

H.560

An act relating to traffic safety

It is hereby enacted by the General Assembly of the State of Vermont:

\* \* \* DUI; Ignition Interlock Devices \* \* \*

Sec. 1. 23 V.S.A. § 1200 is amended to read:

§ 1200. DEFINITIONS

As used in this subchapter:

\* \* \*

(9) “Ignition interlock restricted driver’s license” or “ignition interlock RDL” or “RDL” means a restricted license or privilege to operate a motor vehicle issued by the Commissioner allowing a person whose license or privilege to operate has been suspended or revoked for operating under the influence of intoxicating liquor or in excess of legal limits of alcohol concentration, or for refusing an enforcement officer’s reasonable request for an evidentiary test, to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, installed with an approved ignition interlock device.

\* \* \*

Sec. 2. 23 V.S.A. § 1213 is amended to read:

§ 1213. IGNITION INTERLOCK RESTRICTED DRIVER'S LICENSE;

PENALTIES

(a) First offense without death or serious bodily injury. A person whose license or privilege to operate is suspended for a first offense under this subchapter that did not result in death or serious bodily injury to another person shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The Commissioner shall issue an ignition interlock RDL ~~to a person eligible under section 1205(a)(1), 1205(a)(2), 1206(a), or 1216(a)(1) of this title upon~~ to a person suspended for a first offense upon receipt of a \$125.00 application fee, ~~and upon receipt~~ and of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated; and of financial responsibility as provided in section 801 of this title; ~~and enrollment in an Alcohol and Driving Education Program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(a)(1), 1205(a)(2), 1206(a), or 1216(a)(1) of this title.~~ A new ignition interlock RDL shall expire at midnight on the eve of the second birthday of the applicant following the date of issue, and may be renewed for one-year terms. The Commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose

the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be \$125.00.

(b) ~~Second~~ First offense involving death or SBI; second offense. ~~A person~~ Except for an offense under section 1216 of this subchapter or an offense arising solely from being under the influence of a drug other than alcohol, a person whose license or privilege to operate is suspended for a first offense involving death or serious bodily injury to another or a second offense under this subchapter shall be permitted required to operate ~~a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued~~ under a valid ignition interlock RDL. ~~The Commissioner shall issue an ignition interlock RDL to a person eligible under section~~ for the relevant period prescribed in subsection 1205(m), 1206(b), or 1208(a), or 1216(a)(2) of this title prior to being eligible for reinstatement of his or her regular license, unless exempt under subdivision 1209a(a)(4) of this title. A person whose license is suspended under subdivision 1216(a)(2) of this title may elect to obtain an ignition interlock RDL. The Commissioner shall issue an ignition interlock RDL upon receipt of a \$125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, and of financial responsibility as provided in section 801 of this title, and enrollment in an Alcohol and Driving Rehabilitation Program. The RDL shall be valid after expiration of the

~~applicable shortened period specified in section 1205(m), 1208(a), or 1216(a)(2) of this title.~~ A new ignition interlock RDL shall expire at midnight on the eve of the second birthday of the applicant following the date of issue, and may be renewed for one-year terms. The Commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be \$125.00.

(c) Third or subsequent offense. ~~A person~~ Except for an offense under section 1216 of this subchapter or an offense arising solely from being under the influence of a drug other than alcohol, a person whose license or privilege to operate is suspended or revoked for a third or subsequent offense under this subchapter shall be ~~permitted~~ required to operate ~~a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued under a valid ignition interlock RDL for the relevant period prescribed in subsection 1209a(b) of this title prior to being eligible for reinstatement or issuance of a regular license, unless exempt under subdivision 1209a(a)(4) of this title.~~ The Commissioner shall issue an ignition interlock RDL ~~to a person eligible under section 1205(a)(3), 1205(m), 1208(b), or 1216(a)(2) of this title~~ upon receipt of a \$125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor

vehicle to be operated, and of financial responsibility as provided in section 801 of this title, ~~and enrollment in an Alcohol and Driving Rehabilitation Program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(a)(3), 1205(m), 1208(b), or 1216(a)(2) of this title.~~ A new ignition interlock RDL shall expire at midnight on the eve of the second birthday of the applicant following the date of issue, and may be renewed for one-year terms. The Commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be \$125.00.

