right to ask for a hearing to contest the suspension of your operator's license.

(2) This notice shall serve as a temporary operator's license and is valid until 12:01 a.m. of the date of suspension. If this is your first violation of 23 V.S.A. § 1201 and if you do not request a hearing, your license will be suspended as provided in this notice. If this is your second or subsequent violation of 23 V.S.A. § 1201, your license will be suspended on the 11th day after you receive this notice. It is a crime to drive while your license is suspended.

(3) If you wish to request a hearing before the district court, you must mail or deliver your request for a hearing within seven (7) days after (date of notice).

(4) If your request for a hearing is not mailed or delivered within seven (7) days after (date of notice), you waive your right to a hearing and your license will be suspended as provided in this notice.

(5) In order to request a hearing, sign the attached form and mail or deliver the form to the commissioner of motor vehicles at the address shown.

(6) If you are charged with a second or subsequent violation of 23 V.S.A. § 1201, no person shall sell, transfer or encumber the title to a vehicle that may be subject to immobilization or forfeiture unless approved by the court in which the charge is filed for good cause shown.

(e) Effective date of suspension.

(1) First offense. -- Unless a hearing is requested, a suspension under this section of the license of a person who the officer has reasonable grounds to believe violated section 1201 of this title a first time becomes effective on the eleventh day after the person receives notice or is deemed to have received notice under subsection (c) of this section. If a hearing is requested, a suspension shall not become effective unless the court orders a suspension after hearing as provided in this section.

(2) Second or subsequent offense. -- A suspension of a person's license under this section shall become effective on the eleventh day after the person receives notice or is deemed to have received notice under subsection (c) of this section if:

(A) the officer has reasonable grounds to believe the person has violated section 1201 of this title; and

(B) after July 1, 1991, the person has:

(i) had his or her operator's license suspended pursuant to this section; or

(ii) been convicted of a violation of section 1201 of this title.

(f) Review by district court. -- Within seven days following receipt of a notice of intention to suspend and of suspension, a person may make a request for a hearing before the district court by mailing or delivering the form provided with the notice. The request shall be mailed or delivered to the commissioner of motor vehicles who shall then notify the district court that a hearing has been requested and who shall then provide the state's attorney with a copy of the notice of intention to suspend and of suspension and the officer's affidavit.

(g) Preliminary hearing. -- The preliminary hearing shall be held within 21 days of the alleged offense. Unless impracticable or continued for good cause shown, the date of the preliminary hearing shall be the same as the date of the first appearance in any criminal case resulting from the same incident for which the person received a citation to appear in court. The preliminary hearing shall be held in accordance with procedures prescribed by the supreme court.

(h) Final hearing. -- If the defendant requests a hearing on the merits, the court shall schedule a final hearing on the merits to be held within 21 days of the date of the preliminary hearing. In no event may a final hearing occur more than 42 days after the date of the alleged offense without the consent of the defendant or for good cause shown. The final hearing may only be continued by the consent of the defendant or for good cause shown. The issues at the final hearing shall be limited to the following:

(1) whether the law enforcement officer had reasonable grounds to believe the person was operating, attempting to operate or in actual physical control of a vehicle in violation of section 1201 of this title;

(2) whether at the time of the request for the evidentiary test the officer informed the person of the person's rights and the consequences of taking and refusing the test substantially as set out in subsection 1202(d) of this title;

(3) whether the person refused to permit the test;

(4) whether the test was taken and the test results indicated that the person's alcohol concentration was 0.08 or more at the time of operating, attempting to operate or being in actual physical control of a vehicle in violation of section 1201 of this title, whether the testing methods used were valid and reliable and whether the test results were accurate and accurately evaluated. Evidence that the test was taken and evaluated in compliance with rules adopted by the

department of health shall be prima facie evidence that the testing methods used were valid and reliable and that the test results are accurate and were accurately evaluated;

(5) whether the requirements of section 1202 of this title were complied with.

No less than seven days before the final hearing, and subject to the requirements of District Court Civil Rule 11, the defendant shall provide to the state and file with the court a list of the issues (limited to the issues set forth in this subsection) that the defendant intends to raise. Only evidence that is relevant to an issue listed by the defendant may be raised by the defendant at the final hearing. The defendant shall not be permitted to raise any other evidence at the final hearing, and all other evidence shall be inadmissible.

