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Analytical Study of the Legal and Operational Aspects of the Minnesota Law Entitled "Chemical Test for Intoxication" M.S.A. Sec. 169,123

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16. Abstract

This report provides information for use by state legislatures, state governmental agencies, traffic safety organizations and other persons in enacting laws to control driving and drinking on the highways and specifically the type of "administrative per se" law in the State of Minnesota.

The report outlines the legal framework of the "administrative per se" law in the State of Minnesota. It explores the possible legal challenges which defendants might raise against the law. It studies the operational impact the "administrative per se" law has had in Minnesota on other alcohol countermeasures to control the drinking driver. The report concludes the Minnesota "administrative per se" law would withstand the possible legal challenges. It concludes that the enactment of this law has had a positive effect on the attitudes of law enforcement officers and has increased the effort of controlling DWI offenses. The report recommends that other states enact such a law.

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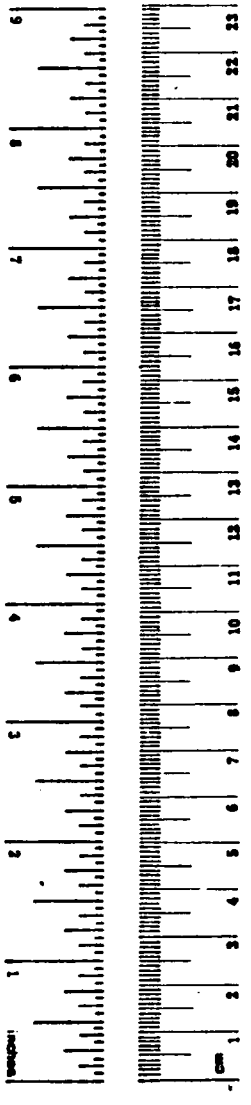
METRIC CONVERSION FACTORS

Approximate Conversions to Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
in	inches	*2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km
		AREA		
in^2	square inches	6.5	square centimeters	cm^2
ft^2	square feet	0.09	square meters	m^2
yd^2	square yards	0.8	square meters	m^2
mi^2	square miles	2.6	square kilometers	km^2
	acres	0.4	hectares	ha
		MASS (weight)		
oz	ounces	28	grams	g
lb	pounds	0.45	kilograms	kg
	short tons (2000 lb)	0.9	tonnes	t
		VOLUME		
tsp	teaspoons	5	milliliters	ml
Tbsp	tablespoons	15	milliliters	ml
fl oz	fluid ounces	30	milliliters	ml
c	cups	0.24	liters	l
pt	pints	0.47	liters	l
qt	quarts	0.96	liters	l
gal	gallons	3.8	liters	l
ft^3	cubic feet	0.03	cubic meters	m^3
yd^3	cubic yards	0.76	cubic meters	m^3
		TEMPERATURE (exact)		
°F	Fahrenheit temperature	5/9 (after subtracting 32)	Celsius temperature	°C

*1 in = 2.54 (exactly). For other exact conversions and more detailed tables, see NBS Misc. Publ. 286, Units of Weights and Measures, Price $2.25, SD Catalog No. C13.10:286.



Approximate Conversions from Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi
		AREA		
cm^2	square centimeters	0.16	square inches	in^2
m^2	square meters	1.2	square yards	yd^2
km^2	square kilometers	0.4	square miles	mi^2
ha	hectares (10,000 m^2)	2.5	acres	
		MASS (weight)		
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	
		VOLUME		
ml	milliliters	0.03	fluid ounces	fl oz
l	liters	2.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
m^3	cubic meters	35	cubic feet	ft^3
m^3	cubic meters	1.3	cubic yards	yd^3
		TEMPERATURE (exact)		
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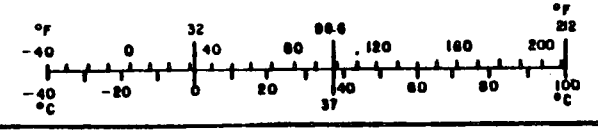

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PART I

STATEMENT OF PROBLEM

The State of Minnesota has a rather unique law.[1] It has been described as an "administrative per se" drinking-driving statute. In essense it provides as a part of the implied consent law that when a law enforcement officer obtains a chemical test for intoxication from a driver, and the result is 0.10 BAC or more,[2] the officer serves notice to the driver on behalf of the motor vehicle department (Department of Public Safety) of intention to revoke his driver's license for having a BAC of 0.10 or more. The driver is given 30 days in which to request a hearing and if none is requested, then the department revokes for 90 days. If a hearing is held, and the issues are determined against the driver, then his license is revoked for 90 days.[3]

This procedure is <u>additional</u> to the criminal drinking-driving charges of "driving under the influence of alcohol" and "driving with 0.10 BAC or more" which are tried in the court system.[4] Also, Minnesota has an implied consent law similar to other states which provides that upon <u>refusal</u> of a chemical test for intoxication action is taken against the license.[5]

The task of this study was to report on the legal and operational aspects of the "administrative per se" law. They are:

"1. Ascertain to what extent offenders charged with DUI are cited under Minnesota Section 169.123, as opposed to Minnesota Section 169.121, wherein an implied consent BAC test has been administered.

