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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

Introduced By: Senators Archambault, McCaffrey, Ruggerio, Lombardi, and Jabour

Date Introduced: March 29, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 31-27-2, 31-27-2.1 and 31-27-2.8 of the General Laws in Chapter
2 31-27 entitled "Motor Vehicle Offenses" are hereby amended to read as follows:

3 **31-27-2. Driving under influence of liquor or drugs.**

4 (a) Whoever drives or otherwise operates any vehicle in the state while under the
5 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in
6 chapter 28 of title 21, or any combination of these, shall be guilty of a misdemeanor, except as
7 provided in subdivision (d)(3), and shall be punished as provided in subsection (d) of this section.

8 (1) Notwithstanding any other sentencing and disposition provisions contained in this
9 chapter, if the district court judge or magistrate makes a finding that a motorist was operating a
10 vehicle in the state while under the influence of drugs, toluene, or any controlled substance as
11 evidenced by the presence of controlled substances on or about the person or vehicle, or other
12 reliable indicia or articulable conditions thereof, but not intoxicating liquor based on a
13 preliminary breath test, results from a breathalyzer which indicates no blood alcohol
14 concentration, or both, the judge or magistrate may exercise their discretion and eliminate the
15 requirement of an ignition interlock system, provided that blood and/or urine testing is mandated
16 as a condition to operating a motor vehicle as provided in §31-27-2.8.

17 (2) Notwithstanding any other sentencing and disposition provisions contained in this
18 chapter, if the district court judge or magistrate makes a finding that a motorist was operating a
19 vehicle in the state while under the influence of drugs, toluene, or any controlled substance as

1 [evidenced by the presence of controlled substances on or about the person or vehicle, or other](#)
2 [reliable indicia or articulable conditions thereof and intoxicating liquor based on a preliminary](#)
3 [breath test, results from a breathalyzer which indicates no blood alcohol concentration, or both,](#)
4 [the judge or magistrate may require an ignition interlock system in addition to blood and/or urine](#)
5 [testing as a condition to operating a motor vehicle as provided in §31-27-2.8.](#)

6 (b) (1) Any person charged under subsection (a), whose blood alcohol concentration is
7 eight one-hundredths of one percent (.08%) or more by weight, as shown by a chemical analysis
8 of a blood, breath, or urine sample, shall be guilty of violating subsection (a). This provision shall
9 not preclude a conviction based on other admissible evidence. Proof of guilt under this section
10 may also be based on evidence that the person charged was under the influence of intoxicating
11 liquor, drugs, toluene, or any controlled substance defined in chapter 28 of title 21, or any
12 combination of these, to a degree that rendered the person incapable of safely operating a vehicle.
13 The fact that any person charged with violating this section is, or has been, legally entitled to use
14 alcohol or a drug shall not constitute a defense against any charge of violating this section.

15 (2) Whoever drives, or otherwise operates, any vehicle in the state with a blood presence
16 of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by
17 analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as
18 provided in subsection (d).

19 (c) In any criminal prosecution for a violation of subsection (a), evidence as to the
20 amount of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of
21 title 21, or any combination of these, in the defendant's blood at the time alleged as shown by a
22 chemical analysis of the defendant's breath, blood, or urine or other bodily substance, shall be
23 admissible and competent, provided that evidence is presented that the following conditions have
24 been complied with:

25 (1) The defendant has consented to the taking of the test upon which the analysis is made.
26 Evidence that the defendant had refused to submit to the test shall not be admissible unless the
27 defendant elects to testify.

28 (2) A true copy of the report of the test result was mailed within seventy-two (72) hours
29 of the taking of the test to the person submitting to a breath test.

30 (3) Any person submitting to a chemical test of blood, urine, or other body fluids shall
31 have a true copy of the report of the test result mailed to him or her within thirty (30) days
32 following the taking of the test.

33 (4) The test was performed according to methods and with equipment approved by the
34 director of the department of health of the state of Rhode Island and by an authorized individual.

1 (5) Equipment used for the conduct of the tests by means of breath analysis had been
2 tested for accuracy within thirty (30) days preceding the test by personnel qualified as
3 hereinbefore provided, and breathalyzer operators shall be qualified and certified by the
4 department of health within three hundred sixty-five (365) days of the test.

5 (6) The person arrested and charged with operating a motor vehicle while under the
6 influence of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of
7 title 21, or, any combination of these in violation of subsection (a), was afforded the opportunity
8 to have an additional chemical test. The officer arresting or so charging the person shall have
9 informed the person of this right and afforded him or her a reasonable opportunity to exercise this
10 right, and a notation to this effect is made in the official records of the case in the police
11 department. Refusal to permit an additional chemical test shall render incompetent and
12 inadmissible in evidence the original report.

13 (d) (1) (i) Every person found to have violated subdivision (b)(1) shall be sentenced as
14 follows: for a first violation whose blood alcohol concentration is eight one-hundredths of one
15 percent (.08%), but less than one-tenth of one percent (.1%), by weight, or who has a blood
16 presence of any scheduled controlled substance as defined in subdivision (b)(2), shall be subject
17 to a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300);
18 shall be required to perform ten (10) to sixty (60) hours of public community restitution, and/or
19 shall be imprisoned for up to one year. The sentence may be served in any unit of the adult
20 correctional institutions in the discretion of the sentencing judge and/or shall be required to attend
21 a special course on driving while intoxicated or under the influence of a controlled substance;
22 provided, however, that the court may permit a servicemember or veteran to complete any court-
23 approved counseling program administered or approved by the Veterans' Administration, and his
24 or her driver's license shall be suspended for thirty (30) days up to one hundred eighty (180) days.
25 The sentencing judge or magistrate may prohibit that person from operating a motor vehicle,
26 [pursuant to §31-27-2\(a\)\(1\) or \(a\)\(2\)](#), that is not equipped with an ignition interlock system [and/or](#)
27 [blood and urine testing](#) as provided in § 31-27-2.8.

