

1 of ~~health~~ [public safety](#).

2 SECTION 2. Sections 12-1.5-2, 12-1.5-3, 12-1.5-4, 12-1.5-5, 12-1.5-8, 12-1.5-10, 12-
3 1.5-11, 12-1.5-12, 12-1.5-13, and 12-1.5-16 of the General Laws in Chapter 12-1.5 entitled
4 “DNA Detection of Sexual and Violent Offenders” are hereby amended to read as follows:

5 **12-1.5-2. Definitions.** – For the purposes of this chapter:

6 (1) "CODIS" is derived from combined DNA index system, the Federal Bureau of
7 Investigation's national DNA identification index system that allows the storage and exchange of
8 DNA records submitted by state and local forensic DNA laboratories;

9 (2) "DNA" means deoxyribonucleic acid, which is located in the cells of the body and
10 provides an individual's personal genetic blueprint. DNA encodes genetic information that is the
11 basis of human hereditary and forensic identification;

12 (3) "DNA record" means DNA identification information only, which is stored in the
13 state DNA database or the combined DNA index system for the purpose of generating
14 investigative leads or supporting statistical interpretation of DNA test results. The DNA record is
15 the result obtained from the DNA typing tests. The DNA record is comprised of the
16 characteristics of a DNA sample which are of value only in establishing the identity of
17 individuals. The DNA record, however, does not include the DNA sample, and the DNA record
18 may never include the results of tests of any structural genes. The results of all DNA
19 identification tests on an individual's DNA sample are also collectively referred to as the DNA
20 profile of an individual;

21 (4) "DNA sample" means a blood or tissue sample provided by any person with respect
22 to offenses covered by this chapter, or submitted to the department of ~~health~~ [public safety](#)
23 laboratory pursuant to this chapter for DNA analysis or storage, or both;

24 (5) "F.B.I." means the Federal Bureau of Investigation;

25 (6) "State DNA databank" means the repository of DNA samples collected under this
26 chapter, which is administered by the department of ~~health~~ [public safety](#); and

27 (7) "State DNA database" means the state-level DNA identification record system to
28 support law enforcement which is administered by the department of ~~health~~ [public safety](#) and
29 which provides DNA records to the F.B.I. for storage and maintenance in CODIS. It is the
30 collective capability to store and maintain DNA records related to forensic casework, the DNA
31 records of those convicted offenders required to provide a DNA sample under state law, and
32 anonymous DNA records used for research, quality control, and other DNA analysis support
33 systems.

34 **12-1.5-3. ~~Powers and duties of the department of health public safety~~ Powers and**

1 **duties of the department of public safety.** – In addition to any other powers and duties
2 conferred by this chapter, the department of ~~health~~ [public safety](#) shall:

3 (1) Be responsible for the policy management and administration of the state DNA
4 database and state DNA databank;

5 (2) Promulgate rules and regulations, within one hundred and eighty (180) days of June
6 29, ~~1998~~ [2010](#), to carry out the provisions of this chapter; and

7 (3) Provide for liaison with the F.B.I. and other criminal justice agencies in regard to the
8 state's participation in CODIS or in any DNA database designated by the department of ~~health~~
9 [public safety](#).

10 **12-1.5-4. State DNA database.** – There is established the state DNA database. It shall
11 be administered by the department of ~~health~~ [public safety](#) and provide DNA records for the F.B.I.
12 for storage and maintenance by CODIS. The state DNA database shall have the capability
13 provided by computer software and procedures administered by the department of ~~health~~ [public](#)
14 [safety](#) to store and maintain DNA records related to:

- 15 (1) Forensic casework, including the identification of missing persons;
- 16 (2) Convicted offenders required to provide a DNA sample under this chapter; and
- 17 (3) Anonymous DNA records used for research on identification technologies or quality
18 control.

19 **12-1.5-5. State DNA databank.** – There is established the state DNA databank. It shall
20 serve as the repository of DNA samples collected under this chapter and shall be administered by
21 the department of ~~health~~ [public safety](#).