"2. Analyze the constitutional, legal and operational ramifications and potential impediments relative to the application of Minnesota Section 169.123 (special emphasis to be given to Subd. 4, 5 and 6).

"3. Determine, if possible, to what extent law enforcement officers

are using the Subd. 4 provision by submitting to the Commissioner of Public Safety BAC test results of 0.10 percent or more.

"4. Determine what use is being made by the Motor Vehicle Department (Department of Public Safety) of the BAC test results as authorized under Subd. 4. What, if any, are the constitutional, legal and practical problems—how well is it working.

"5. Determine to what extent driver license revocation actions are taken pursuant to Subd. 4 (BAC test results of 0.10 percent or higher) under the following situations:

1) The DUI charge is nolle prossed
2) The DUI case is continued
3) The DUI charge is plea bargained down to a lesser offense
4) The DUI case results in an acquittal.

"6. Based on available data, determine the impact the enactment of Minnesota Section 169.123 (Subd. 4) has had on the number of implied consent refusals.

"7. Determine the extent to which the Commissioner of Public Safety appears through prosecuting attorneys at driver license revocation hearings as provided for in Minnesota Section 169.123 (Subd. 6).

"8. Determine, to the extent practical, the impact of the administrative licensing action on the adjudication process (e.g., conviction rates, sanction involved).

"9. Determine, to the extent practical, the impact of the administrative licensing process on the rate of enforcement and support of police officers."

FOOTNOTES - Part I.

1. Minnesota Statutes Annotated, Sec. 169.123. It is interesting to note that West Virginia enacted a similar provision in 1981. See West Virginia Regular Session 1981, New Laws page 849. It is Sec. 17C-5A-1, effective September 1, 1981.

2. "BAC" is a commonly used term which is defined in Minnesota as "Alcohol Concentration" in Sec. 169.01 as follows:

> "Subd. 61. Alcohol concentration. "Alcohol Concentration" means (a) the number of grams of alcohol per 100 milliliters of blood, or (b) the number of grams of alcohol per 210 liters of breath, or (c) the number of grams of alcohol per 67 milliliters of urine."

3. The term "revocation" is not defined in the Minnesota statutes. However, the Department of Public Safety interprets the action required in the commonly accepted meaning of the term. A revocation means that the driver's license is terminated by formal action of the department and the driver can make application for a new license after the expiration of the time period.

4. The criminal charges are contained in Minnesota Statutes Annotated, Sec. 169.121.

5. The implied consent procedures are contained in Minnesota Statutes Annotated, Sec. 169.123.

PART II

LEGAL ASPECTS

One of the tasks of this study was to: "Analyze the constitutional, legal and operational ramifications and potential impediments relative to the application of Minnesota Section 169.123 (special emphasis to be given to Subd. 4, 5 and 6)."

Consequently, the first step will be to outline the legal framework.

LEGAL FRAMEWORK

The Minnesota "administrative per se" drinking-driving law became effective on July 1, 1976.[1] It is a parallel track to the traditional criminal charges normally placed against a drinking driver, and in many respects the two tracks are independent.

The legal steps in this system are summarized as follows:

1. Contact with Driver: A law enforcement officer comes into contact with a drinking driver in various ways. He may observe the conduct; he may respond to a motor vehicle collision; he may stop a driver for another violation; he may receive information from other citizens who have observed the drinking driver. Whatever the means, the information the officer has must meet the requirements of the U.S. Supreme Court decision in Delaware v. Prouse[2] in which the Court held that the officer must have at least "articulable suspicion" as a basis for the stop, or that a non-discretionary systematic roadblock is being operated.

2. After Stopping the Driver: The officer has several options after stopping the driver. He can:

a. Issue a citation and release the driver if the circumstances warrant.

b. Request a preliminary breath screening test for alcoholic influence provided the officer has "reason to believe" from the manner in which a person is driving, operating, or controlling a motor vehicle, or has driven, operated, or controlled a motor vehicle, that the driver may be violating or has violated the "under the influence" of alcohol or controlled substance or combination thereof, or the "illegal per se" law. (Sec. 169.121(6).)

c. Request a chemical test of blood, breath, or urine to determine the presence of alcohol or a controlled substance provided the officer has "reasonable and probable grounds to believe" the person was driving, operating, or in physical control of a motor vehicle in violation of Sec. 169.121 (criminal charges - see App. I) and one of the following conditions exist:

   1) the person has been lawfully placed under arrest for a violation of Sec. 169.121, or similar municipal ordinance, or
   2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death, or
   3) the person has refused to take the preliminary breath screening test, or
   4) the person took the preliminary breath screening test and the results recorded an alcohol concentration of 0.10 or more. (Sec. 169.123(2).)

d. Release the driver when the preliminary breath screening test indicates the driver is not under the influence and when circumstances

do not warrant other action.

e. Make an arrest for driving under the influence of alcohol or controlled substance. (Sec. 169.121.)

f. Release the driver without arresting or without issuing citation if circumstances warrant.