(d) If a fine is to be imposed for a conviction of a violation of section 1201 of this title, upon receipt of proof of installation of an approved ignition interlock device, the Court may order that the fine of an indigent person conditionally be reduced by one-half to defray the costs of the ignition interlock device, subject to the person's ongoing operation under, and compliance with the terms of, a valid ignition interlock RDL as set forth in this section. In considering whether a person's fine should be reduced under this subsection, the Court shall take into account any discount already provided by the device manufacturer or provider.

\* \* \*

(f)(1) Prior to the issuance of an ignition interlock RDL under this section, the Commissioner shall notify the applicant ~~of the applicable period prior to eligibility for reinstatement under section 1209a or 1216 of this title, and that the reinstatement period under section 1209a or 1216 of this title may be~~ extended under this subsection (f) or subsections (g)–(h) of this section.

\* \* \*

(i) Upon receipt of notice that the holder of an ignition interlock RDL has been ~~adjudicated~~ convicted of an offense under this title that would result in suspension, revocation, or recall of a license or privilege to operate, the Commissioner shall suspend, revoke, or recall the person's ignition interlock RDL for the same period that the license or privilege to operate would have been suspended, revoked, or recalled. The Commissioner may impose a reinstatement fee in accordance with section 675 of this title and require, prior to reinstatement, satisfactory proof of installation of an approved ignition interlock device, and of financial responsibility as provided in section 801 of this title, ~~and enrollment in or completion of an alcohol and driving education or rehabilitation program.~~

\* \* \*

(l)(1) The Commissioner, in consultation with any individuals or entities the Commissioner deems appropriate, shall adopt rules and may enter into agreements to implement the provisions of this section. The Commissioner

shall not approve a manufacturer of ignition interlock devices as a provider in this State unless the manufacturer agrees to reduce the cost of installing, leasing, and deinstalling the device by at least 50 percent for persons who furnish proof of receipt of Three Squares, Heating Assistance, or Reach Up benefits.

\* \* \*

Sec. 3. 23 V.S.A. § 1209a is amended to read:

§ 1209a. CONDITIONS OF REINSTATEMENT; ALCOHOL AND

DRIVING EDUCATION; SCREENING; THERAPY PROGRAMS

(a) Conditions of reinstatement. ~~No~~ A license or privilege to operate 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 be reinstated only:

\* \* \*

(C) ~~if the person elects to operate under an ignition interlock RDL,~~  
after:

~~(i) a period of nine months (plus any extension of this period arising from a violation of section 1213 of this title) if the person's license or privilege to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or~~

~~(ii) a period of six months (~~

(i) after the end of the relevant suspension period specified in subsection 1205(a) or 1206(a) of this title or, if the person elects to operate under an ignition interlock RDL, after operating under the ignition interlock RDL for a period equivalent to the relevant suspension period specified in subsection 1205(a) or 1206(a) of this title plus any extension of this period arising from a violation of section 1213 of this title) ~~in all other cases; or~~

(ii) in the case of a first suspension arising from an offense that resulted in serious bodily injury to or death of another person, after the person operates under an ignition interlock RDL for a period equivalent to the relevant suspension period specified in subsection 1206(b) of this title; and

(D) if the person has no pending criminal charges, civil citations, or unpaid fines or penalties for a violation under this chapter.

(2) In the case of a second suspension, a license shall not be reinstated until:

\* \* \*

(C) ~~if the person elects to operate~~ after the person operates under an ignition interlock RDL, ~~after:~~

~~(i) a period of two years (plus any extension of this period arising from a violation of section 1213 of this title) if the person's license or privilege to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or~~

~~(ii) a period of 18 months ( for a period equivalent to the relevant suspension period specified in subsection 1205(m) or 1208(a) of this title, plus any extension of this period arising from a violation of section 1213 of this title) in all other cases, except that this requirement shall not apply if the underlying offense arose solely from being under the influence of a drug other than alcohol; and~~

(D) the person has no pending criminal charges, civil citations, or unpaid fines or penalties for a violation under this chapter.

