COMMITTEE ON JUDICIARY
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O R E G O N V E H I C L E C O D E

ARTICLE 9. SERIOUS TRAFFIC OFFENSES

Preliminary Draft No. 1; June 1974

Reporter: Donald L. Paillette Subcommittee on Adjudication

OREGON VEHICLE CODE

ARTICLE ___. SERIOUS TRAFFIC OFFENSES

Preliminary Draft No. 1

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Section 1. (Driving while under the influence of liquor or drugs.) (1) A person commits the offense of driving while under the influence of liquor or drugs if, while being under the influence of intoxicating liquor, dangerous drugs or narcotic drugs, he drives a vehicle upon a highway.

(2) As used in subsection (1) of this section:

(a) "Dangerous drugs" has the meaning provided for that term in ORS 475.010.

(b) "Narcotic drugs" has the meaning provided for that term in ORS 474.010.

(3) Driving while under the influence of liquor or drugs is a Class A traffic infraction.

COMMENTARY

ORS 483.992 would be repealed. For further discussion see Reference Paper, "Reckless Driving and Criminal Liability," (June 1974). The classification of the offense is in accord with Judiciary Committee action of June 12, 1974, regarding classification of offenses.

Section 2. (Penalty for driving vehicle upon highway with certain percentage of alcohol in blood.) ORS 483.999 is amended to read:

483.999. (1) Any person who drives any vehicle upon any highway of this state when that person has [.15] .10 percent or more by weight of alcohol in his blood as shown by chemical analysis of the person's breath, blood, urine or saliva made pursuant to ORS 483.634 to 483.646 shall be punished, upon conviction, by imprisonment in the county or municipal jail for not less than six days and not more than one year and, at the discretion of the court, by a fine of not more than $2,000. However, when the person has had no prior conviction under this section within five years of the date of violation, he shall be punished upon conviction by either such imprisonment or such fine or both, or, at the direction of the court, by such imprisonment or participation in an appropriate rehabilitation program or both.

(2) Notwithstanding ORS 137.010 and 137.520, and except as provided in subsections (1) and (3) of this section, the court may not suspend the imposition or execution of a sentence of imprisonment imposed for violation of this section or place a person convicted of a violation of this section on probation or grant him parole.

(3) The court may place a person convicted of a violation of this section on probation or suspend imposition or execution of sentence if the person is 18 years of age or younger or if the court receives a written recommendation from a physician that the person, for medical reasons, should not be incarcerated in jail.

(4) The court shall make written findings in all cases wherein a sentence of imprisonment is not imposed, or is suspended, or execution

thereof is suspended, or the person convicted is placed on probation, under subsection (1) or (3) of this section, and the findings shall state the grounds therefor. If the reason for the suspension is participation in a rehabilitation program, the findings shall state the grounds in detail.

[(5) For purposes of ORS 482.430, a conviction under this section or a city ordinance conforming to subsection (1) of this section shall be considered to be a conviction for driving under the influence of intoxicating liquor.]

COMMENTARY

The statute is amended to lower the blood alcohol percentage in the crime from .15 to .10 percent in accordance with Judiciary Committee action of June 12, 1974. See, also, section 10, infra. Subsection (5) is deleted and picked up by ORS 482.430, as amended by s. 3, infra.

Section 3. (Conviction of traffic offenses as grounds for mandatory revocation or suspension.) ORS 482.430 is amended to read:

482.430. (1) The division forthwith shall revoke any person's permit or license to operate motor vehicles upon receiving a record of the conviction of such person of any of the following offenses:

(a) Manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle.

(b) Perjury or the making of a false affidavit to the division under this chapter or any other law of this state requiring the registration of motor vehicles or regulating their operation on highways.

(c) Any crime punishable as a felony in the commission of which a motor vehicle is used.

(d) Conviction or forfeiture of bail upon three charges of reckless driving all within the preceding 12 months.

(~~3~~ e) A conviction of a driver of a motor vehicle involved in an accident resulting in the death or injury of another person, upon a charge of failing to stop and disclose his identity at the scene of the accident.

(2) The division forthwith shall suspend any person's permit or license to operate motor vehicles upon receiving a record of the conviction of such person for the following offenses:

(a) Driving while under the influence of intoxicating liquor, dangerous drugs or narcotic drugs.

(b) Fleeing or attempting to elude a traffic or police officer.

(c) Driving with .10 percent or more by weight of alcohol in driver's blood.