28 (ii) Every person convicted of a first violation whose blood alcohol concentration is one-
29 tenth of one percent (.1%) by weight or above, but less than fifteen hundredths of one percent
30 (.15%), or whose blood alcohol concentration is unknown, shall be subject to a fine of not less
31 than one hundred (\$100) dollars, nor more than four hundred dollars (\$400), and shall be required
32 to perform ten (10) to sixty (60) hours of public community restitution and/or shall be imprisoned
33 for up to one year. The sentence may be served in any unit of the adult correctional institutions in
34 the discretion of the sentencing judge. The person's driving license shall be suspended for a

1 period of three (3) months to twelve (12) months. The sentencing judge shall require attendance
2 at a special course on driving while intoxicated or under the influence of a controlled substance
3 and/or alcoholic or drug treatment for the individual; provided, however, that the court may
4 permit a servicemember or veteran to complete any court-approved counseling program
5 administered or approved by the Veterans' Administration. The sentencing judge or magistrate
6 may prohibit that person from operating a motor vehicle that is not equipped with an ignition
7 interlock system as provided in § 31-27-2.8.

8 (iii) Every person convicted of a first offense whose blood alcohol concentration is
9 fifteen hundredths of one percent (.15%) or above, or who is under the influence of a drug,
10 toluene, or any controlled substance as defined in subdivision (b)(1), shall be subject to a fine of
11 five hundred dollars (\$500) and shall be required to perform twenty (20) to sixty (60) hours of
12 public community restitution and/or shall be imprisoned for up to one year. The sentence may be
13 served in any unit of the adult correctional institutions in the discretion of the sentencing judge.
14 The person's driving license shall be suspended for a period of three (3) months to eighteen (18)
15 months. The sentencing judge shall require attendance at a special course on driving while
16 intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for
17 the individual; provided, however, that the court may permit a servicemember or veteran to
18 complete any court-approved counseling program administered or approved by the Veterans'
19 Administration. The sentencing judge or magistrate shall prohibit that person from operating a
20 motor vehicle, [pursuant to §31-27-2\(a\)\(1\) or \(a\)\(2\)](#), that is not equipped with an ignition interlock
21 system [and/or blood and urine testing](#) as provided in § 31-27-2.8.

22 (2) (i) Every person convicted of a second violation within a five-year (5) period with a
23 blood alcohol concentration of eight one-hundredths of one percent (.08%) or above, but less than
24 fifteen hundredths of one percent (.15%), or whose blood alcohol concentration is unknown, or
25 who has a blood presence of any controlled substance as defined in subdivision (b)(2), and every
26 person convicted of a second violation within a five-year (5) period, regardless of whether the
27 prior violation and subsequent conviction was a violation and subsequent conviction under this
28 statute or under the driving under the influence of liquor or drugs statute of any other state, shall
29 be subject to a mandatory fine of four hundred dollars (\$400). The person's driving license shall
30 be suspended for a period of one year to two (2) years, and the individual shall be sentenced to
31 not less than ten (10) days, nor more than one year, in jail. The sentence may be served in any
32 unit of the adult correctional institutions in the discretion of the sentencing judge; however, not
33 less than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing
34 judge shall require alcohol or drug treatment for the individual; provided, however, that the court

1 may permit a servicemember or veteran to complete any court-approved counseling program
2 administered or approved by the Veterans' Administration and shall prohibit that person from
3 operating a motor vehicle, [pursuant to §31-27-2\(a\)\(1\) or \(a\)\(2\)](#), that is not equipped with an
4 ignition interlock system [and/or blood and urine testing](#) as provided in § 31-27-2.8.

5 (ii) Every person convicted of a second violation within a five-year (5) period whose
6 blood alcohol concentration is fifteen hundredths of one percent (.15%) or above, by weight as
7 shown by a chemical analysis of a blood, breath, or urine sample, or who is under the influence of
8 a drug, toluene, or any controlled substance as defined in subdivision (b)(1), shall be subject to
9 mandatory imprisonment of not less than six (6) months, nor more than one year; a mandatory
10 fine of not less than one thousand dollars (\$1,000); and a mandatory license suspension for a
11 period of two (2) years from the date of completion of the sentence imposed under this
12 subsection. The sentencing judge shall require alcohol or drug treatment for the individual;
13 provided, however, that the court may permit a servicemember or veteran to complete any court
14 approved counseling program administered or approved by the Veterans' Administration. The
15 sentencing judge or magistrate shall prohibit that person from operating a motor vehicle, [pursuant](#)
16 [to §31-27-2\(a\)\(1\) or \(a\)\(2\)](#), that is not equipped with an ignition interlock system [and/or blood](#)
17 [and urine testing](#) as provided in § 31-27-2.8

18 (3) (i) Every person convicted of a third or subsequent violation within a five-year (5)
19 period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or
20 above, but less than fifteen hundredths of one percent (.15%), or whose blood alcohol
21 concentration is unknown or who has a blood presence of any scheduled controlled substance as
22 defined in subdivision (b)(2), regardless of whether any prior violation and subsequent conviction
23 was a violation and subsequent conviction under this statute or under the driving under the
24 influence of liquor or drugs statute of any other state, shall be guilty of a felony and be subject to
25 a mandatory fine of four hundred (\$400) dollars. The person's driving license shall be suspended
26 for a period of two (2) years to three (3) years, and the individual shall be sentenced to not less
27 than one year and not more than three (3) years in jail. The sentence may be served in any unit of
28 the adult correctional institutions in the discretion of the sentencing judge; however, not less than
29 forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall
30 require alcohol or drug treatment for the individual; provided, however, that the court may permit
31 a servicemember or veteran to complete any court-approved counseling program administered or
32 approved by the Veterans' Administration, and shall prohibit that person from operating a motor
33 vehicle, [pursuant to §31-27-2\(a\)\(1\) or \(a\)\(2\)](#), that is not equipped with an ignition interlock
34 system [and/or blood and urine testing](#) as provided in § 31-27-2.8.

