

LEGISLATIVE GUIDE TO OPERATING WHILE INTOXICATED (OWI) LAW IN IOWA



TABLE OF CONTENTS

Note to Reader:

Research is conducted by the Legal Services Division of the Iowa Legislative Services Agency in an objective and nonpartisan manner. Although a Legislative Guide may identify issues for consideration by the General Assembly, nothing contained in a Guide should be interpreted as advocating a particular course of action. The reader is cautioned against using information contained in a Legislative Guide to draw conclusions as to the legality of a particular behavior or set of circumstances.

About the Author:

This Guide was written by Rachele Hjelmaas, J.D., University of Iowa, 1988. Ms. Hjelmaas has been Legal Counsel with the Legislative Services Agency since 2000. She staffs the Judiciary Committees and drafts legislation in the areas of civil law, domestic abuse, victim rights, probate, OWI, civil commitment, and infrastructure appropriations.

Questions concerning this Guide may be directed to Ms. Hjelmaas by telephone at (515) 281-8127 or by e-mail at: rachele.hjelmaas@legis.state.ia.us

December 2007

I. Introduction.....	1
II. Chapter 321J — Operating a Motor Vehicle While Intoxicated (OWI).....	1
A. Scope and History.....	1
B. OWI — The Criminal Offense.....	2
1. Elements of the Offense.....	2
2. Enhanced Charging.....	3
3. Sentencing.....	3
4. Substance Abuse Evaluations and Treatment.....	6
5. Victim Restitution.....	6
6. License Revocations Based Upon an OWI Conviction.....	6
C. OWI — Iowa's Implied Consent Law.....	8
1. License Revocations Under Implied Consent.....	9
2. Chemical Testing.....	10



I. Introduction.

This Legislative Guide discusses the basic structure of Iowa's operating while intoxicated (OWI) laws. The Guide is not intended to be an exhaustive survey of OWI laws. The Guide also discusses two federal laws that directly impact the blood alcohol limit for both criminal offenses and license revocations under Iowa's OWI laws. Iowa Code references, unless otherwise noted, incorporate both the 2007 Iowa Code and the 2007 Iowa Code Supplement. If the footnoted item was substantively amended by a 2007 enactment, a 2007 Iowa Acts citation is included in the footnote.

II. Chapter 321J — Operating a Motor Vehicle While Intoxicated (OWI).

A. Scope and History.

Iowa Code chapter 321J contains Iowa's OWI and implied consent laws. First appearing as a separate chapter in the 1987 Iowa Code, the chapter includes the criminal offense of operating a motor vehicle while under the influence of alcohol or a drug (OWI),¹ as well as administrative procedures for revoking driver's licenses apart from any criminal prosecution for OWI based upon the concept of "implied consent."

The criminal offense of operating a motor vehicle while intoxicated has been in existence in Iowa since 1911.² Until 1982, criminal prosecution of OWI cases was based upon evidence of impairment,³ and not on the results of chemical tests for blood alcohol concentration levels alone, which tests were reserved for implied consent proceedings.⁴ In 1982, however, the General Assembly adopted a "per se" alcohol offense, whereby a person could be convicted for OWI based upon a blood alcohol concentration of .13 or above, with no additional evidence of impairment required.⁵ With the merging of the criminal and implied consent provisions in 1986, the General Assembly also lowered the blood alcohol limit for a "per se" offense to .10.⁶ In 2003, the General Assembly further lowered the blood alcohol limit to .08.⁷ Currently, chemical test results can be used for license revocations as well as OWI criminal convictions.⁸

The concept of "implied consent" was first introduced into law in 1963 as a purely administrative concept.⁹ The theory of implied consent is that a "driver impliedly agrees to submit to a test in return for the privilege of using the public highways."¹⁰ The test involves a chemical test of one of three bodily substances — blood, breath, or urine — to determine

¹ Critics have opined the need to retitle the chapter "Operating While Impaired" to accurately reflect the inclusion of intoxication that may result from the use of drugs or controlled substances. See, e.g., OWI Subcommittee of the Criminal Sentencing Commission of the Iowa Legislative Council, Minutes, October 25, 1999, p. 3.