3. Implied Consent Law - Warning: As noted above in "2.c." the officer may request a chemical test of blood, breath, or urine to determine alcohol concentration or a controlled substance provided the officer has "reasonable and probable cause" and one of four conditions is present. The next step for the officer is to request a chemical test and warn the driver:

a. That if testing is refused, the person's right to drive will be revoked for a period of six months; and

b. That if a test is taken and the results indicate that the person is under the influence of alcohol or a controlled substance, the person will be subject to criminal penalties and the person's right to drive may be revoked for a period of 90 days; and

c. That the person has a right to consult with an attorney but that this right is limited to the extent that it cannot unreasonably delay administration of the test or the person will be deemed to have refused the test; and

d. That after submitting to testing, the person has the right to have additional tests made by a person of his own choosing.[3] (Sec. 169.123(2).)

4. Implied Consent Law - Driver's Choice: After the officer has requested the test and has given the driver the warning, the next step is with the

driver. He can:

a. Refuse to permit chemical testing, and if so, then none shall be given.

b. Submit to a chemical test.

5. Implied Consent Law - Notice of Revocation: If the driver refuses the chemical test or if he submits and the test results are 0.10 or more alcohol concentration—in either event—the officer may serve immediate notice of intention to revoke on behalf of the Commissioner of Public Safety. When he does so, the officer shall take the license or permit of the driver, if any, and issue a temporary license effective for 30 days. If the license or permit is picked up by the officer, it is sent to the Commissioner of Public Safety along with the certification. (Sec. 169.123(5a).) See the form used for this step under Appendix III entitled "Notice of Revocation."

In the event a blood or urine test is given and the results are not immediately available, or for some reason the officer does not serve immediate notice, then the department serves the notice by certified mail.

6. Implied Consent Law - Certification: If the driver refuses the test or if he submits and the results are 0.10 or more alcohol concentration, the officer shall certify to the Commissioner of Public Safety that:

a. The officer had reasonable and probable grounds to believe that the person had been driving, operating, or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance; and that:

b. The driver refused the test; or

c. That the driver submitted to the test and the results were 0.10 or more alcohol concentration.

7. Implied Consent Law - Action by Commissioner of Public Safety: Under the notice of revocation the driver has 30 days within which to request a hearing. If he does not, the order of revocation becomes effective. If the driver requests a hearing it is conducted as follows. (Sec. 169.123(5) and (6).)

8. Implied Consent Law - Hearing: If the driver requests a hearing within 30 days:

a. The hearing shall be before a municipal or county judge in the county where the alleged offense occurred unless there is an agreement that the hearing be in some other county.

b. The hearing shall be to the court and may be conducted at the same time and in the same manner as hearings on pre-trial motions for criminal prosecution under Sec. 169.121 (criminal charges see Appendix I).

c. The hearing shall be recorded.

d. The Commissioner of Public Safety may appear through his own attorney or by agreement with the jurisdiction involved, through the prosecuting authority for that jurisdiction. (Note: Current practice is for an Assistant Attorney General to represent the Commissioner in all such hearings.)

e. The request for the hearing delays the effective date of the revocation until a final judicial determination which results in a decision adverse to the person.

f. If a hearing is requested within the 30 days, the Commissioner shall issue additional temporary licenses until the final determination of whether or not there shall be a revocation. The

additional temporary license is good for 180 days and may be renewed by the Commissioner as necessary.

g. The scope of the hearing shall cover the issues of:

1) whether the officer had reasonable and probable grounds to believe the person was . . . (see 2.c. above for the grounds under which the test can be requested—or Sec. 169.123 (Subd. 2) in Appendix I).

2) whether at the time of the request for a test, the officer warned the person of his rights and consequences of taking or refusing the test (see Sec. 169.123 (Subd. 2) for text of warning in Appendix I).

3) whether the person refused the test or whether the test was taken and the results indicated an alcohol concentration of 0.10 or more and whether the testing method used was valid and reliable, and whether the test results were accurately evaluated.

h. The burden of proof at the hearing is on the state and it must prove the issues by a "fair preponderance of the evidence." (See State v. Halvorson, 181 N.W.2d 473, 477 (Minn.-1970).)

i. The court shall order either that the revocation be rescinded or sustained and forward the order to the Commissioner of Public Safety.

j. If the order of revocation is sustained the court shall also forward the driver's license to the Commissioner if it is not already in the Commissioner's possession. (Sec. 169.123(6).)

k. The driver has the right to be represented by counsel at the hearing.

9. Implied Consent Law - Appeal: If the hearing under the implied consent law goes adversely to the driver, he has the right to appeal to the District Court in the county where the hearing was held. The hearing is on the record and is governed by the same procedure as appeals from misdemeanor convictions. (Sec. 169.123(7).) If the hearing goes adversely to the Commissioner he may also appeal. (See State v. Normandin, 169 N.W.2d 222 (Minn.-1969), holding state can appeal an implied consent hearing decision; and State v. Ogg, 246 N.W.2d 560 (Minn.-1976), outlining procedure for appeal of implied consent hearing by the state.)

