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

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I. Introduction.

This Legislative Guide discusses the basic structure including both criminal and administrative features, of Iowa's operating a motor vehicle while intoxicated (OWI) law. The Guide is not intended to be an exhaustive survey of this law. Iowa Code references, unless otherwise noted, incorporate both the 2011 Iowa Code and the 2011 Iowa Code Supplement. If the footnoted item was substantively amended by a 2011 enactment, a 2011 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), as well as administrative procedures for revoking driver's licenses apart from any criminal prosecution for OWI based upon the concept of "implied consent."¹

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 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

¹ Iowa's boating while intoxicated (BWI) law is very similar to and based on Iowa's OWI law. For a detailed discussion of the BWI law, see Legal Services Division, Iowa Legislative Services Agency, Legislative Guide to State Regulation of Watercraft and Water Navigation, December 2007, pp. 16-24 available at http://www.legis.iowa.gov/DOCS/LSA/Legis_Guide/2009/LGLSL031.PDF (last visited November 16, 2011)

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 1981 Iowa Code § 321.281.

⁴ 1981 Iowa Code § 321B.4.

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

⁶ 1986 Iowa Acts ch. 1220, § 2.

⁷ 2003 Iowa Acts ch. 60, §§ 1-6 (HF 65). The blood alcohol limit for Iowa's boating while intoxicated law was lowered from .10 to .08 in 2011. 2011 Iowa Acts ch. 24, § 2 (SF 7). The same legislation amended the definition of "operate", when used in reference to a motorboat, to mean the motorboat is powered by a motor which is running, and when used in reference to a sailboat, to mean the sailboat is either powered by a motor which is running, or has sails hoisted and is not propelled by a motor, and is under way.

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

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



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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 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 Department of Transportation (DOT).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 In 2010, the Legislature reorganized and restructured criminal penalty, sentencing, and related license revocation provisions in Iowa Code section 321J.2.¹⁴

B. OWI — The Criminal Offense.

1. Elements of the Offense.

In Iowa, the crime of operating a motor vehicle while intoxicated consists 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

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

¹¹ Iowa Code § 321J.6(1).

¹² Iowa Code §§ 321J.9, 321J.12.

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

¹⁴ 2010 Iowa Acts ch. 1124 (SF 431), § 1. SF 431 also duplicated certain provisions in Iowa Code §§ 321J.4 (revocation of licenses, ignition interlock devices, and temporary restricted licenses), 903.1 (maximum term of imprisonment for first offense OWI offenses), 907.3 (eligibility provisions for deferred judgments, deferred sentences, and suspended sentences), and 907.14 (civil penalty provisions for deferred judgments) in Iowa Code § 321J.2 (criminal OWI provisions). All of the revisions were intended to be nonsubstantive. The bill also made conforming changes in Iowa Code §§ 707.6A (homicide or serious injury by vehicle) and 902.3 (indeterminate sentences) and Iowa Code ch. 910 (victim restitution). The Act took effect December 1, 2010.

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).

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 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 or above the .08 blood alcohol level, the test result in and of itself is evidence of a criminal violation of the law.

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.²⁴ 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.²⁵ The distinction between this alternative and the first alternative discussed is that not all drugs are considered to be controlled substances as listed in Iowa 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.²⁶ An impaired driver taking prescription medication may be able to assert an affirmative defense.²⁷

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.²⁸ This “look-back” provision is the period from the date of the oldest conviction to the date of the most current arrest.²⁹ 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.³⁰

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

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).

²³ Iowa Code § 321J.1(1).

²⁴ Iowa Code § 321J.2(1)(c).

²⁵ Iowa Code § 321J.1(4).

²⁶ See, e.g., State v. Bond, 493 N.W.2d 826 (Iowa 1992).

²⁷ Iowa Code § 321J.2(1)(b).

²⁸ Iowa Code § 321J.2(8).

²⁹ State v. Raim, 381 N.W.2d 635, 637-638 (Iowa 1986).

³⁰ Iowa Code § 321J.2(8)(c).