² 1911 Iowa Acts ch. 72, § 24. Revocation at that time was dependent upon the criminal act. Iowa Code § 5014.09 (1939). For a more detailed history and reference guide in this area, see generally, Peter J. Grady, Iowa Prosecuting Attorneys Training Council, OWI and Traffic Offenses in Iowa: A Prosecution Manual, pp. 3-4, (4th ed. 2007-2009) [hereinafter PATC Guide].

³ Iowa Code § 321.281 (1981).

⁴ Iowa Code § 321B.4 (1981).

⁵ 1982 Iowa Acts ch. 1167, § 5, codified at Iowa Code § 321.281 (1983).

⁶ 1986 Iowa Acts ch. 1220, § 2.

⁷ 2003 Iowa Acts ch. 60, §§ 1-6 (HF 65).

⁸ Iowa Code §§ 321J.2(8), 321J.12(1), 321J.15.

⁹ 1963 Iowa Acts ch. 114, §§ 37-50 (Uniform Chemical Test for Intoxication Act), codified at Iowa Code ch. 321B (1966).

¹⁰ State v. Hitchens, 294 N.W.2d 686, 687 (Iowa 1980).



OWI Law in Iowa

the blood alcohol level of a person suspected of driving drunk.¹¹ If a suspected violator either tests at or above the .08 blood alcohol level or refuses to consent to testing, the person's license is automatically revoked by the Iowa Department of Transportation (IDOT).¹² In 1982, the General Assembly broadened the scope of this law to include testing for the presence of drugs in a suspected person's blood.¹³ The purpose of the implied consent law is to remove dangerous and irresponsible drivers from the roadways without delay.¹⁴

B. OWI — The Criminal Offense.

1. Elements of the Offense.

In Iowa, the crime of operating a motor vehicle while intoxicated is comprised of two elements: (1) operation of a motor vehicle; (2) while intoxicated.¹⁵

a. Operation of a Motor Vehicle. The Iowa Supreme Court has defined the term "operate" for purposes of this statute to mean the "immediate, actual physical control over a motor vehicle that is in motion and/or has its engine running."¹⁶ A person may be found to be operating a motor vehicle without actually driving it.¹⁷ The State may prove operation by direct or circumstantial evidence.¹⁸

b. While Intoxicated. The State must prove the second element of intoxication by one of the following alternatives:

i. While "under the influence" of alcohol or drugs or both. Although "under the influence" is not specifically defined by statute, case law defines "under the influence" to mean the same as "in an intoxicated condition."¹⁹ This alternative requires the State to prove, beyond a reasonable doubt, that the defendant was operating a motor vehicle while under the influence of an alcoholic beverage or other drug or a combination of both.²⁰ Iowa Criminal Jury Instruction 2500.5 defines "under the influence factors" to include a peace officer's observations regarding the defendant's mental ability, judgment, emotions, and control of bodily actions or motions.²¹ Even if a chemical test is taken, the State is not required, but is allowed, to put the results into evidence.²²

ii. While having an alcohol concentration of .08 or more. Iowa law defines "alcohol concentration" to mean the number of grams of alcohol contained

¹¹ Iowa Code § 321J.6(1).

¹² Iowa Code §§ 321J.9, 321J.12.

¹³ 1982 Iowa Acts ch. 1167, §§ 5, 14, 17.

¹⁴ Shriver v. Iowa Dep't. of Transp., 430 N.W.2d 921, 924 (Iowa 1988).

¹⁵ Iowa Code § 321J.2(1).

¹⁶ Munson v. Iowa Dep't. of Transp., 513 N.W.2d 722, 724-25 (Iowa 1994).

¹⁷ See State v. Murray, 539 N.W.2d 368, 369 (Iowa 1995).

¹⁸ See State v. Braun, 495 N.W.2d 735, 739 (Iowa 1993).

¹⁹ See, e.g., State v. Davis, 196 N.W.2d 885, 890 (Iowa 1972). In 1969, the General Assembly changed the "while intoxicated language" to "while under the influence." 1969 Iowa Acts ch. 205, § 1.

²⁰ Iowa Code § 321J.2(1)(a).