1 (ii) Every person convicted of a third or subsequent violation within a five-year (5) period
2 whose blood alcohol concentration is fifteen hundredths of one percent (.15%) above by weight
3 as shown by a chemical analysis of a blood, breath, or urine sample, or who is under the influence
4 of a drug, toluene, or any controlled substance as defined in subdivision (b)(1), shall be subject to
5 mandatory imprisonment of not less than three (3) years, nor more than five (5) years; a
6 mandatory fine of not less than one thousand dollars (\$1,000), nor more than five thousand
7 dollars (\$5,000); and a mandatory license suspension for a period of three (3) years from the date
8 of completion of the sentence imposed under this subsection. The sentencing judge shall require
9 alcohol or drug treatment for the individual. The sentencing judge or magistrate shall prohibit that
10 person from operating a motor vehicle, pursuant to §31-27-2(a)(1) or (a)(2), that is not equipped
11 with an ignition interlock system and/or blood and urine testing as provided in § 31-27-2.8.

12 (iii) In addition to the foregoing penalties, every person convicted of a third or
13 subsequent violation within a five-year (5) period, regardless of whether any prior violation and
14 subsequent conviction was a violation and subsequent conviction under this statute or under the
15 driving under the influence of liquor or drugs statute of any other state, shall be subject, in the
16 discretion of the sentencing judge, to having the vehicle owned and operated by the violator
17 seized and sold by the state of Rhode Island, with all funds obtained by the sale to be transferred
18 to the general fund.

19 (4) Whoever drives or otherwise operates any vehicle in the state while under the
20 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in
21 chapter 28 of title 21, or any combination of these, when his or her license to operate is
22 suspended, revoked, or cancelled for operating under the influence of a narcotic drug or
23 intoxicating liquor, shall be guilty of a felony punishable by imprisonment for not more than three
24 (3) years and by a fine of not more than three thousand dollars (\$3,000). The court shall require
25 alcohol and/or drug treatment for the individual; provided, the penalties provided for in § 31-27-
26 2(d)(4) shall not apply to an individual who has surrendered his or her license and served the
27 court-ordered period of suspension, but who, for any reason, has not had his or her license
28 reinstated after the period of suspension, revocation, or suspension has expired; provided, further,
29 the individual shall be subject to the provisions of subdivision (d)(2)(i), (d)(2)(ii), (d)(3)(i),
30 (d)(3)(ii), or (d)(3)(iii) regarding subsequent offenses, and any other applicable provision of this
31 section.

32 (5) (i) For purposes of determining the period of license suspension, a prior violation
33 shall constitute any charge brought and sustained under the provisions of this section or § 31-27-
34 2.1.

1 (ii) Any person over the age of eighteen (18) who is convicted under this section for
2 operating a motor vehicle while under the influence of alcohol, other drugs, or a combination of
3 these, while a child under the age of thirteen (13) years was present as a passenger in the motor
4 vehicle when the offense was committed, may be sentenced to a term of imprisonment of not
5 more than one year, and further, shall not be entitled to the benefit of suspension or deferment of
6 this sentence. The sentence imposed under this section may be served in any unit of the adult
7 correctional institutions in the discretion of the sentencing judge.

8 (6) (i) Any person convicted of a violation under this section shall pay a highway
9 assessment fine of five hundred dollars (\$500) that shall be deposited into the general fund. The
10 assessment provided for by this subsection shall be collected from a violator before any other
11 fines authorized by this section.

12 (ii) Any person convicted of a violation under this section shall be assessed a fee of
13 eighty-six dollars (\$86).

14 (7) (i) If the person convicted of violating this section is under the age of eighteen (18)
15 years, for the first violation he or she shall be required to perform ten (10) to sixty (60) hours of
16 public community restitution and the juvenile's driving license shall be suspended for a period of
17 six (6) months, and may be suspended for a period up to eighteen (18) months. The sentencing
18 judge shall also require attendance at a special course on driving while intoxicated or under the
19 influence of a controlled substance and alcohol or drug education and/or treatment for the
20 juvenile. The juvenile may also be required to pay a highway assessment fine of no more than
21 five hundred dollars (\$500) and the assessment imposed shall be deposited into the general fund.

22 (ii) If the person convicted of violating this section is under the age of eighteen (18)
23 years, for a second or subsequent violation regardless of whether any prior violation and
24 subsequent conviction was a violation and subsequent under this statute or under the driving
25 under the influence of liquor or drugs statute of any other state, he or she shall be subject to a
26 mandatory suspension of his or her driving license until such time as he or she is twenty-one (21)
27 years of age and may, in the discretion of the sentencing judge, also be sentenced to the Rhode
28 Island training school for a period of not more than one year and/or a fine of not more than five
29 hundred dollars (\$500).

30 (8) Any person convicted of a violation under this section may undergo a clinical
31 assessment at the community college of Rhode Island's center for workforce and community
32 education. Should this clinical assessment determine problems of alcohol, drug abuse, or
33 psychological problems associated with alcoholic or drug abuse, this person shall be referred to
34 an appropriate facility, licensed or approved by the department of behavioral healthcare,

1 developmental disabilities and hospitals, for treatment placement, case management, and
2 monitoring. In the case of a servicemember or veteran, the court may order that the person be
3 evaluated through the Veterans' Administration. Should the clinical assessment determine
4 problems of alcohol, drug abuse, or psychological problems associated with alcohol or drug
5 abuse, the person may have their treatment, case management, and monitoring administered or
6 approved by the Veterans' Administration.