(3) In the case of a third or subsequent suspension or a revocation, a license shall not be reinstated until:

(A) the person has successfully completed an alcohol and driving rehabilitation program;

(B) 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;

(C) the person has satisfied the requirements of subsection (b) of this section; and

~~(D) if the person elects to operate under an ignition interlock RDL, after:~~

~~(i) a period of four years (plus any extension of this period arising from a violation of section 1213 of this title) if the person's license or privilege~~

~~to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or~~

~~(ii) a period of three years (plus any extension of this period arising from a violation of section 1213 of this title) in all other cases; and~~

~~(E) the person has no pending criminal charges, civil citations, or unpaid fines or penalties for a violation under this chapter.~~

(4) The Commissioner shall waive a requirement to operate under an ignition interlock RDL prior to eligibility for reinstatement if the person furnishes sufficient proof as prescribed by the Commissioner that he or she is incapable of using an ignition interlock device because of a medical condition that will persist permanently or at least for the term of the suspension or, in the case of suspensions or revocations for life, for a period of at least three years.

(b) Abstinence.

(1) Notwithstanding any other provision of this subchapter, a person whose license or privilege to operate has been suspended or revoked for life under this subchapter may apply to the Driver Rehabilitation School Director and to the Commissioner for reinstatement of his or her driving privilege. The person shall have completed three years of total abstinence from consumption of alcohol or drugs, or both. The beginning date for the period of abstinence shall be no sooner than the effective date of the suspension or revocation 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. The application shall include the applicant's authorization for a urinalysis examination to be conducted prior to reinstatement under this subdivision. The application to the Commissioner shall be accompanied by a fee of \$500.00. The Commissioner shall have the discretion to waive the application fee if the Commissioner determines that payment of the fee would present a hardship to the applicant.

(2) 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, has operated under a valid ignition interlock RDL for at least three years following the suspension or revocation or, in the case of a suspension or revocation involving a refusal, for at least four years following the suspension or revocation, 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, subject to the condition that the person's suspension or revocation will be put back in effect in the event any further investigation reveals a return to the consumption of alcohol or drugs and to such additional conditions as the Commissioner may impose ~~and,~~ ~~if the person has not previously operated for three years under an ignition~~

~~interlock RDL, subject to the additional condition that the person shall operate under an ignition interlock restricted driver's license for a period of at least one year following reinstatement under this subsection. However, the Commissioner may waive this one-year requirement to operate under an ignition interlock restricted driver's license if the person furnishes proof as prescribed by the Commissioner that he or she is incapable of using an ignition interlock device because of a medical condition that will persist permanently or at least for one year. The requirement to operate under an ignition interlock RDL shall not apply if the person is exempt under subdivision (a)(4) of this section or if all of the offenses that triggered the lifetime suspension or revocation arose solely from being under the influence of a drug other than alcohol.~~

(3) If after notice and hearing the Commissioner later finds that the person was violating the conditions of the person's reinstatement under this subsection, the person's operating license or privilege to operate shall be immediately suspended or revoked ~~for the period of the original suspension~~ life.

(4) If the Commissioner finds that a person reinstated under this subsection was suspended pursuant to section 1205 of this title, or was convicted of a violation of section 1201 of this title, the person shall be

conclusively presumed to be in violation of the conditions of his or her reinstatement.

(5) A person shall be eligible for reinstatement under this subsection only once following a suspension or revocation for life.

(6)(A) If an applicant for reinstatement under this subsection resides in a jurisdiction other than Vermont, the Commissioner may elect not to conduct an investigation. If the Commissioner elects not to conduct an investigation, he or she shall provide a letter to the applicant's jurisdiction of residence stating that Vermont does not object to the jurisdiction issuing the applicant a license if the applicant is ~~authorized~~ required to operate only vehicles equipped with an ignition interlock device for at least a three-year period and is required to complete any alcohol rehabilitation or treatment requirements of the licensing jurisdiction.