²¹ Iowa Criminal Jury Instructions, No. 2500.5. As written the jury instruction applies only to alcohol, but in practice, this instruction is modified to include under the influence of drugs or under the influence of a combination of alcohol and drugs, as the case may be. PATC Guide, p. 16.

²² State v. Flaucher, 223 N.W.2d 214 (Iowa 1974).



in 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine.²³ This alternative is known as a "per se" violation which means that when the defendant has tested at the equivalent of a .08 blood alcohol level, the test result in and of itself is evidence of a criminal violation of the law.²⁴

iii. While any amount of a controlled substance is present in the person. The controlled substances alternative prohibits a person from operating a motor vehicle with any amount of a controlled substance present in the person.²⁵ A controlled substance is defined as any drug, substance, or compound that is listed in Iowa Code section 124.204 or 124.206, or any metabolite or derivative of the drug, substance, or compound.²⁶ The distinction between this alternative and the first alternative discussed is that not all drugs are considered to be controlled substances as listed in Code section 124.204 or 124.206. In other words, impaired driving may occur through the use of drugs which do not fall into the specific controlled substance definitions.²⁷ An impaired driver taking prescription medication may be able to assert an affirmative defense.²⁸

2. Enhanced Charging.

The degree or severity of a particular OWI offense is determined by the number of OWI convictions a person has had within the previous 12 years.²⁹ This "look-back" provision is the period from the date of the oldest conviction to the date of the most current arrest.³⁰ Convictions or the equivalent of deferred judgments for violations in other states under statutes substantially corresponding to the statute prohibiting the operation of a motor vehicle while intoxicated in this state are counted as previous offenses.³¹

3. Sentencing.

The sentencing provisions under Iowa's OWI laws serve both to punish and to treat the OWI offender. The sentencing provisions for a person convicted of an OWI offense in Iowa vary depending on whether the current conviction is the person's first, second, or third or subsequent OWI conviction. A person convicted of an OWI offense faces mandatory minimum jail time and monetary fines, including restitution. A person convicted of an OWI offense is also required to undergo a substance abuse evaluation and, if necessary, participate in a substance abuse treatment program, including a reality education substance abuse prevention program and a course for drinking drivers. In addition, a person convicted of an OWI offense faces losing the person's

²³ Iowa Code § 321J.1(1).

²⁴ Chemical testing of any of the three substances — blood, breath, or urine — results in a number which is then compared to this statutory per se level of .08. Iowa Code § 321J.1(1). The margin of error to calculate relevant alcohol levels is specified in Iowa Code § 321J.2(10).

²⁵ Iowa Code § 321J.2(1)(c).

²⁶ Iowa Code § 321J.1(4).

²⁷ See, e.g., *State v. Bond*, 493 N.W.2d 826 (Iowa 1992).

²⁸ Iowa Code § 321J.2(7).

²⁹ Iowa Code § 321.12(4).

³⁰ *State v. Raim*, 381 N.W.2d 635, 637-638 (Iowa 1986).

³¹ Iowa Code § 321J.2(4)(c).



OWI Law in Iowa

driver's license for a certain period of time depending upon the number and type of the offense, and depending on whether the person has already lost their license administratively.

a. First Offense. A person convicted of a first offense OWI is guilty of a serious misdemeanor punishable by up to one year in jail and subject to a minimum term of imprisonment in the county jail of 48 hours less credit for time served in a jail or detention facility or any time spent in a court-ordered OWI program.³² However the court can defer the judgment or sentence or suspend the sentence.³³ The court cannot grant a deferred judgment or sentence, or suspend the sentence, if the defendant has previously been convicted of an OWI offense or the defendant's driving record shows one or more OWI-related license revocations within the past 12 years,³⁴ the defendant's alcohol concentration exceeded .15, the defendant has previously received a deferred judgment or sentence, the defendant refused a chemical test, or the OWI offense resulted in bodily injury to a person other than the defendant.³⁵