7 (e) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol
8 per one hundred (100) cubic centimeters of blood.

9 (f) (1) There is established an alcohol and drug safety unit within the division of motor
10 vehicles to administer an alcohol safety action program. The program shall provide for placement
11 and follow-up for persons who are required to pay the highway safety assessment. The alcohol
12 and drug safety action program will be administered in conjunction with alcohol and drug
13 programs licensed by the department of behavioral healthcare, developmental disabilities and
14 hospitals.

15 (2) Persons convicted under the provisions of this chapter shall be required to attend a
16 special course on driving while intoxicated or under the influence of a controlled substance,
17 and/or participate in an alcohol or drug treatment program; provided, however, that the court may
18 permit a servicemember or veteran to complete any court-approved counseling program
19 administered or approved by the Veterans' Administration. The course shall take into
20 consideration any language barrier that may exist as to any person ordered to attend, and shall
21 provide for instruction reasonably calculated to communicate the purposes of the course in
22 accordance with the requirements of the subsection. Any costs reasonably incurred in connection
23 with the provision of this accommodation shall be borne by the person being retrained. A copy of
24 any violation under this section shall be forwarded by the court to the alcohol and drug safety
25 unit. In the event that persons convicted under the provisions of this chapter fail to attend and
26 complete the above course or treatment program, as ordered by the judge, then the person may be
27 brought before the court, and after a hearing as to why the order of the court was not followed,
28 may be sentenced to jail for a period not exceeding one year.

29 (3) The alcohol and drug safety action program within the division of motor vehicles
30 shall be funded by general revenue appropriations.

31 (g) The director of the health department of the state of Rhode Island is empowered to
32 make and file with the secretary of state regulations that prescribe the techniques and methods of
33 chemical analysis of the person's body fluids or breath and the qualifications and certification of
34 individuals authorized to administer this testing and analysis.

1 (h) Jurisdiction for misdemeanor violations of this section shall be with the district court
2 for persons eighteen (18) years of age or older and to the family court for persons under the age
3 of eighteen (18) years. The courts shall have full authority to impose any sentence authorized, and
4 to order the suspension of any license, for violations of this section. ~~All trials in the district court
5 and family court of violations of the section shall be scheduled within thirty (30) days of the
6 arraignment date. No continuance or postponement shall be granted except for good cause shown.
7 Any continuances that are necessary shall be granted for the shortest practicable time.~~ Trials in
8 superior court are not required to be scheduled within thirty (30) days of the arraignment date.

9 (i) No fines, suspensions, assessments, alcohol or drug treatment programs, course on
10 driving while intoxicated or under the influence of a controlled substance, public community
11 restitution, or jail provided for under this section can be suspended.

12 (j) An order to attend a special course on driving while intoxicated that shall be
13 administered in cooperation with a college or university accredited by the state, shall include a
14 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars
15 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into
16 the general fund.

17 (k) For the purposes of this section, any test of a sample of blood, breath, or urine for the
18 presence of alcohol that relies in whole or in part upon the principle of infrared light absorption is
19 considered a chemical test.

20 (l) If any provision of this section, or the application of any provision, shall for any
21 reason be judged invalid, such a judgment shall not affect, impair, or invalidate the remainder of
22 the section, but shall be confined in this effect to the provision or application directly involved in
23 the controversy giving rise to the judgment.

24 (m) For the purposes of this section, "servicemember" means a person who is presently
25 serving in the armed forces of the United States, including the Coast Guard, a reserve component
26 thereof, or the National Guard. "Veteran" means a person who has served in the armed forces,
27 including the Coast Guard of the United States, a reserve component thereof, or the National
28 Guard, and has been discharged under other than dishonorable conditions.

29 **31-27-2.1. Refusal to submit to chemical test.**

30 (a) Any person who operates a motor vehicle within this state shall be deemed to have
31 given his or her consent to chemical tests of his or her breath, blood, and/or urine for the purpose
32 of determining the chemical content of his or her body fluids or breath. No more than two (2)
33 complete tests, one for the presence of intoxicating liquor and one for the presence of toluene or
34 any controlled substance, as defined in § 21-28-1.02(7), shall be administered at the direction of a

1 law enforcement officer having reasonable grounds to believe the person to have been driving a
2 motor vehicle within this state while under the influence of intoxicating liquor, toluene, or any
3 controlled substance, as defined in chapter 28 of title 21, or any combination of these. The
4 director of the department of health is empowered to make and file, with the secretary of state,
5 regulations that prescribe the techniques and methods of chemical analysis of the person's body
6 fluids or breath and the qualifications and certification of individuals authorized to administer the
7 testing and analysis.