22 **12-1.5-8. DNA sample required upon conviction.** – (a) Every person convicted of an
23 offense as listed in § 12-1.5-7 after June 29, 1998, shall have a DNA sample taken for analysis as
24 follows:

25 (1) Every person who is sentenced to a term of confinement to prison, for an offense as
26 listed in § 12-1.5-7 shall not be released prior to the expiration of his or her maximum term of
27 confinement unless and until a DNA sample has been taken;

28 (2) Every person convicted of an offense or sentenced to probation as listed in § 12-1.5-7
29 shall have a DNA sample taken for analysis by the department of the ~~health~~ [public safety](#) as a
30 condition for any sentence which disposition will not involve an intake into prison.

31 (b) All DNA samples taken pursuant to this section shall be taken in accordance with
32 regulations promulgated by the department of ~~health~~ [public safety](#).

33 **12-1.5-10. Procedures for conduct, disposition and use of DNA analysis.** – The
34 department of ~~health~~ [public safety](#) shall promulgate procedures to be used in the collection,

1 submission, identification, analysis, storage and disposition of DNA samples and typing results of
2 DNA samples submitted under this chapter. These procedures shall meet or exceed the current
3 standards for quality assurance and proficiency testing for DNA analysis issued by the F.B.I. All
4 DNA sample typing results, all DNA records and all DNA samples shall be securely stored in the
5 state of Rhode Island DNA database and DNA databank respectively, in the following manner:

6 (1) All DNA sample typing results and the DNA records shall be stored in a computer
7 database after all personal identifiers have been removed. Further, these records shall be accessed
8 only through the use of an encryption code. The encryption code shall be confidential and only
9 those persons authorized by the department of [health public safety](#) and charged with
10 responsibilities under this chapter shall have access to these records and shall be given the
11 encryption code.

12 (2) All DNA samples shall be securely locked, with a coded locking system, in a DNA
13 databank at the department of health and only the director of the department of [health public](#)
14 [safety](#) and the head of the DNA laboratory shall have access to these DNA samples to carry out
15 the provisions of this chapter.

16 (3) The department of [health public safety](#) is authorized to contract with third parties for
17 purposes of creating a DNA record only. Any third party contracting to carry out the functions of
18 this chapter shall be subject to the same restrictions and requirements of this chapter, and DNA
19 samples provided to third parties pursuant to this section shall have all personal identification
20 removed.

21 (4) Except as otherwise provided in § 12-1.5-11, DNA samples and DNA records
22 collected under this chapter shall be used only for law enforcement identification purposes or to
23 assist in the recovery of identification of human remains from disasters or for other humanitarian
24 identification purposes, including identification of missing persons; and

25 (5) DNA samples and DNA records collected under this chapter shall never be used
26 under the provisions of this chapter for the purpose of obtaining information about physical
27 characteristics, traits or predispositions for disease.

28 **12-1.5-11. DNA database exchange.** – It shall be the duty of the department of [health](#)
29 [public safety](#) to collect DNA samples, to receive, store, and to perform analysis or to contract for
30 DNA typing analysis with a qualified DNA laboratory that meets the regulations as established by
31 the department of [health public safety](#), to classify and to file the DNA record of identification
32 characteristic profiles of DNA samples submitted under this chapter and to make the information
33 available as provided in this section. Access to the DNA databank shall be for identification
34 analysis only and shall be limited upon a showing of need to duly constituted federal, state and

1 local law enforcement agencies and their servicing forensic DNA laboratories and by court order
2 to the defendant or his or her attorney in a criminal case. The contents of the DNA record of
3 individuals in the state DNA database shall be made available:

4 (1) To criminal justice agencies or approved DNA forensic laboratories which serve these
5 agencies; or

6 (2) Upon written or electronic request and in furtherance of an official investigation by a
7 criminal justice agency or its designated forensic laboratory of a criminal offense or offender or
8 suspected offender;

9 (3) To prosecuting attorneys who are actively involved in a case in which the DNA
10 record of an individual is relevant; to grand juries and courts when such records are subpoenaed;
11 to defense attorneys when the DNA record is relevant to a pending case.

