

# Vermont Legislative Council

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## MEMORANDUM

To: House Judiciary Committee

From: Erik FitzPatrick

Date: February 19, 2015

Subject: DUI; legislative enactments

The Vermont General Assembly has enacted a substantial amount of legislation during the last 25 years in an effort to improve safety on State roads by reducing the number of DUI offenses and enhancing the penalties against DUI offenders, particularly repeat offenders. Significant legislative enactments related to DUI have been passed in 1991, 1997, 1998, 2000, 2002, 2005, 2008 (twice), 2010, 2011, 2012, and 2014. This memorandum summarizes the major substantive provisions of those acts.

### **Act No. 55 of 1991**

Lowers legal limit of legal operation from 0.10 to 0.08; established 0.02 limit for minors.

Introduces term “blood alcohol concentration” or BAC (had been variant of “amount or weight of alcohol in a person’s blood, as shown by analysis of the person’s breath or blood”).

Suspensions: Repealed lower suspension period for second offense occurring more than five years after first offense; raises suspension for 4<sup>th</sup> or subsequent offenses from six years to life ( 3<sup>rd</sup> offense remains three years); eliminates the maximum 15-year relation back on prior convictions.

Abstinence: provides that total abstinence reinstatement process is available only once to person whose license has been suspended for life.

Penalties: Raises maximum jail term for first offense from one to two years and retains maximum \$750.00 fine; for second offense retains maximum two-year jail term but adds 48 consecutive hours of mandatory imprisonment, and increases fine to \$1,500.00; for third or subsequent offenses raises fine from \$1,500.00 to \$2,500.00 and increases maximum jail term from two to five years. With respect to death resulting, raises maximum fine from \$3,000.00 to \$10,000.00, maintains 15-year maximum prison term with one year minimum. With respect to serious bodily injury, raises maximum fine from \$3,000.00 to \$5,000.00, maintains 15-year maximum prison term with one year

minimum. Repeals lesser penalties when second offense is more than five years after the first or when 3<sup>rd</sup> offense is more than 15 years after the second.

Establishes separate DLS offense when license is suspended for violations of section 674, 1091, 1094, 1128, 1133 or 1201. Establishes maximum two years in prison or \$5,000.00 fine; had been 30 days for first offense, 90 days for second, six months for third, two years for fourth or subsequent. Mandatory minimums remain: two days for first offense, four days for second, eight days for third, 16 days for fourth or subsequent.

Creates civil offense when license is suspended for reason other than a violation of section 674, 1091, 1094, 1128, 1133 or 1201. 3<sup>rd</sup> or subsequent violations punished under the criminal provisions of 674.

Negligent operation. Establishes a maximum 15-year penalty and \$5,000.00 fine for causing serious bodily injury while operating a vehicle contrary to law or regulation. Minimum had applied only to death resulting cases.

### **Act No. 56 of 1997**

Establishes crime of criminal refusal to take a required breath test if a person has been previously convicted of DUI or if there is an accident resulting in injury or death of another person.

Permits a law enforcement officer to apply for a search warrant to obtain a sample of the person's blood if a person is involved in an accident resulting in serious injury or death and refuses to take a breath test.

Suspensions. Increases suspension for 3<sup>rd</sup> or subsequent offenses from 18 months to life; eliminates lifetime suspensions for 4<sup>th</sup> or subsequent offenses.

Establishes 24-hour statewide coverage by Defender General to assure that adequate legal services are provided to persons entitled to consult with attorney before a breath test, funded in part by \$50.00 surcharge for refusing to take a breath test.

The Safe Highway Accident Reduction Project (SHARP) in each county is required to run at least six sobriety checkpoints prior to February 28, 1998. Money from the Governor's Highway Safety Program will fund the DUI checkpoints as well as purchase two mobile evidentiary breath alcohol instruments and increase the presence of law enforcement officers on Vermont's highways for the principal purpose of detecting and apprehending violators of the DUI laws.

Requires DUI offender to successfully complete CRASH and alcohol treatment assessment; previously only CRASH had been required.

**Act No. 56 of 1997 (1998 Adj. Sess.)**

Creates the position of Coordinator of Alcohol Traffic Programs with the following responsibilities:

- \*\* Monitor and coordinate all State, county, and municipal DUI programs.
- \*\* Develop a comprehensive plan for a statewide DUI enforcement program.
- \*\* Study DUI issues and make legislative recommendation.
- \*\* Compile DUI-related data.
- \*\* Establish an interagency workgroup to coordinate involved State agencies

Adds 16 new Vermont State Police troopers in the next two years and requires the State Police to use those new troopers to increase its enforcement of DUI laws.

Provides funds to municipal and county law enforcement agencies for a coordinated, statewide, DUI enforcement program.

Adds a \$50.00 surcharge to DUI, DLS, and a number of other motor vehicle offenses. These surcharges go into a special fund to pay for increased DUI enforcement.