10. Implied Consent Law - Other Provisions: In addition to the aspects outlined above, the Minnesota implied consent law also provides that:

a. Police officers who can implement the implied consent provisions are limited to state highway patrol officers, University of Minnesota peace officers, a constable defined in Sec. 367.40, and a police officer of any municipality, including towns defined in Sec. 368.01, or a county law enforcement officer. (Sec. 169.123(1).)

b. A person may decline a blood test and elect to take either a breath or urine test, whichever is available and offered. However, no action can be taken for refusing a blood test unless either a breath or urine test was available and offered. (Sec. 169.123(2).)

c. Notwithstanding the requirement in "b" if there is reasonable and probable grounds to believe there is impairment by a controlled substance which is not subject to testing by blood or breath, a urine test may be required even after the blood or breath test has been administered. (Sec. 169.123(2a).)

d. Only a physician, medical technician, physician's trained mobile

intensive care paramedic, registered nurse, medical technologist, or laboratory assistant acting at the request of a peace officer may withdraw blood. This requirement does not apply to breath or urine. (Sec. 169.123(3).)

e. The person tested has a right to have a person of his own choosing administer a chemical test or tests in addition to any administered at the direction of the officer, provided that the additional test specimen is obtained at the place where the person is in custody, that it is after the test administered by the officer, and that it is at no expense to the state. The failure or inability to obtain the additional test shall not preclude the admissibility of the test by the officer unless the additional test was prevented or denied by the officer. (Sec. 169.123(3).)

f. Upon the request of the person tested, full information concerning the test or tests shall be made available to him. (Sec. 169.123(3).)

g. The physician or other qualified persons named in Sec. 169.123(3) who are authorized to withdraw blood at the request of the officer shall in no manner be liable in any civil or criminal action except for negligence in withdrawing the blood. (Sec. 169.123(3).)

11. Probable Cause and Exigent Circumstances for the Test. While not a part of the implied consent statute in Minnesota, it should be noted that the Minnesota Supreme Court has approved another method of obtaining a chemical test for intoxication. This method is based on constitutional law and since the court found there was no conflict with the statues, officers can obtain a chemical test for intoxication where there is (1) an exigent circumstance that the evidence will be lost (now or never), (2) that the officer had

probable cause to support a formal arrest, (3) and it is a highly unobtrusive search. Further, that a formal arrest should be made whenever the suspect appears capable of understanding and communicating with the arresting officer. If not, then the arrest is not necessary.[4]

This method has been approved by the court where the driver is in the hospital and unable to understand and communicate with the officer and there was probable cause to believe that the driver had killed another person while driving under the influence.

LEGAL CHALLENGES

At least 20 states, including Minnesota have enacted criminal "illegal per se" drinking-driving laws.[5] Since these laws are parallel to the "administrative per se" statute in Minnesota, an examination of appellate court decisions may shed light on possible legal challenges which might be raised against the administrative per se law. Also, other possible legal challenges will be discussed.

Arbitrary and Capricious. In North Carolina and Delaware appellate court decisions have ruled on the question of whether or not the 0.10 BAC was an arbitrary and capricious number. In rejecting this argument the North Carolina Court of Appeals held:

> "First, defendant argues that the new offense of driving when the alcohol in one's blood is 0.10 percent or more by weight is an arbitrary and unconstitutional exercise of the police power of the State because there is no evidence that a driver with 0.10 percent or more of alcohol in his blood is a threat to the health, safety, or welfare of the citizens. We will not discuss the numerous scientific studies which have shown the state of intoxication of persons with various degrees of alcohol in their blood. See, for example, Little, Control of the Drinking Driver: Science Challenges Legal Creativity, 54 A.B.A.J. 555 (June 1968). Suffice to say, from 1963 to 1975 there was a statutory presumption in this State that a person with 0.10 percent or more by weight of alcohol in his blood was under the influence of intoxicating liquor. G.S. 20-139.1(a)

(repealed by the 1973 amendment effective 1 January 1975). Our Supreme Court has held that the results of a breathalyzer test are admissible in evidence, and a test showing 0.10 percent or more by weight of alcohol in a defendant's blood is sufficient to carry the State's case to the jury on the question of whether defendant was under the influence of intoxicating liquor. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967). We hold that the prohibition against driving upon the public highways when the amount of alcohol in one's blood is 0.10 percent or more by weight contributes in a real and substantial way to the safety of other travelers. The challenged statute is a constitutional exercise of police power by the General Assembly."[6]

Similarily the Supreme Court of Delaware said:

"We are unable to agree with appellant's contention that the new statute is unconstitutional. Its effect is to forbid any person to operate a motor vehicle if his blood contains .1 of one per cent alcohol. It represents a legislative determination that such quantity of alcohol has sufficient adverse effect upon any person to make his driving a definite hazard to himself and others. We cannot say that this determination is unfounded or contrary to the facts; a number of studies and many statistics have recently been published by experts in this field which support that conclusion."[7]

In summary, based on these two decisions, it is not likely the courts would strike down a "per se" provision since the 0.10 BAC is based on a number of scientific studies and is not, consequently, arbitrary or capricious.