(3) The period of suspension shall be:

(a) First conviction within a 10-year period, 30 days.

(b) Second conviction within a 10-year period, one year.

(c) Third or subsequent conviction within a 10-year period, three years.

COMMENTARY

The statute is amended to specifically include conviction of the crime of driving with .10 blood alcohol content as a ground for mandatory suspension of driver's license.

Section 4. (Suspension for refusing breath test; notice of suspension.) ORS 482.540 is amended to read:

482.540. (1) Upon receipt of the report of a police officer as required in subsection (2) of ORS 483.634, and in accordance with subsection (2) of this section and subsection (1) of ORS 482.550, the division shall suspend the reported person's license, permit or privilege to drive a motor vehicle in this state for a period of [90] 180 days.

(2) Upon receipt of the report of the police officer, the division shall notify the reported person by mail of the intention to suspend and allow said person a 20-day period after the date of mailing said notice to request in writing a hearing before a representative of the division as provided in this section. If no request is filed within the 20-day period, the division shall thereupon suspend the license, permit or privilege of the person to drive a motor vehicle.

(3) Notice of intention to suspend or notice of an order of suspension is presumed to have been received upon the expiration of five days after it is deposited in the United States mail with postage prepaid, addressed to the person at his last address as shown by his application for original, renewal or duplicate license, which mailing may be proved by the certificate of any officer or employe of the division over 18 years of age specifying the time and place of giving notice.

COMMENTARY

The statute is amended to increase the suspension period for refusal to take the breath test from 90 to 180 days in accord with Judiciary Committee action of June 12, 1974.

Section 5. (Hearing on suspension under ORS 482.540.) ORS 482.550 is amended to read:

482.550. (1) If a request for a hearing is filed, the hearing shall be before a representative of the division in the county where the alleged offense occurred unless there is an agreement between the person and the division that the hearing be conducted elsewhere. In connection with such hearing, the division or its authorized representative may administer oaths and shall issue subpenas for the attendance of witnesses requested by the person or the division and the production of relevant documents. The hearing shall be recorded by whatever means may be determined by the division and shall include testimony and exhibits, if any. The record of the proceeding shall not be transcribed unless requested by a party to the proceeding. Upon an affirmative finding on each matter listed in subsection (2) of this section, the division shall issue an order suspending the license, privilege or permit of the person to drive a motor vehicle, effective as provided in ORS 482.560. Otherwise, no suspension shall be ordered.

(2) The scope of the hearing shall be limited to:

(a) Whether the person at the time he was requested to submit to a test was under arrest for driving a motor vehicle while under the influence of intoxicating liquor in violation of [subsection (2) of ORS 483.992] section -- of this 1975 Act or of a municipal ordinance;

(b) Whether the police officer had reasonable grounds to believe, at the time the request was made, that the person refusing to submit to the test had been driving under the influence of intoxicating liquor in violation of [subsection (2) of ORS 483.992] section -- of this 1975 Act or of a municipal ordinance;

(c) Whether the person refused to submit to a test;

(d) Whether such person was informed of the consequences, under ORS 482.540 to 482.560, of his refusal to submit to the test; and

(e) Whether such person was informed of his rights as provided in ORS 483.638.

COMMENTARY

This is a housekeeping amendment to insert the new statutory reference to driving while under the influence. (See section 1, supra.)

Section 6. (Notice of suspension, revocation or cancellation.) ORS 482.570 is amended to read:

482.570. When the division, as authorized or required, suspends, revokes or cancels a license or the right to apply for a license to operate motor vehicles, it shall give notice of such action to the person whose license or right is affected. Service of the notice is accomplished either by mailing the notice by certified mail, return receipt requested, to the person's address as shown by division records, or at the option of the division, by personal service in the same manner as a summons is served in an action at law. [When notice sent by certified mail is returned, the receipt unsigned, service of notice shall be accomplished by personal service in the same manner as a summons is served in an action at law. Refusal of the service by the person whose license or right is suspended is prima facie evidence of receipt of the notice.]

COMMENTARY

See Commentary under section 7.

Section 7. (Driving while suspended or revoked.) (1) A person commits the crime of driving while suspended or revoked if he drives a motor vehicle upon a highway during a period when his right or privilege to drive a motor vehicle, or his right to apply for a license to drive a motor vehicle in this state, has been suspended or revoked by the division.