(B) If the applicant's jurisdiction of residence is prepared to issue or has issued a license in accordance with subdivision (A) of this subdivision (6) and the applicant satisfies the requirements of section 675 of this title, the Commissioner shall update relevant State and federal databases to reflect that the applicant's lifetime suspension or revocation in Vermont under chapter 13, subchapter 13 of this title has terminated.

\* \* \*

Sec. 4. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

(a) Refusal; alcohol concentration above legal limits; suspension periods.

(1) 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~~ nine months and until the person complies with section 1209a of this title. However, a during this period, the person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 30 days of this six-month period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.

(2) 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 above a limit specified in subsection 1201(a) of this title, 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~~ six months and until the person complies with section 1209a of this title.

However, ~~a~~ during this period, the person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title ~~after 30 days of this 90 day period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.~~

(3) 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 subdivision 1201(d)(2) of this title and that the person submitted to a test and the test results indicated 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, 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 life. However, during the suspension, a person may ~~operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after one year of this lifetime suspension unless the alleged offense involved a collision resulting in serious bodily injury or death to another~~ operate a motor vehicle under the terms of an ignition interlock RDL issued under section 1213 of this title.

\* \* \*

(m) Second and subsequent suspensions. For a second suspension under this subchapter, the period of suspension shall be 18 months and until the person complies with section 1209a of this title or, in the case of a suspension following refusal of an enforcement officer's reasonable request for an evidentiary test, the period of suspension shall be two years and until the person complies with section 1209a of this title. However, a ~~the~~ person may operate a motor vehicle during this period under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title ~~after 90 days of this 18-month period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.~~ For a third or subsequent suspension under this subchapter, the period of suspension shall be life. However, a ~~person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after one year of~~ during this lifetime suspension ~~unless the alleged offense involved a collision resulting in serious bodily injury or death to another,~~ the person may operate a motor vehicle under the terms of an ignition interlock RDL issued under section 1213 of this title.

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Sec. 5. 23 V.S.A. § 1206 is amended to read:

§ 1206. SUSPENSION OF LICENSE FOR DRIVING WHILE UNDER  
INFLUENCE; FIRST CONVICTIONS

(a) First conviction—generally. 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~~ six months and until the defendant complies with section 1209a of this title or, in the case of a conviction following refusal of an enforcement officer’s reasonable request for an evidentiary test, the period of suspension shall be nine months and until the person complies with section 1209a of this title. ~~However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 30 days of this 90 day period unless the offense involved a collision resulting in serious bodily injury or death to another.~~

(b) Extended suspension—fatality or serious bodily injury. In cases resulting in a fatality or a serious bodily injury to a person other than the defendant, the period of suspension shall be one year and until the defendant complies with section 1209a of this title.

~~(c) Extended suspension refusal; serious bodily injury. Upon conviction of a person for violating a provision of subsection 1201(c) of this title involving a collision in which serious bodily injury resulted, 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. During a suspension under this section, the defendant may operate a motor vehicle under the terms of an ignition interlock RDL issued under section 1213 of this title.~~

Sec. 6. 23 V.S.A. § 1202(d) is amended to read:

(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~~ nine 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~~ six months.

\* \* \*

Sec. 7. 23 V.S.A. § 1208 is amended to read:

§ 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 or, in the case of a conviction following refusal of an enforcement officer's reasonable request for an evidentiary test, for a period of two years and until the person complies with section 1209a of this title. However, a during the suspension period, the person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title ~~after 90 days of this 18-month period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.~~

(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.

~~However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after one year of~~ during this lifetime suspension ~~unless the alleged offense involved a collision resulting in serious bodily injury or death to another~~ revocation, the person may operate a motor vehicle under the terms of an ignition interlock RDL issued under section 1213 of this title.

