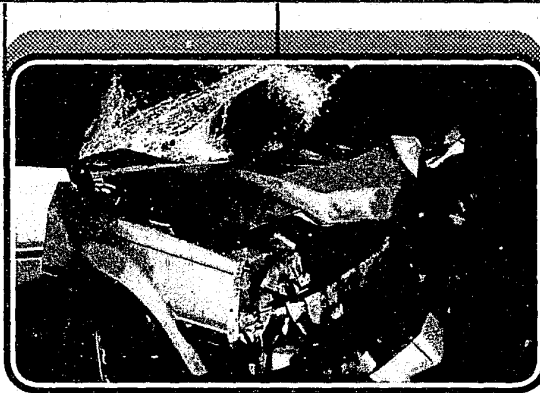


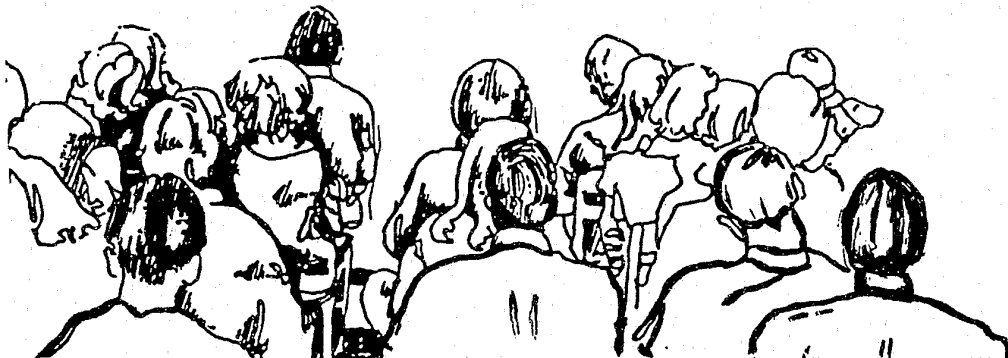
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# DRIVING WHILE INTOXICATED

*Rhode Island's  
Comprehensive  
Status Report*



DWI DRIVER RETRAINING



GOVERNOR'S JUSTICE COMMISSION  
STATISTICAL ANALYSIS CENTER

STATE OF RHODE ISLAND



JULY, 1989  
REPORT N° 25

AND PROVIDENCE PLANTATIONS

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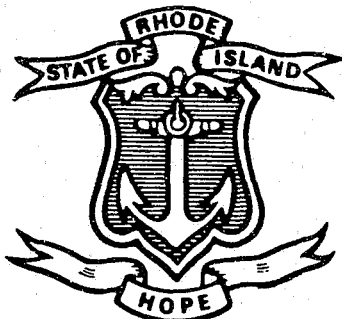
**Of course, supply and demand should be considered.**

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# DRIVING WHILE INTOXICATED

## REPORT

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**REPORT  
No 25**

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# H I G H L I G H T S

**The findings of this report include the following key points:**

- The individuals most likely to be apprehended for D.W.I. offenses in Rhode Island and nationwide are young, single, male adults.
  - Drunk driving has been a problem since the automobile was first permitted on public roads.
  - Arrests for D.W.I. have increased almost consistently throughout the post-war period to the present time, both in Rhode Island and nationwide.
  - D.W.I. is the fifth most common offense in Rhode Island for which arrests are made (of the 29 F.B.I. crime categories).
  - The figures for alcohol consumption nationwide suggest that one segment of the population (approximately one-third) is responsible for consuming 95 percent of all the alcohol purchased.
  - Alcohol affects motor control, reasoning ability and visual capabilities of human beings.
  - Alcohol is of virtually no nutritional value, yet it is consumed in larger quantities than both coffee and milk. It is absorbed into the body more rapidly than most substances and takes longer to leave it.
  - Approximately one driver is arrested for a D.W.I. offense for every 88 licensed drivers on the roads of the United States.
  - In the last ten years, about 250,000 people were killed by drunk drivers in the U.S. More than 650,000 people are injured in alcohol-related traffic accidents every year on America's roads.
- 
-



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- The breathalyzers approved by the R.I. Department of Health are a reliable means of testing the blood-alcohol level of suspected D.W.I. offenders.
  - Obtaining a D.W.I. conviction is becoming increasingly difficult for the state's police forces; strict procedures must be followed both at the scene and in the police station in order for probable cause for stopping a motorist to be established and for D.W.I. evidence to be successful in court.
  - While most accidents of all types occur in cities, as a proportion of total accidents per community, more alcohol-related accidents occur in outlying areas than in urban or suburban municipalities in Rhode Island.
  - Alcohol-related fatal accidents are most likely to take place between the hours of 7:00 P.M. and 4:00 A.M. on Saturdays and Sundays.
  - In the last ten years, the monetary costs to individuals and to the nation of alcohol-related traffic incidents amount to over 20 billion dollars.
  - In Rhode Island, the Governor's Justice Commission estimates that D.W.I. education, enforcement, adjudication, incarceration and substance abuse treatment cost about 1.78 million dollars in 1988.
  - The costs to society of enforcing D.W.I. laws are substantially higher than the penalties paid back to society by intoxicated drivers.
  - The Automobile Association of America reports that "alcohol clouds the mind, delays reaction and blurs vision. Any one of these can result in a crash with grave consequences..."
  - The case history of the Morsilli family of Warwick, Rhode Island illustrates the extreme emotional costs that drunk driving imposes on relatives and friends of alcohol-related accident victims.
-

## INTRODUCTION

**Purpose  
of the  
Study**

This report analyzes recent trends in arrests, convictions and sentencing for driving while intoxicated (D.W.I.) in the state of Rhode Island. Its purpose is to identify significant changes in the pattern of intoxicated driving and to assess the relative significance of legislation, the criminal justice system and public opinion in bringing such changes about.

The report examines the age and gender profiles of intoxicated drivers and presents statistics for their geographic distribution across the cities and towns of the state. A description is provided of how the criminal justice system apprehends, adjudicates and penalizes intoxicated drivers in order to assess its effectiveness in making Rhode Island's roads safer.

The report concludes with suggestions for policy changes which might improve the way the criminal justice system responds to the problem of intoxicated drivers.

**Methods**

The foundations of this report fall into two broad categories: first, the numerous state and federal reports which document specific aspects of the D.W.I. problem — alcoholism; arrest, accident and death statistics; legislation and penalties; treatment and rehabilitation — and, second, information gained through interviews with key professionals working to reduce drunk driving in the state of Rhode Island. This report attempts to provide a synthesis of this information. Its goal is to identify the linkages between the D.W.I. statistics (and the trends they reveal) and both their social and policy implications.

To this end, a number of data sources are drawn upon. Secondary sources include statistics from the Federal Bureau of Investigation - Uniform Crime Reports; U.S. Department of Justice - Bureau of Justice Statistics; the U.S. Department of Transportation - National Highway Traffic Safety Administration and National Transportation Safety Board; the

R.I. Department of Transportation - Administrative Adjudication Division and Planning Division; the R.I. Department of Health - Division of Drug Control and Office of the Chief Medical Examiner; R.I. District Court; R.I. Judicial Systems and Sciences; R.I. Governor's Office of Highway Safety; R.I. Department of Corrections, R.I. General Laws, 1988; and the Automobile Association of America. These sources are cited in the narrative and tables, and are referenced in full at the end of this report.

Interviews with professionals working in the area of D.W.I. in Rhode Island are the key primary data sources. The interviewees include the Chief Judge of the R.I. District Court; three police chiefs from urban, suburban and rural Rhode Island communities; officials of the R.I. Department of Transportation's Administrative Adjudication Division; police officer training experts from the R.I. Department of Health's Division of Drug Control; and the father of a young man who was killed by a drunk driver in 1983, a father who subsequently established a fund in his son's name to promote awareness of the hazards of drunk driving among Rhode Island's youth. The Governor's Justice Commission wishes to reiterate its thanks to all those who contributed to this study.

### What is Driving While Intoxicated?

Chapter 27, Section 2 of the General Laws of Rhode Island (1988) reads, "Whoever operates or otherwise drives any vehicle in the state while under the influence of any intoxicating liquor, drugs, toluene or any controlled substance... shall be guilty of a misdemeanor and shall be punished... Any person charged... under this section whose blood alcohol concentration is one-tenth of one percent (.1%) or more by weight as shown by a chemical analysis of blood, breath or urine sample shall be guilty [of driving under the influence of liquor or drugs]."

To lend meaning to the technical language of the law, it is necessary to understand what alcohol does to the human body, and why it is imperative that individuals with a blood-alcohol level higher than .1 percent do not drive.

The alcohol used in most alcoholic drinks is ethyl alcohol, a substance which has absolutely no nutritional value. Unlike most ingested substances, it does not follow regular digestive channels but rather is absorbed immediately into the bloodstream through the walls of the stomach and small intestine. Because the brain has a high concentration

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of blood (which is approximately 90 percent water), the effect of alcohol is apparent very soon after its consumption. Alcohol is potentially dangerous for another reason. Not only is it rapidly absorbed by the body, but it remains there for a long period of time. The liver is only able to process or oxidize one-third fluid ounce of alcohol per hour into disposable matter. In many instances, just two or three drinks taken in rapid succession can render a person legally drunk.

There is no normal alcohol in the body, so that when any alcohol is determined to be in the body (for example, by blood or breath tests) it is there because it has been ingested from some outside source.

"Pacing yourself" in the consumption of drinks is of no value because alcohol has a cumulative effect. The rate at which the body absorbs alcohol is much higher than the rate at which the body can dispose of it. The Automobile Association of America notes that a 160 pound man who drinks two beers or two 1.5 ounce shots of bourbon an hour would have a blood-alcohol level of .191 at the end of a six hour period. He would be legally drunk and be violating the drunk driving laws if he then drove in Rhode Island. The R.I. Department of Health notes that one highball of 100 percent proof whiskey contains about two ounces of whiskey, or one ounce of alcohol, so, at the rate of one-third fluid ounce of alcohol being burned each hour, it would take three hours for the destruction and elimination of the alcohol in just one highball. It would require 24 hours for the complete elimination from the system of one pint (16 fluid ounces) of whiskey.

Unfortunately, much credence is given to "alcohol antidotes" by those who believe that they can reduce the impacts of their drinking and therefore drive their cars safely. Black coffee, cold showers, fresh air and exercise are much touted remedies. But the alcohol is still in the system. Its effects are undiminished. The coffee and the fresh air merely furnish false confidence and give a rush to the system, convincing a person to drive when they should not.

Other intervening variables further complicate the issue. If a person is tired prior to drinking, or if they are unwell or on medication when consuming alcohol, the impacts of taking a drink are multiplied. Being stressed or even having a bad day at work can compound the effects. From one day to the next, no-one can anticipate how alcohol

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will impair their ability to operate a vehicle. Even under similar conditions, the same amount of alcohol may have a completely different effect the very next time a driver drinks. As the American Automobile Association suggests, "There is only one thing of which a driver can be sure - the effect of alcohol on his or her ability to operate a car tends to be detrimental."

Concrete evidence to promote avoiding alcohol altogether when driving is offered by the National Transportation Safety Board, which found that a driver's propensity for contributing to a traffic accident increases four times with a blood-alcohol level of .06, six times at .08 and about eight times at .1 percent. Thus the level at which a person is legally drunk in Rhode Island (.1 percent) allows for considerable impairment: individuals can drive legally even when they might be at much greater risk of causing an accident than when they have consumed no alcohol. Drunk drivers may rationalize matters in their defense: "I always have a few drinks and have never had an accident", "I always drink coffee afterwards and feel just fine", or "This .1 percent business is too tough — I drive perfectly well above that". The evidence and research of numerous studies suggests that such excuses are groundless.

Scientific facts about alcohol include serious implications for anyone who drinks and drives. Many of these facts, reported by the American Automobile Association, the National Highway Traffic Safety Administration and the R.I. Department of Health, are not widely known. They include:

- o Alcohol affects motor abilities.
  - o Alcohol is a depressant drug, not a stimulant: alcohol stimulates the body initially by irritating the nerve endings in the throat and esophagus, causing quick, deep breathing and rapid heart beats; its depressant effects are only noticed once the alcohol gets into the blood and reaches the brain.
  - o Alcohol acts on the central nervous system to slow the activities of the brain and spinal cord.
  - o Alcohol causes an initial sense of euphoria and overconfidence, followed by incoordination, confusion, disorientation, stupor and even death.
  - o Alcohol affects the ability to reason.
  - o Alcohol reduces reaction times.
  - o Alcohol affects the liver more than any other organ, interfering with its ability to adequately process sugar and fat.
-

- 
- o Alcohol reduces control over light entering the eye and therefore the ability to regain focus after exposure to bright lights — such as oncoming headlights.
  - o Alcohol can cause double vision.
  - o Alcohol affects the ability to judge distance.
  - o Alcohol reduces a person's peripheral vision.
  - o Alcohol reduces the ability to distinguish colors and renders colors blurred — like the red, yellow and green of traffic lights.
  - o Alcohol reduces night vision and therefore reduces the visibility distance below the stopping distance...
- ... and the list goes on.

The American Automobile Association concludes, "A clear mind, excellent reflexes and good vision all are essential to being an alert, safe driver. And under even the best of circumstances... alcohol clouds the mind, delays reactions and blurs vision. Any one of these can result in a crash with grave consequences... Some people will drive after drinking. Despite how well they may control their drinking on such occasions, it is important for them to realize, at least, that under certain conditions they are likely to have had one drink too many. Even after just one drink."

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## DRUNK DRIVING IN AMERICA AND RHODE ISLAND: A STATUS SUMMARY

### Driving While Intoxicated: A National Problem

Drunk drivers have been a problem since the dawn of the automotive age. An editorial in a turn of the century publication, the *Quarterly Journal of Inebriety* (1904), noted, "We have received a communication containing a history of 25 fatal accidents occurring to automobile wagons. Fifteen persons occupying these wagons were killed outright, five more died two days later... A careful inquiry showed that in nineteen of these accidents the drivers had used spirits within an hour or more of the disaster..."

In the late decades of this century, more than 50,000 persons have died each year in auto accidents. Alcohol has been, and continues to be, a major factor in more than half of them. Driving while intoxicated is a serious problem across the United States in terms both of its prevalence and its consequences. In the 1980s, according to the Bureau of Justice Statistics, there has been one arrest for D.W.I. for every 88 licensed drivers. The National Highway Traffic Safety Administration estimates that as many as 250,000 people were killed in alcohol-related crashes over the last ten years. More than 650,000 people are injured in alcohol-related accidents every year. The annual cost in property damage, medical costs, and other costs associated with drunk driving incidents amounts to more than 20 billion dollars. The personal costs of physical pain, grief and despair are incalculable.

Information about trends in drunk driving must largely be drawn from data bases maintained by state and federal agencies. That drunk driving is a serious national problem is highlighted by the findings of a special report, entitled *Drunk Driving* (1988), produced by the U.S. Department of Justice's Bureau of Justice Statistics. Nationwide, the following patterns have emerged in recent years:

- Between 1970 and 1986, arrests for D.W.I. increased nearly 223 percent, while the number of licensed drivers increased by 42 percent.