(2) In a prosecution under subsection (1) of this section, it is an affirmative defense that:

(a) An injury or immediate threat of injury to human or animal life and the urgency of the circumstances made it necessary for the defendant to drive a motor vehicle; or

(b) The defendant had not received notice of his suspension or revocation as required by ORS 482.570; however, this defense shall not be available if the defendant refused to sign a receipt for the certified mail containing the notice or if the notice could not be delivered to the defendant because he had not notified the division of a change in his residence as required by subsection (2) of ORS 482.290.

(3) Driving while suspended or revoked is a Class A misdemeanor.

COMMENTARY

Subsection (1) restates the crime of driving while suspended or revoked. ORS 482.650 would be repealed.

Subsection (2) sets forth two affirmative defenses to the charge. Paragraph (a) is cast under the existing statute as an exception and has been restated in the draft section.

Paragraph (b) places the burden on the defendant to prove by a preponderance of the evidence that he did not receive the required notice of suspension or revocation. The most vexatious problem that has plagued officials in their attempts to enforce the prohibition against driving

while suspended has been their inability to locate the licensee to notify him of the suspension or to prove at trial that notice was received. The draft deals with this dilemma by making the defense unavailable if the certified mail containing the notice has been refused or if the defendant has not kept the division advised of his residence as required by statute. This approach to the notice problem is consistent with State v. Buen, infra. ORS 482.570 is amended to delete the provision for mandatory personal service when the certified mail is returned, receipt unsigned. (See section 6.)

Oregon Cases

In State v. Buen, 97 Adv Sh 150, ___ Or App ___, 509 P2d 865 (1973), the defendant was convicted in three separate trials of DWS. A certified copy of suspension was mailed to his address, return receipt requested. The receipt was returned, signed by another, with the defendant's name written below the signature. In district court defendant was sentenced to four days, eight days and sixteen days. In circuit court the defendant was sentenced to thirty days, six months and one year, to run consecutively. The Court of Appeals affirmed.

The defendant first contended that he had not received adequate notice of suspension. The court noted that prior to 1971 ORS 482.570 provided that notice by mailing is afforded a disputable presumption of receipt. In 1971 the legislature removed the disputable presumption language and said that notice is given by mailing the notice by certified mail, return receipt requested, or by personal service. Proof of the following of this procedure by the MVD alone is sufficient to support conviction. Further, ORS 482.290 (2) requires a driver to notify the MVD of a change of address.

With regard to the sentence, the court relied on State v. Madden, 10 Or App 643, 501 P2d 71 (1972), in holding the sentence legal.

State v. Cesaro, 8 Or App 274, 494 P2d 256 (1972), was a case in which the defendant was cited for speeding in Medford. The citation contained the statutory notice that failure to appear could result in a warrant for arrest or suspension or both. ORS 484.150 (7) (a). Defendant failed to appear in municipal court. The court sent him notice to appear on a certain date. Defendant claimed he never received the notice. After the second date, the court sent notice to MVD and defendant's license was suspended. Defendant was convicted three times of driving while suspended. The Court of Appeals affirmed.

Defendant contended the procedure violated due process in that it did not give him notice and an opportunity to be heard prior to suspension. The court held that the defendant had been given notice and an opportunity to be heard through the statutory notice on the citation. Defendant conceded that an arrest warrant could issue without additional notice and an opportunity to be heard. The same is true of suspension. This is similar to forfeiture of bail, ORS 484.130, or a default judgment in a civil case, ORS 18.080.

In State v. Miles, 8 Or App 190, 492 P2d 497 (1972), the defendant was convicted of DUIL, driving while suspended and driving with no operator's license in possession (discussion of DUIL issues omitted). Defendant contended that he could not be convicted of DWS and no operator's license based on the same act of driving. The Court of Appeals reversed as to this issue and vacated the no operator's license charge.

ORS 482.650 (DWS) and 482.300 (2) (no operator's license) are two separate offenses. One may not, however, be convicted of both. No operator's license presumes the driver had a valid license. DWS presumes the nonexistence of a valid license to operate a motor vehicle. Thus the two charges are incompatible.

In City of Oakland v. Moore, 1 Or App 80, 457 P2d 659 (1969), the defendant was convicted of driving while his right to apply was suspended. The officer checked "no licensed operator" and "suspended" boxes on the Uniform Traffic Citation. The Court of Appeals affirmed.