In addition, the court must impose a fine of \$1,250, but the court may waive up to \$625 of the fine if the defendant presents a temporary restricted license to the court. The court also has the option of ordering the defendant to perform community service in lieu of the fine.³⁶ The defendant must also undergo a substance abuse evaluation at the defendant's own cost and, if necessary, complete substance abuse treatment, attend a course for drinking drivers, and if available and appropriate, attend a reality education substance abuse prevention program.³⁷ The court shall also order restitution for damages resulting directly from the offense to the victim.³⁸

b. Second Offense. A person convicted of a second offense OWI is guilty of an aggravated misdemeanor and must serve a mandatory minimum term of imprisonment in the county jail or community-based correctional facility of seven days which cannot be suspended.³⁹ The sentence must be served on consecutive days with a maximum term of imprisonment of two years.⁴⁰ If the court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing the defendant, the court may order the defendant to serve the minimum term in segments of at least 48 hours and to perform community service.⁴¹ A person convicted of a second offense OWI is ineligible for a deferred judgment or sentence.⁴²

³² Iowa Code § 321J.2(2)(a)(1).

³³ Iowa Code § 907.3(1)(3).

³⁴ Iowa Code § 321.12(4).

³⁵ Iowa Code §§ 321J.2(3)(a), 907.3(1)(g), (2)(c), (3)(c).

³⁶ Iowa Code § 321J.2(2)(a)(2). If the court assesses a fine, a 30 percent surcharge and a DARE surcharge are also included. Iowa Code § 911.2.

³⁷ Iowa Code § 321J.2(2)(a)(4), (3)(b),(c).

³⁸ Iowa Code § 321J.2(9).

³⁹ Iowa Code §§ 321J.2(2)(b), (3)(a)(2), 907.3(3)(c).

⁴⁰ Iowa Code §§ 321J.2(3)(d), 903.1(2).

⁴¹ Iowa Code § 321J.2(3)(d).

⁴² Iowa Code § 321J.2(3)(a)(2).



In addition, the defendant is subject to a minimum fine of \$1,875, but not more than \$6,250.⁴³ The court may order community service in lieu of the fine.⁴⁴ In addition to any fine or penalty imposed, the court shall order restitution for damages resulting directly from the offense to the victim.⁴⁵ The defendant must also undergo a substance abuse evaluation at the defendant's expense and may be committed for treatment.⁴⁶ The court may also order the defendant to participate in a reality education substance abuse prevention program.⁴⁷ The court may also order a vehicle used in the commission of the offense and owned by the defendant to be impounded or immobilized.⁴⁸

c. Third and Subsequent Offenses. A person convicted of a third or subsequent OWI offense is guilty of a class "D" felony, shall be committed to the custody of the Department of Corrections for an indeterminate term not to exceed five years, and shall serve a mandatory minimum term of imprisonment of 30 days.⁴⁹ If the court suspends the defendant's sentence, the defendant must serve the mandatory minimum term of at least 30 days in the county jail, and the court may commit the defendant to community treatment.⁵⁰ In addition, the court must impose a fine of not less than \$3,125, but not more than \$9,375, and shall order restitution for damages resulting directly from the offense to the victim.⁵¹ The defendant must also undergo a substance abuse evaluation at the defendant's expense and, if appropriate, be committed for treatment.⁵² The offender may be committed to a continuum of programming for the supervision and treatment of OWI violators by the Director of the Department of Corrections⁵³ or to the Judicial District Department of Correctional Services for an unpaid community service program. The court may also order a vehicle used in the commission of the offense and operated by the defendant to be impounded or immobilized.⁵⁴

d. Death or Serious Injury. A person convicted of an OWI offense that unintentionally causes the death of another person is guilty of a class "B" felony punishable by up to 25 years in prison and revocation of driver's license for six years. The court shall order the defendant, at the defendant's expense, to enroll in and satisfactorily attend a course for drinking drivers and to submit to evaluation and treatment or rehabilitation services. In addition, where available and appropriate, the

⁴³ Iowa Code § 321J.2(2)(b).

⁴⁴ See *State v. Lutgen*, 606 N.W.2d 312 (Iowa 2000).

⁴⁵ Iowa Code § 321J.2(9).

⁴⁶ Iowa Code §§ 321J.2(3)(b), 321J.3(1), (2).

⁴⁷ Iowa Code § 321J.2(3)(c).

⁴⁸ Iowa Code § 321J.4B(5)(b).

⁴⁹ Iowa Code § 321J.2(2)(c).

