

MILLENNIUM DUI PREVENTION ACT

APPENDIX B

Reference:	MILLENNIUM DUI PREVENTION ACT Model DUI law developed by the National Committee on Uniform Traffic Laws and Ordinances
<u>Basis for a DUI Charge:</u>	
Standard DUI Offense:	Under the influence of alcohol §102(a)(3)
Illegal per Se Provisions (BAC/BrAC):	I. $\geq .08$ ^{1342and1343} §102(a)(1) and (2) II. Under the Extreme Influence of Alcohol- $\geq .16$ §102(b)(1) and (2)
Presumption (BAC/BrAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug, (2) a Combination of Drugs or (3) a Combination of Alcohol and Drugs §102(a)(4) and (5)
<u>Chemical Breath Tests for Alcohol Concentration:</u>	
Preliminary Breath Test Provision:	Yes – Justification: articulable grounds § 109
Implied Consent Provision:	Formal arrest is not required in all DUI situations. A request for a chemical test under the implied consent provisions may be made under the following conditions: (1) An arrest for a drunk-driving offense; (2) where there is probable cause to believe that a person operated a vehicle under the influence of alcohol, drugs or controlled substances; or (3) where there is probable cause that a person under 21 years old has operated a vehicle with any amount of alcohol in their system. §107(a)
Implied Consent Provision Applies to Drugs:	Yes §107(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes – (Criminal and Civil Cases) §103(c) A driver may be compelled to submit to a chemical test if involved in an accident resulting in either death or serious personal injury to another person and there is reason to believe that the driver was under the influence of alcohol or drugs. §110

¹³⁴² The Millennium DUI Prevention Act's illegal per se provisions also make it an offense to operate a motor vehicle with a breath alcohol concentration of either .08 or more or, in cases where drivers are "under the extreme influence of alcohol," .16 or more.

¹³⁴³ Under §212(c), "alcohol concentration" means "either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath."

MILLENNIUM DUI PREVENTION ACT

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Provision:

Blood: Yes §107(a)
Urine: Yes – Only for the Presence of Drugs §107(a)

Other: "Other Bodily Substances" – Only for the Presence of Drugs §107(a)

Adjudication of DWI Charges:

Mandatory Adjudication Provision (Yes/No): No
Anti-Plea-Bargaining Provision (Yes/No): No
Pre-Sentencing Investigation Provision (PSI) Yes – Alcohol and Drug Screening required before sentencing §102(e)(1)

Sanctions for Refusal to Submit to a BAC Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail): None

Administrative Licensing Action (Suspension/Revocation): None

Refusal to Take Implied Consent Chemical Test:
Criminal Sanction (Fine/Jail): None
Administrative Licensing Action (Suspension/Revocation): **Suspension – 1 mandatory year** §107(e)(1)

Sanctions Following a Conviction for a DWI Offense¹³⁴⁴:

Criminal Sanctions – Imprisonment¹³⁴⁵:
Term (Day, Month, Years)

I. DUI- Illegal per se: BAC >.08 – first offense – 10 days to 1 year; second and subsequent offense (within 5 years) – **90 days to 1 year** §102(c)(1) and 2)
II. Under the Extreme Influence of Alcohol: Illegal per se BAC ≥ .16 – first offense – 30 days to 1 year; second and subsequent offense (within 5 years) – **120 days to 1 year** §102(d)(1) and (2)

Mandatory Minimum Term: Under the Extreme Influence of Alcohol (Illegal per se BAC ≥ .16) first offense – 30 consecutive days; second and subsequent offense (within 5 years) – **60 consecutive days** §102(d)(1) and (2)

¹³⁴⁴ The Millennium DUI Prevention Act does not classify DUI offenses. Under most State laws these offenses would be considered misdemeanors because incarceration does not exceed one year.