12 (4) The department of ~~health~~ [public safety](#) shall consistent with the provisions of this
13 chapter promulgate regulations governing the methods of obtaining information from the state
14 DNA database and CODIS and procedures for verification of the identity and authority of the
15 requester; and

16 (5) The department of ~~health~~ [public safety](#) may create a separate population database
17 comprised of DNA samples obtained under this chapter after all personal identification is
18 removed. The department of health may share or disseminate the population database with other
19 criminal justice agencies or forensic DNA laboratories that serve to assist the department of
20 ~~health~~ [public safety](#) with statistical databases. The population database may be made available to
21 and searched by other agencies participating in the CODIS system.

22 **12-1.5-12. Cancellation of authority to access or exchange DNA records.** – The
23 department of ~~health~~ [public safety](#) shall be authorized, for good cause shown, to revoke or
24 suspend the right of a forensic DNA laboratory within this state to access or exchange DNA
25 identification records with criminal justice agencies.

26 12-1.5-13. **Expungement.** – A person whose DNA record or profile has been included
27 in the databank pursuant to this act may request expungement, on the grounds that the conviction
28 on which authority for including that person's DNA record or profile was based, has been
29 reversed. The department of ~~health~~ [public safety](#) shall purge all records and identifiable
30 information in the database pertaining to the person and destroy all samples from the person upon
31 receipt of a written request for expungement pursuant to this section and a certified copy of the
32 final court order reversing the conviction. The department of ~~health~~ [public safety](#) shall purge and
33 destroy all records and identifiable information in its database and all DNA samples taken
34 pursuant to this chapter from convicted persons upon official proof that the person has been

1 deceased for a period of at least three (3) years. Official proof shall include, but not be limited to,
2 a certified copy of a death certificate.

3 **12-1.5-16. Confidentiality of records.** – All DNA profiles and samples submitted to
4 the department of ~~health~~ [public safety](#) pursuant to this chapter shall be treated as confidential and
5 exempt from the provisions of chapter 2 of title 38 except as otherwise provided in this chapter.

6 SECTION 3. Section 12-5-2 of the General Laws in Chapter is 12-5 entitled “Search
7 Warrants” is hereby amended to read as follows:

8 **12-5-2. Grounds for issuance.** - A warrant may be issued under this chapter to search
9 for and seize any of the following:

10 (1) Property stolen or embezzled, or obtained by any false pretense, or pretenses, with
11 intent to cheat or defraud within this state, or elsewhere;

12 (2) Property kept, suffered to be kept, concealed, deposited, or possessed in violation of
13 law, or for the purpose of violating the law;

14 (3) Property designed or intended for use, or which is or has been used, in violation of
15 law, or as a means of committing a violation of law;

16 (4) Property which is evidence of the commission of a crime; or

17 (5) Samples of blood, saliva, hair, bodily tissues, bodily fluids, or dental impressions
18 from the body of a person, that may yield evidence of the identity of the perpetrator of a crime
19 when subjected to scientific or other forensic analysis. The foregoing samples, and the results of
20 any scientific or other forensic analysis, shall be admissible in all criminal proceedings, subject to
21 application of the rules of evidence and criminal procedure. When any of the foregoing samples
22 are seized for scientific or forensic analysis, the seizure shall be conducted in accordance with the
23 regulations, guidelines, or protocols of the department of health, [department of public safety](#) or
24 the state crime laboratory, as may be appropriate under the circumstances.

25 SECTION 4. Section 23-1-8 of the General Laws in Chapter 21-1 is entitled “Department
26 of Health” is hereby amended to read as follows:

27 **23-1-8. Toxicologist Forensic Scientist – Crime detection.** – The director of ~~health~~
28 public safety shall appoint in accordance with law a suitable and qualified ~~toxicologist~~ [forensic](#)
29 [scientist](#) to conduct examinations of evidence in connection with scientific crime detection, and
30 for that purpose the director shall cooperate with the Rhode Island state police, [the department of](#)
31 [health](#), the department of the attorney general, and other law enforcement agencies in the matter
32 of scientific crime detection.

33 SECTION 5. Sections 31-27-2, 31-27-2.1 and 31-27-2.3 of the General Laws in Chapter
34 is 12-5 entitled “Motor Vehicle Offenses” are hereby amended to read as follows:

1 **31-27-2. Driving under influence of liquor or drugs.** – (a) Whoever drives or
2 otherwise operates any vehicle in the state while under the influence of any intoxicating liquor,
3 drugs, toluene, or any controlled substance as defined in chapter 28 of title 21, or any
4 combination of these, shall be guilty of a misdemeanor except as provided in subdivision (d)(3)
5 and shall be punished as provided in subsection (d) of this section.