- Arrest rates for D.W.I. were highest among 21 year olds, whose arrest rates approximate one arrest for every 40 licensed drivers.
- Since the mid 1980s, most states have phased in new laws raising the minimum age for purchasing alcohol to 21. Per capita arrest rates for D.W.I. for individuals aged 18 to 20 years have decreased 14 percent since then.
- Prior to their arrest for D.W.I., convicted offenders had consumed a median of six ounces of pure alcohol (equivalent to 12 bottles of beer or eight mixed drinks) in a median of four hours.
- About 54 percent reported drinking only beer, about two percent only wine, 23 percent only liquor, and 22 percent had been drinking two or more different beverages.
- For D.W.I. offenders sentenced to jail, the median term imposed was five months; those with prior D.W.I. sentences received sentences that were twice as long as first-timers.
- About seven percent of all persons confined in local jails were charged with or convicted of D.W.I.; nearly 13 percent of all jail inmates had a current charge or previous conviction for D.W.I.
- Those in jail for D.W.I. were 95 percent male, had a median age of 32, and reflected a racial distribution similar to the general adult population; nearly 80 percent were not living with a spouse at the time of their arrest, and they were more likely to be unemployed than adults in the civilian labor force.
- Nearly half of those in jail for D.W.I. had previously been sentenced to probation, jail, or prison for D.W.I., and three-quarters had a prior sentence for any crime (including D.W.I.).
- Nearly half of all inmates in jail for D.W.I. had previously been involved in an alcohol abuse treatment program; about one in 11 were undergoing treatment at the time of their most recent arrest for D.W.I.

The prevalence of drunk driving must be viewed in the context of the high levels of alcohol consumption in the United States. According to the Statistical Abstracts of the United States (1987) and a study by Olson and Gerstein (1986), the consumption per person of alcoholic beverages in 1985 was 27.6 gallons. This was greater than the per capita



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consumption of coffee (25.9 gallons) and even milk (27.1 gallons). Among all beverages, the figure for alcohol was exceeded only by that for soft drinks (45.6 gallons). It was estimated in the Olson and Gerstein study that one-third of the United States adult population accounts for over 95 percent of total alcohol consumed. Even more shocking is that five percent of the adult population accounts for over half of total alcohol consumption.

**Driving  
While  
Intoxicated  
In  
Rhode Island:  
An Overview**

The seriousness of D.W.I. as a prevalent offense in Rhode Island is revealed by comparing D.W.I. arrests to arrests in other categories of crime in any given year. The Federal Bureau of Investigation's Uniform Crime Reporting system collects data on all forms of crime from every police district and state police force in the United States. The latest collated figures available for a whole year in Rhode Island are from 1987. Table 1 shows that of the crimes individually listed by the F.B.I., D.W.I. was the fifth most common offense for which arrests were made (2,427 arrests or 5.91 percent of the total). The only categories in which more arrests were made were "Other Assaults", "Larceny", "Drug Abuse Violations" and "Disorderly Conduct".

These crime figures place D.W.I. clearly into perspective. Yet, despite its prevalence, D.W.I. is a crime that appears to hold the public's attention only fleetingly. Its consequences are rarely as sordid as the circumstances surrounding, for example, rape and murder. Drinking remains socially acceptable to many people. Perhaps news of its potential consequences — injury and death — is too easy to ignore.

Drunk driving is one indication of the broader alcohol problem that is endemic in our society. A report by the R.I. Office of the Chief Medical Officer (1985) found that alcohol was present in the systems of 30 percent of the victims of traumatic deaths (all categories). Sixty-one of the 208 accident victims, or 29.34 percent, had ethyl alcohol in their systems, suggesting "the contributory influence of this substance in the cause of death."

In the same R.I. Office of the Chief Medical Examiner report, an analysis was made of all victims of traffic-related deaths in Rhode Island in 1985. Of the 115 people killed on Rhode Island's roads, 46 six percent had ethyl alcohol in their systems; 31 percent were drivers, ten percent were passengers and five percent were pedestrians.

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Table 1

**NUMBER OF ARRESTS, BY TYPE OF CRIME,  
RHODE ISLAND, 1987**

Crime (F.B.I. Category)	Arrests	% of Total
<b>Total (All Crimes) .....</b>	<b>41,085</b>	<b>100.00</b>
<b>Driving Under the Influence (D.W.I.) .....</b>	<b>2,427</b>	<b>5.91</b>
Murder and Non-negligent Manslaughter .....	18	0.04
Forcible Rape .....	130	0.32
Robbery .....	247	0.60
Aggravated Assault .....	1,091	2.66
Other Assault (except property/violent) .....	3,012	7.33
Burglary .....	1,704	4.15
Larceny (except motor vehicles) .....	4,457	10.85
Motor Vehicle Theft .....	418	1.02
Arson .....	67	0.16
Forgery and Counterfeiting .....	103	0.25
Fraud .....	1,057	2.57
Embezzlement .....	94	0.23
Stolen Property (buying/receiving/possess.) ..	768	1.87
Vandalism .....	1,588	3.87
Weapons Offenses .....	565	1.38
Prostitution and Vice .....	773	1.88
Sex Offenses (except rape and prostitution) ...	200	0.49
Drug Abuse Violations .....	3,598	8.76
Gambling .....	60	0.15
Offenses Against Family and Children .....	288	0.70
Liquor Law Violations .....	1,506	3.67
Drunkenness .....	109	0.27
Disorderly Conduct .....	3,464	8.43
Vagrancy .....	145	0.35
Suspicion .....	1,547	3.77
Curfew and Loitering Violations .....	98	0.24
Runaways .....	728	1.77
All Other Offenses (except traffic) .....	10,823	26.34

*Source: Federal Bureau of Investigation, Uniform Crime Reports, July, 1988.*

But these figures mask the responsibility of drunk drivers for causing these fatalities. A special report by the R.I. Department of Transportation's Planning Division, also published in 1985 (and therefore based on the same data), indicates that 98 percent of all alcohol-related fatal accidents were caused by a vehicle operator driving drunk. In only two percent of alcohol-related fatal accidents was a pedestrian or passenger at fault. It is therefore the driver

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of the vehicle who must take the blame in an overwhelming majority of alcohol-related fatal crashes.

The volume of alcohol consumed by Rhode Islanders has changed significantly in the past few years. Figures published by the R.I. Department of Business Regulation's Liquor Control Administration (1988) show that, in 1988, Rhode Islanders were supplied with 26.900 gallons of malt alcoholic beverages (which include beer) per capita (a total of 25,474,451 gallons statewide), 3.227 gallons of wine per capita (3,056,225 gallons statewide) and 1.999 gallons of distilled spirits per capita (1,892,953 statewide).

Table 2 shows the annual percent changes in the level of imports of alcoholic beverages to Rhode Island from 1983 through 1988. The most marked changes occurred in the six categories of distilled spirits, where there were declines in both total gallons supplied and the per capita supply of liquor during this six year period. Between 1983 and 1988, scotch supplies were down 22 percent, whiskey was down 28 percent, gin was down 29 percent, rum was down five percent, brandy was down three percent and vodka was down four percent.

Malt beverage supplies remained fairly stable, showing a relatively small decrease of two percent, while wine supplies actually increased by two percent between 1983 and 1988. Clearly, there has been a reduction in the overall demand for alcoholic beverages among Rhode Islanders, but within that aggregate reduction there has been a move toward wines and away from distilled spirits. The fact that alcohol supplies are down and that arrests for D.W.I. are up (see Chapter 3) compounds the argument that most D.W.I. offenses are committed by a "hard core" of individuals whose drinking patterns have remained unchanged by heightened social awareness in the general population.

A detailed analysis of D.W.I. trends in the nation and in Rhode Island is provided in the next chapter. A brief overview of who drunk drivers are and when they are on the roads is provided here by way of an introduction to the data.

An indication of the individuals most likely to drive drunk is provided by data for arrests and for drivers involved in alcohol-related accidents. Summary statistics from the R.I. District Court Sentencing Register (1988) show that the average age of D.W.I. defendants is 32 years. More 24 year olds are arrested than individuals of any other age. Males accounted for 1,422 of the 1,622 total defendants in 1988 (or 87.7 percent), while females accounted for 200

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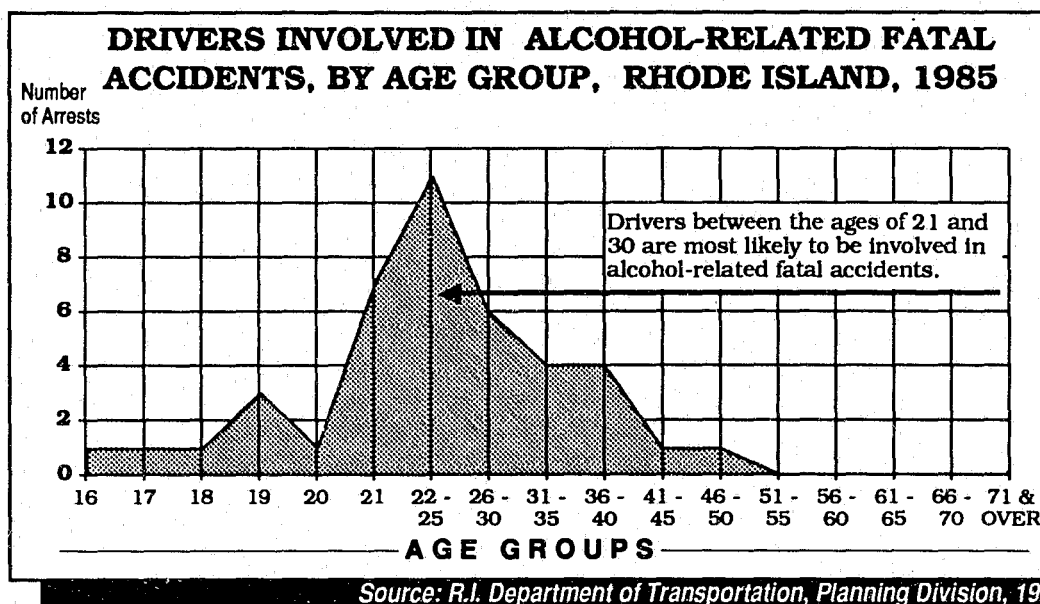
Table 2

**IMPORTS OF ALCOHIC BEVERAGES,  
RHODE ISLAND, 1983-1988**

PRODUCT	YEAR	GALLONS	GALLONS PER CAPITA	ANNUAL %
<b>SCOTCH</b>	1983	201,622	.213	-2.95
	1984	190,198	.201	-5.66
	1985	185,503	.195	-2.47
	1986	173,137	.183	-6.66
	1987	161,445	.170	-6.75
	1988	157,022	.166	-2.74
<b>WHISKEY</b>	1983	443,428	.478	-12.05
	1984	412,025	.435	-7.08
	1985	431,970	.456	-4.84
	1986	341,618	.361	-20.91
	1987	335,778	.371	-1.71
	1988	317,884	.336	-5.32
<b>GIN</b>	1983	195,993	.207	+5.09
	1984	170,426	.180	-13.04
	1985	196,312	.207	+15.19
	1986	145,948	.154	-25.66
	1987	152,243	.161	+4.31
	1988	140,115	.148	-7.96
<b>RUM</b>	1983	146,723	.155	+93
	1984	141,438	.149	-3.60
	1985	155,143	.164	+9.69
	1986	135,177	.143	-12.87
	1987	144,877	.153	+7.18
	1988	139,816	.148	-3.49
<b>BRANDY</b>	1983	75,218	.079	-13.37
	1984	71,782	.076	-4.57
	1985	80,393	.085	+11.99
	1986	71,032	.075	-11.64
	1987	63,587	.067	-10.48
	1988	73,098	.078	+13.01
<b>VODKA</b>	1983	506,410	.535	+7.76
	1984	502,495	.530	-.77
	1985	532,736	.562	+6.01
	1986	473,308	.500	-11.16
	1987	471,360	.498	-.41
	1988	486,078	.514	+3.03
<b>WINE</b>	1983	2,987,526	3.154	-9.75
	1984	3,120,680	3.295	+4.27
	1985	3,101,824	3.275	-.60
	1986	3,203,883	3.383	+3.29
	1987	3,296,395	3.480	+2.88
	1988	3,056,225	3.227	-7.29
<b>MALT BEVERAGES</b>	1983	25,960,599	27.410	+13.09
	1984	24,226,097	25.580	-6.68
	1985	24,171,618	25.520	-.22
	1986	25,333,040	26.750	+4.80
	1987	24,685,141	26.060	-2.55
	1988	25,474,451	26.900	+3.10

Source: R.I. Dept. of Business Regulation, Liquor Control Admn., Annual Report, 1988

Figure 1



(or 12.3 percent). Most drunk drivers in Rhode Island are therefore young, male adults.

An analysis by the R.I. Department of Transportation's Planning Division (1985) shows that drivers between the ages of 21 and 30 years are most likely to be involved in alcohol-related fatal accidents (Figure 1), and that such accidents are most likely to take place between the hours of 7:00 P.M. and 4:00 A.M. (Figure 2) on Saturdays and Sundays (Figure 3). The majority of these fatal accidents occur in the very early hours of the weekend day mornings. These findings correspond with similar studies for the nation as a whole undertaken by independent researchers and by the federal government.

As was previously stated, it is impossible to calculate the personal costs of physical suffering, despair and grief endured by alcohol-related accident victims and their relatives.

Figure 2

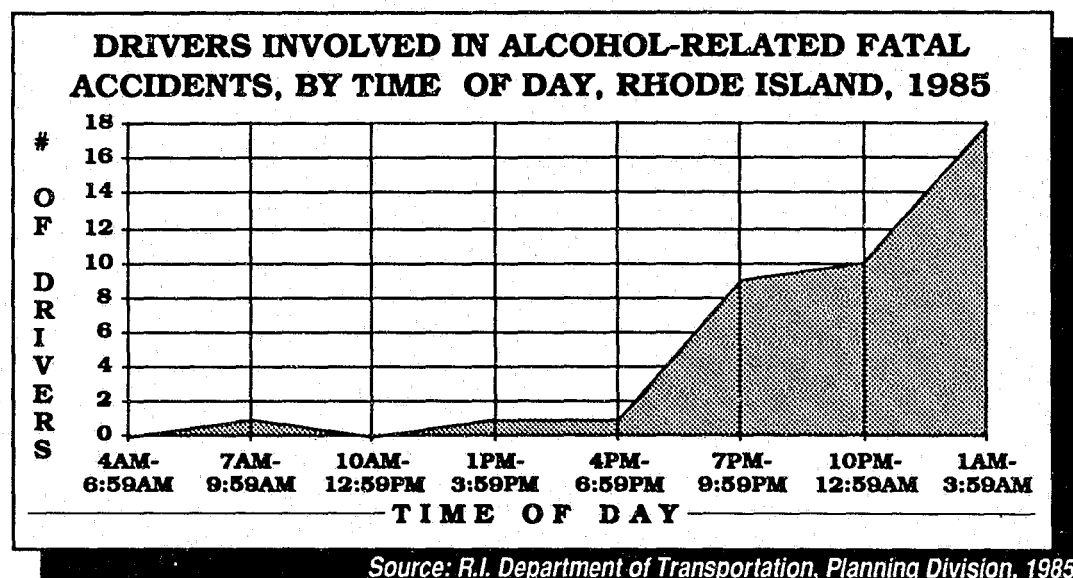
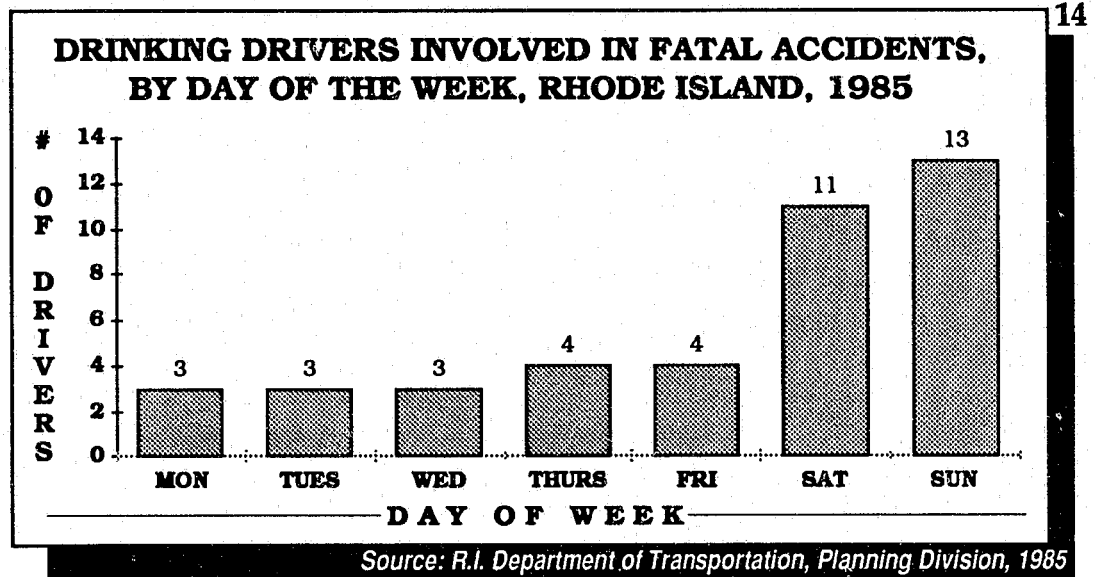


Figure 3



### The Impact of Drunk Driving: A Brief Case History

The implications of drunk driving can perhaps only be demonstrated through the anguish of the relatives and friends whose loved ones are injured or killed by a drunk driver.