Sec. 8. 23 V.S.A. § 1216 is amended to read:

§ 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 subdivision 1209a(a)(1) of this title or, in the case of a refusal of an enforcement officer's reasonable request for an evidentiary test, for a period of nine months and until

the person complies with section 1209a of this title. However, during this period, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title ~~after 30 days of this six month period unless the offense involved a collision resulting in serious bodily injury or death to another.~~

(2)(A) For a second or subsequent violation, the person's license or privilege to operate shall be suspended until the person complies with subdivision 1209a(a)(2) of this title and for the longer of the following periods:

(i) until the person reaches the age of 21 years of age; or for  
(ii) one year, whichever is longer, and complies with subdivision 1209a(a)(2) of this title or, in the case of a refusal of an enforcement officer's reasonable request for an evidentiary test, for 15 months.

(B) However, during the suspension period, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title ~~after 90 days of the applicable suspension period unless the offense involved a collision resulting in serious bodily injury or death to another.~~

(b) A person's license or privilege to operate that has been suspended under this section shall not be reinstated until:

(1) the Commissioner has received satisfactory evidence that the person has complied with ~~section 1209a of this title and~~ an Alcohol and Driving Education Program approved by the Commissioner of Health and a therapy

program if required, and that the provider of the a required therapy program  
has been paid in full;

(2) the person has no pending criminal charges, civil citations, or unpaid  
fines or penalties for a violation under this chapter; and

~~(3)(A) for a first offense, after:~~

~~(i) a period of one year (plus any extension of this period arising  
from a violation of section 1213 of this title) if the person's license or privilege  
to operate is suspended after a refusal to consent to a law enforcement officer's  
reasonable request for an evidentiary test; or~~

~~(ii) a period of nine months (plus any extension of this period  
arising from a violation of section 1213 of this title) in all other cases; or~~

~~(B) for persons operating under an ignition interlock RDL for a  
second or subsequent offense, after:~~

~~(i) a period of two years (plus any extension of this period arising  
from a violation of section 1213 of this title) or until the person is 21,  
whichever is longer, if the person's license or privilege to operate is suspended  
after a refusal to consent to a law enforcement officer's reasonable request for  
an evidentiary test; or~~

~~(ii) a period of 18 months (plus any extension of this period  
arising from a violation of section 1213 of this title) or until the person is 21,  
whichever is longer, in all other cases after the end of the relevant suspension~~

period specified in subsection (a) of this section or, if the person elects to operate under an ignition interlock RDL, after operating under the ignition interlock RDL for a period equivalent to the relevant suspension period specified in subsection (a) of this section plus any extension of this period arising from a violation of section 1213 of this title.

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\* \* \* DUI; Civil Suspensions \* \* \*

Sec. 9. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

\* \* \*

(f) Review by Superior Court. Within seven days following receipt of a notice of intention to suspend and of suspension, a ~~person~~ defendant may ~~make~~ a request ~~for~~ a hearing before the Superior 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 Criminal Division of the Superior Court that a hearing has been requested and provide the State's Attorney with a copy of the notice.

(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. At or before the preliminary hearing, the judicial officer shall determine whether the affidavit or affidavits filed by the State provide a sufficient factual basis under subsection (a) of this section for the civil suspension matter to proceed. At the preliminary hearing, if the defendant requests a hearing on the merits, the court shall set the date of the final hearing in accordance with subsection (h) of this section.

(h) Final hearing.

(1) If the defendant requests a hearing on the merits, the ~~Court shall schedule a final hearing on the merits to~~ hearing shall be held ~~within no later than 21 days of following~~ 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~~ except if this period is extended with the consent of the defendant or for good cause shown. The issues at the final hearing shall be limited to the following specifically enumerated issues:

(A) 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.

(B) 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.

(C) Whether the person refused to permit the test.

(D) Whether the test was taken and the test results indicated that the person's alcohol concentration was above a legal limit specified in subsection 1201(a) or (d) of this title, 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 Public Safety 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.

(E) Whether the requirements of section 1202 of this title were complied with.

(2) No less than seven days before the final hearing, and subject to the requirements of Vermont Rule of Civil Procedure 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~~ an answer

to the notice of intent to suspend setting forth the issues raised by the defendant, limited to the issues set forth in this subsection, and a brief statement of the facts and law upon which the defendant intends to rely at the final hearing. 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.