Vague and Indefinite. This argument was made in decisions in Utah and Florida. It was contended that because the driver had no way to determine when he was approaching 0.10 BAC without a chemical test the statute violated due process of law. In rejecting this argument the Supreme Court of Florida held:

"Appellant alleges that the statute is vague and indefinite and so violative of due process in two ways. First, Appellant claims that consumers of alcoholic beverages are unable to determine how much alcohol they may consume before their alcohol blood level will make it unlawful for them to drive. An identical argument was made against a Utah statute, substantially similar to the challenged statute, in Greaves v. State, 528 P.2d 805 (Utah 1974). The Utah Supreme Court stated: 'We can see no reason why a person of ordinary intelligence would have any difficulty in understanding that if he has drunk anything containing alcohol, and particularly any substantial amount thereof, he should not attempt to drive or take control of a motor vehicle.' (Id. at 808.)

The above language is the view of this Court and accordingly we reject Appellant's first argument of 'vagueness.'

"Appellant's second 'vagueness' argument is meritorious but the statute's defect is easily cured. Appellant correctly points out that the statute fails to state whether the prohibited percentage of alcohol in the driver's bloodstream is by weight or by volume. We recognize the scientific difference. To determine the legislative intent we turn our attention to Section 322.262(2)(c), Florida Statutes Annotated, which provides as follows:

'If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired. Moreover, such person who has a blood alcohol level of 0.10 percent or above shall be guilty of driving, or being in actual physical control of, a motor vehicle, with an unlawful blood alcohol level.' (Emphasis supplied.)

"Because the above statute and the challenged statute are in pari materia we construe them together and hold that the legislative intent is that the standard of weight be applied in the enforcement of the challenged statute.

"Section 316.028(3), Florida Statutes Annotated, withstands each of Appellant's constitutional attacks." [8]

In summary, based on these two decisions, "per se" provisions are not vague and indefinite.

Equal Protection. In the Watts[9] case the defendant contended that the substantial disparity in punishment between the offense of "under the influence" and the offense of "per se" drinking-driving laws was arbitrary and unreasonable and thus it violated equal protection. The Supreme Court of Missouri concluded:

"Although appellant states his point in constitutional terms, he offers no authority based upon constitutional principles and his ultimate conclusion, not stated in his point, is that the enactment of Section 564.439 repealed, by implication, Section 564.440. He contends that both sections prohibit the same conduct and that the punishment and consequences of conviction under Section 564.440 are so unreasonably different from those under Section 564.439 that the sections are 'irreconcilably repugnant,' and that the later enactment (Sec. 564.439) had the effect of repealing the earlier (Sec. 564.440).

"As appellant acknowledges, a conviction under Sec. 564.440 could occur although a blood alcohol test showed the defendant to have had between 0.05% and 0.09% blood alcohol (Sec. 564.442, subd. 1 (2)) or even in the absence of a blood alcohol test result. Thus,

> the basic premise of appellant's argument on this score fails because Section 564.439 and Section 564.440 do not necessarily deal with the same conduct."[10]

Based on the Watts case the later enactment of a "per se" provision does not repeal the "under the influence" provision since they have different elements. No other decisions on equal protection were found but that constitutional clause has been interpreted to prohibit unequal treatment of persons within the same group or class. However, the legislature has the power to group or classify drivers as long as the classification is based on reasonable grounds. It is not likely that the administrative per se law could be successfully challenged on equal protection grounds.

Procedural Due Process. In Bell v. Burson[11] the U.S. Supreme Court held that deprivation of the continued possession of a driver's license was subject to the due process clause of the 14th Amendment of the U.S. Constitution. The Court said:

> "While '(m)any controversies have raged about . . . the Due Process Clause,' . . . it is fundamental that except in emergency situations (and this is not one) (financial responsibility law) due process requires that when a State seeks to terminate an interest such as that here involved (driver's license) it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective." (Italics by the Court.)

Thus it is clear that due process requires notice and opportunity for a hearing appropriate to the nature of the case before the termination of the driver's license becomes effective. It appears there are instances in which the hearing may come after the action against the license, but that issue is not present under the Minnesota implied consent law. The Minnesota law provides for:

1. A hearing on the issues in a municipal or county court and a finding adverse to the driver is required before the Commissioner of Public Safety can revoke the license. (Sec. 169.123(5) and (6).)

2. The notice of opportunity for a hearing is served personally on the driver at the time he refuses or the test results are 0.10 or more. Sec. 169.123(5a). See form used in Appendix III, "Notice of Revocation."

3. There is a right of appeal to the District Court from the hearing before the municipal or county court. (Sec. 169.123(7).)

It appears quite clear that the Minnesota implied consent law procedures fully comply with the requirements of the U.S. Supreme Court in Bell v. Burson.[12]

In 1979, which is after the present implied law was enacted, the Supreme Court of Minnesota concluded in the Wiehle[13] decision that: "The present implied consent law satisfies all constitutional requirements."

Collateral Impact - Administrative Versus Criminal. Under the Minnesota statutes it is a criminal offense to drive, etc., with an alcohol concentration of 0.10 or more. In a parallel track the implied consent law provides for a revocation of the driver's license if the driver submits to a chemical test for intoxication and the results are an alcohol concentration of 0.10 or more. The question arises: if this "issue" of 0.10 or more has been litigated in the criminal trial, what impact does this have under the administrative proceeding and vice versa?