(i) Finding by the court. -- The court shall electronically forward a report of the hearing to the commissioner. Upon a finding by the court that the law enforcement officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person refused to submit to a test, or upon a finding by the court that the law enforcement officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was 0.08 or more at the time the person was operating, attempting to operate or in actual physical control, the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle shall be suspended or shall remain suspended for the required term and until the person complies with section 1209a of this title. Upon a finding in favor of the person, the commissioner shall cause the suspension to be canceled and removed from the record, without payment of any fee.

(j) Venue and conduct of hearings. -- Venue for proceedings under this section shall be in the territorial unit of the district court where the offense is alleged to have occurred. Hearings under this section shall be summary proceedings conducted by the district court without a jury and shall be subject to the District Court Civil Rules only as consistent with this section. The state has the burden of proof by a preponderance of the evidence. Affidavits of law enforcement officers, chemists of either party, or expert witnesses of either party shall be admissible evidence which may be rebutted by witnesses called by either party. The affidavits shall be delivered to the other party at least five days prior to the hearing.

(k) Appeal. -- A decision of the district court under this section may be appealed as a matter of right to the supreme court. The suspension shall not be stayed pending appeal unless the defendant is reasonably likely to prevail on appeal.

(l) Access to information. -- In connection with a proceeding under this section the operator shall have access to all written statements and information in the possession and control of the state concerning the evidentiary test or tests, including without limitation the police report, processing forms, certification and affidavit, breath test results, police notes and the names and addresses of witnesses. If the operator intends to rely on the independent analysis, the state shall have access to the test results from the independent analysis and names and addresses of all witnesses. No depositions or written interrogatories shall be permitted except in extraordinary circumstances.

(m) Second and subsequent suspensions. -- For a second suspension under this section, the period of suspension shall be 18 months and until the person complies with section 1209a of this title. For a third or subsequent suspension under this section, the period of suspension shall be life.

(n) Presumption. -- In a proceeding under this section, if there was at any time within two hours of operating, attempting to operate or being in actual physical control of a vehicle an alcohol concentration of 0.08 or more, it shall be a rebuttable

presumption that the person's alcohol concentration was 0.08 or more at the time of operating, attempting to operate or being in actual physical control.

(o) Use immunity. -- No testimony or other information presented by the defendant in connection with a proceeding under this section or any information directly or indirectly derived from such testimony or other information, may be used for any purpose, including impeachment and cross-examination, against the defendant in any criminal case, except a prosecution for perjury or giving a false statement.

(p) Suspensions to run concurrently. -- Suspensions imposed under this section or any comparable statute of any other jurisdiction and sections 1206 and 1208 of this title or any comparable statutes of any other jurisdiction or any suspension resulting from a conviction for a violation of section 1091 of this title from the same incident shall run concurrently and a person shall receive credit for any elapsed period of a suspension served in Vermont against a later suspension imposed in this state. In order for suspension credit to be available against a later suspension, the suspension issued under this section must appear and remain on the individual's motor vehicle record.

(q) Rules. -- The supreme court shall adopt rules ensuring the fairness of proceedings under this section.

(r) A person suspended under this section for a refusal shall be assessed a surcharge of \$ 50.00 which shall be collected by the department of motor vehicles prior to reinstatement of the person's driving privileges. The department shall transfer the surcharge assessed under this subsection to the public defender special fund created in section 5239 of Title 13 specifying the source of the moneys being deposited. All such moneys shall be used by the office of the defender general to cover the cost of providing statewide 24-hour legal services coverage as required by 23 V.S.A. § 1202(g). After \$ 40,000.00 has been deposited in the public defender special fund in a single fiscal year, all additional collected surcharges assessed under this subsection in that fiscal year shall be credited to the governor's highway safety commission for deposit in a DUI enforcement special fund established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5. All such DUI enforcement special fund receipts shall be used exclusively for statewide DUI enforcement and for no other purpose.

(s) A person who has received a notice of suspension under this section shall not apply for or receive a duplicate operator's license while the matter is pending. A person who violates this subsection shall be fined not more than \$ 500.00.