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

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

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

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

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

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

34 (4) The test was performed according to methods and with equipment approved by the

1 director of the department of health and/or the department of public safety of the state of Rhode
2 Island and by an authorized individual.

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

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

15 (d) Every person found to have violated subdivision (b)(1) of this section shall be
16 sentenced as follows: for a first violation whose blood alcohol concentration is eight one-
17 hundredths of one percent (.08%) but less than one-tenth of one percent (.1%) by weight or who
18 has a blood presence of any scheduled controlled substance as defined in subdivision (b)(2) shall
19 be subject to a fine of not less than one hundred dollars (\$100) nor more than three hundred
20 dollars (\$300), shall be required to perform ten (10) to sixty (60) hours of public community
21 restitution, and/or shall be imprisoned for up to one year. The sentence may be served in any unit
22 of the adult correctional institutions in the discretion of the sentencing judge and/or shall be
23 required to attend a special course on driving while intoxicated or under the influence of a
24 controlled substance, and his or her driver's license shall be suspended for thirty (30) days up to
25 one hundred eighty (180) days.

26 (ii) Every person convicted of a first violation whose blood alcohol concentration is one-
27 tenth of one percent (.1%) by weight or above but less than fifteen hundredths of one percent
28 (.15%) or whose blood alcohol concentration is unknown shall be subject to a fine of not less than
29 one hundred (\$100) dollars nor more than four hundred dollars (\$400) and shall be required to
30 perform ten (10) to sixty (60) hours of public community restitution and/or shall be imprisoned
31 for up to one year. The sentence may be served in any unit of the adult correctional institutions in
32 the discretion of the sentencing judge. The person's driving license shall be suspended for a
33 period of three (3) months to twelve (12) months. The sentencing judge shall require attendance
34 at a special course on driving while intoxicated or under the influence of a controlled substance

1 and/or alcoholic or drug treatment for the individual.

2 (iii) Every person convicted of a first offense whose blood alcohol concentration is
3 fifteen hundredths of one percent (.15%) or above, or who is under the influence of a drug,
4 toluene, or any controlled substance as defined in subdivision (b)(1) shall be subject to a fine of
5 five hundred dollars (\$500) and shall be required to perform twenty (20) to sixty (60) hours of
6 public community restitution and/or shall be imprisoned for up to one year. The sentence may be
7 served in any unit of the adult correctional institutions in the discretion of the sentencing judge.
8 The person's driving license shall be suspended for a period of three (3) months to eighteen (18)
9 months. The sentencing judge shall require attendance at a special course on driving while
10 intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for
11 the individual.

12 (2) Every person convicted of a second violation within a five (5) year period with a
13 blood alcohol concentration of eight one-hundredths of one percent (.08%) or above but less than
14 fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is unknown or
15 who has a blood presence of any controlled substance as defined in subdivision (b)(2), and every
16 person convicted of a second violation within a five (5) year period regardless of whether the
17 prior violation and subsequent conviction was a violation and subsequent conviction under this
18 statute or under the driving under the influence of liquor or drugs statute of any other state, shall
19 be subject to a mandatory fine of four hundred dollars (\$400). The person's driving license shall
20 be suspended for a period of one year to two (2) years, and the individual shall be sentenced to
21 not less than ten (10) days nor more than one year in jail. The sentence may be served in any unit
22 of the adult correctional institutions in the discretion of the sentencing judge; however, not less
23 than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge
24 shall require alcohol or drug treatment for the individual, and may prohibit that person from
25 operating a motor vehicle that is not equipped with an ignition interlock system for a period of
26 one year to two (2) years following the completion of the sentence as provided in § 31-27-2.8.