⁵⁰ In 2002, the General Assembly amended Iowa Code § 321J.2.(2)(c) to specify that an OWI third or subsequent offender must serve the 30-day mandatory sentence in either state prison or a county jail facility. 2002 Iowa Acts ch. 1042, § 1.

⁵¹ Iowa Code § 321J.2(2)(c).

⁵² Iowa Code §§ 321J.2(3)(b), 321J.3(2).

⁵³ Iowa Code §§ 321J.2(2)(c)(1), (2), 904.513, 907.6. This includes sanctioning options which allow offenders to be placed in a community residential treatment program ranging from prison to residential treatment facilities based upon risk management, treatment needs, behavior, performance, medical needs, and available space.

⁵⁴ Iowa Code § 321J.4B.



OWI Law in Iowa

court may order the defendant to attend a reality education substance abuse program.⁵⁵

A person convicted of an OWI offense that unintentionally causes serious injury to a person other than the defendant is guilty of a class "D" felony punishable by up to five years in prison, and in addition shall be sentenced to a fine of at least \$750 but not more than \$7,500.⁵⁶

A person convicted of either of the foregoing OWI offenses is ineligible for a deferred judgment or sentence.⁵⁷

4. Substance Abuse Evaluations and Treatment.

All persons convicted of an OWI offense must undergo a substance abuse evaluation at the defendant's own expense, and the court must order the defendant to follow the recommendations of the evaluation.⁵⁸ If the court commits the defendant to a substance abuse treatment facility, the administrator of the facility shall report to the court when the defendant has received the maximum benefit from the treatment and the defendant shall be released from the facility. The defendant's treatment time shall be credited against the defendant's sentence. The court may prescribe the length of time for the evaluation and treatment or it may request that the community college conducting the course for drinking drivers, which the person is ordered to attend or the treatment program to which the person is committed, immediately report to the court when the person has received the maximum benefit from either program or has recovered from the person's addiction. Upon successfully completing a course for drinking drivers or an ordered substance abuse treatment program, a court may place the defendant on probation for six months and, as a condition of probation, the defendant shall attend a posttreatment program.⁵⁹

5. Victim Restitution.

In addition to any other fine or penalty imposed, the defendant shall be ordered to make restitution payments to individual victims for damages resulting directly from the offense. There is no limitation on damages to individual victims.⁶⁰ In addition, public agencies that incur costs of an emergency response unit, including fire fighters, law enforcement, ambulance, medical, or other emergency services, may also claim restitution up to a maximum of \$500 per public agency.⁶¹

6. License Revocations Based Upon an OWI Conviction.

As will be discussed in section C(1) below, driver's license revocations are for the most part a purely administrative matter, handled by IDOT, and often done through the implied consent process (either the defendant refused to submit to a chemical test or

⁵⁵ Iowa Code § 707.6A(1)(b), (d).

⁵⁶ Iowa Code §§ 707.6A(4), 902.9(5).

⁵⁷ Iowa Code §§ 707.6A(7), 907.3(1)(j), 907.3(2)(d).

⁵⁸ Iowa Code § 321J.2(3)(b).

⁵⁹ Iowa Code § 321J.3(1)(a-d).

⁶⁰ Iowa Code § 321J.2(9)(a).

⁶¹ Iowa Code § 321J.2(9)(b).



failed the test).⁶² In some cases, however, an offender's license has not yet been revoked by IDOT prior to conviction.⁶³ In those cases, the court must order IDOT to revoke a first-time offender's driver's license for 180 days.⁶⁴ In addition, the law places the following motor vehicle operating restrictions on a first-time offender as follows:

- A defendant whose alcohol concentration is .08 or more but not more than .10 shall be eligible to apply for a temporary restricted license (work permit) immediately upon revocation if a test was obtained, and shall not be required to install an approved ignition interlock device.
- A defendant whose alcohol concentration is .08 or more but not more than .10 shall not be eligible to apply for a work permit for at least 30 days after the effective date of the revocation if a test was obtained and an accident resulting in personal injury or property damage occurred. In addition, such a defendant shall be required to install an approved ignition interlock device on all vehicles owned or operated by the defendant.
- A defendant whose alcohol concentration is more than .10 but less than .15 shall be eligible to apply for a temporary restricted license immediately upon revocation if a test was obtained, and shall be ordered to install an approved ignition interlock device on all vehicles owned or operated by the defendant.
- A defendant whose alcohol concentration is more than .10 who is involved in an accident in which property damage or personal injury occurred or whose alcohol concentration exceeded .15 shall not be eligible to apply for a temporary restricted license for at least 30 days after the effective date of the revocation if a test was obtained and shall be required to install an ignition interlock device on all vehicles owned or operated by the defendant.⁶⁵