The remainder of this report is dedicated to an analysis of D.W.I. data and their implications for prevention, enforcement, punishment and treatment. But first, to provide an understanding of drunk driving's potential impacts, a review is given of the experience of one Rhode Island family whose lives were suddenly changed by a drunk driver.

In July 1984, Reader's Digest published an article entitled, "I Still See Him Everywhere", the response to which was a mailbag of letters quite unprecedented in the magazine's recent history. The article was written by Richard Morsilli, father of Todd, a teenager from Warwick, Rhode Island, who was killed by a drunk driver on February 22, 1983.

The Reader's Digest article is based on the transcript of a speech Todd's father gave to a group of high school students at Riverdale Country School in New York. His opening words were, "Good morning. My name is Richard Morsilli. Eight months ago my son Todd was struck and killed by a seventeen year-old drunk driver. Todd was thirteen. He was a wonderful boy...

"... The neighbor saw the car coming. Jeff [Todd's friend] saw it too. The car was weaving. They both shouted and Jeff jumped into a snow bank, but Todd... Todd... couldn't get out of the way...

"The car... struck Todd. He was... thrown ninety feet... The car didn't stop...

"... I got a call at my office. It was someone at the

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hospital. The voice said a boy's been hurt. We think it's your son. Can you come right away? All I can remember is saying, over and over: Just let there be a chance. He'll make it, if he has a chance, because he doesn't give up.

"He didn't get his chance. At the hospital a priest met me and took me into a little room... Todd's mother and I didn't even have time to hope. By the time we knew about it all, he was gone...

"Nine hundred people jammed the church for his funeral. 'It was like he was everyone's best friend', a fifteen year-old who spoke at the service said. 'You were just glad he was your friend too.'

"I'm not on a crusade... And I didn't come to tell you not to drink. I came only to say that when you do drink, please, please call your parents to come get you. Because if something happens to you, it won't just be another tragedy; it'll be their beloved child. And if you kill someone else's child, it'll be someone like my son Todd. It doesn't have to happen. Don't let it happen..."

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# PART III

## TRENDS

### Changes in Drunk Driving Nationwide

A report by the U.S. Department of Justice's Bureau of Justice Statistics (1988) provides details of changing patterns in the incidence of drunk driving, the accidents it causes and the profiles of intoxicated drivers.

In 1986, over 86 percent of adults over the age of 16 years held driver's licenses — some 158 million people. In the same year, nearly 1.8 million arrests were made by state and local police forces for D.W.I. offenses; 46,056 motor vehicle fatalities occurred, about 40 percent were attributable to alcohol (according to the National Highway Traffic Safety Administration).

Between 1970 and 1986, the rate of D.W.I. arrests increased more than 127 percent from 498 to 1,131 per 100,000 licensed drivers (Figure 4). The peak year of 1983 showed a record 1,921,000 arrests — about one arrest for every 80 licensed drivers in the United States.

Since 1975, changes in arrest rates for D.W.I. have not been consistent among age groups. In 1975, people between the ages of 18 and 45 years were overrepresented compared to their share of total licensed drivers (Table 3). People aged

Figure 4

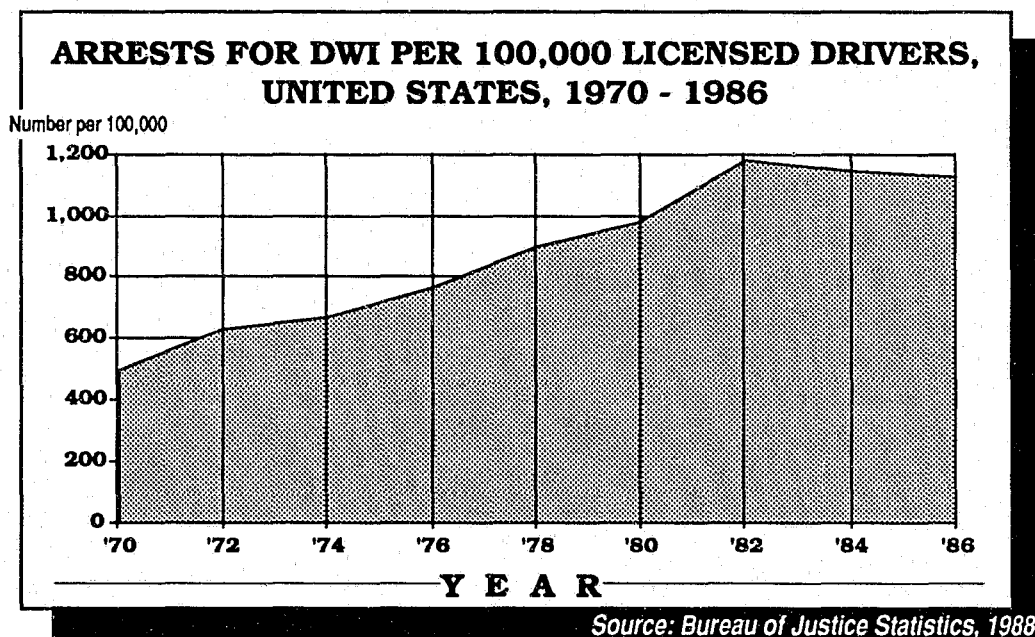




Table 3

### COMPARISON OF LICENSED DRIVERS AND ESTIMATED ARRESTS FOR DWI (by age), U.S., 1975 & 1986

Age	1975			1986			Percent change in rate, 1975-86
	Percent of: Drivers	Arrests	Arrests per 100,000 drivers	Percent of: Drivers	Arrests	Arrests per 100,000 drivers	
Total	100%	100%	729	100%	100%	1,130	+ 55%
16-17 years old	3.7%	1.8%	352	2.6%	1.5%	647	+ 84%
18-24	18.9	25.3	979	15.7	28.8	2,075	+ 112
25-29	12.9	15.0	847	13.0	22.0	1,909	+ 125
30-34	10.3	12.2	867	12.2	15.8	1,471	+ 70
35-39	8.5	10.6	909	10.9	11.1	1,158	+ 27
40-44	7.9	9.8	904	8.5	7.2	968	+ 7
45-49	8.0	8.9	812	6.9	4.9	805	- 1
50-54	7.9	7.3	675	6.3	3.4	609	- 10
55-59	6.8	4.6	490	6.3	2.4	434	- 11
60-64	5.7	2.7	347	5.9	1.6	299	- 14
65 and older	9.5	1.8	141	11.9	1.2	118	- 16

Note: Percents may not add to 100% due to rounding

Sources: Federal Highway Administration, Selected Highway Statistics and Charts, 1985. FBI, Crime in the U.S., 1975 & 1986

18 to 24 years accounted for 18.9 percent of total drivers, but over 25 percent of D.W.I. arrestees (about one arrest per 102 drivers). The most elderly drivers, those aged over 65 years, accounted for 9.5 percent of total drivers, but less than two percent of those arrested for D.W.I. offenses.

The increased sobriety among middle-aged and elderly drivers in the period 1975-1986 is demonstrated by an overall decline in D.W.I. arrest rates for these age groups. Arrest rates for people in the 45 to 49 year age group decreased one percent — each succeeding age group shows a progressively larger decline (Table 3). Conversely, the young adult age groups reflected substantial increases in rates of arrest. Drivers between the ages of 18 and 29 years experienced arrest rates in 1986 that were more than double the rates in 1975.

The Bureau of Justice Statistics offers three possible explanations for this continued trend toward younger intoxicated drivers:

- Stronger D.W.I. enforcement may have been targeted more toward younger drivers than to middle-aged and older drivers.
- Drinking and driving behavior may have changed over time due to social factors, making drinking among young drivers more acceptable with youth and young adult peer groups.
- Many states lowered the minimum drinking age between 1971 and 1983 from 21 to 18, possibly increasing the prevalence of younger drunk drivers during the 1970s and early 1980s.

## Changes in Drunk Driving in Rhode Island

Arrest data from the R.I. District Court, the R.I. Department of Transportation's Administrative Adjudication Division and the criminal justice system's data processing and analysis service (R.I. Judicial Systems and Sciences) show a changing profile of drunk drivers in Rhode Island. The most frequently occurring age of drunk drivers fell from 26 years to 24 years between 1980 and 1988. The average age of drunk drivers fell from 33 to 32 years in the same period. The ratio between males and females arrested for D.W.I. offenses has remained fairly stable. Currently, males account for 88 percent of arrestees, while females account for 12 percent. Of the individuals arrested for D.W.I. in 1988, 92 percent were first offenders, seven percent were second offenders and two percent were third or fourth offenders.

Table 4 and Figure 5 present data for the number of annual arrests for the period 1970 to 1988. There is a marked difference between the average annual arrests for the 1970s (1,053 average annual arrests between 1970 & 1979) and the 1980s (2,149 average annual arrests between 1980 and 1988). This change represents an increase of over 100 percent in the average annual arrests for D.W.I. between the two decades. The peak year of 1986 (2,653 arrests) has been followed by small declines of -8.5 percent between 1986 and 1987 and -1.8 percent between 1987 and 1988, but it is too soon to predict whether there has been a reversal of the underlying upward trend. Two things, however, are clear from the literature, from the data and from interviews with professionals:

- *An alarming number of drunk drivers are still using Rhode Island's roads.*
- *The police are more vigilant than ever before in apprehending D.W.I. offenders.*

Figure 5



Table 4 **ANNUAL ARRESTS FOR DRIVING WHILE INTOXICATED,  
RHODE ISLAND, 1970 - 1988**

YEAR	NUMBER OF ARRESTS	ANNUAL % CHANGE
1988	2,383	-1.8
1987	2,427	-8.5
1986	2,653	+2.2
1985	2,595	+46.9
1984	1,767	-16.1
1983	2,465	+5.8
1982	2,330	+40.4
1981	1,660	+56.5
1980	1,061	-6.2
1979	1,130	+19.5
1978	946	-24.4
1977	1,251	+36.4
1976	917	-12.2
1975	1,044	-16.6
1974	1,252	+33.4
1973	937	-24.4
1972	1,240	+24.9
1971	993	+21.1
1970	820	—

Source: FBI/Uniform Crime Reports, 1970 - 1988

The 1988 figures for the geographic distribution of driving charges provides interesting information on the type of communities which encounter the most D.W.I. incidents. Contrary to what might be expected, most charges for D.W.I. are made in the less densely populated areas of the state. (Table 5). In fact, the R.I. District Court serving these areas (the Second and Fourth Districts—including Little Compton, Jamestown, Charlestown and Exeter) have the highest D.W.I. charge rates. The areas which contain the largest urban agglomerations (the Fifth and Sixth Districts, including Providence, Pawtucket and Central Falls) have among the lowest charge rates (Table 5). Several factors, suggested by Rhode Island police chiefs and judges might explain this geographic pattern:

- *Drunk drivers feel more confident driving while intoxicated on the quieter streets of the less densely populated areas.*
- *The priorities of less urban police forces are different from those of urban areas: urban police officers must deal with more violent crimes and may have insufficient man-power to prioritize D.W.I.*
- *In most cases, roads in outlying areas are often straighter, longer and less busy than urban streets thus permitting faster driving and therefore easier identification of erratic driving behavior.*

Table 5

**DISTRIBUTION OF DWI CHARGES  
BY DISTRICT COURT AREA, RHODE ISLAND, 1988**

Rank Order	Court District	# of Charges	Cities/Towns Within District
1	2nd	516	Newport, Little Compton, Tiverton, Middletown, Portsmouth, & Jamestown
2	4th	350	Charlestown, Hopkinton, Narragansett, New Shoreham, North Kingstown, Exeter South Kingstown, Richmond & Westerly
3	3rd	339	Warwick, West Warwick, Coventry, East Greenwich & West Greenwich
4	7th	330	Woonsocket, Burrillville, North Smithfield & Smithfield
5	8th	283	Cranston, Johnston, Scituate, N. Providence, Gloucester & Foster
6	6th	225	Providence & East Providence
7	5th	208	Pawtucket, Central Falls, Lincoln, & Cumberland
8	1st	132	Barrington, Bristol & Warren
<b>Total Charges:</b>		<b>2,383</b>	

*Source: R.I. Judicial Systems and Sciences, 1988*

- *Urban residents are able to use public transportation or walk to the places where they consume alcohol. This is rarely the case in less urban communities.*
- *Many of Rhode Island's more outlying communities are also tourist areas and attract large numbers of summer visitors; consumption of alcohol by visitors and tourists is likely to impact D.W.I. incidents.*

When traffic accidents occur in Rhode Island, a higher proportion of them are likely to be alcohol-related in the more outlying communities than in urban areas. While more traffic accidents of all types occur in urban areas, a much smaller percentage of them are alcohol-related than those in the state's more rural towns. Table 6 illustrates that approximately half of fatal accidents in Rhode Island between 1984 and 1987 were alcohol-related (the range is 45 percent for 1987 and 58 percent for 1984). Figures published by the R.I. Department of Health (1985), when aggregated by type of community, show that the proportion of total fatal accidents that were alcohol-related in urban areas was 32 percent; in suburban areas, 34 percent; and in the more outlying areas, 48 percent.

Table 6

ALCOHOL-RELATED FATAL ACCIDENTS RHODE ISLAND, 1984 - 1987			
YEAR	TOTAL FATALITIES	ALCOHOL-RELATED FATALITIES	% OF FATALITIES ALCOHOL-RELATED
1987	113	51 (est)	45% (est)
1986	124	56 (est)	45% (est)
1985	115	48	46%
1984	79	46	58%

Source: R.I. Department of Health, 1988

# PART IV

## LEGISLATION AND PENALTIES

### The Impact of D.W.I. Legislation on Arrests Nationwide

Throughout the early to mid-1970s, most states lowered the minimum age for the purchase or sale of alcoholic beverages, largely in response to the 26th Amendment which, in 1971, extended voting rights to 18 year olds. Between 1970 and 1973, 24 states reduced the minimum age. By 1983, 33 states permitted the purchase of alcoholic beverages by people aged under 21 years. As a result of recent changes to federal highway funding legislation, however, states have begun to raise the minimum drinking age. As of 1987, only seven states had not raised the drinking age to 21 years (Table 7).