27 (ii) Every person convicted of a second violation within a five (5) year period whose
28 blood alcohol concentration is fifteen hundredths of one percent (.15%) or above by weight as
29 shown by a chemical analysis of a blood, breath, or urine sample or who is under the influence of
30 a drug, toluene, or any controlled substance as defined in subdivision (b)(1) shall be subject to
31 mandatory imprisonment of not less than six (6) months nor more than one year, a mandatory fine
32 of not less than one thousand dollars (\$1,000) and a mandatory license suspension for a period of
33 two (2) years from the date of completion of the sentence imposed under this subsection.

34 (3) Every person convicted of a third or subsequent violation within a five (5) year period

1 with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or above but
2 less than fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is
3 unknown or who has a blood presence of any scheduled controlled substance as defined in
4 subdivision (b)(2) regardless of whether any prior violation and subsequent conviction was a
5 violation and subsequent conviction under this statute or under the driving under the influence of
6 liquor or drugs statute of any other state, shall be guilty of a felony and be subject to a mandatory
7 fine of four hundred (\$400) dollars. The person's driving license shall be suspended for a period
8 of two (2) years to three (3) years, and the individual shall be sentenced to not less than one year
9 and not more than three (3) years in jail. The sentence may be served in any unit of the adult
10 correctional institutions in the discretion of the sentencing judge; however, not less than forty-
11 eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall
12 require alcohol or drug treatment for the individual, and may prohibit that person from operating
13 a motor vehicle that is not equipped with an ignition interlock system for a period of two (2) years
14 following the completion of the sentence as provided in § 31-27-2.8.

15 (ii) Every person convicted of a third or subsequent violation within a five (5) year period
16 whose blood alcohol concentration is fifteen hundredths of one percent (.15%) above by weight
17 as shown by a chemical analysis of a blood, breath, or urine sample or who is under the influence
18 of a drug, toluene or any controlled substance as defined in subdivision (b)(1) shall be subject to
19 mandatory imprisonment of not less than three (3) years nor more than five (5) years, a
20 mandatory fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars
21 (\$5,000) and a mandatory license suspension for a period of three (3) years from the date of
22 completion of the sentence imposed under this subsection.

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

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

32 (ii) Any person over the age of eighteen (18) who is convicted under this section for
33 operating a motor vehicle while under the influence of alcohol, other drugs, or a combination of
34 these, while a child under the age of thirteen (13) years was present as a passenger in the motor

1 vehicle when the offense was committed may be sentenced to a term of imprisonment of not more
2 than one year and further shall not be entitled to the benefit of suspension or deferment of this
3 sentence. The sentence imposed under this section may be served in any unit of the adult
4 correctional institutions in the discretion of the sentencing judge.

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

9 (ii) Any person convicted of a violation under this section shall be assessed a fee. The
10 fee shall be as follows:

11 FISCAL YEAR	FISCAL YEAR	FISCAL YEAR
12 1993-1995	1996-1999	2000-2010
13 \$147	\$173	\$86

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

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

30 (7) Any person convicted of a violation under this section may undergo a clinical
31 assessment at a facility approved by the department of ~~health~~ [mental health retardation and](#)
32 [hospitals](#). Should this clinical assessment determine problems of alcohol, drug abuse, or
33 psychological problems associated with alcoholic or drug abuse, this person shall be referred to
34 the T.A.S.C. (treatment alternatives to street crime) program for treatment placement, case

1 management, and monitoring.

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

4 (f) There is established an alcohol and drug safety unit within the division of motor
5 vehicles to administer an alcohol safety action program. The program shall provide for placement
6 and follow-up for persons who are required to pay the highway safety assessment. The alcohol
7 and drug safety action program will be administered in conjunction with alcohol and drug
8 programs within the department of ~~health~~ [mental health retardation and hospitals](#).

9 (2) Persons convicted under the provisions of this chapter shall be required to attend a
10 special course on driving while intoxicated or under the influence of a controlled substance,
11 and/or participate in an alcohol or drug treatment program. The course shall take into
12 consideration any language barrier which may exist as to any person ordered to attend, and shall
13 provide for instruction reasonably calculated to communicate the purposes of the course in
14 accordance with the requirements of the subsection. Any costs reasonably incurred in connection
15 with the provision of this accommodation shall be borne by the person being retrained. A copy of
16 any violation under this section shall be forwarded by the court to the alcohol and drug safety
17 unit. In the event that persons convicted under the provisions of this chapter fail to attend and
18 complete the above course or treatment program, as ordered by the judge, then the person may be
19 brought before the court, and after a hearing as to why the order of the court was not followed,
20 may be sentenced to jail for a period not exceeding one year.