The preceding is also true for a defendant who receives a deferred judgment, except IDOT has the discretion to revoke the defendant's driver's license for a period of not less than 30 days nor more than 90 days.⁶⁶

The court must order IDOT to revoke a second-time offender's (revoked or convicted) driver's license for two years, and a second-time offender is not eligible for a temporary restricted license for one year, provided the defendant installs an ignition interlock device on the defendant's vehicle.⁶⁷ A third or subsequent offender faces license revocation for six years and the same eligibility restrictions for a temporary restricted license.⁶⁸ License revocation periods for persons convicted of an OWI offense are thus dependent upon the number of prior convictions, not on the level of

⁶² Iowa Code §§ 321J.9, 321J.12.

⁶³ A peace officer may have failed to offer a test or failed to offer the test in a timely manner, an OWI conviction or deferred judgment was obtained with an alcohol concentration lower than the per se level, or an administrative revocation was reversed. PATC Guide, pp. 4-6.

⁶⁴ Iowa Code § 321J.4.

⁶⁵ Iowa Code § 321J.4(1).

⁶⁶ Iowa Code § 321J.4(3).

⁶⁷ Iowa Code § 321J.4(2), (8).

⁶⁸ Iowa Code § 321J.4(4).



OWI Law in Iowa

the current offense,⁶⁹ except for persons convicted of OWI that resulted in either serious injury or death. In cases involving a serious injury to a person other than the defendant, but caused by the defendant, the court shall order IDOT to revoke the defendant's driver's license for one year in addition to any other revocation already imposed.⁷⁰ In OWI vehicular homicide cases, a defendant faces a license revocation period of six years, and is ineligible for a temporary restricted license for two years.⁷¹

C. OWI — Iowa's Implied Consent Law.

The purpose of the implied consent law is to allow the State to remove a person suspected of operating a motor vehicle while intoxicated from the public roadways as soon as possible. In order to accomplish this, the General Assembly enacted a procedure that empowers the State, acting through IDOT, to revoke a suspected violator's driver's license without any unnecessary delay. The procedure authorizes chemical testing of bodily substances from persons suspected of driving while intoxicated, without a warrant.⁷² Once a peace officer invokes implied consent, a person may either submit to testing or refuse to be tested, actions which subject the person to potential license revocation.⁷³ To protect a person from indiscriminate testing or harassment, Iowa law places limitations on the circumstances under which implied consent procedures can be invoked.

A police officer who invokes the implied consent law must first meet certain requirements. First, the police officer must be a qualified "peace officer" as that term is specifically defined in Iowa Code section 321J.1.⁷⁴ The specific definition of a peace officer is intended to protect the public from testing by law enforcement officers who lack the proper foundational training.⁷⁵ Second, the peace officer must have "reasonable grounds to believe" a person is in violation of the OWI law.⁷⁶ If reasonable grounds exist, the peace officer may request the person to submit to a preliminary breath screening test (PBT), the results of which may be used to determine whether a chemical test of any one of three bodily fluids — blood, breath, or urine — should be requested, or whether an arrest should be made.⁷⁷ Third, one of the following specified "triggering events" must occur:

- A peace officer has lawfully placed the person under arrest for a violation of the OWI law.
- The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.
- The person has refused to take a PBT.

⁶⁹ Iowa Code § 321.12(4).

⁷⁰ Iowa Code § 321J.4(5).

⁷¹ Iowa Code §§ 321J.4(6), 707.6A(1)(a).

⁷² Iowa Code § 321J.6. See generally, *State v. Stanford*, 474 N.W.2d 573, 575 (Iowa 1991) (Iowa's implied consent procedure constitutes an exception to the warrant requirement of the Fourth Amendment to the United States Constitution).