D.W.I. arrest rates for individuals between 18 and 19 years of age peaked in 1982; for 20 year olds they peaked one year later. Between 1983 and 1986, as the minimum drinking age rose across the United States, the number of arrests for individuals between 18 and 20 years of age decreased by 24 percent. The Bureau of Justice Statistics (1988) attributes at least half this decrease to changes in the minimum drinking age.

Arrest rates for age groups 21 years and older have also declined since 1983, though at a slower pace than those

Table 7

#### MINIMUM DRINKING AGES, 1983 & 1987

Minimum Drinking Age	Number of States	
	1983	1987
18 years	13	2
19 years	14	5
20 years	6	0
21 years	17	43

Source: U.S. Bureau of Justice Statistics, 1988

younger than 21 years. Between 1983 and 1986, the number of D.W.I. arrests per 100,000 licensed drivers dropped 9.6 percent for 21 year olds, 7.8 percent for 22 year olds, six percent for 23 year olds and 2.3 percent for 24 year olds. This further illustrates the positive impact of federal legislation (requiring states to raise their minimum drinking ages) upon the number of 18 to 20 year olds driving drunk. Those young adults unaffected by the legislation (individuals aged 21 and older) have seen much smaller declines in their D.W.I. arrest rates.

A recent survey by Lloyd, O'Malley and Bachman (1986) suggests that drinking behavior among high school students has indeed changed. In a national survey of high school seniors, twelfth graders reported less drinking activity in 1986 (after most states had raised their minimum drinking age) than did seniors in 1980 (Table 8).

Table 8

**DRINKING BEHAVIOR AMONG  
HIGH SCHOOL SENIORS, 1980 AND 1986**

Drinking Behavior	Senior Class Of:	
	1980	1986
Percent who drank in last 30 days	72.0%	65.0%
Percent who drank daily	6.0%	4.8%
Percent with binge drinking	41.2%	36.8%

*Source: Lloyd, O'Malley and Bachman, National Institute on Drug Abuse, 1986*

These figures point to an overall downward trend in drinking among high school students nationwide. However, the figures are still very high. Statistics for Rhode Island, recently published by the R.I. Department of Health (1988), do not provide grounds for optimism. In a statewide survey entitled Adolescent Substance Abuse Survey: Statewide Findings, the Department of Health presents the following disturbing findings for public school students in grades seven through 12:

- 31 percent had been drunk in the month preceding the survey (30 percent of seniors).
- 37 percent had ridden with an impaired driver (53 percent of seniors).
- 17 percent had mixed alcohol with illegal drugs (30 percent of seniors).

- 39 percent had used illegal drugs (59 percent of seniors).
- 23 percent had used illegal drugs in the month preceding the survey (32 percent of seniors).
- 16 percent had been drunk at least five times in the month preceding the survey (19 percent of seniors).

So, while the level of substance abuse among young people may have declined nationwide in the last decade, this recent Rhode Island survey suggests that levels of abuse remain alarmingly high. Many of these intoxicated students drive drunk or ride in cars with drunk friends. The implications for traffic safety are undeniably clear: kids are going to continue to be arrested for D.W.I. offenses; kids will continue to injure or kill people like Todd Morsilli; and the intoxicated kids themselves run the risk of ending up injured or dead.

#### Profiles of DWI Jail Inmates

On June 30, 1983, there were an estimated 220,740 adults confined in America's local jails. An estimated 13,089 (or six percent) were serving sentences after conviction for D.W.I. offenses (according to Bureau of Justice Statistics data). When prior sentences are accounted for, the estimated percent of jail inmates with a current charge or a past conviction for D.W.I. rises to nearly 13 percent. About 48 percent of persons jailed for D.W.I. had previous D.W.I. convictions. Persons jailed for D.W.I. were more likely than other jail inmates to have been convicted previously for the same crime; only those jailed for larceny and burglary had higher percentages with prior convictions for the same crime (52 percent and 51 percent, respectively).

Analyzing nationwide patterns of D.W.I. sentencing is difficult, since those convicted D.W.I. offenders sentenced to jail are not representative of all persons sentenced for the offense; many more D.W.I. offenders are under probationary supervision or have received other sanctions. However, it is useful to examine the length of jail terms of those sentenced to incarceration, because these individuals are most likely to be the chronic and serious offenders for whom the effect of a prior record can be gauged.

According to the 1983 Survey of Inmates of Local Jails, published by the Bureau of Justice Statistics (1988), the median jail sentence of first-time D.W.I. offenders was 90 days, compared to 180 days for recidivists (repeat offenders). About one-third of first-time offenders received 30 days or less, compared to about one-fifth of the recidivists. Among



individuals with two or more prior D.W.I. convictions, relatively few received sentences longer than one year (although figures for state prisons, where longer sentences may be served, were not assessed by the B.J.S. study).

Nearly half of the persons confined in local jails for D.W.I. offenses reported having been previously enrolled in an alcohol treatment program (many of these were mandated by the courts for prior offenses). Nearly nine percent reported that they were undergoing such treatment at the time of their arrest. Based upon their older age, patterns of habitual drinking and prior convictions, many of those in prison for D.W.I. nationwide, and the recidivists in particular, appear to have chronic alcohol problems. An often overlooked result of these alcohol problems, in combination with the abuser's decision to drive, is their contribution to severe prison overcrowding. This problem is particularly acute at present in Rhode Island.

#### **D.W.I. Legislation and Penalties in Rhode Island**

Driving while intoxicated offenses are covered by Chapter 27, "Motor Vehicle Offenses", of the General Laws of Rhode Island (Appendix I). The Sections of the Act pertaining to D.W.I. are 27-2, Driving under the influence of liquor or drugs; 27-2.1, Refusal to submit to chemical test; 27-2.2, Driving under the influence of liquor or drugs, resulting in death; 27-2.3, Revocation of license upon refusal to submit to preliminary breath test; 27-2.5, Chemical tests to persons under eighteen years of age; and 27-2.6, Driving under the influence of liquor or drugs, resulting in serious bodily injury.

The law provides that anyone who operates a motor vehicle and has a blood-alcohol level above 0.1 percent may be charged with the misdemeanor of driving under the influence of liquor or drugs (S.27-2(a)(b)). In order to pursue a criminal prosecution, the evidence submitted before the court must meet certain conditions (S.27-2(c)): the defendant must consent to a chemical analysis (of breath, blood or urine); a copy of the test result must be mailed to the person submitting to the test within 72 hours; a copy of any chemical test of blood, urine or other bodily fluids must be mailed to the person submitting to the test within 30 days; the test must be performed with equipment, and in accordance with methods, approved by the Director of the R.I. Department of Health; breath analysis equipment must have been tested by qualified personnel within 30 days prior to the test in question, and the personnel performing the equipment test must have been certified by the R.I. Depart-

ment of Health within 365 days of the test; and the person arrested and charged under S.27-2 must have been afforded the opportunity to have an additional chemical test, said opportunity to be provided by the arresting officer and noted in the official records of the police department.

The penalty structure is divided into two parts (S.27-2(d)). The first applies to adults 18 years and older. The second applies to minors under the age of 18 years. The penalties for individuals aged 18 years and older, prescribed by the General Laws of Rhode Island (1988), are as follows:

**FOR A FIRST OFFENSE -**

- Minimum fine of \$100.
- Ten to 60 hours of community service and/or imprisonment.
- License suspension of three to six months.
- Attendance at a special course on D.W.I. (\$25 fee). and/or alcohol or drug treatment.
- Highway Assessment Fine of \$250.
- Attendance at the R.I. Department of Transportation's Alcohol and Drug Safety Unit for assessment/placement.
- Possible referral to R.I. Department of Mental Health, Retardation and Hospitals (M.H.R.H.) for clinical assessment of alcohol, drug abuse or psychological problems in the Treatment Alternatives to Street Crime (T.A.S.C.) program.

**FOR A SECOND OFFENSE (WITHIN A FIVE YEAR PERIOD) -**

- Mandatory fine of \$400.
- License suspension of one to two years.
- Ten days to one year prison term.
- Attendance at a special course on D.W.I. (\$25 fee).
- Mandatory alcohol or drug treatment.
- Highway Assessment Fine of \$250.
- Attendance at the R.I. Department of Transportation's Alcohol and Drug Safety Unit for assessment/placement.
- Possible referral to R.I. Department of Mental Health, Retardation and Hospitals (M.H.R.H.) for clinical assessment of alcohol, drug abuse or psychological problems in the Treatment Alternatives to Street Crime (T.A.S.C.) program.

**FOR A THIRD OR SUBSEQUENT OFFENSE (WITHIN A FIVE YEAR PERIOD) -**

- Mandatory fine of \$400.
- License suspension of two to three years.
- Six months to one year prison term.
- Attendance at a special course on D.W.I. (\$25 fee).

- 
- Mandatory alcohol or drug treatment.
  - Highway Assessment Fine of \$250.
  - Attendance at the R.I. Department of Transportation's Alcohol and Drug Safety Unit for assessment/placement.
  - Possible referral to R.I. Department of Mental Health, Retardation and Hospitals (M.H.R.H.) for clinical assessment of alcohol, drug abuse or psychological problems in the Treatment Alternatives to Street Crime (T.A.S.C.) program.

The penalties for individuals aged under 18 years, prescribed by the General Laws of Rhode Island (1988), are two-tiered. For minors found to have a blood-alcohol level of 0.1 percent or above, the penalties are as follows:

**FOR A FIRST OFFENSE -**

- Ten to 60 hours of public community service.
- License suspension of six months.
- Attendance at a special course on D.W.I. (\$25 fee).
- Possible Highway Assessment Fine of up to \$250.

**FOR A SECOND OR SUBSEQUENT OFFENSE (WITHIN A FIVE YEAR PERIOD) -**

- License suspension of one year.
- Possible sentence of up to one year at the Rhode Island Training School.
- Attendance at a special course on D.W.I. (\$25 fee).
- Possible fine of up to \$500.

For individuals aged under 18 years found to have a blood-alcohol level of more than 0.04 percent but less than 0.1 percent ("determined to have been driving while impaired" under S.27-2.5), the penalties are as follows:

**FOR A FIRST OFFENSE -**

- Highway Assessment Fine of \$150 or community service.
- License suspension of six months.
- Attendance at a special course on D.W.I. (\$25 fee).
- Possible alcohol/drug abuse treatment.

**FOR A SECOND OFFENSE -**

- Highway Assessment Fine of \$150 or community service.
  - License suspension until age 21.
  - Attendance at a special course on D.W.I. (\$25 fee).
  - Mandatory alcohol/drug abuse treatment.
-

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**FOR A THIRD OR SUBSEQUENT OFFENSE -**

- Highway Assessment Fine of \$150 or community service.
- License suspension for an additional two years.
- Attendance at a special course on D.W.I. (\$25 fee).
- Mandatory alcohol/drug abuse treatment.

Jurisdiction over adults aged 18 years and over, charged with D.W.I. offenses, is given to the R.I. District Court. Jurisdiction over minors aged under 18 years is given to the R.I. Family Court (S.27-2(h)).

Anyone aged 18 years or older who refuses to submit to a chemical test, after having been arrested for D.W.I., falls under the jurisdiction of the R.I. Department of Transportation's Administrative Adjudication Division. S.27-2.1 states that, "Any person who operates a motor vehicle within this state shall be deemed to have given his consent to chemical tests of breath, blood and/or urine for the purpose of determining the chemical content of his body fluids or breath.." For breathalyzer refusal, the same Section requires an Administrative Judge of the Administrative Adjudication Division (A.A.D.) to "promptly order that the person's operator's license or privilege to operate a motor vehicle in this state be immediately suspended and that the person's license be surrendered within five days of notice of suspension."

Upon suspension, the A.A.D. must immediately notify the individual and, within 15 days, allow them to attend a hearing before an Administrative Judge. The judge will then decide whether the police officer had reasonable grounds to believe that the arrested person had been driving under the influence of liquor or drugs and that the person had been informed by the officer of the penalties incurred by non-compliance with chemical test requirements.

The penalties for chemical test refusal are as follows:

**FOR A FIRST OFFENSE -**

- Fine of \$200 to \$500.
  - Ten to 60 hours of community public service.
  - License suspension of three to six months.
  - Attendance at a special course on D.W.I. (\$25 fee) and/or alcohol or drug treatment.
  - Highway Assessment Fine of \$250.
-

**FOR A SECOND OFFENSE (WITHIN A FIVE YEAR PERIOD) -**

- Fine of \$300 to \$500.
- License suspension of one to two years.
- Mandatory alcohol or drug treatment.

**FOR A THIRD OR SUBSEQUENT OFFENSE (WITHIN A FIVE YEAR PERIOD) -**

- Fine of \$400 to \$500.
- License suspension of two to three years.
- Mandatory alcohol or drug treatment.
- Prior to the reinstatement of any license of a person charged with a third or subsequent offense during a three year period, a hearing must be held before an A.A.D. Administrative Judge to review that person's driving record, employment history, family background, and other pertinent factors that would indicate that the person has demonstrated behavior that warranted reinstatement of the license.

Chemical test refusals by minors are handled by the R.I. Family Court. The penalties are the same as those for a conviction based on a positive chemical test, as described in S.27-2(d)(6).

The sub-sections of Chapter 27, "Motor Vehicle Offenses," of the General Laws of Rhode Island which pertain to D.W.I., including those discussed above, are to be found in Appendix I of this report.

**D.W.I.  
Penalties  
in  
Rhode Island:  
Summary  
Statistics**

Of the 2,427 individuals arrested for D.W.I. offenses in Rhode Island in 1987, 2,298 (or 95 percent) were formally charged under Chapter 27. Of the 2,298 charged, 73 (or 3.4 percent) were sentenced to prison or given suspended sentences. The breakdown of these sentences is provided in Table 9.

The majority of individuals convicted of D.W.I. and sentenced to jail are given the minimum ten day sentence; most of these were second or subsequent offenders. Many of these individuals serve "Special" or "Weekend" sentences which allow them to return home during the week and serve their jail terms between 6:00 PM on Fridays and 6:00 PM on Sundays.

In 1988, there were 1,530 license suspensions for D.W.I. offenses. Of these, 1,420 (or nearly 88 percent) were suspended for three months. This corresponds with the

proportion of individuals convicted of first offenses (for which a three month suspension is the minimum suspension period). In 1988, 92 percent of individuals convicted for D.W.I. were first offenders, seven percent were second offenders and one percent were third or fourth offenders. In most cases, the courts clearly imposed the minimum license suspension period on first offenders.

The dollar amount generated through court fines, the Highway Assessment Fine, and court costs/fees associated with D.W.I. District Court court cases (\$662,540) and Administrative Adjudication Division penalties (\$590,220) amounted to a total of \$1,252,760 in 1988. Estimates by the Governor's Justice Commission for the costs of maintaining D.W.I. detection, prevention, treatment, incarceration, judicial and adjudication programs amounted to approximately \$1,780,000 in the same year. Thus the costs to society of enforcing D.W.I. laws are substantially higher — by half a million dollars each year — than the penalties paid back to society by drunk drivers.

Table 9

**NUMBER OF INDIVIDUALS SENTENCED FOR  
D.W.I. OFFENSES, RHODE ISLAND, 1987**

<b>Length of Sentence</b>	<b>Number</b>	<b>% of Total</b>
One Year	1	1
Six months	11	16
Ninety days	2	3
Forty-five days	1	1
Thirty days	6	8
Ten days	52	71

*Source: R.I. District Court records; R.I. Judicial Systems and Sciences, 1987.*

## THE CRIMINAL JUSTICE SYSTEM IN RHODE ISLAND

### The Criminal Justice System and the Administrative Adjudication Division

The Annual Report of the R.I. Department of Health's Division of Drug Control (1988) notes that there were 18,277 arrests between 1983 and 1988 for D.W.I. and chemical test refusal; 58.8 percent for D.W.I. and 41.2 percent for chemical test refusal. The key agencies of the criminal and administrative law responsible for processing intoxicated drivers in Rhode Island are the District Court (for D.W.I. cases involving adults), the Family Court (for D.W.I. and chemical test refusal cases involving minors) and the Administrative Adjudication Division of the R.I. Department of Transportation (for chemical test refusal cases involving adults).