(t) For a first offense, the time limits set forth in subsections (g) and (h) of this section are directive only, and shall not be interpreted by the court to be mandatory or jurisdictional.

(u) In any proceeding under this section, for cause shown, a party's chemist may be allowed to testify by telephone in lieu of a personal appearance.

23 V.S.A. § 1206. Suspension of license for driving while under influence, reinstatement

(a) First conviction. -- Except as otherwise provided, upon conviction of a person for violating a provision of section 1201 of this title, or upon final determination of an appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of 90 days and until the defendant complies with section 1209a of this title.

(b) Extended suspension. -- In cases resulting in a fatality, the period of suspension shall be one year and until the defendant complies with section 1209a of this title.

(c) Upon conviction of a person for violating a provision of subsection 1201(b) or (c) of this title, or upon final determination of an appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately suspend the person's operating license or nonresident operating privilege or the privilege of an unlicensed operator to operate a vehicle for a period of six months, and until the defendant complies with section 1209a of this title.

23 V.S.A. § 1208. Suspensions for subsequent convictions

(a) Second conviction. -- Upon a second conviction of a person violating a provision of section 1201 of this title and upon final determination of an appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately suspend the person's operating license, or nonresident operating privilege or the privilege of an unlicensed operator to operate a vehicle for 18 months and until the defendant complies with section 1209a of this title.

(b) Third conviction. -- Upon a third or subsequent conviction of a person violating a provision of section 1201 of this title and upon final determination of any appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately revoke the person's operating license, or nonresident operating privilege or the privilege of an unlicensed operator to operate a motor vehicle for life.

23 V.S.A. § 1209a. Conditions of reinstatement; alcohol and driving education; screening; therapy programs

(a) Conditions of reinstatement. -- No license suspended or revoked under this subchapter, except a license suspended under section 1216 of this title, shall be reinstated except as follows:

(1) In the case of a first suspension, a license shall not be reinstated until the person has:

(A) successfully completed an alcohol and driving education program, at the person's own expense, followed by an assessment of the need for further treatment by a state designated counselor, at the person's own expense, to determine whether reinstatement should be further conditioned on satisfactory completion of a therapy program agreed to by the person and the drinking driver rehabilitation program director; and

(B) if the screening indicates that therapy is needed, satisfactorily completed or shown substantial progress in completing a therapy program at the person's own expense agreed to by the person and the driver rehabilitation program director.

(2) In the case of a second suspension, a license shall not be reinstated until the person has successfully completed an alcohol and driving rehabilitation program and has completed or shown substantial progress in completing a therapy program at the person's own expense agreed to by the person and the driver rehabilitation program director.

(3) In the case of a third or subsequent suspension, a license shall not be reinstated until the person has completed or shown substantial progress in completing a therapy program at the person's own expense agreed to by the person and the driver rehabilitation program director.

(b) Abstinence. -- Notwithstanding any other provision of this subchapter, a person whose license has been suspended for three years or more under this subchapter may apply to the driver rehabilitation school director and to the commissioner for reinstatement of his or her driving privilege. In the case of a suspension for three years, the person shall have completed two years of total abstinence from consumption of alcohol or drugs, or both. In the case of a suspension for life, the person shall have completed three years of total abstinence from consumption of alcohol or drugs, or both. In both cases, the beginning date for the period of abstinence shall be no sooner than the effective date of the suspension from which the person is requesting reinstatement and shall not include any period during which the person is serving a sentence of incarceration to include furlough. If the commissioner, or a medical review board convened by the commissioner, is satisfied by a preponderance of the evidence that the applicant has abstained for the required number of years immediately preceding the application and hearing, has successfully completed a therapy program as required under this section and the person appreciates that he or she cannot drink any amount of alcohol and drive safely, the person's license shall be reinstated immediately upon such conditions as the commissioner may impose. If after notice and hearing the commissioner later finds that the person was operating, attempting to operate or in actual physical control of a vehicle while the person's alcohol concentration was 0.02 or more following reinstatement under this subsection, the person's operating license or privilege to operate shall be immediately suspended for the period of the original suspension. A person shall be eligible for reinstatement under this section only once following a suspension for life.