¹³⁴⁵ A person sentenced to a term of incarceration may be allowed to serve such sentence under a home detention program, inpatient rehabilitation (treatment) center, minimum-security facility or other facility provided the offender is under confinement. §§102(h) and 212(i)

MILLENNIUM DUI PREVENTION ACT

Fine:	
Amount (\$ Range):	<u>First offense – \$250 to \$1,000; second and subsequent offense (within 5 years) – \$500 to \$1,000</u> §102(c)(1) and (2) <u>Under the Extreme Influence of Alcohol: (Illegal per se BAC ≥.16) – first offense – \$500 to \$1,000; second and subsequent offense (within 5 years) – \$1,000 to \$2,000</u> §102(d)(1) and (2)
Mandatory Min. Fine (\$):	<u>First and subsequent offenses: \$500.</u>
Other Penalties:	
Community Service:	The court may order an offender to perform community service. §102(i)
Restitution	Yes – The court may order an offender to pay restitution to victims. §102(i)
Other:	The court also may order an offender to pay the costs associated with (1) incarceration, (2) home detention, (3) alcohol-drug evaluation or (4) an alcohol-drug treatment program. §102(i)
<u>Administrative Per Se Provision:</u>	Yes (1) BAC/BrAC ≥.08 or (2) Probable Cause of Driving Under the Influence of Alcohol, Drugs or Controlled Substances – Suspension – 180 mandatory days §107(d) and (e)(2) and (3) <u>Persons Under 21 Years Old: BAC/BrAC ≥.02¹³⁴⁶ Suspension – 180 mandatory days</u> §108(a) and (f)(2)
<u>Post DWI Conviction Licensing Action:</u>	<u>First offense – suspension; second and subsequent offense (within 5 years) – Revocation</u> §102(c)(1) and (2) II. <u>Under the Extreme Influence of Alcohol (Illegal per se BAC ≥.16) – first offense – Revocation; second and subsequent offense (within 5 years) – Revocation</u> §102(d)(1) and (2)
Term of License Withdrawal :	<u>First offense – 180 days; second and subsequent offense (within 5 years) – 1 year</u> §102(c)(1) and (2) II. <u>Under the Extreme Influence of Alcohol (Illegal per se BAC .16) – first offense – 1 year; second and subsequent offense (within 5 years) – 2 years</u> §102(d)(1) and (2)
Mandatory Minimum Term of Withdrawal:	<u>First offense – 180 days; second and subsequent offense (within 5 years) – 1 year</u> §102(c)(1) and (2) II. <u>Under the Extreme Influence of Alcohol (Illegal per se BAC ≥.16) – first offense – 1</u>

¹³⁴⁶ As measured by either a preliminary alcohol screening test or a test under the implied consent law. §103 and §108(a)

MILLENNIUM DUI PREVENTION ACT

year; second and subsequent offense (within 5 years) – **2 years** §102(d)(1) and (2)

Other:

Rehabilitation:

Alcohol Education: Alcohol Treatment: **Yes**¹³⁴⁷ (for all DUI offenses) This may include inpatient treatment at an appropriate facility or institution. §102(e)(2)

Vehicle Impoundment/Confiscation:

Authorized by Specific Provisions:

No {Covered by NCUTLO Safe Streets Act}

Ignition Interlock.

For any DUI offense, the court may order an offender to operate only motor vehicles equipped with ignition interlock devices. §102(f)

Provisions Prohibiting:

(1) The Possession of Open Containers of Alcoholic Beverages in a Vehicle Passenger Compartment:

Yes^{1348and1349} §11-901(b)

(2) The Consumption of Alcoholic Beverages by a Driver of a Motor Vehicle:

Yes¹³⁵⁰ §11-901(a)

¹³⁴⁷ Reinstatement of an offender's driving privileges, as well as any restrictions that may be imposed thereon, may be based on the person's progress in a rehabilitation program. §102(e)(5)

¹³⁴⁸ The sanctions for violating this prohibition are an imprisonment term for not more than 30 days and/or a fine of not more than \$500. §211(c)

¹³⁴⁹ This prohibition does not apply to a motor vehicle being used primarily for the transportation of persons for compensation or to the living quarters of a house coach, house trailer, or recreational vehicle nor does it apply to a vehicle operated by a chauffeur in his or her "for-hire capacity." §211(b)

¹³⁵⁰ This provision prohibits the consumption of alcoholic beverages while operating a motor vehicle on a 'public highway'. §211(a)