For the police departments of Rhode Island — local forces and State Police — successfully bringing a case to court and obtaining a conviction involves following strict procedural guidelines which cover the period from when a driver is pulled over on suspicion of intoxicated driving to when they are formally charged at the police station. The key evidence used in court is usually the result of a chemical test. In most cases, this is conducted using a breathalyzer at the police station (hand-held models are used in the field only for preliminary testing in order to establish probable cause for a D.W.I. arrest).

### The Breathalyzer Test

The term "breath test" describes the determination of the concentration of ethyl alcohol in an individual's blood, by a quantitative chemical analysis of the individual's breath, taken under controlled conditions.

The breath in the lungs absorbs alcohol from blood vessels in the walls of the lungs. Controlled experiments have shown that the relationship of the alcohol in the blood to the alcohol in the breath is a constant ratio for any individual (R.I. Department of Health, Division of Drug Control, Training Manual - Breath Alcohol Analysis Program, 1989). It has been established that for any individual, one cubic centimeter of that individual's blood contains the same

quantity of alcohol as 2,100 cubic centimeters of that individual's alveolar (deep) breath, if both blood and breath are taken at the same time. Therefore, a breath sample is a quick, clean, efficient and, most importantly, an accurate substitute for a blood sample.

Breath testing instruments are designed to collect a definite volume of alveolar breath under known conditions of temperature and pressure. This known volume of breath is analyzed by chemical procedures for the exact quantity of alcohol present, with the analysis occurring within the instrument. The instrument automatically calculates the quantity of alcohol present and provides the operator with a reading in percent blood-alcohol.

There are a number of widely accepted advantages to the breathalyzer over other means of blood-alcohol testing, and these advantages indicate why breathalyzer machines are used so pervasively by police forces in the United States:

- Breath analysis, using instrumentation, requires less time than that required for the analysis of blood, urine or other body fluids.
- A sample of breath is more easily obtained than a sample of any other bodily substance.
- Breath analysis does not involve the participation of a scientist or technician.
- Duplicate samples of breath can be obtained and analyzed with an expenditure of only five minutes additional time.
- The operation of breath testing equipment is very simple when compared to the procedures used in determination of alcohol in the physiological fluids.
- There is no problem of sample custody, since the accused blows directly into the instrument in the presence of the operator.
- Fewer witnesses are required, since a physician is not needed to take the sample and an expert witness will not be needed after the first few cases in any judicial district.
- All the breath testing equipment approved by the R.I. Department of Health meet the requirements of specificity (freedom from interfering substances), reliability (ability to reproduce correct results over time) and simplicity (a minimum of manipulations required to obtain a result).
- Operators are not required to make estimates or judgments and there is no chance of error due to fatigue.
- A person must, by nature, exhale and thus breath is easily collected; courts have consistently held that, once exhaled, breath is no longer the property of the person who exhaled it.



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If a breathalyzer machine is operated within the manufacturer's guidelines, if an operator waits for its warm-up period, if the machine is properly calibrated and if the operator has undergone the appropriate training, the breathalyzer will be a reliable means for determining blood-alcohol levels.

There are, of course, some problems. The quality of breathalyzer instruments is dependent upon the pace of both technological innovation and the adoption of new technologies by breathalyzer manufacturers. Because the establishment of the 0.1 percent blood-alcohol level is so crucial in obtaining a conviction for D.W.I., the accuracy of the breathalyzer machine and the procedures by which it is operated have been challenged by defense counsel across the country.

Special emergency powers have been vested in the Director of the R.I. Department of Health so that he/she might respond to successful challenges against breathalyzer evidence and ensure that police forces use only state-of-the-art equipment. Periodically, the Director of Health issues amendments to the Rules and Regulations Pertaining to Preliminary Breath Testing and Standards for the Determination of the Amount of Alcohol and/or Drugs in a Person's Blood by Chemical Analysis (R31-27-ALCH). In 1988, for example, these rules were changed no less than six times.

Several breathalyzer machines have been declared unsuitable in recent years. According to the most recently available Filing of Amendments (November 10, 1988), only five models, made by four manufacturers, are approved by the R.I. Department of Health. These models currently contribute toward the successful prosecution of intoxicated drivers throughout the state, and they will continue to do so until the next successful defense challenge or until technology again advances the art. The problem for the police and prosecutors is that it is almost impossible to predict when either of these events might occur.

### **Chemical Tests on Body Fluids**

Chemical tests on the physiological fluids to establish blood-alcohol levels are accomplished by distillation techniques or "enzymatic assays". By distilling alcohol from the chosen body fluid (usually blood or urine), chemical tests can be employed to determine the exact amount of alcohol recovered from the fluid used for the analysis. Precautions are taken to ensure that nothing is distilled from the sample which will yield the same chemical result as alcohol. In addition, enzymatic techniques can be employed

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to determine the amount of alcohol in body fluids. These tests involve adding the enzyme alcohol dehydrogenase to a measured amount of body fluid containing an unknown amount of alcohol, and measuring the amount of alcohol that is oxidized.

Most police officers, even with thorough training, will seldom be deemed qualified to conduct such an analysis to the satisfaction of a court. Trained analysts — chemists, biochemists, bacteriologists or pharmacologists — would be required to present such evidence before a judge.

### Making an Arrest and Getting a Conviction

In order to obtain a conviction for D.W.I., police chiefs are aware that their officers must follow strict procedures. Interviews with police chiefs from urban, suburban and rural communities in Rhode Island suggest that police departments constantly update themselves on developments arising from recent court cases. One police chief stated, "Once we are caught out by a procedural problem, we are never caught out by that one again."

The R.I. Department of Health's Division of Drug Control holds training sessions for police officers to ensure that they are able:

- *to identify intoxicated drivers,*
- *to establish probable cause for stopping a suspected intoxicated driver,*
- *to conduct effective pre-arrest screening, and*
- *to follow the necessary procedures both at the scene and at the police station for ensuring a D.W.I. conviction.*

Detection is both the most difficult task in the D.W.I. enforcement effort, and the most important. The Division of Drug Control notes that the detection task begins when the police officer develops the first suspicion that a D.W.I. violation is occurring and ends when he decides whether or not there is sufficient probable cause to arrest the suspect. The typical D.W.I. contact involves three separate and distinct phases:

- *vehicle in motion,*
- *personal contact, and*
- *pre-arrest screening.*

In the first phase, the officer identifies visual clues as to a possible D.W.I. offense by observing the vehicle in

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motion. A police officer may observe the manner in which a suspect responds to an officer's signal to stop. During the second phase, the first task is to approach, observe and interview the driver while he is still in the vehicle and to note any face-to-face evidence of impairment. At this time, the police officer might administer some simple pre-exit sobriety tests to gain additional information. The officer must then decide whether or not to ask the suspect to exit his vehicle. The officer is still not committed to making an arrest during this phase.

During the third phase, the police officer administers formal psychophysical field sobriety tests and a preliminary breath test to evaluate the extent of the suspect's impairment. There are three field sobriety tests: the Horizontal Gaze Nystagmus Test (in which a suspect's eyeball is tracked across a horizontal plane to see if it jerks), the Walk and Turn Test (in which a suspect must stand still in a heel-to-toe position while receiving instructions and, subsequently, take nine heel-to-toe steps down a straight line before turning as instructed) and the One Leg Stand Test (in which a suspect must stand on one leg, the other leg outstretched with the heel six inches off the ground, and count to 30 out loud).

After the third phase, the officer must decide if there is sufficient probable cause to arrest the subject for D.W.I. The arrest decision is based on the accumulation of evidence from all three phases.

Once the decision is made to arrest an individual for D.W.I., a number of steps are necessary to ensure a conviction, according to current procedures. The procedures recommended by the Division of Drug Control are quite detailed and require that a police officer complete a rigorous report on every incident for which a D.W.I. arrest is made. The procedures are as follows:

- **The Incident** - To be transposed onto the police report exactly as the investigation reveals, through observation, questioning of operators of vehicles involved and all witnesses, and from physical evidence at the scene. Identify all persons involved, obtain medical aid and transportation for treatment of injured.
- **Police at Scene** - Note name of first officer to arrive on scene and probable cause that led him to believe subject was operating under the influence of

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intoxicating liquor, also the time the officer notified subject of his rights at the scene, typing exactly what the officer notified subject of. Note how subject was conveyed to the station, by whom and time of arrival at the station.

■ **Investigation at Police Station** - Upon arrival at police station, the Certified Operator will again notify the D.W.I. subject of rights at station, noting items of all phases of the investigation. Offer use of phone. After having subject under observation for fifteen minutes, and the instrument having reached proper working temperature, the subject will be given first phase of breath test. Note reading. If reading is over 0.1 percent blood-alcohol, a simulator or equilibrator test will be conducted as a check on the instrument. The Certified Operator will then complete Alcohol Influence Report Form (See Appendix II). One half-hour after first sample, he will conduct the second sample of the breath test. Note readings on Police Report and Alcohol Influence Report Form. Conduct simulator or equilibrator test. Offer subject use of phone again. Note if phone was used, call made to whom, and answer received. Subject will then be notified of the charge against him and held for the next session of the Division Court.

■ **True Copy Of Test Results Mailed Within 72 Hours** - The Certified Operator will compose a form letter, sending original of form letter with true copies of the test record and operational checklists of both samples to the prisoner's last known address within 72 hours of taking said test, noting on Police Report: by whom mailed, witnessed by whom, location of mail box, and time and date mailed.

■ **Statements From All Involved** - Obtain statements from the operators of the vehicles, witnesses (whether interested or disinterested) noting where witness was located and time and location statements were obtained.

■ **Police and Civilian Witnesses** - Place names of investigating officers, noting their division, and all witnesses at the end of the report so that the proper persons will be notified to appear in court.

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- **Diagram** - Necessary when accident is of a fatal nature, police vehicle or policeman involved, fatality, personal injury or when diagram will assist in prosecution of the case.
- **Time Log Sheet** - To contain the time of each step of the investigation.
- **Warrants** - Where possible, make certain that the warrant has the correct names, dates, signatures and charges.
- **Refusal To Submit To Breath Test** - When subject refuses to submit to the breath test, a Summons for Refusal to Submit will be issued. Affidavits, letter and summons to be sent to Administrative Adjudication Division. Copies to be retained at the police station.

These procedures, establishing specific actions for a police officer — from the time he decides to pull a suspect over and begins to establish probable cause to the time he completes his Alcohol Influence Report Form and Police Report in readiness for court — demonstrate the complexity of the D.W.I. issue for the criminal justice community. They also demonstrate the vigor with which the police must pursue drunk drivers (both on and off the road) in order to obtain a conviction. The statistics for arrests and convictions, analyzed in preceding chapters of this study, suggest that the police and the courts are taking D.W.I. offenses more seriously in recent years than ever before and working more effectively to make Rhode Island's roads safer.

## PART

## VI

**D.W.I. INTERVENTION  
AND PREVENTION:****TOWARD MAKING RHODE ISLAND'S ROADS SAFER****Summary  
of  
D.W.I.  
Problems**

This report has found that arrest rates in Rhode Island for driving while intoxicated offenses have climbed steadily since the early 1970s, from a low of 820 in 1970 to a peak of 2,653 in 1986. It was noted that, while there have been slight declines in arrest rates since 1986, the overall figures remain high and it is too early to predict whether there has been a reversal in the underlying upward trend.

Nationwide, between 1970 and 1986, the rate of D.W.I. arrests increased by more than 127 percent. This represents a leap from 498 to 1,131 arrests per 100,000 licensed drivers. In 1983, the nation's police officers made 1,921,000 arrests for D.W.I. — about one arrest for every 80 licensed drivers in the United States. In Rhode Island, there was an increase of over 100 percent in the average annual number of arrests between the 1970s and the 1980s.

Data for arrests in Rhode Island show that the average age of drunk drivers has declined from 33 to 32 years in the period 1980 to 1988, and that the age at which a person is most likely to be arrested for D.W.I. is 24 years. Drunk drivers in both the nation and Rhode Island are most likely to be young, single, male adults. Second, third and subsequent offenders are also likely to be male, but considerably older.

A Rhode Islander is more likely to be arrested for drunk driving in a rural community than in a city or suburb. Alcohol-related fatal accidents account for a higher proportion of total accidents in less densely populated areas than they do in suburban and urban areas.

Legislation affecting the minimum drinking age has impacted the rate at which teenagers are arrested for D.W.I. offenses. Nationwide, fewer individuals under the age of 20 years are arrested today than when the drinking age was lowered in the early 1970s. However, in Rhode Island the number of school-age students who abuse alcohol and drugs remains alarmingly high.

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General social awareness about such tragedies as the death of Todd Morsilli and the activities of Mothers Against Drunk Driving (M.A.D.D.) have undoubtedly toughened the resolve of society's more responsible members not to drink and drive. Police and researchers look to the irresponsibility of those individuals who abuse alcohol or drugs on a regular basis — both weekend night drinkers and those with chronic alcohol or drug abuse problems — as the major contributors to the D.W.I. arrest rates in the state.

There are still a large number of drunk drivers on Rhode Island's roads and the police are more vigilant in arresting them. It is difficult to assess whether the higher arrest rates of the 1980s are attributable to larger numbers of intoxicated drivers or to better enforcement. It is quite clear, however, that the number of drunk drivers on the roads remains unacceptably high.

### Policy Suggestions

**The Governor's Justice Commission (GJC) would therefore endorse many existing initiatives, and encourages the appropriate federal and state agencies to examine in detail some of the issues arising from this report:**


✓ Driving with a blood-alcohol level below the current legal level of 0.1 percent can significantly impair the driving ability of adults. Future legislative initiatives might focus on reducing the blood-alcohol level at which an individual is considered to be legally drunk in Rhode Island from 0.1 to 0.08 percent or lower.


✓ There are a number of excellent programs for breathalyzer training and for improved sobriety testing offered by the R.I. Department of Health's Division of Drug Control. The appropriate agencies should work toward further dissemination of the Division's training materials, so that many more police officers can be exposed to training in detecting D.W.I. offenders, establishing probable cause, correctly using breathalyzer equipment and thereby enhancing the conviction rates for those charged with D.W.I. offenses.


✓ Several judges and police officers interviewed for this study believe that heavy fines are a major deterrent against D.W.I. offenses. Future legislative initiatives might consider increases in the court fines, chemical test refusal fines and the Highway


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Assessment Fines for all D.W.I. offenders, including first-time offenders.

 Further research and studies are necessary to establish ways to better identify drugged drivers and to set reliable chemical standards by which to effect arrests and obtain convictions for drugged driving offenses in Rhode Island.

 Urban police forces should examine D.W.I. as a priority arrestable offense.

 The costs incurred by local police forces, which must send arresting officers to D.W.I. court hearings, are substantial and currently not reimbursed through State programs. The appropriate agencies should consider developing a system for channeling certain funds derived from penalties and fines back to local police forces.

 The appropriate State agencies should consider a new media campaign against drunk driving, to include print and electronic media and the adoption of a new logo and/or motto, to be funded year-round.

 All educational programs in grades K through 12 which instruct children and youths about the hazards of alcohol and drugs, including intoxicated driving, should be encouraged.