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

23 (g) The directors of the health department [and the department of public safety](#) of the state
24 of Rhode Island ~~is~~ [are](#) empowered to make and file with the secretary of state regulations which
25 prescribe the techniques and methods of chemical analysis of the person's body fluids or breath,
26 and the qualifications and certification of individuals authorized to administer this testing and
27 analysis.

28 (h) Jurisdiction for misdemeanor violations of this section shall be with the district court
29 for persons eighteen (18) years of age or older and to the family court for persons under the age
30 of eighteen (18) years. The courts shall have full authority to impose any sentence authorized and
31 to order the suspension of any license for violations of this section. All trials in the district court
32 and family court of violations of the section shall be scheduled within thirty (30) days of the
33 arraignment date. No continuance or postponement shall be granted except for good cause shown.
34 Any continuances that are necessary shall be granted for the shortest practicable time. Trials in

1 superior court are not required to be scheduled within thirty (30) days of the arraignment date.

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

5 (j) An order to attend a special course on driving while intoxicated that shall be
6 administered in cooperation with a college or university accredited by the state, shall include a
7 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars
8 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into
9 the general fund.

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

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

17 **31-27-2.1. Refusal to submit to chemical test.** – (a) Any person who operates a motor
18 vehicle within this state shall be deemed to have given his or her consent to chemical tests of his
19 or her breath, blood, and/or urine for the purpose of determining the chemical content of his or
20 her body fluids or breath. No more than two (2) complete tests, one for the presence of
21 intoxicating liquor and one for the presence of toluene or any controlled substance, as defined in
22 § 21-28-1.02(7), shall be administered at the direction of a law enforcement officer having
23 reasonable grounds to believe the person to have been driving a motor vehicle within this state
24 while under the influence of intoxicating liquor, toluene, or any controlled substance, as defined
25 in chapter 28 of title 21, or any combination of these. The directors of the department of health
26 and the department of public safety ~~is~~ are empowered to make and file with the secretary of state,
27 regulations which prescribe the techniques and methods of chemical analysis of the person's body
28 fluids or breath and the qualifications and certification of individuals authorized to administer the
29 testing and analysis.

30 (b) If a person for religious or medical reasons cannot be subjected to blood tests, the
31 person may file an affidavit with the division of motor vehicles stating the reasons why he or she
32 cannot be required to take blood tests, and a notation to this effect shall be made on his or her
33 license. If that person is asked to submit to chemical tests as provided under this chapter, the
34 person shall only be required to submit to chemical tests of his or her breath or urine. When a

1 person is requested to submit to blood tests, only a physician or registered nurse or a medical
2 technician certified under regulations promulgated by the director of the department of health
3 may withdraw blood for the purpose of determining the alcoholic content in it. This limitation
4 shall not apply to the taking of breath or urine specimens. The person tested shall be permitted to
5 have a physician of his or her own choosing and at his or her own expense administer chemical
6 tests of his or her breath, blood, and/or urine in addition to the tests administered at the direction
7 of a law enforcement officer. If a person having been placed under arrest refuses upon the request
8 of a law enforcement officer to submit to the tests, as provided in § 31-27-2, none shall be given,
9 but a judge of the traffic tribunal or district court judge, upon receipt of a report of a law
10 enforcement officer: that he or she had reasonable grounds to believe the arrested person had
11 been driving a motor vehicle within this state under the influence of intoxicating liquor, toluene,
12 or any controlled substance, as defined in chapter 28 of title 21, or any combination of these; that
13 the person had been informed of his or her rights in accordance with § 31-27-3; that the person
14 had been informed of the penalties incurred as a result of noncompliance with this section; and
15 that the person had refused to submit to the tests upon the request of a law enforcement officer;
16 shall promptly order that the person's operator's license or privilege to operate a motor vehicle in
17 this state be immediately suspended and that the person's license be surrendered within five (5)
18 days of notice of suspension. A traffic tribunal judge or a district court judge pursuant to the
19 terms of subsection (c) of this section shall order as follows:

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

26 (2) Every person convicted for a second violation within a five (5) year period shall be
27 guilty of a misdemeanor, shall be imprisoned for not more than six (6) months and shall pay a
28 fine in the amount of six hundred dollars (\$600) to one thousand dollars (\$1,000), order the
29 person to perform sixty (60) to one hundred (100) hours of public community restitution, and the
30 person's driving license in this state shall be suspended for a period of one year to two (2) years.
31 The judge shall require alcohol and/or drug treatment for the individual.