⁷³ Iowa Code §§ 321J.9, 321J.12.

⁷⁴ Iowa Code § 321J.1(8).

⁷⁵ See *State v. Palmer*, 554 N.W.2d 859 (Iowa 1996).

⁷⁶ See e.g., *State v. Boleyn*, 547 N.W.2d 202, 205 (Iowa 1996) (Reasonable grounds test determined by the facts and circumstances known to the officer at the time implied consent is invoked).

⁷⁷ Iowa Code § 321J.5. Neither the fact of the test request nor the results of a PBT are admissible at trial.



- The PBT was administered and it indicated an alcohol concentration at or above the appropriate legal limit.
- The PBT was administered and it indicated an alcohol concentration less than the prohibited level, and the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.⁷⁸

When these requirements are met, a peace officer may invoke implied consent.⁷⁹ A peace officer who requests a person to submit to a chemical test must first advise the person that if the person refuses to take the test, or if the person takes the test and the results indicate an alcohol concentration at or above the legal limit, the person's driver's license will be revoked.⁸⁰

1. License Revocations Under Implied Consent.

a. Test Refusal. A person who has been requested to submit to a chemical test has the option of refusing the test, effectively withdrawing their implied consent. A test is not given, but IDOT must revoke the person's driver's license upon receipt of the peace officer's certification that the officer had reasonable grounds to believe the person was operating a motor vehicle while intoxicated in violation of the law, that specific conditions existed for chemical testing, and that the person refused to be tested. The revocation period is for one year if the person has no previous revocation or two years with a previous revocation. In addition, the person is ineligible for a temporary restricted license (work permit) for at least 90 days after the effective date of the revocation if a first offense, or for at least one year if the person has had a previous revocation. The person must have an ignition interlock device installed on the person's vehicle to receive a temporary restricted license.⁸¹

b. Test Failure. If a person submits to a chemical test and the results indicate the presence of a controlled substance or other drug, or an alcohol concentration equal to or above the appropriate legal limit, IDOT must revoke the person's driver's license for 180 days if the person has had no previous license revocation. If the person is a first-time offender, the person is subject to the same license revocation restrictions as a person who has been convicted of an OWI for the first time (see section B(6) on p. 6). If the person is under the age of 21, the person cannot apply for a temporary restricted license for at least 60 days. If the person has had a previous revocation, the person's license will be suspended for at least one year.⁸²

c. Due Process. Administrative license revocation by IDOT is a civil administrative matter.⁸³ A person whose license has been revoked may request an administrative hearing limited to the issues of whether a peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of the OWI law and any or all of the following: (1) whether the person refused to be tested; (2) whether test results indicated a person "failed" or was at or above the appropriate legal blood alcohol limit; or (3) whether test results indicated the presence of alcohol, a

⁷⁸ Iowa Code § 321J.6(1)(a-g).

⁷⁹ State v. Hopkins, 465 N.W.2d 894, 895 (Iowa 1991).

⁸⁰ Iowa Code § 321J.8 (information to be contained in implied consent advisory).



OWI Law in Iowa

controlled substance or other drug, or a combination of both.⁸⁴ A person has the right to contest the matter once the administrative appeal process has been exhausted through the judicial review process.⁸⁵

2. Chemical Testing.

a. Tests Pursuant to Warrants. A person's refusal to submit to a chemical test does not prohibit the withdrawal of a bodily specimen if a peace officer has reasonable grounds to believe the person or persons driving were in violation of the OWI law and a traffic accident occurred that resulted in death or personal injury reasonably likely to cause death. Peace officers who suspect an OWI case may involve involuntary manslaughter, vehicular homicide, or serious injury by motor vehicle may seek search warrants to seize blood.