(c) Screening and therapy programs. -- In the case of a second or subsequent suspension, the commissioner shall notify the person that he or she is required to enroll in the alcohol and driving education screening and therapy program provided for in this section within 30 days of license suspension. If the person fails to enroll or fails to remain so enrolled until completion, the drinking driver rehabilitation program shall report such failure to the sentencing court. The court may order the person to appear and show cause why he or she failed to comply.

(d) Judicial review. -- A person aggrieved by a decision of a designated counselor under this section may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

(e) Therapy program. -- A therapy program required under this section may include without limitation outpatient therapy, intensive outpatient therapy and residential therapy. In the event that the individual and the driver rehabilitation program director cannot agree on the type of therapy required, the district court shall make that determination.

(f) Fees. -- The department of health's drinking driver rehabilitation program shall assess fees for the alcohol and driving education program and the alcohol assessment screening required by subdivision (a)(1)(A) of this section. The fee for the alcohol and driving education program shall not exceed \$ 180.00. The fee for the alcohol assessment screening shall not exceed \$ 150.00. In the case of a more intensive or weekend residential program combining both the alcohol and driving education program and the alcohol assessment screening, the total charge shall not exceed \$ 500.00. Charges collected under this section shall be credited to separate special funds for each type of service and shall be available to the department of health to offset the cost of operating the drinking driver rehabilitation program.

23 V.S.A. § 1210. Penalties

(a) Screening. -- Before sentencing a defendant under this section, the court may order that the defendant submit to an alcohol assessment screening. Such a screening report may be considered at sentencing in the same manner as a presentence report. At sentencing, the defendant may present relevant evidence, including the results of any independent alcohol assessment which was conducted at the person's own expense. Evidence regarding any such screening or an

alcohol assessment performed at the expense of the defendant shall not be admissible for any other purpose without the defendant's consent.

(b) First offense. -- A person who violates section 1201 of this title may be fined not more than \$ 750.00, or imprisoned for not more than two years, or both.

(c) Second offense. -- A person convicted of violating section 1201 of this title who has been convicted of another violation of that section shall be fined not more than \$ 1,500.00 or imprisoned not more than two years, or both. At least 200 hours of community service shall be performed, or 60 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed.

(d) Third or subsequent offense. -- A person convicted of violating section 1201 of this title who has twice been convicted of violation of that section shall be fined not more than \$ 2,500.00 or imprisoned not more than five years, or both. At least 400 hours of community service shall be performed, or 100 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed.

(e) Death resulting. -- If the death of any person results from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than \$ 10,000.00 or imprisoned not less than one year nor more than 15 years, or both. The provisions of this subsection do not limit or restrict prosecutions for manslaughter.

(f) Injury resulting. -- If serious bodily injury, as defined in 13 V.S.A. § 1021(2), results to any person other than the operator from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than \$ 5,000.00, or imprisoned not less than one year nor more than 15 years, or both.

(g) Determination of fines. -- In determining appropriate fines under this section the court may take into account the total cost to a defendant of alcohol screening, participation in the alcohol and driving education program and therapy and the income of the defendant.

(h) A person convicted of violating 23 V.S.A. § 1201 shall be assessed a surcharge of \$ 60.00, which shall be added to any fine imposed by the court. The court shall collect and transfer such surcharge to the department of health for deposit in the health department's laboratory services special fund.

(i) A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$ 50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to the office of defender general for deposit in the public defender special fund specifying the source of the monies being deposited. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.

(j) A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$ 50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to be credited to the DUI enforcement fund. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.

23 V.S.A. § 1212. Conditions of release; arrest upon violation

(a) At the first appearance before a judicial officer of a person charged with violation of section 1201 of this title, the court, upon a plea of not guilty, shall consider whether to establish conditions of release. Those conditions may include a requirement that the defendant not operate a motor vehicle if there is a likelihood that the defendant will operate a motor vehicle in violation of section 1201. The court may consider all relevant evidence, including whether the defendant has a motor vehicle or criminal record indicating prior convictions for one or more alcohol-related offenses. Prior convictions may be established for this purpose by a noncertified photocopy of a motor vehicle record, a computer printout or an affidavit. Nothing in this section limits the authority of a judicial officer to impose other conditions of release, nor does it limit or modify other statutory provisions concerning license suspension or revocation or the right of a person to operate a motor vehicle.