Requires a person charged with DUI to surrender his or her license to the officer; the person is given a notice of suspension that serves as a temporary license. A preliminary hearing on the suspension must occur within 21 days of the alleged offense and a final hearing must occur within 42 days of the alleged offense.

Authorizes the court, at the time of sentencing, to order immobilization of a vehicle operated by a person at the time of a second or subsequent DUI or DLS after a DUI. The court may order forfeiture of the vehicle for a third or subsequent DUI or DLS after a DUI.

Requires State officials to study the advisability and feasibility of creating a special DUI-drug offense docket within the District Court.

Requires CRASH for a second DUI and for a second and subsequent offense requires enrollment in a therapy program within 30 days of suspension.

Requires persons convicted of DUI to maintain automobile liability insurance, which may not be canceled except with 15 days' notice to the Commissioner of Motor Vehicles.

Increases mandatory automobile liability insurance from \$20,000.00/\$40,000.00 to \$25,000.00/\$50,000.00 and mandatory uninsured motorist coverage from \$20,000.00/\$40,000.00 to \$50,000.00/\$100,000.00.

Requires the Commissioner of Motor Vehicles to prepare a monthly list of all persons whose license is suspended or revoked. The list is required to be available to law enforcement officers electronically.

Requires emergency room medical staff to report to law enforcement a blood test of an operator who is involved in an accident if the test meets or exceeds the legal limit.

Increases the fine for drinking while driving to \$500.00.

Amends the definition of “vehicle” to include all-terrain vehicles.

For the purpose of DUI, excludes a driveway which serves a single-family or two-family residence of the operator. The exception does not apply if an operator on a driveway causes property damage, death, or bodily injury.

**Act No. 56 of 1999 (2000 Adj. Sess.)**

Penalties. The number of hours of imprisonment which must be served by a person convicted for a second time of operating a vehicle while under the influence of alcohol is raised from 48 to 60, and the defendant is provided with the option of performing 200 hours of community service as an alternative sentence; for third or subsequent offenses, the options are 100 hours of imprisonment or 400 hours of community service. In either case, credit may be received for time served in a residential alcohol treatment facility pursuant to a sentence if the program is successfully completed.

Suspension. Increases from 90 days to six months the license suspension for criminal refusal.

For purposes of civil driver license suspension (DLS) proceedings, an affidavit from an employee of the Agency of Transportation indicating that the person’s license was suspended is admissible and establishes a permissive inference that the suspension was in effect for the time period stated. A certified copy of the person’s motor vehicle record from DMV is not required to establish the inference.

Proof of minimum insurance coverage is required from persons who have had their license suspended civilly for DUI; prior law only required such proof from persons convicted criminally of the offense.

Creates an affirmative defense for “actual physical control” DUI cases if the defendant proves by clear and convincing evidence that he or she had no intention of operating the vehicle and had not in fact operated the vehicle while under the influence.

Limits issues at civil suspension hearings to those about which the defendant provides notice seven days before the hearing, and chemists are permitted to testify at the hearings by telephone. This section also provides that the 21-day and 42-day time limits for holding preliminary and final civil suspension hearings are not mandatory for first

offenses, and makes clear that multiple license suspensions for the same incident run concurrently.

PMB. Expands jurisdiction of the judicial bureau to include civil offenses for minors in possession of alcohol. For first offenses, charges against minors 16 years of age or older for possession of alcohol may be treated as civil violations and charged in the Judicial Bureau instead of as criminal offenses prosecuted in District Court, if the State's Attorney chooses. The bill also adds consumption of and attempting to procure alcohol to the current prohibitions on possession and procurement. A person charged with a civil violation must complete alcohol screening under the oversight of the teen alcohol service program, a new program to be established for this purpose by the diversion board. Civil violations cannot, however, be used by insurers as a basis for setting rates. Failure to complete conditions of the program results in suspension of the offender's driver's license for 90 days. For criminal cases where there has been a prior offense, the bill adds a 120-day mandatory license suspension, as well as a 60-day suspension for cases which go to diversion.

**Act No. 146 of 2002**

Changes terminology to "substance abuse" from "alcohol abuse" in statutes governing the Office of Drug and Alcohol Prevention.

Clarifies that a person who refuses to submit to a breath test can be ordered to submit to a blood test if the person has been involved in an accident resulting in death or serious bodily injury, and that the results of the test, as well as the fact of the refusal, may be introduced as evidence at trial.

Prohibits owner from transferring vehicle after it becomes subject to forfeiture for multiple DUI offenses.

Permits chemists or expert witnesses of either party to testify by affidavit at DUI civil license suspension hearings.

**Act No. 37 of 2005**

Makes it a criminal offense to operate a commercial motor vehicle with a BAC of 0.04 or more. Previously it had been a civil violation only.