This issue could be raised by double jeopardy, res judicata, collateral estoppel, or collateral attack.

"Double jeopardy" is a constitutional right which prohibits a person from being tried twice for the same crime. The great weight of authority holds this doctrine is not applicable between a criminal conviction and a suspension or revocation of a driver's license growing out of the same event.[14]

"Res judicata" is a rule that a final judgment or decree on the merits is

conclusive of the rights of the parties in later suits on the points and matters determined in the former suit. It is normally applied to civil proceedings but has been applied in criminal cases. Here again the great weight of authority is that res judicata does not prevent the suspension or revocation of a driver's license growing out of the same event.[15]

"Collateral attack" is an attempt to avoid, defeat, or evade another judicial proceeding in an incidental proceeding. An exception is the right to appeal to a higher court in the same case. Here again the great weight of judicial authority is against collateral attack.[16]

"Collateral estoppel" is defined as once a court has litigated and decided an "issue" involving a party the same issue cannot be relitigated in a different case. The U.S. Supreme Court incorporated this doctrine into criminal cases in Ashe v. Swenson.[17] More recently the Court applied collateral estoppel to a case where the defendant was charged with possession of heroin and intent to kill. At his pretrial suppression hearing he attempted to suppress the evidence seized in a search of his house. The trial court ruled the search was legal and allowed the evidence to be admitted at the trial. He was convicted. Later he filed a civil rights action in Federal court against the officers who made the search alleging his 4th Amendment rights had been violated. The trial court held that collateral estoppel prevented him from relitigating the search and seizure question because that issue had already been decided against him in the prior criminal case. In upholding the trial court's ruling the U.S. Supreme Court said:

> "The federal courts have traditionally adhered to the related doctrines of res judicata and collateral estoppel. Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Cromwell v. County of Sac., 94 U.S. 351, 352, 24 L.Ed 195. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may

preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. . . . As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.

"In recent years, this Court has reaffirmed the benefits of collateral estoppel in particular, finding the policies underlying it to apply in contexts not formerly recognized at common law. Thus, the Court has eliminated the requirement of mutuality in applying collateral estoppel to bar relitigation of issues decided earlier in federal court suits, Blonder-Tongue Laboratories, Inc. v. University of Illinois, 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788, and has allowed a litigant who was not a party to a federal case to use collateral estoppel 'offensively' in a new federal suit against the party who lost on the decided issue in the first case, Parklane Hosiery Co. v. Shore, 439 U.S. 322, 99 S.Ct. 645, 58 L.Ed.2d 552. But one general limitation the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a 'full and fair opportunity' to litigate that issue in the earlier case."[18]

A Texas U.S. District Court has stated:

"It is well-settled in federal law that the doctrine of collateral estoppel is 'as applicable to decisions of criminal courts as to those of civil jurisdiction.' . . . Thus, a criminal conviction can work an offensive estoppel in a subsequent civil proceeding if the issues for which estoppel is sought were put in issue and directly determined in the prior criminal proceeding." [19]

In regards to collateral estopped there are three requirements:

"The doctrine of collateral estoppel requires (1) that the issue in question be identical to an issue actually litigated in the prior litigation; (2) that the prior litigation have resulted in a final judgment on the merits; and (3) that the party against whom the estoppel is asserted was a party or in privity with a party to the prior adjudication."[20]

Nonetheless there is no judicial requirement that res judicata and collateral estoppel must apply in all situations. As regards an administrative determination, the U.S. Supreme Court has held that:

"When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." [21]

This holding was cited in a U.S. Court of Appeals case that ultimately disallowed a claim of res judicata as argued by a corporation charged with OSHA violations:

"Finally, we note that even where the technical requirements of res judicata have been established, a court may nonetheless refuse to apply the doctrine. This court does not adhere to a rigid view of the doctrine in the administrative context:

> 'The sound view is therefore to use the doctrine of res judicata when the reasons for it are present in full force, to modify it when modification is needed, and to reject it when the reasons against it outweigh those in its favor.'

Bowen v. United States, 570 F.2d 1311, 1321 (7th Cir. 1978) quoting 2 K. Davis, Administrative Law Treatise 548 (1958). Res judicata must yield on occasion to competing public policies." [22]

A case from the Washington Supreme Court discusses the issues as applied either way—Criminal trial determination's impact on administrative hearing and Administrative hearing determination applied to a criminal trial. The case involved a parolee who was successful in defending against his parole revocation for a narcotics violation at an administrative hearing immediately prior to his criminal trial on the narcotic charge. He attempted to use the "not guilty" finding of the administrative hearing to preclude relitigation of the issue at his criminal trial. The pertinent language from the court is as follows:

"If a Washington state parolee is acquitted in a criminal trial, that acquittal does not bar the state from conducting a parole revocation hearing based upon the same incident. Standlee v. Smith, 83 Wash.2d 405, 518 P.2d 721 (1974). See also Standlee v. Rhay, 403 F.Supp. 1247 (E.D.Wash.-1975), rev'd 557 F.2d 1303 (9th Cir.-1977).