\* \* \*

(n) Presumption. In a proceeding under this section:

(1) if at any time within two hours of operating, attempting to operate, or being in actual physical control of a vehicle a person had an alcohol concentration ~~of~~ at or above a legal limit specified in subsection 1201(a) or (d) of this title, it shall be a rebuttable presumption that the person's alcohol concentration was above the applicable limit at the time of operating, attempting to operate, or being in actual physical control;

(2) if a person operates, attempts to operate, or is in actual physical control of a vehicle in the presence of a law enforcement officer and is taken into custody in connection with such operation, attempted operation, or actual physical control, and while in the continuous custody of the officer at any time had an alcohol concentration at or above a legal limit specified in subsection 1201(a) or (d) of this title, it shall be a rebuttable presumption that the person's

alcohol concentration was above the applicable limit at the time of operating, attempting to operate, or being in actual physical control.

\* \* \*

(u) In any proceeding under this section:

(1) for cause shown, a party's chemist may be allowed to testify by telephone in lieu of a personal appearance;

(2) a party's chemist shall be allowed to testify by videoconference in lieu of a personal appearance, provided that videoconferencing shall be at the party's own expense and by the party's own arrangement.

Sec. 10. 23 V.S.A. § 1204 is amended to read:

§ 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:

\* \* \*

(3) If the person's alcohol concentration at any time within two hours of the alleged offense was ~~0.10 or more~~, at or above the applicable legal limit specified in subsection 1201(a) or (d) of this title, it shall be a permissive inference that the person was under the influence of intoxicating liquor in violation of subdivision 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.

\* \* \* DUI Penalties \* \* \*

Sec. 11. 23 V.S.A. § 1210 is amended to read:

§ 1210. PENALTIES

\* \* \*

(b) First offense. A person who violates section 1201 of this title may be fined not more than ~~\$750.00~~, \$1,000.00 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~~ \$2,000.00 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 offense. A person convicted of violating section 1201 of this title who has previously been convicted two times of a violation of that section shall be fined not more than ~~\$2,500.00~~ \$3,000.00 or imprisoned not more than five years, or both. At least 96 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. The Court may impose a sentence that does not include a term of imprisonment or that does not require that the 96 hours of imprisonment be served consecutively only if the Court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

(e)(1) Fourth or subsequent offense. A person convicted of violating section 1201 of this title who has previously been convicted three ~~or more~~ times of a violation of that section shall be fined not more than ~~\$5,000.00~~ \$4,000.00 for a fourth offense or imprisoned not more than 10 years, or both. A person convicted of violating section 1201 of this title who has previously been convicted four or more times of a violation of that section shall be fined not more than the sum of \$5,000.00 plus an additional \$1,000.00 for each prior conviction that exceeds four priors or imprisoned not more than 10 years, or both. At least 192 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 treatment facility pursuant to sentence if the program is successfully completed. The Court shall not impose a sentence that does not include a term of imprisonment unless the Court makes written findings on the record that there are compelling reasons why such a sentence will serve the interests of justice and public safety.

\* \* \*

\* \* \* Alcohol Screening Devices \* \* \*

Sec. 12. 7 V.S.A. § 501 is amended to read:

§ 501. UNLAWFUL SALE OF INTOXICATING LIQUORS; CIVIL  
ACTION FOR DAMAGES

\* \* \*

(e) Evidence. In an action brought under this section, evidence of responsible actions taken or not taken is admissible, if otherwise relevant. Responsible actions may include, but are not limited to, instruction of servers as to laws governing the sale of alcoholic beverages, training of servers regarding intervention techniques, admonishment to patrons or guests concerning laws regarding the consumption of intoxicating liquor, making available an alcohol screening device, and inquiry under the methods provided by law as to the age or degree of intoxication of the persons involved.

\* \* \*

\* \* \* Alcohol Screening Devices; Study \* \* \*

Sec. 13. ALCOHOL SCREENING DEVICES; STUDY

The Commissioner of Liquor Control or designee, in consultation with the Commissioner of Health or designee, shall study whether and how the State should promote the availability and use of alcohol screening devices in the State, and whether making such devices available on the premises of liquor licensees and to individuals will promote public safety. On or before January 15, 2017, the Commissioner shall submit a written report of his or her findings and any proposed recommendations for legislation to the House and Senate Committees on Judiciary, the House Committee on General, Housing and Military Affairs, and the Senate Committee on Economic Development, Housing and General Affairs.