**Act No. 170 of 2008**

Expands the definition of "drug" for purposes of DUID to include any substance or combination of substances, other than alcohol, which affects the nervous system, brain, or muscles of a person so as to impair, noticeably and appreciably, a person's ability to drive a vehicle safely.

**Act No. 195 of 2008**

Multiple victims. Permits the State to charge the offender with a separate violation for each person who is injured or killed as a result of the DUI, BUI, and other motor vehicle offenses.

**Act No. 126 of 2010**

Ignition interlock. Authorizes issuance of ignition interlock restricted driver's licenses (RDLs) effective July 1, 2011, to eligible DUI offenders and specifies the terms and conditions of operation under an ignition interlock RDL. Cases involving refusal or death or serious bodily injury are not eligible.

First-time offenders otherwise subject to a 90-day suspension or those under 21 subject to a civil six-month suspension may operate under an RDL after a 30-day period. Reinstatement of the operator's regular license requires operation under a valid RDL for six months, among other requirements.

Second-time offenders otherwise subject to an 18-month suspension may operate under an RDL after a 90-day period. Reinstatement of the operator's regular license requires operation under a valid RDL for 18 months, among other requirements.

Third or subsequent offenders otherwise subject to a life suspension may operate under an RDL after a one-year suspension period. Reinstatement of the operator's regular license requires operation under a valid RDL for three years, among other requirements.

The act requires the Commissioner of Motor Vehicles to study: the creation of an indigent fund to defray the costs of ignition interlock devices; coordinating use of ignition interlock devices with other types of monitoring equipment; the relative success of ignition interlock programs in other states; and appropriate fees to cover program costs. The Commissioner also is required to develop an implementation plan and to report to the committees of jurisdiction by January 15, 2011.

**Act No. 56 of 2011**

The act creates enhanced penalties for multiple DUI offenders and establishes presumptive minimum prison terms for multiple DUI offenders which must be served unless the court makes written findings that such a sentence will not serve the interests of justice and public safety. A person with a prior DUI conviction who is convicted of a second or subsequent DUI with a blood alcohol content of 0.16 or greater, which is twice the legal limit, is prohibited from driving with a BAC of 0.02 or greater for the next three years.

The act prohibits a person from letting another person operate the person's car if the person knows that the operator is under the influence of alcohol or other drugs.

Transfers authority and supervision over blood and breath alcohol testing and alcohol screening devices from the Department of Health to the Department of Public Safety.

Permits law enforcement officer or corrections officer who observes a person violating a condition of parole requiring that the person not operate a motor vehicle to arrest and detain the person.

Permits forfeiture of a vehicle after a conviction for permitting an impaired person to operate a vehicle with death or serious bodily injury resulting, or upon a determination by the parole board that the operator has violated a parole condition prohibiting operation of a motor vehicle.

Requires director of the Governor's Highway Safety Program, in consultation with the Defender General and the Departments of Motor Vehicles, of Public Safety, of Health, and of Corrections to report to the House and Senate Committees on Judiciary on a plan for implementation of a comprehensive system of penalties, alternative sanctions, and treatment to reduce the number of persons with repeat offenses of operating motor vehicles while under the influence of alcohol or other drugs.

### **Act No. 190 of 2012**

The act was a House Committee on Judiciary bill that made substantial revisions and updates to the ignition interlock program created in 2010. The act:

(1) Extends the periods before which the holder of an ignition interlock restricted driver's license (RDL) is eligible for reinstatement of his or her regular license if the holder makes three attempts to start a vehicle with a blood alcohol concentration (BAC) of 0.04 or over, or if the holder fails a rolling retest with a BAC of 0.04 or above.

(2) Extends by six months the period before which an RDL holder is eligible for reinstatement if the holder is convicted of operating a motor vehicle not equipped with an ignition interlock device, or attempting to tamper with or circumvent the device, or failing to pull over after failing a rolling retest, and repeals an existing provision requiring the RDL be permanently revoked in such cases.

(3) Amends current law to extend eligibility for an RDL to persons whose underlying DUI offense involved a refusal to consent to a breath test, and provides that such persons must operate under the RDL for longer periods than persons who do elect to take a breath test before they are eligible for reinstatement of their regular license.

(4) Provides that an RDL will expire on the eve of a holder's second birthday following the date of issue.

(5) Provides that a person electing to obtain an RDL and whose DUI offense involved a BAC of 0.16 or more must obtain an ignition interlock device with GPS capabilities.

(6) Requires a person whose license is reinstated under the Total Abstinence program to operate under an ignition interlock RDL for a one-year period following reinstatement, unless the person already operated under an RDL for a period of three years prior to reinstatement.

**Act No. 169 of 2014**

The act prohibits operation of a vehicle while under the influence of a drug, which is defined to mean that a person's ability to operate a motor vehicle safely is diminished or impaired in the slightest degree. Current law had prohibited operation while under the influence of a drug to a degree which renders the person incapable of driving safely.