"The Standlee court relied upon 'the rule that a difference in the degree of the burden of proof in the two proceedings precludes application of collateral estoppel.' Standlee v. Smith, supra, 833 Wash.2d at 407, 518 P.2d at 722. The 'beyond a reasonable doubt' standard applies in a criminal case, while a parole revocation hearing is governed by the less exacting 'preponderance of the evidence' standard. Thus, a parolee defendant might be acquitted in a criminal prosecution because the state was unable to meet the burden of proof 'beyond a reasonable doubt', yet the same evidence could, under the lesser standard of proof, support parole revocation. (This is the general rule and it is certainly applicable to DWI/Implied Consent statutes, see Asbridge v. North Dakota State Highway Commission, 291 N.W.2d 739 (N.D.-1980); Marquardt v. Webb, 545 P.2d 769 (Okla.-1976).) . . .

"Collateral estoppel, perhaps more descriptively denoted as issue preclusion, and res judicata are doctrines having a common goal of judicial finality. The principles underlying both doctrines are to prevent relitigation of already determined causes, curtail multiplicity of actions, prevent harassment in the courts, inconvenience to the litigants, and judicial economy.

"Of the two doctrines, res judicata is the more comprehensive because it relates to a prior judgment arising out of the same cause of action between the parties. Collateral estoppel is less encompassing, barring relitigation of a particular issue or determinate fact. Both doctrines require a large measure of identity as to parties. . . .

"As to identity of parties, mutuality of parties is not a limiting ingredient of the collateral estoppel rule imposed by the Fifth and Fourteenth Amendments. It is sufficient that the party against whom the plea of collateral estoppel is asserted was a party or in privity with a party in the prior litigation.

"Here, the prosecutor asserts that the State was not a party at the parole revocation hearing because 'the state' for purposes of parole revocation is not 'the state' for purposes of criminal prosecutions. We find this contention to be without merit. Although the prosecutor was not a participant in the revocation proceeding, an assistant attorney general was. The same sovereign is involved in both instances."

The court then went on to consider whether an administrative determination could be applied to preclude a criminal trial. The court stated:

"Decisions of administrative agencies may be accorded preclusive effect in subsequent litigation. . . . The applicability of collateral estoppel in each case is dependent upon a number of factors, including (1) whether the agency acting within its competence made a factual decision; (2) agency and court procedural differences; and (3) policy considerations. . . .

"Policy arguments have been often the deciding factor when collateral estoppel is based upon prior administrative determination. 2 K. Davis, Administrative Law Treatise, Sec. 18.04 (1958 and Supp. 1970). The doctrine may be qualified or rejected when its application would contravene public policy. . . .

"We believe public policy dictates rejection of collateral estoppel in this instance. Parole revocation is not part of a new criminal prosecution. . . .

"Practical public policy requires that new criminal matters, when charged in the criminal justice system, must be permitted to be there decided, unhampered by any parallel proceedings of the Board of Prison Terms and Paroles. Consequently we hold that the board's parole revocation hearing decision regarding Dupard may not be interposed as a basis for collateral estoppel in his prosecution on new criminal charges."[23]

Since public policy considerations are an exception to the application of collateral estoppel, it is important to note that the U.S. Supreme Court has held in a number of cases that highway safety is a compelling public interest. For example in the Mackey case the Court said:

"We have traditionally accorded the states great leeway in adopting summary procedures to protect public health and safety. States surely have at least as much interest in removing drunken drivers from their highways as in summarily seizing mislabeled drugs or destroying spoiled foodstuffs."[24]

In Minnesota, the Supreme Court has held that acquittal of the criminal charge of DWI does not, as a matter of law, dispose of corollary charges under the implied consent law. Furthermore, administrative and criminal proceedings growing out of a DWI case are related only insofar as they generally grow out of the same set of facts. Even though the state is the "party" in both instances, at a criminal trial, the "state" is represented by the county attorney, who is not free to plea bargain away state civil penalties. The civil penalties, i.e., via administrative process, is solely within the jurisdiction of the state's Attorney General and therefore the state could not be estopped from applying a civil sanction even though the county attorney included a "no loss of license" in his plea bargain.[25]

Other issues concerning res judicata, collateral estoppel and collateral attack are:

1. Res judicata is applicable in successive administrative proceedings.[26]
2. A collateral attack on the underlying criminal conviction is generally not permitted at an administrative hearing.[27]
3. As applied to Minnesota, res judicata does apply in administrative hearing and the Supreme Court has admonished state agencies to comply with pertinent statutes and regulations.