The defendant alleged that the citation was sufficient to charge only driving while suspended and not driving while right to apply suspended. The court first noted that the legislature, in adopting the Uniform Traffic Citation, intended a minimum of formality. The citation is effective even though the person must make reasonable inquiry of the officer or another person to determine the crime charged. State v. Waggoner, 228 Or 334, 365 P2d 291 (1961).

ORS 482.010 (7) (b) defines "license" to include "the privilege of any person to drive a motor vehicle whether or not such person holds a valid license." This broad definition would include driving while right to apply is suspended.

Section 8. (Results of chemical test of blood to govern offense charged.) (1) If any test given to an arrested person under ORS 483.634 to 483.643 shows the amount of alcohol in the person's blood to be .10 percent or more, the person shall be charged with the crime of driving with .10 percent or more blood alcohol content in violation of ORS 483.999, but the person shall not be charged with the separate traffic infraction of driving under the influence of intoxicating liquor arising out of the same criminal episode.

(2) If any test given to an arrested person under ORS 483.634 to 483.643 shows the amount of alcohol in the person's blood to be less than .10 percent, the person may be charged with the traffic infraction of driving under the influence of intoxicating liquor in violation of section 1 of this Article.

(3) Charging the arrested person with violating ORS 483.999 does not affect in any manner the validity of the initial arrest of the person for driving under the influence of intoxicating liquor, or the authority of the police officer to make the arrest.

(4) Except for the traffic infraction of driving under the influence of intoxicating liquor, subsection (1) of this section does not prevent charging the arrested person with any other traffic offense arising out of the same criminal episode.

COMMENTARY

This section establishes rules to prohibit the practice of "double charging" of an arrested motorist with both the crime of driving with .10 percent or more blood alcohol content and the traffic infraction of driving under the influence of intoxicating liquor. Since the enactment in 1971 of ORS 483.999, this has apparently become the general practice under the .15 statute.

The Oregon Court of Appeals has examined several different aspects of the relationship between the two existing crimes of driving under the influence, ORS 483.992, and driving with .15 or more blood alcohol content, ORS 483.999.

Oregon Cases

In State v. Nelson, Wolfe, & Ehrhard, 96 Adv Sh 1843, ___ Or App ___, 509 P2d 36 (1973), the defendants were each charged in justice court with DUIL, ORS 483.992, and driving with .15 percent or more alcohol in blood, ORS 483.999. The state moved to consolidate the charges in each case. The motion was granted and affirmed by the circuit court.

The Court of Appeals affirmed the trial court and held that consolidation was proper.

The court held that this case did not present a double jeopardy problem. In State v. Welch, 96 Adv Sh 631, ___ Or ___, 505 P2d 910 (1973), the Supreme Court pointed out that double jeopardy does not arise unless a defendant is subjected to two different trials. There is nothing improper in charging the defendant with two separate counts. This does not present a double jeopardy problem such as was presented in State v. Brown, 262 Or 442, 497 P2d 1191 (1972), where there were two separate trials.

The court did not rule on the question of cumulative punishment because there had been no trial in the case and thus there was no evidence that the two charges arose out of a single transaction.

It should be noted that in State v. Welch, the Supreme Court ruled that, while a defendant could be tried on two counts of publishing forged checks, he could be subjected to only one penalty, as the publication of two forged checks constituted one transaction.

State v. Abbott, 97 Adv Sh 1735, ___ Or App ___, 514 P2d 355 (1973), was a case in which the defendant was charged in district court with DUIL, ORS 483.992, and driving with .15 percent or more alcohol in blood, ORS 483.999. The district judge found the defendant not guilty of DUIL and guilty of .15.

The defendant appealed and the circuit court dismissed the .15 percent charge. The court ruled that .15 is not a separate crime but rather an enhanced penalty provision of the DUIL statute. Further, the legislature did not intend that a defendant could be convicted and sentenced for both

crimes. The circuit court held that it was impossible for one to be found not guilty of DUIL and guilty of .15.

The Court of Appeals reversed. The court first noted that the state could consolidate both charges. State v. Nelson, Wolfe, & Ehrhard, supra. There is no question in this case as to whether the defendant can be convicted and sentenced for both crimes because the defendant was found not guilty of one.

The court held that ORS 482.430, which provides that for revocation a .15 percent conviction will be treated as a DUIL conviction, does not indicate that .15 is merely an enhanced penalty provision. Revocation of a license is not intended to be punishment. State v. Robinson, 235 Or 524 (1963).