\* \* \* Serious Bodily Injury; Definition \* \* \*

Sec. 14. 23 V.S.A. § 4 is amended to read:

§ 4. DEFINITIONS

Except as may be otherwise provided herein, and unless the context otherwise requires in statutes relating to motor vehicles and enforcement of the law regulating vehicles, as provided in this title and 20 V.S.A. part 5, the following definitions shall apply:

\* \* \*

(84) "Serious bodily injury" has the meaning set forth in 13 V.S.A.

§ 1021.

\* \* \* Negligent Operation of a Motor Vehicle; Penalties \* \* \*

Sec. 15. 23 V.S.A. § 1091 is amended to read:

§ 1091. NEGLIGENCE OPERATION; GROSSLY NEGLIGENCE  
OPERATION

(a) Negligent operation.

(1) A person who operates a motor vehicle on a public highway in a negligent manner shall be guilty of negligent operation.

(2) The standard for a conviction for negligent operation in violation of this subsection shall be ordinary negligence, examining whether the person breached a duty to exercise ordinary care.

(3) A person who violates this subsection shall be imprisoned not more than one year or fined not more than \$1,000.00, or both. If the person has been previously convicted of a violation of this subsection, the person shall be imprisoned not more than two years or fined not more than \$3,000.00, or both.

If serious bodily injury to or death of any person other than the operator results, the operator shall be subject to imprisonment for not more than two years or to a fine of not more than \$3,000.00, or both. If serious bodily injury or death results to more than one person other than the operator, the operator

may be convicted of a separate violation of this subdivision for each decedent or person injured.

(b) Grossly negligent operation.

(1) A person who operates a motor vehicle on a public highway in a grossly negligent manner shall be guilty of grossly negligent operation.

(2) The standard for a conviction for grossly negligent operation in violation of this subsection shall be gross negligence, examining whether the person engaged in conduct which involved a gross deviation from the care that a reasonable person would have exercised in that situation.

(3) A person who violates this subsection shall be imprisoned not more than two years or fined not more than \$5,000.00, or both. If the person has previously been convicted of a violation of this section, the person shall be imprisoned not more than four years or fined not more than \$10,000.00, or both. If serious bodily injury ~~as defined in 13 V.S.A. § 1021~~ to or death of any person other than the operator results, the ~~person~~ operator shall be imprisoned for not more than 15 years or fined not more than \$15,000.00, or both. If serious bodily injury or death results to more than one person other than the operator, the operator may be convicted of a separate violation of this subdivision for each decedent or person injured.

(c) The provisions of this section do not limit or restrict the prosecution for manslaughter.

\* \* \*

\* \* \* Passing Vulnerable Users; Violations \* \* \*

Sec. 16. 23 V.S.A. § 1033 is amended to read:

§ 1033. PASSING MOTOR VEHICLES AND VULNERABLE USERS

\* \* \*

(c) If serious bodily injury to or death of any person other than the operator results from the operator's violation of subsection (b) of this section, the operator shall be subject to imprisonment for not more than two years or a fine of not more than \$3,000.00, or both. The provisions of this section do not limit prosecution under section 1091 of this chapter or for any other crime.

\* \* \* Effective Date; Transition Provision \* \* \*

Sec. 17. EFFECTIVE DATE AND APPLICABILITY TO PENDING DUI  
MATTERS

(a) This act shall take effect on July 1, 2016.

(b) The requirement to operate under an ignition interlock RDL as a condition for eligibility for reinstatement for first DUI offenses involving death or serious bodily and for second or subsequent DUI offenses, created under Secs. 2 and 3, amending 23 V.S.A. §§ 1213(b), 1213(c), and 1209a, shall apply only in connection with a first DUI offense involving death or serious bodily

injury or a second or subsequent DUI offense that occurs on or after the  
effective date of this act.