(b) A court which requires as a condition of release that a defendant not operate a motor vehicle shall so notify the commissioner of motor vehicles. The commissioner shall take suitable steps to assure that this information is available to law enforcement officers. The court shall promptly advise the commissioner of any modification of this condition of release and of the termination of proceedings.

(c) A law enforcement officer who observes a person violating a condition of release requiring that he not operate a motor vehicle may promptly arrest the person for violating a condition of bail and shall bring the person before the nearest available judicial officer without unnecessary delay. A law enforcement officer who otherwise has probable cause to believe that a person has violated a condition of release requiring that he not operate a motor vehicle shall promptly notify a prosecuting officer.

23 V.S.A. § 1213a. Immobilization of vehicle

(a) Immobilization. -- At the time of sentencing after a second or subsequent conviction under section 1201 of this title, the court may, upon the motion of the state, and in addition to any penalty imposed by law, order the motor vehicle operated by the defendant at the time of the offense seized and immobilized by a law enforcement agency designated by the court, as provided in this section and section 1213c of this title.

(b) Immobilization on owner's property. -- A motor vehicle subject to an immobilization order shall be immobilized, whenever possible, on property owned by the owner of the vehicle or on a parking space legally available to the owner of the vehicle. An immobilized vehicle is not exempt from enforcement of liens held by third parties.

(c) Immobilization on state or private property. -- If the owner of the motor vehicle does not own property or have a parking area on which the vehicle can be immobilized, the vehicle shall be impounded on property owned by the state or on private property. All costs of impoundment shall be paid by the defendant. The period of impoundment shall run as if the vehicle were immobilized.

(d) Expiration of immobilization order. -- An order of immobilization under this section shall expire in 18 months or when the defendant obtains a valid operator's license, whichever comes first.

(e) Release of vehicle. -- When an immobilization order expires, and when the costs provided for in this section have been paid in full by the defendant, the vehicle shall be released to its owner.

(f) Costs. -- All costs of towing and impoundment shall be paid by the defendant before the vehicle is released to its

owner. If the defendant fails to pay the towing and impoundment costs within 30 days after the immobilization order expires, the state is authorized to sell the vehicle by public auction pursuant to the procedures in chapter 13 of Title 27. The proceeds from the sale of the vehicle shall be used first to offset the costs of towing, impounding and releasing the vehicle. Any balance remaining, after any liens on the vehicle have been paid in full, shall be paid to the owner of the vehicle.

(g) Disbursement of proceeds. -- Proceeds from the defendant's payment of the release fee and towing and impoundment costs shall be disbursed to the law enforcement agencies that incurred the costs.

(h) Tampering. -- A person who tampers with an immobilization device or mobilizes a vehicle that is subject to an order of immobilization shall be imprisoned not more than two years or fined not more than \$ 1,000.00, or both.

23 V.S.A. § 1213b. Forfeiture of vehicle

At the time of sentencing after a third or subsequent conviction under section 1201 of this title, the court may, upon motion of the state and in addition to any penalty imposed by law and after notice and hearing, order the motor vehicle operated by the defendant at the time of the offense forfeited and sold as provided in section 1213c of this title.

23 V.S.A. § 1213c. Immobilization and forfeiture proceedings

(a) Notice. -- The state shall provide the following persons with notice of an immobilization or forfeiture hearing:

- (1) the defendant;
- (2) the registered owner or owners;
- (3) any holder of a security interest in or lien on the vehicle; and
- (4) any other person appearing to be an innocent owner or operator as described in subsection (f) of this section.

(b) Content of notice. -- The notice shall contain the following:

- (1) a description of the motor vehicle, including vehicle identification number, make, model and year;
- (2) the name of the registered owner or owners, lienholder, and any other person appearing to be an innocent owner or operator as described in subsection (g) of this section;
- (3) the date, time and place of the hearing; and
- (4) a statement that any person who is an owner, an innocent owner or operator, or who holds a security interest in, or claims any interest in the motor vehicle, may appear and be heard at the hearing to protect the person's interest in the motor vehicle.

(c) Service of notice. -- The notice of hearing shall be served as provided for in the District Court Civil Rules on the registered owner or owners and any lienholders as shown on the certificate of title for the vehicle as shown in the records of the department of motor vehicles in the state in which the vehicle is registered or titled.