Finally, the court held that a defendant could be found not guilty of DUIL and yet be found guilty of .15 percent. Although unlikely, it would be possible for one to conduct himself so as to show few signs of intoxication and yet have .15 percent alcohol in his blood. Thus, there could be a finding of not guilty of DUIL and a finding of guilty of .15.

ORS 483.992 (2) (DUIL) and 483.999 (.15 percent) define separate offenses, as they may require different proof in some respects.

In State v. Rowe, 97 Adv Sh 2346, ___ Or App ___, 515 P2d 1352 (1973), the defendant was found not guilty of DUIL and guilty of .15 percent in district court. Upon appeal, the circuit court found the defendant guilty of .15. The defendant appealed, contending that one may not be found not guilty of DUIL and guilty of .15 percent.

The Court of Appeals affirmed based on State v. Abbott, supra.

Section 9. (Implied consent to chemical test; police report of refusal; evidence of refusal inadmissible.) ORS 483.634 is amended to read:

483.634. (1) Any person who operates a motor vehicle upon the highways of this state shall be deemed to have given consent, subject to ORS 483.634 to 483.646, to a chemical test of his breath for the purpose of determining the alcoholic content of his blood if arrested for driving a motor vehicle while under the influence of intoxicating liquor in violation of [subsection (2) of ORS 483.992] section -- of this 1975 Act or of a municipal ordinance. A test shall be administered upon the request of a police officer having reasonable grounds to believe the person arrested to have been driving while under the influence of intoxicating liquor in violation of [subsection (2) of ORS 483.992] section -- of this 1975 Act or of a municipal ordinance.

(2) If a person under arrest for driving a motor vehicle while under the influence of intoxicating liquor in violation of [subsection (2) of ORS 483.992] section -- of this 1975 Act or of a municipal ordinance, refuses the request of a police officer to submit to a chemical test of his breath as provided in subsection (1) of this section, and if the person has been informed of the consequences of such refusal as provided by ORS 482.540 to 482.560 and of his rights as provided in ORS 483.638, no test shall be given, but the police officer shall prepare a sworn report of the refusal and cause it to be delivered to the division. The report shall disclose:

(a) Whether the person at the time he was requested to submit to a test was under arrest for driving a motor vehicle while under the

influence of intoxicating liquor in violation of [subsection (2) of ORS 483.992] section -- of this 1975 Act or of a municipal ordinance;

(b) Whether the police officer had reasonable grounds to believe, at the time the request was made, that the person refusing to submit to the test had been driving under the influence of intoxicating liquor in violation of [subsection (2) of ORS 483.992] section -- of this 1975 Act or of a municipal ordinance;

(c) Whether the person refused to submit to a test;

(d) Whether such person was informed of the consequences, under ORS 482.540 to 482.560, of his refusal to submit to the test; and

(e) Whether such person was informed of his rights as provided in ORS 483.638.

(3) If a person under arrest refuses to submit to a chemical test of his breath under the provisions of subsection (2) of this section or refuses to consent to chemical tests as provided by ORS 483.636, evidence of his refusal shall not be admissible in any civil or criminal action, suit or proceeding arising out of acts alleged to have been committed while the person was driving a motor vehicle on the highways while under the influence of intoxicating liquor.

COMMENTARY

The amendments are of a housekeeping nature to conform to section 1 of the Article which would redefine and reclassify the offense of driving under the influence.

Section 10. (Use of chemical analyses to show intoxication.) ORS 483.642 is amended to read:

483.642. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts committed by a person driving a motor vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's breath, blood, urine or saliva shall give rise to the following presumptions:

(a) Not more than .05 percent by weight of alcohol in his blood, supports a disputable presumption that he was not then under the influence of intoxicating liquor.

(b) More than .05 percent but less than [.10] .08 percent by weight of alcohol in his blood, is indirect evidence that may be used to determine whether or not he was then under the influence of intoxicating liquor.

(c) Not less than [.10] .08 percent by weight of alcohol in his blood, supports a disputable presumption that he was then under the influence of intoxicating liquor.

(2) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood.

(3) Nothing in this section is intended to limit the introduction of any competent evidence bearing upon the question of whether or not a person has been under the influence of intoxicating liquor.

COMMENTARY

This is a companion amendment to s. 2 and reduces the disputable presumption figure from .10 percent to .08 in accord with Judiciary Committee action of June 12, 1974.