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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 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 the person's 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.³¹ However, the court may, under some circumstances, defer the judgment or sentence or suspend the sentence.³² 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, 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.³³

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.³⁴ 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.³⁵ The court shall also order restitution to the victim and to public agencies for emergency response costs for damages resulting directly from the offense.³⁶

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.³⁷ The sentence must be served on consecutive days with a maximum term of imprisonment of two years.³⁸ 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

³¹ Iowa Code § 321J.2(3)(a).

³² Iowa Code §§ 321J.2(3)(b)(1), 907.3(1),(3).

³³ Iowa Code §§ 321J.2(3)(b)(2), and (8), 907.3(1)(g), (2)(c), and (3)(c).

³⁴ Iowa Code § 321J.2(3)(c). If the court assesses a fine, a 35 percent criminal penalty surcharge and a DARE surcharge are also included under Iowa Code §§ 911.1 and 911.2.

³⁵ Iowa Code § 321J.2(3)(e) and (7)(a),(b).

³⁶ Iowa Code §§ 321J.2(13) and 910.2.

³⁷ Iowa Code §§ 321J.2(2)(b), and (4)(a), 907.3(3)(c).

³⁸ Iowa Code §§ 321J.2(7)(c), 903.1(2).

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.³⁹ A person convicted of a second offense OWI is ineligible for a deferred judgment or sentence.⁴⁰

In addition, the defendant is subject to a minimum fine of \$1,875, but not more than \$6,250.⁴¹ The court may order community service in lieu of the fine.⁴² In addition to any fine or penalty imposed, the court shall order restitution to the victim and to public agencies for emergency response costs for damages resulting directly from the offense.⁴³ The defendant must also undergo a substance abuse evaluation at the defendant's expense, may be committed for treatment, and may also be ordered to participate in a course for drinking drivers and a reality education substance abuse prevention program.⁴⁴ The court may also order a vehicle used in the commission of the offense and owned by the defendant to be impounded or immobilized.⁴⁵

c. Third and Subsequent Offenses. A person convicted of a third or subsequent OWI offense is guilty of a class "D" felony, is committed to the custody of the Department of Corrections for an indeterminate term not to exceed five years, and must serve a mandatory minimum term of imprisonment of 30 days.⁴⁶ 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.⁴⁷ In addition, the court must impose a fine of not less than \$3,125, but not more than \$9,375, and shall order restitution to the victim and to public agencies for emergency response costs for damages resulting directly from the offense.⁴⁸ The defendant must also undergo a substance abuse evaluation at the defendant's expense, be committed for treatment, if appropriate, and participate in a course for drinking drivers and a reality education substance abuse prevention program.⁴⁹ 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 Corrections or to the Judicial District Department of Correctional Services for an unpaid community service program.⁵⁰ The court may also order a vehicle used in the commission of the offense and operated by the defendant to be impounded or immobilized.⁵¹

³⁹ Iowa Code § 321J.2(7)(c).

⁴⁰ Iowa Code § 907.3(1)(g), (2)(c), and (3)(c).

⁴¹ Iowa Code § 321J.2(4)(b). See 2011 Iowa Acts ch. 131 (SF 533), § 93 (corrective amendment).

⁴² See *State v. Lutgen*, 606 N.W.2d 312 (Iowa 2000).

⁴³ Iowa Code §§ 321J.2(13), 910.2.

⁴⁴ Iowa Code § 321J.2(4)(d) and (7)(a),(b).

⁴⁵ Iowa Code § 321J.4B(2)(a)(1).

⁴⁶ Iowa Code § 321J.2(2)(c) and (5)(a).

⁴⁷ Iowa Code § 321J.2(5)(a)(2).

⁴⁸ Iowa Code §§ 321J.2(5)(b), 321J.2(13), and 910.2.

⁴⁹ Iowa Code § 321J.2(5)(d).

⁵⁰ Iowa Code §§ 321J.2(5)(a)(1), 904.513. 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.

⁵¹ Iowa Code § 321J.4B(2)(a)(1).