(d) Hearing. -- The court shall hold a hearing to determine whether or not to order the motor vehicle immobilized or forfeited. The proceeding shall be against the motor vehicle and shall be deemed civil in nature.

(e) Hardship consideration. -- In determining the motion the court may consider any undue hardship which immobilization or forfeiture would cause to a person, other than the defendant, who is dependent on the motor vehicle for essential transportation needs. In making such determination, the court shall consider any evidence of past or current domestic violence.

(f) Order. -- The court shall make findings of fact and conclusions of law and shall issue a final order. The court may order the motor vehicle immobilized or forfeited if the court finds that:

- (1) the motor vehicle is subject to immobilization or forfeiture;
- (2) the notice as required by this section was served; and
- (3) no party has shown that he or she is an innocent owner or operator as described in subsection (g) of this section.

(g) Rights of innocent owner or operator. -- The court shall not order the immobilization or forfeiture of a motor vehicle if an owner, co-owner or person who regularly operates the motor vehicle, other than the defendant, shows by a preponderance of the evidence that the owner, co-owner or regular operator did not consent to or have any express or implied knowledge that the motor vehicle was being or was intended to be operated in a manner that would subject the motor vehicle to immobilization or forfeiture, or that the owner, co-owner or regular operator had no reasonable opportunity or capacity to prevent the defendant from operating the motor vehicle.

(h) Rented or leased vehicles. -- A vehicle that is rented or leased for a period of less than one year shall not be subject to immobilization or forfeiture unless it is established in the proceedings that the owner of the rented or leased vehicle knew of or consented to the operation of the motor vehicle in a manner that would subject the vehicle to immobilization or forfeiture.

(i) Lienholder. -- If the court finds that a person has an enforceable lien on or other interest in the motor vehicle which is not held through a straw purchase, trust or otherwise for the actual benefit of another and that the person did not know of or consent to the operation of the motor vehicle in a manner that would subject the vehicle to immobilization or forfeiture, the court shall:

- (1) permit the person to enforce the lien or other interest as provided by law if such enforcement does not result in the return of the motor vehicle to the defendant; or
- (2) upon immobilization or forfeiture order compensation to the person, to the extent of the person's interest, from the proceeds of the resulting sale.

(j) Order of forfeiture. -- If the court orders the motor vehicle forfeited, it shall be delivered into the custody of the commissioner of buildings and general services, who shall dispose of the motor vehicle pursuant to section 1556 of Title 29. The proceeds from the sale of the vehicle shall be used to offset any costs of selling the vehicle. Any balance remaining, after any liens on the vehicle have been paid in full, shall be deposited into the general fund.

- (k) Appeal. -- A decision of the court under this section may be appealed as a matter of right to the supreme court.
- (l) Disbursement of proceeds. -- Proceeds from the defendant's payment of the release fee and towing and impoundment costs shall be disbursed to the law enforcement agencies that incurred the costs.
- (m) Owning, leasing and renting prohibited. -- After issuance of an immobilization or forfeiture order, and during the defendant's license suspension or revocation period, the defendant shall not operate, purchase, lease or rent a motor vehicle. Persons under 21; alcohol concentration of 0.02 or more
- (a) A person under the age of 21 who operates, attempts to operate or is in actual physical control of a vehicle on a highway when the person's alcohol concentration is 0.02 or more, commits a civil traffic violation subject to the jurisdiction of the judicial bureau and subject to the following sanctions:
- (1) For a first violation, the person's license or privilege to operate shall be suspended for six months and until the person complies with section 1209a of this title.
- (2) For a second or subsequent violation, the person's license or privilege to operate shall be suspended until the person reaches the age of 21 or for one year, whichever is longer, and complies with section 1209a of this title.
- (b) Notwithstanding the provisions in subsection (a) of this section to the contrary, a person's license that has been suspended under this section shall not be reinstated until the commissioner has received satisfactory evidence that the provider of the therapy program has been paid in full.
- (c) A person who violates this section may also be subject to recall of his or her provisional license under section 607a of this title.
- (d) If a law enforcement officer has reasonable grounds to believe that a person is violating this section, the officer may request the person to submit to a breath test using a preliminary screening device approved by the commissioner of health. A refusal to submit to the breath test shall be considered a violation of this section. Notwithstanding any provisions to the contrary in sections 1202 and 1203 of this title:
- (1) the results of the test shall be admissible evidence in a proceeding under this section; and
- (2) there shall be no statutory right to counsel prior to the administration of the test.
- (e) In a proceeding under this section, if there was at any time within two hours of operating, attempting to operate or being in actual physical control of a vehicle on a highway an alcohol concentration of 0.02 or more, it shall be a rebuttable presumption that the person's alcohol concentration was 0.02 or more at the time of operating, attempting to operate or being in actual physical control.
- (f) No fine and no points shall be assessed for a violation of this section.
- (g) The alcohol and driving program required under this section shall be administered by the office of alcohol and drug abuse programs and shall take into consideration any particular treatment needs of operators under the age of 21.