SUPPLEMENTARY COMMENTARY

Major Traffic Offenses:

ORS chapter 484 contains the statutes that control traffic offense procedures. ORS 484.010 (5) defines "major traffic offense" as follows:

> "Major traffic offense" means a violation of any of the following provisions of law or a city ordinance conforming thereto:
>
> (a) Reckless driving, as defined in subsection (1) of ORS 483.992.
>
> (b) Driving while under the influence of intoxicating liquor, dangerous drugs or narcotic drugs, as defined in subsection (2) of ORS 483.992 or ORS 483.999.
>
> (c) Failure to perform the duties of a driver involved in an accident or collision, as defined in subsections (1) and (2) of ORS 483.602 and ORS 483.604, which would be punishable under subsection (1) of ORS 483.990.
>
> (d) Operating a motor vehicle while the operator's or chauffeur's license is suspended or revoked, as defined in ORS 482.650.
>
> (e) Fleeing or attempting to elude a traffic or police officer, as defined in subsection (1) of ORS 483.049.

The above definition should be amended and appropriate amendments made in other sections of ORS chapter 484 if the proposals set forth in this Article, or similar changes, are adopted.

Probable Cause Arrests and Implied Consent Law:

ORS 133.310 (as amended by Ch 42, 1974 Special Session Laws) provides that:

(1) A peace officer may arrest a person without a warrant if the officer has probable cause to believe that a person has committed:

(a) A felony, a Class A misdemeanor, an unclassified offense for which the maximum penalty allowed by law is equal

to or greater than the maximum penalty allowed for a Class A misdemeanor, or a major traffic offense as defined in subsection (5) of ORS 484.010; or

(b) Any other offense in the officer's presence.

If the offense of DUIL is made a traffic infraction, ORS 133.310 should be amended accordingly to specifically authorize a peace officer to make a probable cause arrest either for all Class A traffic infractions or for the particular infraction of driving under the influence. This would be essential in order to retain the application of the Implied Consent Law which becomes operative only after the motorist is arrested (ORS 483.634).

Other Serious Traffic Offenses:

This draft does not deal with two other traffic offenses that are now included within the statutory definition of "major traffic offense," i.e., "failure to perform the duties of a driver involved in an accident or collision" and "fleeing or attempting to elude a traffic or peace officer." These offenses presumably would be included in the final draft Article on Serious Offenses and classified according to Classes of Offenses; Disposition of Offenders; Preliminary Draft No. 3. The crime of reckless driving is dealt with in the related Reference Paper, "Reckless Driving and Criminal Liability."

Vehicular homicides are covered by the Oregon Criminal Code, with the nature of the crime depending on the degree of culpability of the offender. See, ORS 163.005 to 163.415.

TEXT OF UNIFORM VEHICLE CODE

ARTICLE IX—SERIOUS TRAFFIC OFFENSES[1]

§ 11-901—Reckless driving

(a) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than five days nor more than 90 days, or by fine of not less than $25 nor more than ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than 10 days nor more than six months, or by a fine of not less than $50 nor more than ($500) or by both such fine and imprisonment. (REVISED, 1971.)

§ 11-902—Driving while under influence of alcohol or drugs

(a) A person shall not drive or be in actual physical control of any vehicle while:

1. There is 0.10 percent or more by weight of alcohol in his blood; (NEW, 1971.)

2. Under the influence of alcohol;[2] (REVISED, 1971.)

3. Under the influence of any drug to a degree which renders him incapable of safely driving; or (FORMERLY § 11-902.1; REVISED, 1971.)

4. Under the combined influence of alcohol and any drug to a degree which renders him incapable of safely driving. (NEW, 1971.)

(b) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or a drug shall not constitute a defense against any charge of violating this section. (FORMERLY § 11-902.1; REVISED, 1971.)

(c) Except as otherwise provided in § 11-902.2, every person convicted of violating this section shall be punished by imprisonment for not less than 10 days nor more than one year, or by fine of not less than $100 nor more than $1,000, or by both such fine and imprisonment and, on a second or subsequent conviction, he shall be punished by imprisonment for not less than 90 days nor more than one year, and, in the discretion of the court, a fine of not more than $1,000. (FORMERLY § 11-902.2; REVISED, 1971.)

[1] This article covers what are generally regarded as *relatively* serious offenses carrying significantly higher penalties. All sections in this article apply on and off the highways under § 11-101.