8 (b) If a person, for religious or medical reasons, cannot be subjected to blood tests, the
9 person may file an affidavit with the division of motor vehicles stating the reasons why he or she
10 cannot be required to take blood tests and a notation to this effect shall be made on his or her
11 license. If that person is asked to submit to chemical tests as provided under this chapter, the
12 person shall only be required to submit to chemical tests of his or her breath or urine. When a
13 person is requested to submit to blood tests, only a physician or registered nurse, or a medical
14 technician certified under regulations promulgated by the director of the department of health,
15 may withdraw blood for the purpose of determining the alcoholic content in it. This limitation
16 shall not apply to the taking of breath or urine specimens. The person tested shall be permitted to
17 have a physician of his or her own choosing, and at his or her own expense, administer chemical
18 tests of his or her breath, blood, and/or urine in addition to the tests administered at the direction
19 of a law enforcement officer. If a person, having been placed under arrest, refuses upon the
20 request of a law enforcement officer to submit to the tests, as provided in § 31-27-2, none shall be
21 given, ~~but a judge or magistrate of the traffic tribunal or district court judge or magistrate, upon~~
22 ~~receipt of a report of a law enforcement officer, that he or she had reasonable grounds to believe~~
23 ~~the arrested person had been driving a motor vehicle within this state under the influence of~~
24 ~~intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or~~
25 ~~any combination of these; that the person had been informed of his or her rights in accordance~~
26 ~~with § 31-27-3; that the person had been informed of the penalties incurred as a result of~~
27 ~~noncompliance with this section; and that the person had refused to submit to the tests upon the~~
28 ~~request of a law enforcement officer; shall promptly order that the person's operator's license or~~
29 ~~privilege to operate a motor vehicle in this state be immediately suspended, however, said~~
30 ~~suspension shall be subject to the hardship provisions enumerated in § 31-27-2.8. ;~~

31 (1) At the initial traffic tribunal appearance, the magistrate shall review the incident,
32 action, and/or arrest reports submitted by the law enforcement officer to determine if there exists
33 reasonable grounds to believe that the person had been driving a motor vehicle while under the
34 influence of intoxicating liquor, any controlled substance as defined in chapter 28 of title 21, or

1 any combination thereof. The magistrate shall also determine if the person had been informed of
2 the penalties incurred as a result of failing to submit to a chemical test as provided in this section.
3 For the purpose of this subsection only "driving a motor vehicle while under the influence of any
4 controlled substance as defined in chapter 28 of title 21" shall be indicated by the presence or
5 aroma of a controlled substance on or about the person or vehicle of the individual refusing the
6 chemical test or other reliable indicia or articulable conditions that the person was impaired due
7 to their intake of a controlled substance.

8 (2) If the magistrate determines that §31-27-2.1(b)(1) has been satisfied they shall
9 promptly order that the person's operator's license or privilege to operate a motor vehicle in this
10 state be immediately suspended. Said suspension shall be subject to the hardship provisions
11 enumerated in §31-27-2.8.

12 (c) A traffic tribunal judge or magistrate, or a district court judge or magistrate, pursuant
13 to the terms of subsection ~~(e)~~ (d) of this section, shall order as follows:

14 (1) Impose, for the first violation, a fine in the amount of two hundred dollars (\$200) to
15 five hundred dollars (\$500) and shall order the person to perform ten (10) to sixty (60) hours of
16 public community restitution. The person's driving license in this state shall be suspended for a
17 period of six (6) months to one year. The traffic tribunal judge or magistrate shall require
18 attendance at a special course on driving while intoxicated or under the influence of a controlled
19 substance and/or alcohol or drug treatment for the individual. The traffic tribunal judge or
20 magistrate may prohibit that person from operating a motor vehicle that is not equipped with an
21 ignition interlock system and/or blood and urine testing as provided in § 31-27-2.8.

22 (2) Every person convicted for a second violation within a five-year (5) period shall be
23 guilty of a misdemeanor; shall be imprisoned for not more than six (6) months; and shall pay a
24 fine in the amount of six hundred dollars (\$600) to one thousand dollars (\$1,000), order the
25 person to perform sixty (60) to one hundred (100) hours of public community restitution; and the
26 person's driving license in this state shall be suspended for a period of one year to two (2) years.
27 The judge or magistrate shall require alcohol and/or drug treatment for the individual. The
28 sentencing judge or magistrate shall prohibit that person from operating a motor vehicle that is
29 not equipped with an ignition interlock system and/or blood and urine testing as provided in § 31-
30 27-2.8.

31 (3) Every person convicted for a third or subsequent violation within a five-year (5)
32 period shall be guilty of a misdemeanor; and shall be imprisoned for not more than one year;
33 fined eight hundred dollars (\$800) to one thousand dollars (\$1,000); shall perform not less than
34 one hundred (100) hours of public community restitution; and the person's operator's license in

1 this state shall be suspended for a period of two (2) years to five (5) years. The sentencing judge
2 or magistrate shall prohibit that person from operating a motor vehicle that is not equipped with
3 an ignition interlock system [and/or blood and urine testing](#) as provided in § 31-27-2.8. The judge
4 or magistrate shall require alcohol or drug treatment for the individual. Provided, that prior to the
5 reinstatement of a license to a person charged with a third or subsequent violation within a three-
6 year (3) period, a hearing shall be held before a judge or magistrate. At the hearing, the judge or
7 magistrate shall review the person's driving record, his or her employment history, family
8 background, and any other pertinent factors that would indicate that the person has demonstrated
9 behavior that warrants the reinstatement of his or her license.

10 (4) For purposes of determining the period of license suspension, a prior violation shall
11 constitute any charge brought and sustained under the provisions of this section or § 31-27-2.

12 (5) In addition to any other fines, a highway safety assessment of five hundred dollars
13 (\$500) shall be paid by any person found in violation of this section, the assessment to be
14 deposited into the general fund. The assessment provided for by this subsection shall be collected
15 from a violator before any other fines authorized by this section.

16 (6) In addition to any other fines and highway safety assessments, a two hundred dollar
17 (\$200) assessment shall be paid by any person found in violation of this section to support the
18 department of health's chemical testing programs outlined in ~~§ 31-27-2(4)~~ [§31-27-2\(f\)](#), that shall
19 be deposited as general revenues, not restricted receipts.

20 (7) No fines, suspensions, assessments, alcohol or drug treatment programs, course on
21 driving while intoxicated or under the influence of a controlled substance, or public community
22 restitution provided for under this section can be suspended.