(h) A charge of violating this section shall not bar prosecution for any crime, including a prosecution under section 1201 of this title. vehicle. A person who violates this subsection shall be imprisoned not more than two years or fined not more than \$ 1,000.00, or both.

(n) (1) Selling or encumbering prohibited. -- Except as provided in subdivision (2) of this subsection, after a person is detained, arrested, lodged or released upon citation for a second or subsequent violation of section 1201 of this title, no person shall sell, transfer or encumber the title to a vehicle that the person knows may be subject to immobilization under section 1213a of this title or forfeiture under section 1213b of this title, unless approved by the court in which the charge is filed for good cause shown. A person who violates this section shall be imprisoned not more than two years or fined not more than \$ 1,000.00, or both.

(2) If the state has not commenced a prosecution for a second or subsequent violation of section 1201 of this title within 90 days of the detention, arrest, lodging or release upon citation, the person may sell, transfer or encumber the subject vehicle.

23 V.S.A. § 1215. Injunctive relief

If the commissioner has not reinstated a license after the suspension or revocation period has run under this subchapter, and the person alleges he or she has complied with section 1209a of this title or alleges that the alcohol assessment screening does not indicate that therapy should be a condition of reinstatement, he or she may seek injunctive relief in the district court in the manner provided by the Vermont Rules of Civil Procedure. In such actions, the driver rehabilitation program director shall be the proper defendant.

23 V.S.A. § 1216. Persons under 21; alcohol concentration of 0.02 or more

(a) A person under the age of 21 who operates, attempts to operate or is in actual physical control of a vehicle on a highway when the person's alcohol concentration is 0.02 or more, commits a civil traffic violation subject to the jurisdiction of the judicial bureau and subject to the following sanctions:

(1) For a first violation, the person's license or privilege to operate shall be suspended for six months and until the person complies with section 1209a of this title.

(2) For a second or subsequent violation, the person's license or privilege to operate shall be suspended until the person reaches the age of 21 or for one year, whichever is longer, and complies with section 1209a of this title.

(b) Notwithstanding the provisions in subsection (a) of this section to the contrary, a person's license that has been suspended under this section shall not be reinstated until the commissioner has received satisfactory evidence that the provider of the therapy program has been paid in full.

(c) A person who violates this section may also be subject to recall of his or her provisional license under section 607a of this title.

(d) If a law enforcement officer has reasonable grounds to believe that a person is violating this section, the officer may request the person to submit to a breath test using a preliminary screening device approved by the commissioner of health. A refusal to submit to the breath test shall be considered a violation of this section. Notwithstanding any provisions to the contrary in sections 1202 and 1203 of this title:

(1) the results of the test shall be admissible evidence in a proceeding under this section; and

(2) there shall be no statutory right to counsel prior to the administration of the test.

(e) In a proceeding under this section, if there was at any time within two hours of operating, attempting to operate or being in actual physical control of a vehicle on a highway an alcohol concentration of 0.02 or more, it shall be a rebuttable presumption that the person's alcohol concentration was 0.02 or more at the time of operating, attempting to operate or being in actual physical control.

(f) No fine and no points shall be assessed for a violation of this section.

(g) The alcohol and driving program required under this section shall be administered by the office of alcohol and drug abuse programs and shall take into consideration any particular treatment needs of operators under the age of 21.

(h) A charge of violating this section shall not bar prosecution for any crime, including a prosecution under section 1201 of this title.