32 (3) Every person convicted for a third or subsequent violation within a five (5) year
33 period shall be guilty of a misdemeanor and shall be imprisoned for not more than one year, fined
34 eight hundred dollars (\$800) to one thousand dollars (\$1,000), order the person to perform not

1 less than one hundred (100) hours of public community restitution, and the person's operator's
2 license in this state shall be suspended for a period of two (2) years to five (5) years. The judge
3 shall require alcohol or drug treatment for the individual. Provided, that prior to the reinstatement
4 of a license to a person charged with a third or subsequent violation within a three (3) year period,
5 a hearing shall be held before a judge. At the hearing the judge shall review the person's driving
6 record, his or her employment history, family background, and any other pertinent factors that
7 would indicate that the person has demonstrated behavior which warrants the reinstatement of his
8 or her license.

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

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

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

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

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

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

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

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

11 **31-27-2.3. Revocation of license upon refusal to submit to preliminary breath test. –**

12 (a) When a law enforcement officer has reason to believe that a person is driving or in actual
13 physical control of any motor vehicle in this state while under the influence of alcohol, the law
14 enforcement officer may require the person to submit to a preliminary breath analysis for the
15 purpose of determining the person's blood alcohol content. The breath analysis must be
16 administered immediately upon the law enforcement officer's formulation of a reasonable belief
17 that the person is driving or in actual control of a motor vehicle while under the influence of
18 alcohol, or immediately upon the stop of the person, whichever is later in time. Any chemical
19 breath analysis required under this section must be administered with a device and in a manner
20 approved by the director of the department of ~~health~~ [public safety](#) for that purpose. The result of a
21 preliminary chemical breath analysis may be used for the purpose of guiding the officer in
22 deciding whether an arrest should be made. When a driver is arrested following a preliminary
23 breath analysis, tests may be taken pursuant to § 31-27-2.1. The results of a preliminary breath
24 test may not be used as evidence in any administrative or court proceeding involving driving
25 while intoxicated or refusing to take a breathalyzer test, except as evidence of probable cause in
26 making the initial arrest.

27 (b) If a person refuses, upon a lawful request of a law enforcement officer, to submit to a
28 test under subsection (a) of this section, that person shall be guilty of an infraction and shall be
29 subject to the penalty provided in § 31-41.1-4. However, it shall be a defense to a charge of
30 refusing a validly requested preliminary breath analysis that the medical condition of a person
31 precluded the giving of any such test.

32 SECTION 6. Any proceeding or other business or matter undertaken or commenced,
33 prior to the effective date of this article, by a department, division, or other administrative agency,
34 the functions, powers, and duties whereof are assigned and transferred to the department of public

1 safety and are pending on the effective date of this act, may be conducted and completed by the
2 director of the department of public safety, or by a subordinate under his direction, in the same
3 manner and under the same terms and conditions and with the same effect as though it were
4 undertaken or commenced or completed by the department, division, or other administrative
5 agency prior to said transfer.

6 SECTION 7. The omission in this article of a citation of any general law or public law
7 now in force which makes it mandatory upon or permissive for the department of health to
8 perform certain functions, which by this article are assigned or transferred to the department of
9 public safety, shall not, unless otherwise clearly intended, suspend or annul the right of the
10 department of public safety to carry out such functions.

11 SECTION 8. In order that there is no interruption in the public safety functions of the
12 department of public safety, the actual transfer of the forensic laboratory to the department of
13 public safety from the department of health may be postponed until after the effective date of this
14 article and until such time, as determined by director of public safety, that the transfer provided
15 herein can best be put into force and effect.

16 SECTION 9. This article shall take effect as of July 1, 2009.

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