23 ~~(e)~~(d) Upon suspending or refusing to issue a license or permit as provided in subsection
24 (a), the traffic tribunal or district court shall immediately notify the person involved in writing,
25 and upon his or her request, within fifteen (15) days, ~~shall~~ afford the person an opportunity for a
26 hearing as early as practical upon receipt of a request in writing. Upon a hearing, the judge may
27 administer oaths and may issue subpoenas for the attendance of witnesses and the production of
28 relevant books and papers. If the judge finds after the hearing that: (1) The law enforcement
29 officer making the sworn report had reasonable grounds to believe that the arrested person had
30 been driving a motor vehicle within this state while under the influence of intoxicating liquor,
31 toluene, or any controlled substance, as defined in chapter 28 of title 21, or any combination of
32 these; (2) The person, while under arrest, refused to submit to the tests upon the request of a law
33 enforcement officer; (3) The person had been informed of his or her rights in accordance with §
34 31-27-3; and (4) The person had been informed of the penalties incurred as a result of

1 noncompliance with this section, the judge shall sustain the violation. The judge shall then
2 impose the penalties set forth in subsection ~~(b)~~(c). Action by the judge must be taken within
3 seven (7) days after the hearing or it shall be presumed that the judge has refused to issue his or
4 her order of suspension.

5 ~~(d)~~(e) For the purposes of this section, any test of a sample of blood, breath, or urine for
6 the presence of alcohol that relies, in whole or in part, upon the principle of infrared light
7 absorption is considered a chemical test.

8 ~~(e)~~(f) If any provision of this section, or the application of any provision, shall, for any
9 reason, be judged invalid, the judgment shall not affect, impair, or invalidate the remainder of the
10 section, but shall be confined in this effect to the provisions or application directly involved in the
11 controversy giving rise to the judgment.

12 ~~31-27-2.8. Ignition interlock system imposed as part of sentence — Requirements~~
13 ~~Ignition interlock system and/or blood and urine testing imposed as part of sentence --~~
14 ~~Requirements.~~

15 (a) Any person subject to suspension pursuant to §31-27-2.1(b)(1) and (b)(2) or convicted
16 under the provisions of §§ 31-27-2(d)(1), 31-27-2(d)(2), 31-27-2(d)(3)(i) or 31-27-2(d)(3)(ii), or
17 whose violation is sustained under the provisions of ~~§ 31-27-2.1(b)(1)~~ §31-27-2.1(b)(1) or (b)(2),
18 may be prohibited by the sentencing judge or magistrate from operating a motor vehicle that is
19 not equipped with an ignition interlock system, and/or blood and urine testing by a licensed
20 physician with knowledge and clinical experience in the diagnosis and treatment of drug related
21 disorders, a licensed or certified psychologist, social worker, or EAP professional with like
22 knowledge, or a substance abuse counselor certified by the National Association of Alcohol and
23 Drug Abuse Counselors (all of whom shall be licensed in Rhode Island), pursuant to this section.

24 (1) Notwithstanding any other sentencing and disposition provisions contained in this
25 chapter, if a Rhode Island traffic tribunal magistrate makes a finding that a motorist was operating
26 a vehicle in the state while under the influence of drugs, toluene, or any controlled substance as
27 evidenced by the presence of controlled substances on or about the person or vehicle, or other
28 reliable indicia or articulable conditions thereof, but not intoxicating liquor based on a
29 preliminary breath test, results from a breathalyzer which indicates no blood alcohol
30 concentration or both, the magistrate may exercise their discretion and eliminate the requirement
31 of an ignition interlock system, provided that blood and/or urine testing is mandated as a
32 condition to operating a motor vehicle as provided in this section.

33 (2) Notwithstanding any other sentencing and disposition provisions contained in this
34 chapter, if a Rhode Island traffic tribunal magistrate makes a finding that a motorist was operating

1 a vehicle in the state while under the influence of drugs, toluene, or any controlled substance as
2 evidenced by the presence of controlled substances on or about the person or vehicle, or other
3 reliable indicia or articulable conditions thereof and intoxicating liquor based on a preliminary
4 breath test, results from a breathalyzer which indicates no blood alcohol concentration or both,
5 the magistrate may require an ignition interlock system in addition to blood and/or urine testing
6 as a condition to operating a motor vehicle as provided in this section.

7 (b) Notwithstanding any other provisions contained in this chapter, ~~after a finding of~~
8 ~~eligibility,~~ any mandatory period of license suspension shall, upon request, be reduced by the
9 imposition of an ignition interlock system and/or blood and urine testing ordered by the court or
10 traffic tribunal as follows:

11 (1) For a violation of § 31-27-2(d)(1), a person shall be subject to a minimum thirty-day
12 (30) license suspension and an imposition of an ignition interlock system and/or blood and urine
13 testing for three (3) months to one year.

14 (2) For a violation of ~~§ 31-27-2.1(b)(1)~~ §31-27-2.1(c)(1), a person shall be subject to a
15 minimum thirty-day (30) license suspension and an imposition of an ignition interlock system
16 and/or blood and urine testing for a period of six (6) months to two (2) years.

17 (3) For a violation of § 31-27-2(d)(2), a person shall be subject to a minimum forty-five-
18 day (45) license suspension and an imposition of an ignition interlock system and/or blood and
19 urine testing for a period of six (6) months to two (2) years.

20 (4) For a violation of ~~§ 31-27-2.1(b)(2)~~ §31-27-2.1(c)(2), a person shall be subject to a
21 minimum sixty-day (60) license suspension and an imposition of an ignition interlock system
22 and/or blood and urine testing for a period of one to four (4) years.