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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 the person’s driver’s license for six years.⁵² 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.⁵³ In addition, the court may order the defendant to attend a reality education substance abuse prevention program.⁵⁴

A person convicted of an OWI offense who 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 \$7,500.⁵⁵

A person convicted of either of the foregoing OWI offenses is ineligible for a deferred judgment or sentence, or a suspended sentence.⁵⁶

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.⁵⁷ If the court commits the defendant to a substance abuse treatment facility, the administrator of the treatment facility is required to 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 is 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 is required to attend a posttreatment program.⁵⁸

5. Victim Restitution.

In addition to any other fine or penalty imposed, the defendant is required to make restitution payments to individual victims for damages resulting directly from the offense. There is no limitation on damages to individual victims. In addition, public agencies that incur costs of an emergency response unit, including fire fighters, law

⁵²Iowa Code § 707.6A(1),(1A).

⁵³Iowa Code § 707.6A(1B).

⁵⁴Iowa Code § 707.6A(1D).

⁵⁵Iowa Code §§ 707.6A(4), 902.9(5).

⁵⁶Iowa Code §§ 707.6A(7), 907.3(1)(j), and 907.3(2)(d) and (3)(d).

⁵⁷Iowa Code § 321J.3.(1)(a).

⁵⁸Iowa Code § 321J.3(1)(b-d).

enforcement, ambulance, medical, or other emergency services, may also claim restitution up to a maximum of \$500 per public agency.⁵⁹

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 the DOT, and often the result of the implied consent process (either the defendant refused to submit to a chemical test or failed the test).⁶⁰ In some cases, however, a first-time offender's license has not yet been revoked by the DOT prior to conviction on the criminal offense.⁶¹ In those cases, the DOT must revoke the defendant's driver's license for 180 days if the defendant submitted to chemical testing and has no previous conviction or revocation and for one year if the defendant refused testing with no previous conviction or revocation.⁶² 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 is eligible to apply for a temporary restricted license (work permit) immediately upon revocation if a test was obtained and no accident resulting in personal injury or property damage occurred, and is not required to install an approved ignition interlock device.
- A defendant whose alcohol concentration is .08 or more but not more than .10 is not 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, and is required to install an approved ignition interlock device on all vehicles owned or operated by the defendant if the defendant seeks a work permit.
- A defendant whose alcohol concentration is more than .10 but less than .15 is eligible to apply for a work permit immediately upon revocation if a test was obtained and no accident resulting in personal injury or property damage occurred, 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 work permit 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.⁶³

⁵⁹ Iowa Code §§ 321J.2(13), 910.2.

⁶⁰ Iowa Code §§ 321J.6, 321J.9, 321J.12.

⁶¹ 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.

⁶² Iowa Code § 321J.4(1).

⁶³ Iowa Code § 321J.4(1).



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The preceding operating restrictions are also true for a defendant who receives a deferred judgment, except the DOT 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.⁶⁴

If the defendant submitted to chemical testing and has had a previous conviction or revocation, the DOT must revoke the offender's driver's license for one year if the defendant submitted to chemical testing and two years if the defendant refused to be tested. A defendant who submitted to chemical testing is ineligible for a work permit for 45 days after the revocation period and for at least 90 days if the defendant refused a chemical test. In addition, the defendant must install an ignition interlock device before a work permit is granted.⁶⁵ A third or subsequent offender faces license revocation for six years and is not eligible for a work permit for one year after the revocation period, conditioned upon installation of an ignition interlock device.⁶⁶

License revocation periods for persons convicted of an OWI offense are thus dependent upon the number of prior convictions, not on the level of the current offense, 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 the DOT to revoke the defendant's driver's license for one year in addition to any other revocation already imposed and the defendant is not eligible for a work permit until the applicable minimum period of ineligibility has expired.⁶⁷ 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.⁶⁸

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 authorizes the state, acting through the DOT, 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.⁶⁹ 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.⁷⁰ 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

⁶⁴ Iowa Code § 321J.4(3).

⁶⁵ Iowa Code § 321J.4(2).

⁶⁶ Iowa Code § 321J.4(4).

⁶⁷ Iowa Code § 321J.4(5).

⁶⁸ Iowa Code §§ 321J.4(6), 707.6A(1A)

⁶⁹ 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).