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# A P P E N D I X I

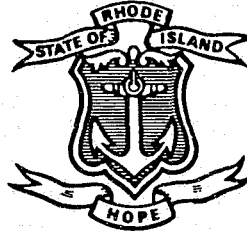
## **General Laws of Rhode Island Chapter 27, Motor Vehicle Offenses**

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General Laws  
of Rhode Island  
Chapter 27,  
Motor Vehicle  
Offenses

1988

GENERAL LAWS



STATE OF RHODE ISLAND  
AND PROVIDENCE PLANTATIONS

(Cumulative Pocket Supplement)

VOLUME 5A

CHAPTER 27

MOTOR VEHICLE OFFENSES

SECTION.

- 31-27-1.1. Driving so as to endanger, resulting in personal injury.
- 31-27-2. Driving under influence of liquor or drugs.
- 31-27-2.1. Refusal to submit to chemical test.
- 31-27-2.2. Driving under the influence of liquor or drugs, resulting in death.
- 31-27-2.3. Revocation of license upon refusal to submit to preliminary breath test.
- 31-27-2.5. Chemical tests to persons under eighteen (18) years of age — Refusal — License suspension.

SECTION.

- 31-27-2.6. Driving under the influence of liquor or drugs, resulting in serious bodily injury.
- 31-27-4. Reckless driving and other offenses against public safety.
- 31-27-5. Maximum driving and on-duty time.
- 31-27-6. Lanes of operation.
- 31-27-17. Permitting juvenile to operate an unregistered motorcycle.
- 31-27-18. Emergency medical services — Special assessment.
- 31-27-19. Operating a motor vehicle on a bicycle trail or path.

31-27-1. Driving so as to endanger, resulting in death.

NOTES TO DECISIONS

ANALYSIS

- a. In general.
  - 1. Unreasonable risk of harm.
  - 2. Culpability.
  - 4. Evidence.
  - 6. Conduct of decedent.
  - 7. Status of fetus.
  - 8. Joint trial with DUI charge.

a. In General.

Since this section is penal in nature, it must be narrowly construed and the defendant must be given the benefit of any reason-

able doubt as to whether an act charged falls within its ambit. *State v. Amaro*, — R.I. —, 448 A.2d 1257 (1982).

1. Unreasonable Risk of Harm.

In determining whether the defendant's conduct is reckless within the meaning of this section, the jury may consider the entire situation, including the conduct of the decedent if it had a bearing on the defendant's conduct. *State v. Dionne*, — R.I. —, 442 A.2d 876 (1982).

2. Culpability.

Mere error in judgment by a driver is not

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sufficient for conviction under this section; neither is the negligence that could support a civil action on damages. *State v. Dionne*, — R.I. —, 442 A.2d 876 (1982).

To constitute recklessness, conduct must constitute more than mere error in judgment by the driver and more than the negligence necessary to support a civil action for damages, and the fact that a defendant drove at an excessive speed does not necessarily establish reckless driving. *State v. Watkins*, — R.I. —, 448 A.2d 1260 (1982).

**4. Evidence.**

Trial justice did not err when he allowed into evidence the hospital records pertaining to the defendant's physical condition in regard to the blood-alcohol level, where the defendant had previously testified he was sober. *State v. Boss*, — R.I. —, 490 A.2d 34 (1985).

Although this section does not explicitly require that a defendant consent to the taking of a blood test before that test may be introduced as evidence, the consent provisions of § 31-27-2 apply. *State v. Timms*, — R.I. —, 505 A.2d 1132 (1986).

**6. Conduct of Decedent.**

Once the jury finds that the defendant was reckless and that his recklessness proximately caused the death, the decedent's conduct becomes irrelevant. *State v. Dionne*, — R.I. —, 442 A.2d 876 (1982).

Negligence on the part of the decedent, is not a defense to culpability under this section, unless such negligence can be shown to be the sole proximate cause of the death. *State v. Dionne*, — R.I. —, 442 A.2d 876 (1982).

Negligence of the decedent may be a relevant factor to be considered on the questions of whether the defendant's conduct was reckless or whether such conduct proximately

caused the death. *State v. Dionne*, — R.I. —, 442 A.2d 876 (1982).

When one drives a motor vehicle in violation of the criminal law pertaining to the operation of such a vehicle on a public highway and, in doing so, causes the death of another, the deceased's negligence is irrelevant absent evidence that would support a finding that the deceased's conduct amounted to an independent intervening cause. *State v. Dionne*, — R.I. —, 442 A.2d 876 (1982).

In a prosecution for violation of § 31-26-1 and this section, where the defendant's conduct was clearly a proximate cause of the victim's death, and where the victim's conduct could not be held to be the sole proximate cause of the fatality, the trial justice did not err in instructing the jury not to consider the victim's conduct in determining whether or not the defendant's conduct was a proximate cause of death. *State v. Watkins*, — R.I. —, 448 A.2d 1260 (1982).

The contributory negligence of the victim is not a defense to a charge of vehicular homicide that is a proximate result of the reckless operation of a motor vehicle. *State v. Northup*, — R.I. —, 486 A.2d 589 (1985).

**7. Status of Fetus.**

A fetus is not a "person" within the meaning of this section. *State v. Amaro*, — R.I. —, 448 A.2d 1257 (1982).

**8. Joint Trial with DUI Charge.**

Where the defendant was being tried for both driving so as to endanger and driving under the influence of alcohol (§ 31-27-2), the trial justice did not abuse his discretion in refusing to conduct a pretrial hearing on the intoxication issue or in denying the defendant's motion to sever. *State v. Northup*, — R.I. —, 486 A.2d 589 (1985).

**31-27-1.1. Driving so as to endanger, resulting in personal injury.** — (a) When the serious bodily injury of any person ensues as a proximate result of the operation of any vehicle in reckless disregard of the safety of others, the person so operating such vehicle shall be guilty of "driving so as to endanger, resulting in personal injury."

(b) "Serious bodily injury" means physical injury that creates a substantial risk of death or causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(c) Any person charged with a violation of this section shall upon conviction be imprisoned for not more than five (5) years.

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## History of Section.

P.L. 1983, ch. 184, § 1.

**31-27-2. Driving under influence of liquor or drugs.** — (a) Whoever operates or otherwise drives any vehicle in the state while under the influence of any intoxicating liquor, drugs, toluene or any controlled substance as defined in chapter 28 of title 21, or any combination thereof, shall be guilty of a misdemeanor and shall be punished as provided in paragraph (d) of this section.

(b) Any person charged under subsection (a) of this section whose blood alcohol concentration is one-tenth of one percent (.1%) or more by weight as shown by a chemical analysis of a blood, breath or urine sample shall be guilty of violating subsection (a) of this section. This provision shall not preclude a conviction based on other admissible evidence. The fact that any person charged with violating this section is or has been legally entitled to use alcohol or a drug shall not constitute a defense against any charge of violating this section.

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

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

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

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

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

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

(6) The person arrested and charged with operating a motor vehicle while under the influence of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21, or any combination thereof in violation of paragraph (a) of this section was

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afforded the opportunity to have an additional chemical test and the officer arresting or so charging such person informed such a person of this right and afforded him a reasonable opportunity to exercise the same and a notation to this effect is made in the official records of the case in the police department. Refusal to permit such additional chemical test shall render incompetent and inadmissible in evidence the original report.

(d)(1) Every person convicted of a first violation shall be subject to a minimum fine of one hundred dollars (\$100) and shall be required to perform ten (10) to sixty (60) hours of public community service and/or shall be imprisoned for up to one (1) year. Said sentence may be served in any unit of the adult correctional institution in the discretion of the sentencing judge. Said person's driving license shall be suspended for a period of three (3) months to six (6) months. The sentencing judge shall require attendance at a special course on driving while intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for the individual.

(2) Every person convicted of a second violation within a five (5) year period shall be subject to a mandatory fine of four hundred dollars (\$400). Said person's driving license shall be suspended for a period of one (1) year to two (2) years and said individual shall be sentenced to not less than ten (10) days nor more than one (1) year in jail. Said sentence may be served in any unit of the adult correctional institution in the discretion of the sentencing judge [;] however, not less than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall require alcohol or drug treatment for the individual.

(3) Every person convicted of a third or subsequent violation within a five (5) year period shall be subject to a mandatory fine of four hundred dollars (\$400). Said person's driving license shall be suspended for a period of two (2) years to three (3) years and said individual shall be sentenced to not less than six (6) months nor more than one (1) year in jail. Said sentence may be served in any unit of the adult correctional institution in the discretion of the sentencing judge [;] however, not less than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall require alcohol or drug treatment for the individual.

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

(5) Any person convicted of a violation under this section shall pay a highway assessment fine of two hundred and fifty dollars (\$250). Said assessment shall be imposed upon July 1, 1982 and every year thereafter and effective January 1, 1986 shall be deposited in a restricted purpose receipt account separate from all other fines collected by the judicial department and shall be collected from a violator before any other fines authorized by this section. Said assessments shall be used for the purposes of administration, screening, alcohol and/or drug treatment and enforcement.

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(6)(a) If the person convicted of violating this section is under the age of eighteen (18) years, for the first violation he or she shall be required to perform ten (10) to sixty (60) hours of public community service, and said juvenile's driving license shall be suspended for a period of six (6) months. The sentencing judge shall also require attendance at a special course on driving while intoxicated or under the influence of a controlled substance and alcohol or drug education and/or treatment for the juvenile. The juvenile may also be required to pay a highway assessment fine of no more than two hundred and fifty dollars (\$250).

(b) If the person convicted of violating this section is under the age of eighteen (18) years, for a second or subsequent violation he or she shall be subject to a mandatory suspension of driving license for a period of one (1) year, and may in the discretion of the sentencing judge also be sentenced to the Rhode Island training school for a period of not more than one (1) year and/or a fine of not more than five hundred dollars (\$500).

(7) Any person convicted of a violation under this section may undergo a clinical assessment at a facility approved by the department of MHRH. Should this clinical assessment determine problems of alcohol, drug abuse or psychological problems associated with alcoholic or drug abuse, this person shall be referred to the T.A.S.C. (treatment alternatives to street crime) program for treatment placement, case management and monitoring.

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

(f)(1) There is hereby established an alcohol and drug safety unit within the department of transportation to administer an alcohol safety action program. The program shall provide for placement and follow-up for persons who are required to pay the highway safety assessment. The alcohol and drug safety action program will be administered in conjunction with alcohol and drug programs within the department of mental health, retardation and hospitals, department of health and department of transportation. The alcohol and drug safety action program shall be implemented on January 1, 1983.

(2) Persons convicted under the provisions of this chapter shall be required to attend a special course on driving while intoxicated or under the influence of a controlled substance and/or participate in an alcohol or drug treatment program. A copy of any violation under this section shall be forwarded by the court to the alcohol and drug safety unit. In the event that persons convicted under the provisions of this chapter fail to attend and complete the above course or treatment program, as ordered by the judge, then said person may be brought before the court, and after hearing as to why the order of the court was not followed, may be sentenced to jail for a period not exceeding one (1) year.

(3) Effective January 1, 1986 there is hereby created within the department of transportation the Alcohol and Drug Safety Action

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Program Account to be funded by monies which are derived from highway safety assessments defined in subdivisions (d)(5) and (d)(6)(a) of this section and § 31-27-2.1(a)(5) and dedicated for the purpose of funding activities described in subdivision (f)(1) of this section. Annual appropriations shall not exceed the amount of receipts anticipated to be collected in the year of the appropriation. Expenses shall not exceed appropriations; however, should receipts not be sufficient to support expenditures made in accordance with appropriations, funds shall be made available from receipts collected in the subsequent year. Should receipts exceed expenditures in any one year, such receipts shall be deposited in the state's general fund.

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

(h) Jurisdiction for violations of this section is hereby given to the district court for persons eighteen (18) years of age or older and to the family court for persons under the age of eighteen (18) years and said courts shall have full authority to impose any sentence authorized and to order the suspension of any license for violations of this section. All trials in the district court and family court of violations of the section shall be scheduled within thirty (30) days of the arraignment date. No continuance or postponement shall be granted except for good cause shown. Such continuances as are necessary shall be granted for the shortest practicable time.

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

(j) An order to attend a special course on driving while intoxicated that shall be administered in cooperation with a college or university accredited by the state shall include a provision to pay a reasonable tuition for such course in an amount not less than twenty-five dollars (\$25.00).

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

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

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**History of Section.**

P.L. 1950, ch. 2595, art. 24, § 2; P.L. 1950 (s.s.), ch. 2639, § 3; G.L. 1956, § 31-27-2; P.L. 1959, ch. 101, § 1; P.L. 1973, ch. 213, § 1; P.L. 1974, ch. 120, § 2; P.L. 1980, ch. 321, § 1; P.L. 1982, ch. 176, § 1; P.L. 1983, ch. 227, § 1; P.L. 1985, ch. 138, § 1; P.L. 1985, ch. 139, § 1; P.L. 1985, ch. 150, § 39; P.L. 1986, ch. 275, § 1; P.L. 1986, ch. 433, § 1; P.L. 1986, ch. 494, § 2; P.L. 1986, ch. 508, § 1.

**Compiler's Notes.** This section was amended by four Acts (P.L. 1986, ch. 275, § 1; P.L. 1986, ch. 433, § 1; P.L. 1986, ch. 494, § 2; P.L. 1986, ch. 508, § 1) passed by the 1986 General Assembly. Inasmuch as the four Acts do not appear to be in conflict with each other, the section as set forth above incorporates the amendments by all four Acts.

As amended by P.L. 1986, ch. 508, § 1 semicolon preceding "however" in the sentence in subdivision (d)(2) and the "one" preceding "(1)" in the second sentence in subdivision (d)(3) were inadvertently omitted. The omitted punctuation and word inserted by the compiler.

As amended by P.L. 1986, ch. 508, § 1 word "discretion" in subdivision (6)(b) contained a misspelling.

In 1986, the bracketed semicolon in subdivision (d)(3) was inserted by the compiler.

**Effective Dates.** Section 3 of P.L. 1986, ch. 508 provides that the amendment of this section by that Act shall take effect upon its passage (June 25, 1986) and shall apply retroactively to January 1, 1986.

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6. Chemical tests.
8. Joint trial for driving so as to endanger.

**6. Chemical Tests.**

A town's failure to preserve a sample of the defendant's breath used in a breathalyzer test did not violate the defendant's due process rights under either the federal or Rhode Island constitution. *State v. Williams*, — R.I. —, 480 A.2d 1383 (1984).

A town's failure to preserve a sample of the defendant's breath used in a breathalyzer test did not violate the defendant's right to confront and cross-examine the evidence against him. *State v. Williams*, — R.I. —, 480 A.2d 1383 (1984).

The defendant was not denied equal protection under the law by the fact that some cities and towns in Rhode Island preserved samples of breath used in breathalyzer tests, but the town in which he was tested did not preserve samples. *State v. Williams*, — R.I. —, 480 A.2d 1383 (1984).

Although the compulsory administration of a blood test does constitute a search within the meaning of the fourth amendment, it is an "appropriate incident" to an arrest for

driving under the influence, and as long as the search is conducted in a reasonable fashion, it is justified absent a warrant. *In re Kean*, — R.I. —, 520 A.2d 1271 (1987).

There is no constitutional right to counsel at the breathalyzer stage of a driving-while-under-the-influence proceeding. *In re Kean*, — R.I. —, 520 A.2d 1271 (1987).

A 17-year-old juvenile's consent to a breathalyzer test was intelligently given where he had had previous experience with the court involving an identical offense months earlier, he chose not to request parents' presence at the station, and was contacted by police, his father showed no interest in coming to the station. *In re Kean*, — R.I. —, 520 A.2d 1271 (1987).

**8. Joint Trial for Driving So As to Endanger.**

Where the defendant was being tried both for driving so as to endanger (§ 31-27-2) and driving under the influence of alcohol, the trial justice did not abuse his discretion in refusing to conduct a pretrial hearing on the intoxication issue or in denying the defendant's motion to sever. *State v. North*, — R.I. —, 486 A.2d 589 (1985).