[2] Enactment of subsection (a)2 is necessary to cover cases where no chemical test evidence is available to prosecute under subsection (a)1.

TEXT OF UNIFORM VEHICLE CODE (Cont'd)

§ 11-902.1—Chemical tests

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol or drugs, evidence of the amount of alcohol or drug in a person's blood at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such a chemical test is made the following provisions shall apply: (NEW, 1971.)

1. Chemical analyses of the person's blood, urine, breath, or other bodily substance to be considered valid under the provisions of this section shall have been performed according to methods approved by the (State department of health) and by an individual possessing a valid permit issued by the (State department of health) for this purpose. The (State department of health) is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the (State department of health). (FORMERLY § 11-902(c).)

2. When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of § 6-205.1, only a physician or a registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens. (FORMERLY § 11-902(d).)

3. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer. (FORMERLY § 11-902(e).)

4. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney. (FORMERLY § 11-902(f).)

5. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood. (FORMERLY § 11-902(b)4.)

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

TEXT OF UNIFORM VEHICLE CODE (Cont'd)

1. If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of alcohol.

2. If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

3. If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of alcohol.*

4. The foregoing provisions of this subsection 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 alcohol. (FORMERLY § 11-902(b).)

OPTIONAL (c) If a person under arrest refuses to submit to a chemical test under the provisions of § 6-205.1, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or drugs. (FORMERLY § 11-902(g).)

§ 11-902.2—Post conviction examination and remedies

(a) Before sentencing any person convicted for a first offense of violating § 11-902, the court may, and upon a second or subsequent conviction of such an offense committed within five years of a prior offense the court shall, conduct or order an appropriate examination or examinations to determine whether the person needs or would benefit from treatment for alcohol or drug abuse.

(b) After the examination, the court may impose penalties specified in this act or, upon a hearing and determination that the person is an habitual user of alcohol or drugs, the court may order supervised treatment on an outpatient basis, or upon additional determinations that the person constitutes a danger to himself or others and that adequate treatment facilities are available, the court may order him committed for treatment at a facility or institution approved by the (State department of health).

(c) Any person subject to this section may be examined by a physician of his own choosing and the results of any such examination shall be considered by the court.

(d) No commitment or supervised treatment on an outpatient basis ordered under subsection (b) shall exceed one year. Upon motion duly made by the convicted person, an attorney, a relative or an attending physician, the court at any time after an order of commitment shall review said order. After determining the progress of

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*** Subsection (b)3 need not be enacted in any state adopting § 11-902(a)1.**

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treatment, the court may order its continuation or the court may order the person's release, supervised treatment on an outpatient basis, or it may impose penalties specified by this act giving credit for the time of commitment.

(e) Upon application by any person under an order of commitment or supervised treatment for a driver's license, the results of the examination referred to in subsection (a) and a report of the progress of the treatment ordered shall be forwarded by the applicant to the department for consideration by the medical advisory board (appointed under § 6-118).

(f) The department may after receiving the advice of the medical advisory board issue a license to such person with conditions and restrictions consistent with the person's rehabilitation and with protection of the public notwithstanding the provisions of § 6-208. (NEW SECTION, 1971.)

§ 11-903—Homicide by vehicle

(a) Whoever shall unlawfully and unintentionally cause the death of another person while engaged in the violation of any state law or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic shall be guilty of homicide when such violation is the proximate cause of said death. (REVISED, 1968.)

(b) Any person convicted of homicide by vehicle shall be fined not less than $500 nor more than $2,000, or shall be imprisoned in the county jail not less than three months nor more than one year, or may be so fined and so imprisoned, or shall be imprisoned in the penitentiary for a term not less than one year nor more than five years. (REVISED, 1962.)

§ 11-904—Fleeing or attempting to elude a police officer

(a) Any driver of a motor vehicle who willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given visual or audible signal to bring the vehicle to a stop, shall be guilty of a misdemeanor. The signal given by the police officer may be by hand, voice, emergency light or siren. The officer giving such signal shall be in uniform, prominently displaying his badge of office, and his vehicle shall be appropriately marked showing it to be an official police vehicle.

(b) Every person convicted of fleeing or attempting to elude a police officer shall be punished by imprisonment for not less than 30 days nor more than six months or by a fine of not less than $100 nor more than $500, or by both such fine and imprisonment. (NEW SECTION, 1968.)