23 (5) For a violation of § 31-27-2(d)(3), a person shall be subject to a minimum sixty-day
24 (60) license suspension and imposition of an ignition interlock system and/or blood and urine
25 testing for a period of one to four (4) years.

26 (6) For a violation of ~~§ 31-27-2.1(b)(3)~~ §31-27-2.1(c)(3), a person shall be subject to a
27 minimum ninety-day (90) license suspension and imposition of an ignition interlock system
28 and/or blood and urine testing for a period of two (2) to ten (10) years.

29 (7)(i) ~~In any case where a person is convicted of a first offense under the provisions of §~~
30 ~~31-27-2(d)(1) or under § 31-27-2.1(b)(1), the sentencing judge or magistrate shall, upon request,~~
31 ~~grant the person a conditional hardship license immediately upon a plea or admission of guilt, or~~
32 ~~an initial suspension under § 31-27-2.1(b), and after a finding of need under this section;~~
33 ~~provided, however, that in a case where a conditional hardship license shall be granted by the~~
34 ~~sentencing judge or magistrate upon an initial suspension under § 31-27-2.1(b) and prior to the~~

1 ~~installation of an ignition interlock device, said hardship license shall be issued to the motorist~~
2 ~~upon proof of installation of an ignition interlock device.~~ If a conviction pursuant to §31-27-
3 2(d)(1) or §31-27-2.1(c)(1) is a first offense, or upon an initial suspension pursuant to §31-27-
4 2.1(b)(ii), where there has been a finding or determination that the motorist was under the
5 influence of intoxicating liquor only, the magistrate shall, upon request, immediately grant a
6 conditional hardship license after a finding of need pursuant to this section and upon proof of the
7 installation of an ignition interlock device.

8 (ii) If a conviction pursuant to §31-27-2(d)(1) or §31-27-2.1(c)(1) is a first offense, or upon
9 an initial suspension pursuant to §31-27-2.1(b)(ii), where there has been a finding or
10 determination that the motorist was under the influence of drugs, toluene, or a controlled
11 substance, but not intoxicating liquor, the judge or magistrate shall, upon request immediately
12 grant a conditional hardship license after a finding of need pursuant to this section and upon proof
13 of blood and urine testing pursuant to this section.

14 (iii) If a conviction pursuant to §31-27-2(d)(1) or §31-27-2.1(c)(1) is a first offense, or
15 upon an initial suspension pursuant to §31-27-2.1(b)(ii), where there has been a finding or
16 determination that the motorist was under the influence of intoxicating liquor, toluene, a
17 controlled substance or any combination thereof, the magistrate shall, upon request immediately
18 grant a conditional hardship license after a finding of need pursuant to this section and upon proof
19 of the installation of an ignition interlock device, subject also to the following testing:

20 (A) The testing of either blood or urine is being performed by or monitored by a licensed
21 physician with knowledge and clinical experience in the diagnosis and treatment of drug related
22 disorders, a licensed or certified psychologist, social worker, or EAP professional with like
23 knowledge, or a substance abuse counselor certified by the National Association of Alcohol and
24 Drug Abuse Counselors (all of whom shall be licensed in Rhode Island).

25 (B) The motorist is require to pay for the substance abuse professional, any testing,
26 retesting, monitoring and reporting costs of the blood and urine testing.

27 (C) Samples are to be collected, tested and confirmed by a federally certified laboratory
28 by means of gas chromatography/mass spectrometry or technology recognized as being at least as
29 scientifically accurate.

30 (D) Samples are to be taken weekly for the first sixty (60) days, thereafter in accordance
31 with the recommendation of the substance abuse professional. The samples taken thereafter may
32 be ordered randomly but must be provided by the motorist within twenty-four (24) hours of the
33 request. The substance abuse professional shall report to the department of the attorney general
34 within twenty-four (24) hours any failure by the motorist to comply with a request for a sample.

1 (E) A positive test of urine or blood which evidences any controlled substances shall be
2 reported by the substance abuse professional to the motorist and to the department of the attorney
3 general within twenty-four (24) hours of receipt of the results. The motorist may, at their own
4 expense, have an opportunity to have the sample retested or reevaluated by an independent testing
5 facility which shall provide the result directly to the substance abuse professional. The attorney
6 general may request, at any time, a copy of any or all test results from the substance abuse
7 professional, which shall forward the requested results within forty-eight (48) hours.

8 (F) Upon completion of the license suspension, conditional hardship, ignition interlock
9 and substance abuse testing periods, a finalized report shall be presented to the department of
10 motor vehicles prior to any license reinstatement.

11 (G) If a judge or magistrate determines that a motorist either failed, without good cause,
12 to comply with a sample request or tested positive for any controlled substance, they may
13 exercise their discretion and revoke the conditional hardship license, extend the time period for
14 the ignition interlock system and/or substance abuse testing for an additional period of up to
15 twelve (12) months and/or impose an additional loss of license for up to twenty-four (24) months.

16 (H) A motorist who has failed, without good cause, to comply with a sample request or
17 tested positive for any controlled substance for a second time within twelve (12) months of the
18 first failure and/or positive test determination shall be guilty of a misdemeanor punishable by up
19 to one year imprisonment, or a fine of up to one thousand dollars (\$1,000), or both.