**31-27-2.1. Refusal to submit to chemical test.** — (a) Any person who operates a motor vehicle within this state shall be deemed to have given his consent, to chemical tests of his breath, blood and/or urine for the purpose of determining the chemical content of his body fluids or breath provided that no more than two (2) complete tests, one for the presence of intoxicating liquor and one for the presence of toluene or any controlled substance as defined in § 21-28-1.02(6) shall be administered at the direction of a law enforcement officer having reasonable grounds to believe such person



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to have been driving a motor vehicle within this state while under the influence of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21 or any combination thereof. The director of the department of health is empowered to make and file with the secretary of state, regulations which prescribe the techniques and methods of chemical analysis of the person's body fluids or breath and the qualifications and certification of individuals authorized to administer such testing and analysis.

If a person, for religious or medical reasons cannot be subjected to blood tests, he may file an affidavit with the registry stating the reasons why he cannot be required to take blood tests, and a notation to this effect shall be made on his license. If such a person is asked to submit to chemical tests as provided herein, he shall only be required to submit to chemical tests of his breath or urine. When a person is requested to submit to blood tests, only a physician or registered nurse or a medical technician certified under regulations promulgated by the director of the department of health may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens. The person tested shall be permitted to have a physician of his own choosing and at his own expense administer chemical tests of his breath, blood and/or urine in addition to the tests administered at the direction of a law enforcement officer. If such person having been placed under arrest refuses upon the request of a law enforcement officer to submit to the tests as provided in § 31-27-2, as amended, none shall be given, but an administrative judge of the division of administrative adjudication, upon receipt of a report of a law enforcement officer that he had reasonable grounds to believe the arrested person had been driving a motor vehicle within this state under the influence of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21, or any combination thereof, that the person had been informed of his rights in accordance with § 31-27-3, that the person had been informed of the penalties incurred as a result of noncompliance with this section, and that the person had refused to submit to the tests upon the request of a law enforcement officer, shall promptly order that the person's operator's license or privilege to operate a motor vehicle in this state be immediately suspended and that the person's license be surrendered within five (5) days of notice of suspension. An administrative judge pursuant to the terms of subsection (b) within shall thereafter order as follows:

(1) Impose for the first violation a fine in the amount of two hundred dollars (\$200) to five hundred dollars (\$500) and shall order the person to perform ten (10) to sixty (60) hours of public community service. Said person's driving license in this state shall be suspended for a period of three (3) months to six (6) months. The administrative judge shall require attendance at a special course on driving while intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for the individual.

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(2) Impose for a second violation within a five (5) year period a fine in the amount of three hundred dollars (\$300) to five hundred dollars (\$500) and said person's driving license in this state shall be suspended for a period of one (1) year to two (2) years. The administrative judge shall require alcohol and/or drug treatment for the individual.

(3) Impose for a third or subsequent violation within a five (5) year period a fine of four hundred dollars (\$400) to five hundred dollars (\$500), and said person's operator's license in this state shall be suspended for a period of two (2) years to three (3) years. The administrative judge shall require alcohol or drug treatment for the individual. Provided, however, That prior to the reinstatement of a license to a person charged with a third or subsequent violation within a three-year period, a hearing shall be held before an administrative judge. At said hearing the administrative judge shall review the person's driving record, his employment history, family background and any other pertinent factors that would indicate that the person has demonstrated behavior which warrants the reinstatement of his license.

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

(5) In addition to any other fines, a highway safety assessment of two hundred fifty dollars (\$250) shall be paid by any person found in violation of this section. Said assessment shall be deposited in a restricted purpose receipt account separate from all other fines collected by the Division of Administrative Adjudication, Department of Transportation and shall be collected from a violator before any other fines authorized by this section. Said assessment shall be used for the purpose of administration, screening alcohol and/or drug treatment and enforcement in accordance with § 31-27-2.

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

(b) Upon suspending or refusing to issue a license or permit as provided in subsection (a) of this section, the division for administrative adjudication shall immediately notify the person involved in writing, and upon his request within fifteen (15) days shall afford him an opportunity for a hearing as early as practical upon receipt of such request in writing. Upon such hearing the administrative judge may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. If the administrative judge finds after such hearing that the law enforcement officer making the sworn report had reasonable grounds to believe that the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21, or any combination thereof, and that said person while under

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arrest refused to submit to the tests upon the request of a law enforcement officer, that the person had been informed of his rights in accordance with § 31-27-3, and that the person had been informed of the penalties incurred as a result of noncompliance with this section, the administrative judge shall sustain the violation. The administrative judge shall then impose the penalties set forth in subsection (a), above. Such action by the administrative judge must be taken within seven (7) days after such hearing, or it shall be presumed that the administrative judge has refused to issue his order of suspension.

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

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

**History of Section.**

G.L., § 31-27-2.1; P.L. 1966, ch. 215, § 1; P.L. 1973, ch. 213, § 1; P.L. 1974, ch. 209, § 1; P.L. 1978, ch. 174, § 1; P.L. 1980, ch. 322, § 1; P.L. 1982, ch. 177, § 1; P.L. 1983, ch. 228, § 1; P.L. 1985, ch. 291, § 1; P.L. 1986, ch. 433, § 1; P.L. 1986, ch. 508, § 1.

**Compiler's Notes.** This section was amended by two Acts (P.L. 1986, ch. 433, § 1; P.L. 1986, ch. 508, § 1) passed by the 1986 General Assembly. Inasmuch as the two Acts

do not appear to be in conflict with each other, the section as set forth above incorporates the amendments by both Acts.

In 1986, the word "or" was substituted by the compiler for "of" in the first sentence of the second paragraph of subsection (a).

**Effective Dates.** Section 3 of P.L. 1986, ch. 508 provides that the amendment of this section by that Act shall take effect upon passage (June 25, 1986) and shall apply retroactively to January 1, 1986.

## NOTES TO DECISIONS

**8. Liability of Police Officers.**

The duty imposed upon a police officer by this section is public in nature. Therefore, an officer is not personally liable to a driver

whom he allows to leave after examining him for intoxication. *Barratt v. Burlingham*, — R.I. —, 492 A.2d 1219 (1985).

**31-27-2.2. Driving under the influence of liquor or drugs, resulting in death.** — (a) When the death of any person other than the operator ensues as a proximate result of an injury received by the operation of any vehicle, the operator of which is under the influence of any intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21 or any combination thereof, the person so operating such vehicle shall be guilty of "driving under the influence of liquor or drugs, resulting in death."

(b) Any person charged with the commission of the offense set forth in subsection (a) shall, upon conviction, be punished as follows:

(1) Every person convicted of a first violation shall be punished by imprisonment in the state prison for not less than six (6) months and for not more than ten (10) years, in any unit of the adult correctional institution in the discretion of the sentencing judge, by a fine of not

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less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and his license to operate a motor vehicle shall be revoked for a period of three (3) years. The license privilege shall not thereafter be reinstated until evidence satisfactory to the registrar of motor vehicles establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of financial responsibility pursuant to chapter 32 of this title.

(2) Every person convicted of a second or subsequent violation within a five (5) year period shall be punished by imprisonment in the state prison for not less than five (5) years and for not more than twenty (20) years, in any unit of the adult correctional institution in the discretion of the sentencing judge, by a fine of not less than eight hundred dollars (\$800) nor more than five thousand dollars (\$5,000) and his license to operate a motor vehicle shall be revoked for a period of five (5) years. The license privilege shall not thereafter be reinstated until evidence satisfactory to the registrar of motor vehicles establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of financial responsibility pursuant to chapter 32 of this title.

**History of Section.**

P.L. 1982, ch. 175, § 1; P.L. 1983, ch. 43,  
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NOTES TO DECISIONS

**1. Consent to Testing.**

Although this section does not explicitly require that a defendant consent to the taking of a blood test before that test may be introduced as evidence, the consent provisions of § 31-27-2 apply. *State v. Timms*, — R.I. —, 505 A.2d 1132 (1986).

Findings of fact underlying the issue of voluntariness, in regard to consent to submit to a blood-alcohol test, will not be disturbed on appeal unless clearly erroneous. *State v. Bruskie*, — R.I. —, 536 A.2d 522 (1988).

**31-27-2.3. Revocation of license upon refusal to submit to preliminary breath test.** — (A) When a law enforcement officer has reason to believe that a person is driving or in actual physical control of any motor vehicle in this State while under the influence of alcohol, the law enforcement officer may require such person to submit to a preliminary breath analysis for the purpose of determining such person's blood alcohol content. Such breath analysis must be administered immediately upon the law enforcement officer's formulation of a reasonable belief that the person is driving or in actual control of a motor vehicle while under the influence of alcohol, or immediately upon the stop of such person, whichever is later in time. Any chemical breath analysis required under this section must be administered with a device and in a manner approved by the director of the department of health for that purpose. The result of a preliminary chemical breath analysis may be used for the purpose of guiding the officer in deciding whether an arrest should be made. When a driver is arrested following a preliminary breath analysis,

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tests may be taken pursuant to § 31-27-2.1. The results of a preliminary breath test may not be used as evidence in any administrative or court proceeding involving driving while intoxicated or refusing to take a breathalyzer test, except as evidence of probable cause in making the initial arrest.

(B) If a person refuses, upon a lawful request of a law enforcement officer, to submit to a test under paragraph (A) hereof, that person shall be guilty of an infraction and shall be subject to this penalty provided in § 31-41-4. However, it shall be a defense to a charge of refusing a validly requested preliminary breath analysis that the medical condition of a person precluded the giving of any such test.

**History of Section.**

P.L. 1982, ch. 326, § 1.

Compiler's Notes. As enacted by P.L.

1982, ch. 326, § 1, this section was designated as § 31-27-2.2.

**31-27-2.5. Chemical tests to persons under eighteen (18) years of age — Refusal — License suspension.** — (a) Any person under eighteen (18) years of age who shall refuse to submit to a chemical test as provided in § 31-27-2 shall have imposed all the penalties provided by § 31-27-2.1, but shall have his license suspended on a first violation for six (6) months, subject to the terms of subsection (e) below.

(b) Jurisdiction for violations of this section is hereby given to the family court.

(c) If such person as set forth in subsection (a) above refuses, upon the request of a law enforcement officer, to submit to a test as provided in § 31-27-2.1, as amended, none shall be given, but a judge of the family court, upon receipt of a report or testimony of a law enforcement officer that he had probable cause to stop the arrested person and reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while impaired by intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21, or any combination thereof, that the person had been informed of his rights in accordance with § 31-27-3, that the person had been informed of the penalties to be incurred as a result of noncompliance with this section and that the person had refused to submit to the test upon the request of a law enforcement officer, shall promptly order a hearing on whether the person's operator's license or privilege to operate a motor vehicle in this state shall be suspended and upon suspension shall order the license of said person to be surrendered to the Rhode Island department of transportation, division of motor vehicles within three (3) days.

(d) If such person takes a test as provided in § 31-27-2 and said test determines said person's blood alcohol concentration to be at least four-hundredths of one percent (.04%) but less than one-tenth of one percent (.1%) by weight, said person shall be determined to have been driving while impaired. A judge of the family court shall, pursuant to the terms of subsection (e) within, thereafter order as follows:

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(1) A highway safety assessment of one hundred fifty dollars (\$150) or community service in lieu of highway safety assessment shall be paid by any person found in violation of this section. Said assessment shall be deposited in a restricted receipt account separate from all other monies collected by the family court. Said assessment shall be used for the purpose of administrative screening and/or alcohol and drug treatment and enforcement in accordance with § 31-27-2.

(2) Said person's driving license shall be suspended for six (6) months on a first violation, provided said person also shall attend a special course on driving while intoxicated and provided that said person shall also attend an alcohol and/or drug treatment program if ordered by the family court judge. Failure or refusal of said person to attend said course and/or alcohol or drug treatment program shall result in said person's driving license being suspended until such time as the course or treatment program has been completed.

(3) On a second violation of this section, said person's driving license shall be suspended until such time as he/she is twenty-one (21) years of age. The sentencing judge shall require alcohol and/or drug treatment for the individual.

(4) On a third or subsequent violation, said person's driving license shall be suspended for an additional period of two (2) years and the sentencing judge shall require alcohol and/or drug treatment for the individual.

(5) No suspensions, assessments, driving while intoxicated school or alcohol and/or drug treatment programs under this section can be suspended, shortened, altered, or changed.

(e) Upon suspending a license or permit as provided in subsection (a), (c) or (e) of this section, the family court shall immediately notify the person involved, in writing, as well as the custodial parent if said person is under the age of eighteen (18) years.

(f) The police department which charges any person under eighteen (18) years of age with refusal to submit to a chemical test, driving while impaired by intoxicating liquors or drugs, or driving while under the influence of liquor or drugs, shall ascertain the name and address of the custodial parent of said person and shall notify said parent in writing within ten (10) days of the charge.

(g) The Rhode Island department of transportation, division of motor vehicles, upon issuing a first license to a person sixteen (16) or seventeen (17) years of age, shall provide a written notice of the penalties provided by this section. Any violation of this section shall not be considered a criminal offense.

**History of Section.**

P.L. 1986, ch. 420, § 1.

**Compiler's Notes.** As amended by P.L. 1986, ch. 420, § 1, this section contained a heading which read "Chemical tests to persons eighteen (18) years of age — Refusal — License suspension."

In 1986, the reference to "§ 31-27-2.1" in subsection (a) was substituted for "§ 32-27-2.1", the phrase "and/or" in the first sentence of subdivision (d)(2) was substituted for "and or", and the word "twenty-one" in the first sentence of subdivision (d)(3) was substituted for "twenty one" by the compiler.

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In 1987, a period was substituted by the compiler for a semicolon at the end of subsection (a).

**31-27-2.6. Driving under the influence of liquor or drugs, resulting in serious bodily injury.** — (a) When serious bodily injury of any person other than the operator is caused by the operation of any motor vehicle, the operator of which is under the influence of any intoxicating liquor, toluene, or any controlled substance as defined in [chapter 28 of title 21] or any combination thereof, the person so operating such vehicle shall be guilty of driving under the influence of liquor or drugs, resulting in serious bodily injury.

(b) As used in this section, "serious bodily injury," means physical injury that creates a substantial risk of death or causes serious physical disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(c) Any person charged with the commission of the offense set forth in subsection (a) shall, upon conviction, be punished by imprisonment for not more than five (5) years and by a fine of not less than two hundred fifty dollars (\$250), nor more than twenty five hundred dollars (\$2,500). The sentencing judge shall have the discretion to sentence any such person to any unit of the adult correctional institution. Additionally, the license of said person may be revoked for a period of up to two (2) years. The license privilege shall not thereafter be reinstated until evidence satisfactory to the registrar of motor vehicles establishes that no grounds exist which would authorize refusal to issue a license and until the person gives proof of financial responsibility pursuant to chapter 32 of this title.

(d) For a second or subsequent conviction under this section within a five (5) year period, a person shall be punished by imprisonment for not less than one (1) year nor more than ten (10) years and by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000). The sentencing judge shall have the discretion to sentence any such person to any unit of the adult correctional institution. Additionally, the license of said person may be revoked for a period of up to four (4) years. The license privilege shall not thereafter be reinstated until evidence satisfactory to the registrar of motor vehicles establishes that no grounds exist which would authorize refusal to issue a license and until the person gives proof of financial responsibility pursuant to chapter 32 of this title.

**History of Section.**

P.L. 1987, ch. 571, § 1.

**Compiler's Notes.** In 1987, the bracketed statutory reference in subsection (a) was sub-

stituted by the compiler for "chapter 28 of title 22" as the former appears to be the intended reference.