A peace officer may obtain a search warrant pursuant to the procedures outlined in Iowa Code chapter 808 ("Search and Seizure") or by utilizing the specific procedures contained in Iowa Code chapter 321J.⁸⁶ If a person knowingly resists or obstructs the withdrawal of a specimen pursuant to a search warrant, the person is guilty of contempt punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail not to exceed one year, or by both the fine and imprisonment.⁸⁷

b. Tests Without a Warrant. If a person is under arrest for an offense arising out of acts alleged to have been committed while the person was operating a motor vehicle in violation of the OWI law and that arrest results from an accident that causes a death or personal injury reasonably likely to cause death, a blood sample may be drawn from the person arrested without the person's consent to determine the amount of alcohol or a controlled substance in that person's blood if the peace officer reasonably believes the blood drawn will produce evidence of intoxication, the method used to take the blood sample is reasonable and performed in a reasonable manner by medical personnel, and the peace officer reasonably believes the officer is confronted with an emergency situation in which the delay necessary to obtain a warrant threatens the destruction of the evidence. If the person from whom a specimen of blood is to be withdrawn objects to the withdrawal, a breath sample may be taken from the person if the person is capable of giving a specimen of breath and a direct breath testing instrument is readily available, unless the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug. If the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a

⁸¹ Iowa Code § 321J.9.

⁸² Iowa Code § 321J.12(1), (2)(a-c).

⁸³ See e.g., *State v. Kocher*, 542 N.W.2d 556 (Iowa 1996).

⁸⁴ Iowa Code § 321J.13.

⁸⁵ Iowa Code § 321J.14. Judicial review of the DOT's actions is governed by the standards of the Iowa Administrative Procedure Act, Iowa Code § 17A.19. A reviewing court will uphold IDOT's decision if it is supported by substantial evidence and is correct in its conclusions of law. *Deppe v. Iowa Dep't. of Transp.*, 647 N.W.2d 473, 475 (Iowa App. 2002).

⁸⁶ Iowa Code § 321J.10; Iowa Code ch. 808.

⁸⁷ Iowa Code § 321J.10(5).



urine sample shall be collected in lieu of a blood sample, if the person is capable of giving a urine sample and the sample can be collected.⁸⁸

c. Procedure. When a chemical test is administered, the peace officer determines which of the three substances — blood, breath, or urine — shall be tested.⁸⁹ A peace officer may take breath or urine samples, but only qualified medical personnel can take a blood sample with the appropriate equipment.⁹⁰ If the peace officer fails to offer the chemical test within two hours after the PBT is administered or refused or the arrest is made, whichever occurs first, a chemical test is not required, and a person's license shall not be revoked for refusing to submit to a test.⁹¹ This two-hour evidentiary rule permits a presumption that test results taken within two hours of operating a motor vehicle are the same as those at the time the person was actually operating the motor vehicle. A person may have an independent chemical test administered at the person's own expense in addition to any administered at the direction of a peace officer.⁹²

d. Underage Violators. Iowa's OWI law contains a "zero tolerance" provision for a person under the age of 21 who submits to a chemical test which indicates a blood alcohol level of .02 or more. A first-time violator under this provision faces a license revocation of 60 days, and 90 days on subsequent violations.⁹³ If a person under the age of 21 refuses to be tested, the person's license will be revoked for one year for a first violation and for two years for a second violation.⁹⁴ These revocations are administrative and do not depend on any criminal charges. If a person's license is revoked for this violation, the person is not eligible for a temporary restricted license at all during the revocation period.⁹⁵ In addition, a person who violates this law must participate in a youthful offender substance abuse awareness program, which consists of an educational program and a substance abuse evaluation.⁹⁶

Another underage provision in the OWI law includes a parental and school notification requirement for persons under the age of 18 who violate the OWI law.⁹⁷ In addition, if the license of a person under the age of 18 is revoked as a result of a conviction, deferred judgment, chemical test refusal, or chemical test failure, the revocation period lasts until the person turns 18 or until the revocation period expires, whichever is longer.⁹⁸

0716RR

⁸⁸ Iowa Code § 321J.10A (2004 Acts ch. 1098, §1).

⁸⁹ Iowa Code § 321J.6(2).

⁹⁰ Iowa Code § 321J.11.

⁹¹ Iowa Code § 321J.6(2).

⁹² Iowa Code § 321J.11.

⁹³ Iowa Code §§ 321J.2A, 321J.12(5).

⁹⁴ Iowa Code § 321J.9(1).

⁹⁵ Iowa Code § 321J.20(2).

⁹⁶ Iowa Code § 321J.25.

⁹⁷ Iowa Code § 321J.2B.

⁹⁸ Iowa Code § 321J.4(7).