20 (c) However, in any case where a motorist has a prior alcohol-related offense or a prior
21 reckless driving conviction under § 31-27-4 or reckless eluding conviction under § 31-27-4.1,
22 within the prior ten (10) years of the offense, or when the instant offense involves a motor vehicle
23 accident, the judge or magistrate may exercise their discretion in the granting of the hardship
24 license by imposing up to a ninety (90) day loss of license prior to any imposition of the hardship
25 license. If the instant matter involves a blood alcohol level of fifteen hundredths (.15) BAC or
26 above, the judge or magistrate may exercise his or her discretion in the granting of the hardship
27 license by imposing up to a six (6) month loss of license prior to any imposition of the hardship
28 license. Said hardship license shall be valid only for twelve (12) hours per day to get to and from
29 employment, necessary medical appointments, job training, schooling, or any other valid reason
30 approved in advance by the sentencing judge or magistrate. A hardship license shall only be
31 granted in conjunction with the installation of an ignition interlock device and/or blood and urine
32 testing. Any conditional driving privileges must be set by the sentencing judge or magistrate after
33 a hearing in which the motorist must provide proof of employment status and hours of
34 employment, or any other legitimate reasons justifying a hardship license. These shall include,

1 but not be limited to, any unemployment training, schooling, medical appointments, therapy
2 treatments, or any other valid requests set forth by sworn affidavit. Once said hardship period has
3 concluded, the motorist must still be subject to the conditions of the ignition interlock system
4 [and/or blood and urine testing](#) as set forth under this section for the period of time as directed by
5 the court. Any individual who violates the requirements of this subsection shall be subject to the
6 penalties enumerated in § 31-11-18.1.

7 ~~(d)~~ Any person convicted of an offense of driving under the influence of liquor or
8 drugs resulting in death, § 31-27-2.2; driving under the influence of liquor or drugs resulting in
9 serious bodily injury, § 31-27-2.6; driving to endanger resulting in death, § 31-27-1; or driving to
10 endanger resulting in serious bodily injury, § 31-27-1.1; may, in addition to any other penalties
11 provided by law, be prohibited from operating a motor vehicle that is not equipped with an
12 approved ignition interlock system [and/or blood and urine testing](#) for one to five (5) years.

13 ~~(e)~~ Any person who operates a motor vehicle with a suspended license during the
14 period of suspension, and the reason for the suspension was due to a conviction of driving under
15 the influence of drugs or alcohol or a sustained violation or conviction of refusal to submit to a
16 chemical test, shall be subject to the further use of the ignition interlock system [and/or blood and](#)
17 [urine testing](#) for a period of six (6) months subsequent to the penalties enumerated in § 31-11-
18 18.1.

19 ~~(f)~~ When the court orders the use of an ignition interlock system, the judge or
20 magistrate shall cause an appropriate notation to be made on the person's record that clearly sets
21 forth the requirement for, and the period of the use of, the ignition interlock system.

22 ~~(g)~~ In addition to the requirements of subsection ~~(e)~~[\(f\) of this section](#), the court or
23 traffic tribunal shall:

24 (1) Require proof of the installation of the ignition interlock system and periodic
25 reporting by the person for the purpose of verification of the proper operation of the ignition
26 interlock system;

27 (2) Require the person to have the ignition interlock system monitored for the proper use
28 and accuracy by a person, firm, corporation, or other association to be approved by the division of
29 motor vehicles at least once every six (6) months, or more frequently as the circumstances may
30 require; and

31 (3) Require the person to pay the reasonable cost of leasing or buying, monitoring, and
32 maintenance of the ignition interlock system.

33 (4) The requirements under subsection ~~(g)~~[\(g\) of this section](#) shall be the responsibility of
34 the probation department or justice assistance, if the individual is under their control, or the

1 division of motor vehicles if the individual is not monitored as a condition of the individual's plea
2 or finding of guilt.

3 ~~(g)~~(h) If a person is required, in the course of the person's employment, to operate a
4 motor vehicle owned or provided by the person's employer, the person may operate that motor
5 vehicle in the course of the person's employment without installation of an ignition interlock
6 system if the court makes specific findings expressly permitting the person to operate, in the
7 course of the person's employment, a motor vehicle that is not equipped with an ignition interlock
8 system.

9 ~~(h)~~(i)(1) Any person subject to an ignition interlock order and/or blood and urine testing
10 who violates such order shall be guilty of a misdemeanor punishable by up to one year
11 imprisonment, or a fine of up to one thousand dollars (\$1,000), or both.

12 (2) For a second violation within six (6) months from entry of the order, the person
13 violating the order shall be imprisoned for a term of not less than ten (10) days and not more than
14 one year.

15 (j) For the purposes of this subsection, a violation of the interlock order, includes, but is
16 not limited to:

17 (1) Altering, tampering, or in any way attempting to circumvent the operation of an
18 ignition interlock system that has been installed in the motor vehicle of a person under this
19 section;

20 (2) Operating a motor vehicle that is not equipped with an ignition interlock system; or

21 (3) Soliciting or attempting to have another person start a motor vehicle equipped with an
22 ignition interlock system for the purpose of providing an operable motor vehicle to a person who
23 is prohibited from operating a motor vehicle that is not equipped with an ignition interlock
24 system.

25 ~~(i)~~(k) Any person who attempts to start, or starts, a motor vehicle equipped with an
26 ignition interlock system, tampers with, or in any way attempts to circumvent, the operation of an
27 ignition interlock system that has been installed in the motor vehicle for the purpose of providing
28 an operable motor vehicle to a person who is prohibited from operating a motor vehicle that is not
29 equipped with an ignition interlock system, shall be guilty of a misdemeanor punishable by up to
30 one year imprisonment or a fine of up to one thousand dollars (\$1,000), or both.

31 SECTION 2. This act shall take effect upon passage.

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LC002004/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

1 This act would grant a judge or magistrate discretion to impose the requirement of blood
2 and/or urine testing or the use of an ignition interlock system or both upon those persons seeking
3 the issuance of a conditional hardship license after conviction of driving under the influence of
4 alcohol or illegal substances or the refusal to submit to a chemical test for same.

5 This act would take effect upon passage.

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LC002004/SUB A
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