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**31-27-4. Reckless driving and other offenses against public safety.** — Any person who operates a motor vehicle recklessly that the lives or safety of the public might be endangered, or participates in drag racing, or operates a vehicle in an attempt to elude or flee from a traffic officer or police vehicle, shall be guilty of a misdemeanor for the first such conviction and a felony for the second and each subsequent conviction.

For the purpose of this title, "drag racing" means the act of two (2) or more individuals competing or racing in a situation in which one (1) of the motor vehicles is beside or to the rear of a motor vehicle operated by a competing driver and one (1) driver attempts to prevent the competing driver from passing or overtaking him, or one or more individuals competing in a race against time unless said race is authorized by the owner of the property upon which said race takes place.

For the purpose of this title, "pursuit" means an active attempt by a law-enforcement officer, in a patrol vehicle, to apprehend one or more occupants of another moving vehicle, when the driver of the fleeing vehicle is aware of the attempt to apprehend him and is resisting the apprehension by maintaining or increasing his speed or by ignoring the law-enforcement officer's attempt to stop him.

Any person who in an attempt to elude or flee from a traffic officer or police vehicle in hot pursuit of said person, operates a motor vehicle at speeds greater than fifteen (15) miles per hour over the speed limit, for the first such conviction, shall be fined a minimum mandatory fine of two hundred dollars (\$200) but not more than five hundred dollars (\$500) and a minimum mandatory license suspension of not less than thirty (30) days. For a second or subsequent such conviction said person shall be fined a minimum mandatory fine of one thousand dollars (\$1,000) and a minimum mandatory license suspension of not less than one (1) year and/or be imprisoned for up to one (1) month.

This section as it was in effect prior to April 25, 1967 shall apply in the case of any offense theretofore committed.

**History of Section.**

P.L. 1950, ch. 2595, art. 24, § 3; P.L. 1950 (s.s.), ch. 2639, § 3; P.L. 1954, ch. 3300, § 1; P.L. 1956, ch. 3819, § 1; G.L. 1956,

§ 31-27-4; P.L. 1958, ch. 70, §§ 1, 2; P.L. 1967, ch. 64, § 1; P.L. 1982, ch. 386, § 1; P.L. 1984, ch. 340, § 1.

**31-27-5. Maximum driving and on-duty time.** — Except as provided in subsection (c) of this section, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive:

(a) More than ten (10) hours following eight (8) consecutive hours off duty, or

(b) For any period after having been on duty fifteen (15) hours following eight (8) consecutive hours off duty.



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(c) Exemptions: (1) Drivers using sleeper-berth equipment as defined in Section 393.76 of the Federal Motor Carrier Safety Regulations may cumulate the required eight (8) consecutive hours off duty resting in a sleeper berth in two (2) separate periods totaling eight (8) hours, neither period to be less than two (2) hours.

(2) The provisions of subsections (a) and (b) of this section shall not apply with respect to drivers used wholly in driving motor vehicles having not more than two (2) axles and whose gross weight does not exceed 10,000 pounds, unless such vehicle is used to transport passengers or explosive or other dangerous articles of such type and in such quantity as to require the vehicle to be specifically marked or placarded under the Federal Hazardous Material Regulations (prescribed in Code of Federal Regulations, Title 49, Section 177.823) or when operated without cargo under conditions which require the vehicle to be so marked or placarded under the cited regulations: Provided further, however, that this shall not apply with respect to drivers of motor vehicles engaged solely in making deliveries for retail stores during the period from December 10 to December 25, both inclusive, of each year.

(3) A driver who encounters adverse driving conditions and cannot, because of those conditions, safely complete the run within the ten (10) hour maximum driving time permitted by subsection (a) may drive and be permitted or required to drive a motor vehicle for not more than two (2) additional hours in order to complete that run or to reach a place offering safety for vehicle occupants and security for the vehicle and its cargo. However, that driver may not drive or be permitted or required to drive:

(1) For more than twelve (12) hours in the aggregate following eight (8) consecutive hours off duty; or

(2) After he has been on duty fifteen (15) hours following eight (8) consecutive hours off duty.

"Adverse driving conditions" means snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun.

(d) Drivers may be declared out of service for violations of this section or Title 49 of the Code of Federal Regulations, Part 395.

**History of Section.**

G.L., ch. 98, § 27; P.L. 1933, ch. 2023, § 1; G.L. 1938, ch. 104, § 1; G.L. 1956, § 31-27-5; P.L. 1986, ch. 282, § 3.

**Compiler's Notes.** In 1986, in subdivision

(c)(2), the word "subsections" was substituted for "subsection" and a comma following "gross weight" was deleted by the compiler.

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**31-27-6. Lanes of operation.** — (a) Any bus, commercial vehicle, camper, vehicle registered as a camper, trailer, or vehicle carrying a camper or trailer travelling on Rhode Island interstate highways shall be allowed to travel only in the first two (2) right hand lanes except in cases of left hand exits, whereby the vehicle shall be allowed to enter the third and fourth left hand lanes one mile prior to an exit. For the purpose of this section a commercial vehicle shall be construed to mean any vehicle registered for commercial purposes and designed and used primarily for the transportation of goods, wares, or merchandise. And the word bus shall be construed to mean any vehicle designed for carrying ten (10) or more passengers and used primarily for the transportation of persons.

(b) The provisions of this chapter shall only be effective during the period that official traffic signs are in place to notify operators of the provisions of this chapter. Any persons violating the provisions of this section upon conviction shall be fined not more than twenty-five dollars (\$25.00).

**History of Section.**

G.L., ch. 98, § 27; P.L. 1933, ch. 2023, § 1;  
G.L. 1938, ch. 104, § 1; G.L. 1956, § 31-27-5;  
P.L. 1986, ch. 282, § 3.

**Compiler's Notes.** In 1986, the word "lanes" following "left hand" in the first sentence of subsection (a) was substituted by the compiler for "lane".

**31-27-17. Permitting juvenile to operate an unregistered motorcycle.** — Any person eighteen (18) years of age or older who shall knowingly permit a person under the age of eighteen (18) years to operate a motorcycle as defined in § 31-1-3 when either said person under the age of eighteen (18) years of age is not licensed in accordance with the provisions of chapter 10.1 of title 31 or where the motorcycle is not registered in accordance with the provisions of chapter 3 of title 31 shall upon conviction be fined not more than five hundred dollars (\$500).

**History of Section.**

P.L. 1982, ch. 253, § 1.

**31-27-18. Emergency medical services — Special assessment.** — The court and/or the administrative adjudication division shall collect, in addition to any fine set forth in this title for a motor vehicle violation, and at the time of the assessment of the fine an additional assessment of one dollar (\$1.00) for each motor vehicle violation of this title. Said one dollar (\$1.00) assessment shall be paid over and accounted for in the manner provided in §§ 31-27-15 and 31-43-5, and shall be deposited by the general treasurer in the budget of the department of health for emergency medical services. Said payments shall be in addition to the annual fiscal appropriation for such purpose and shall not reduce the annual fiscal appropriation for such purpose.

## APPENDIX I

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### General Laws of Rhode Island Chapter 27, Motor Vehicle Offenses

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##### History of Section.

P.L. 1982, ch. 282, § 1.

1982, ch. 282, § 1, this section was designated § 31-27-17.

Compiler's Notes. As enacted by P.L.

**31-27-19. Operating a motor vehicle on a bicycle trail or path.** — (1) No person shall operate any motor vehicle on a bicycle trail or path, as defined in § 31-1-23(j);

(2) Any person who operates a motor vehicle upon any bicycle trail or path shall be guilty of a misdemeanor, punishable by a fine of one hundred dollars (\$100);

(3) The Division of Motor Vehicles, upon receiving a record of the conviction of any person upon a charge of operating a motor vehicle on a bicycle trail or path, shall suspend said person's operator's license for a period of six (6) months;

(4) Emergency vehicle and employees of federal, state and local government shall be exempt from the provisions when acting in the scope of their official duties.

##### History of Section.

P.L. 1982, ch. 302, § 2.

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# **A P P E N D I X   I I**

## **THE ALCOHOLIC INFLUENCE REPORT FORM**

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# Alcoholic Influence Report Form

## S I D E 1

(Check)	(Check)
<input type="checkbox"/> Driver	<input type="checkbox"/> Accident
<input type="checkbox"/> Pedestrian	<input type="checkbox"/> Violation
<input type="checkbox"/> Passenger	<input type="checkbox"/> Other
Date and time of Accident or Violation _____ am _____ pm	

### ALCOHOLIC INFLUENCE REPORT FORM

Police Dept. _____
Arrest No. _____
Accident No. _____
Arresting Officer _____ am _____ pm
Date and time in custody _____ am _____ pm

Name \_\_\_\_\_ Address \_\_\_\_\_

Age \_\_\_\_\_ Sex \_\_\_\_\_ Race \_\_\_\_\_ Approx. Wt. \_\_\_\_\_ Operator Lic. No. \_\_\_\_\_ State \_\_\_\_\_

#### OBSERVATIONS:

<b>CLOTHES</b>	Describe: (Type & Color)	Hat or Cap _____ Jacket or Coat _____ Shirt or Dress _____ Pants or Skirt _____
	Condition:	<input type="checkbox"/> Disorderly <input type="checkbox"/> Disarranged <input type="checkbox"/> Soiled <input type="checkbox"/> Mussed <input type="checkbox"/> Orderly (Describe) _____
<b>BREATH</b>	Odor of Alcoholic Beverage: <input type="checkbox"/> strong <input type="checkbox"/> moderate <input type="checkbox"/> faint <input type="checkbox"/> none	
<b>ATTITUDE</b>	<input type="checkbox"/> Excited <input type="checkbox"/> Hilarious <input type="checkbox"/> Talkative <input type="checkbox"/> Carefree <input type="checkbox"/> Sleepy <input type="checkbox"/> Profanity <input type="checkbox"/> Combative <input type="checkbox"/> Indifferent <input type="checkbox"/> Insulting <input type="checkbox"/> Cocky <input type="checkbox"/> Cooperative <input type="checkbox"/> Polite	
<b>UNUSUAL ACTIONS</b>	<input type="checkbox"/> Hiccoughing <input type="checkbox"/> Belching <input type="checkbox"/> Vomiting <input type="checkbox"/> Fighting <input type="checkbox"/> Crying <input type="checkbox"/> Laughing	
<b>SPEECH</b>	<input type="checkbox"/> Not Understandable <input type="checkbox"/> Mumbled <input type="checkbox"/> Slurred <input type="checkbox"/> Mush Mouthed <input type="checkbox"/> Confused <input type="checkbox"/> Thick Tongued <input type="checkbox"/> Stuttered <input type="checkbox"/> Accent <input type="checkbox"/> Fair <input type="checkbox"/> Good	
Indicate other unusual actions or statements, including when first observed: _____		
Signs or complaint of illness or injury: _____		

#### PERFORMANCE TESTS:

(Note—See departmental instructions for conducting these tests)

Check Squares If Not Made	Check appropriate square before word describing condition observed
<input type="checkbox"/> <b>BALANCE</b>	<input type="checkbox"/> falling <input type="checkbox"/> Needed Support <input type="checkbox"/> Wobbling <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure
<input type="checkbox"/> <b>WALKING</b>	<input type="checkbox"/> falling <input type="checkbox"/> Slagging <input type="checkbox"/> Stumbling <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure
<input type="checkbox"/> <b>TURNING</b>	<input type="checkbox"/> falling <input type="checkbox"/> Slagging <input type="checkbox"/> Hesitant <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure
<input type="checkbox"/> <b>FINGER-TO-NOSE</b>	Right: <input type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure Left: <input type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure
<input type="checkbox"/> <b>COINS</b>	<input type="checkbox"/> Unable <input type="checkbox"/> Fumbling <input type="checkbox"/> Slow <input type="checkbox"/> Sure <input type="checkbox"/> (Other) _____ (Balance during coin test) _____
Ability to understand instructions: <input type="checkbox"/> Poor <input type="checkbox"/> Fair <input type="checkbox"/> Good    Tests performed: Date _____ Time _____ am _____ pm	

#### OBSERVER'S OPINION:

Effects of alcohol: <input type="checkbox"/> extreme <input type="checkbox"/> obvious <input type="checkbox"/> slight <input type="checkbox"/> none	Ability to drive: <input type="checkbox"/> unfit <input type="checkbox"/> fit
Indicate briefly what first led you to suspect alcoholic influence: _____	
Observed by: _____ Assignment: _____	
Witnessed by: _____ Date _____ Time _____ am _____ pm	

#### CHEMICAL TEST DATA:

Specimen: <input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Saliva <input type="checkbox"/> Urine <input type="checkbox"/> None	Analysis result:
<input type="checkbox"/> Refused <input type="checkbox"/> Urinate	If Breath, what instrument?
If refused, why? _____	

# APPENDIX II

## Alcoholic Influence Report Form

## S I D E 2

### INTERVIEW:

Were you operating a vehicle? _____		Where were you going? _____	
What street or highway were you on? _____		Direction of travel? _____	
Where did you start from? _____		What time did you start? _____	
What time is it now? _____		What city (county) are you in now? _____	
What is the date? _____		What day of the week is it? _____	
<b>INTERVIEWER TO FILL IN ACTUAL:</b>			
Time	am/pm	Day	Date
Interviewer's Name			
When did you last eat? _____		What did you eat? _____	
What were you doing during the last three hours? _____			
Have you been drinking? _____		What? _____ How much? _____	
Where? _____		Started? _____ am/pm Stopped? _____ am/pm	
Are you under the influence of an alcoholic beverage now? _____			
What is your occupation? _____		When did you last work? _____	
Do you have any physical defects? _____ If so, what? _____			
Are you ill? _____ If so, what's wrong? _____			
Do you limp? _____ Have you been injured lately? _____ If so, what's wrong? _____			
Did you get a bump on the head? _____ Were you involved in an accident today? _____			
Have you had any alcoholic beverage since the accident? _____ If so, what? _____			
Where? _____		How much? _____ When? _____	
Have you seen a doctor or dentist lately? _____ If so, who? _____ When? _____			
What for? _____ Are you taking tranquilizers, pills or medicines of any kind? _____			
If so, what kind? (Get sample) _____		Last dose? _____ am/pm Do you have epilepsy? _____	
Diabetes? _____		Do you take insulin? _____ If so, last dose? _____ am/pm	
Have you had any injections of any other drugs recently? _____ If so, what for? _____			
What kind of drug? _____		Last dose? _____ am/pm When did you last sleep? _____	
How much sleep did you have? _____		Are you wearing false teeth? _____ Do you have a glass eye? _____	
<b>HANDWRITING SPECIMEN</b>			
Signature and/or anything he chooses. _____			

### REMARKS:

### SUPPLEMENTARY DATA:

(Note—Get witnesses, including officers who observed, to prove driving)

WITNESSES			Was Suspect Driving or Operating	What Was His Condition	Where Observed
Name	Address	Tel. No.			
Passengers in Suspect's Vehicle	Name	Address	Condition		



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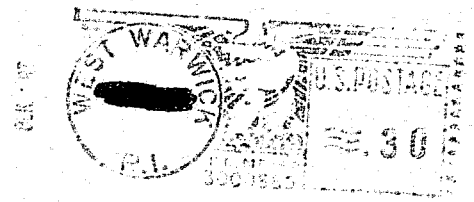
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THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



GOVERNOR'S JUSTICE COMMISSION  
222 Quaker Lane  
West Warwick, RI 02893



Justice Statistics Clearinghouse  
National Summal Justice Ref. Service  
(NCTRS)  
P. O. Box 6000  
Rockville, MD 20850



In Rhode Island,  
Drunk Drivers get Court