⁷⁰ Iowa Code §§ 321J.9, 321J.12.

specifically defined in Iowa Code section 321J.1.⁷¹ 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.⁷² Second, the peace officer must have “reasonable grounds to believe” a person is in violation of the OWI law.⁷³ 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.⁷⁴ 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.
- The PBT was administered and indicated an alcohol concentration at or above the appropriate legal limit.
- The PBT was administered and 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.⁷⁵

When these requirements are met, a peace officer may invoke implied consent.⁷⁶ 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 by the DOT.⁷⁷

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 the DOT 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 work permit for at least 90 days after the effective date of the revocation. The person must

⁷¹ Iowa Code § 321J.1(8).

⁷² See *State v. Palmer*, 554 N.W.2d 859 (Iowa 1996).

⁷³ Iowa Code § 321J.6(1). 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).

⁷⁴ Iowa Code § 321J.5.

⁷⁵ Iowa Code § 321J.6(1)(a-g).

⁷⁶ *State v. Hopkins*, 465 N.W.2d 894, 895 (Iowa 1991).

⁷⁷ Iowa Code § 321J.8.



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have an ignition interlock device installed on the person's vehicle to receive a temporary restricted license at the end of the minimum period of ineligibility.⁷⁸

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, the DOT must revoke the person's driver's license for 180 days if the person has had no previous license revocation and for one year if the person has had a previous revocation.⁷⁹ 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 offense for the first time (see section B(6) on p. 7).⁸⁰ If the person is under the age of 21, the person cannot apply for a work permit for at least 60 days after the effective date of the revocation.⁸¹

c. Due Process. An administrative license revocation by the DOT is a civil administrative matter.⁸² 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 controlled substance or other drug, or a combination of both.⁸³ A person has the right to contest the matter once the administrative appeal process has been exhausted through the judicial review process.⁸⁴

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.⁸⁵ If a person knowingly resists or obstructs the withdrawal of a specimen pursuant to a search warrant, the person is guilty of contempt

⁷⁸ Iowa Code § 321J.9(1),(2).

⁷⁹ Iowa Code § 321J.12(1).

⁸⁰ Iowa Code § 321J.12(2)(a,b).

⁸¹ Iowa Code § 321J.12(2)(c).

⁸² See e.g., *State v. Kocher*, 542 N.W.2d 556 (Iowa 1996).

⁸³ Iowa Code § 321J.13.

⁸⁴ Iowa Code § 321J.14. Judicial review of the DOT's actions is governed by the standards of the Iowa Administrative Procedure Act, in accordance with Iowa Code § 17A.19. Iowa Code § 321J.14. The district court will uphold the DOT'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 Ct. App. 2002).

⁸⁵ Iowa Code § 321J.10; Iowa Code ch. 808.

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.⁸⁶

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 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.⁸⁷

c. Procedure. When a chemical test is administered, the peace officer determines which of the three substances — blood, breath, or urine — shall be tested.⁸⁸ A peace officer may take breath or urine samples, but only qualified medical personnel can take a blood sample with the appropriate equipment.⁸⁹ 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.⁹⁰ 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.⁹¹

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.⁹² 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.⁹³ These revocations are administrative and do not depend on any criminal charges. If a person's license is

⁸⁶ Iowa Code § 321J.10(5).

⁸⁷ Iowa Code § 321J.10A.



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revoked for this violation, the person is not eligible for a temporary restricted license at all during the revocation period.⁹⁴ In addition, a person who violates this law may participate in a youthful offender substance abuse awareness program, which consists of an educational program and a substance abuse evaluation.⁹⁵

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.⁹⁶ 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.⁹⁷

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⁸⁸ Iowa Code § 321J.6(2).

⁸⁹ Iowa Code § 321J.11.

⁹⁰ Iowa Code § 321J.6(2).

⁹¹ Iowa Code § 321J.11.

⁹² Iowa Code §§ 321J.2A, 321J.12(5).

⁹³ Iowa Code § 321J.9(1).

⁹⁴ Iowa Code § 321J.20(2).

⁹⁵ Iowa Code § 321J.25.

⁹⁶ Iowa Code § 321J.2B.

⁹⁷ Iowa Code § 321J.4(7).