"Nevertheless, it should be noted that the practice of the commission in this case is not one to be commended. It appears that, in essence, the commission attempted largely to avoid the difficult legal question here encountered by simply substituting a different set of factual findings for those made in 1963 and 1965. We are in sympathy with relator's assertions that such action was prima facie violative of principles of res judicata--principles which, in spirit at least, apply to adjudications by administrative agencies as well as to those made by the courts. . . . Because of

> the breadth of power which has been delegated to administrative agencies such as the one here involved, it is necessary in the interests of consistency and fairness that such power be exercised only in the manner prescribed by statute and published regulation. Our legislature has set forth specific procedures to be followed relative to providing for notice and hearing for the reopening of compensation awards by the commission."[28]

In conclusion, the great weight of judicial authority continues to hold that a suspension or revocation of a driver's license is not barred by collateral estoppel or res judicata. This was summarized by the annotator in 96 ALR2d 612, 614 as follows:

> "It is generally recognized that state legislatures may, in the exercise of their police powers, enact reasonable regulations for the obtaining of drivers' or operators' licenses and for the revocation or suspension thereof under stated circumstances. However, where those circumstances which were the basis of the revocation or suspension were also the basis of charges in a previous criminal case, it might seem to the layman driver that the state has been allowed to try him twice for the same offense, and his notions of fair play might be injured all the more where the previous criminal prosecution resulted in a determination that he was 'not guilty.' Notwithstanding the notions of fair play entertained by laymen, however, what little authority there is on the subject holds that the later proceeding to revoke or suspend his license, since not intended as a punishment of the driver but designed solely for the protection of the public in the use of the highways, does not in the legal sense subject him to double jeopardy or punishment, nor is a judgment of acquittal in the previous criminal case res judicata on the issue of guilt or innocence in the later proceeding, for, as stated by one court, such judgment does not have any probative value in the subsequent proceeding beyond the mere fact of its rendition, the reason for this being found in the nature of the criminal proceedings and the type of proof required therein, for in a criminal proceeding the guilt of the accused must be established beyond a reasonable doubt, whereas in a civil proceeding to revoke a license it is sufficient if the offense is established by a preponderance of the evidence.
>
> "It should be noted that the result reached in the case of a revocation or suspension of a driver's license is fully in accord with the general rule relating to the effect on administrative proceedings of an acquittal or conviction in criminal proceedings."[29]

Double Punishment. Under the Minnesota law there is a dual track. Under Sec. 169.121 it is a criminal offense for a person to drive, etc., with an alcohol concentration of 0.10 or more. Under the implied consent law a

person can have his driver's license revoked for driving, etc., with an alcohol concentration of 0.10 or more. This second track has been referred to as "administrative per se."

What if a driver is punished with criminal penalties under the first statute and also suffers a revocation of his driver's license under the second law? Does this violate the constitutional prohibitions of double jeopardy and double punishment?

The U.S. Supreme Court has made it clear that the double jeopardy clause of the U.S. Constitution bars double punishment. The Court held in the Pearce[30] case that: "The Constitution was designed as much to prevent the criminal from being twice punished for the same offense as from being twice tried for it."

However, a review of the appellate court decisions indicates there would not be double punishment where one sanction is criminal and the other civil or administrative in nature.[31] For example, in Barnes v. Tofany[32] the defendant was convicted for driving while ability impaired for which he received a mandatory suspension of his driver's license. In addition, acting under a separate statute, the Commissioner of Motor Vehicles, then suspended his driver's license, following an administrative determination that the defendant was grossly negligent. Both suspensions arose out of the same event. The defendant appealed his second suspension on the grounds that this violated his constitutional rights of not being placed in double jeopardy and of double punishment. In upholding both suspensions the New York Court of Appeals said:

> "The constitutional prohibitions against double jeopardy and double punishment do not prevent the Legislature from enacting and and the executive from enforcing, civil as well as criminal sanctions for the same conduct. . . . Therefore, the question before us is really whether the sanction imposed (suspension of an operator's license) is essentially criminal or civil in nature.

"As the Supreme Court noted in Helvering v. Mitchell (303 U.S. 391, 399, 58 S.Ct. 630, 633, 82 L.Ed. 917), 'Remedial sanctions may be of varying types. One which is characteristically free of the punitive criminal element is revocation of a privilege voluntarily granted.' It is apparent that suspension or revocation of the privilege of operating a motor vehicle is essentially civil in nature, having as its aims chastening of the errant motorist, and, more importantly, the protection of the public from such a dangerous individual." * * *

"Each of these proceedings—one, a civil administrative proceeding, and the other, a criminal action—are separate and independent of each other. The outcome of one proceeding is of no consequence in the other. There is no constitutional or statutory prohibition to make the Commissioner's implementation of the statute illegal or unlawful. Since the statute imposed upon the Commissioner a mandatory duty to suspend petitioner's license after conviction, there was no exercise of discretion to be reviewed by the courts below as to the second suspension."[33]

The Supreme Court of Minnesota in the Mulvihill case in 1975 also emphasized this distinction between criminal and civil nature of the two tracks. The court said:

"We feel it important to again emphasize the essential differences between license revocation under Sec. 169.121, subd. 3, and license revocation under Sec. 169.123, subd. 4. The former is automatically imposed as a criminal penalty upon conviction of a Sec. 169.121 violation. It is triggered by the outcome of the criminal proceeding and is imposed through the judicial system. Revocation under this section is for not less than 30 days. On the other hand, revocation under the implied-consent law is essentially civil in nature. State, Department of Public Safety v. House, 291 Minn. 424, 425, 192 N.W.2d 93, 94 (1971). It is imposed administratively by the commissioner of public safety regardless of the outcome of the criminal proceeding arising out of the same incident and is triggered by the refusal to submit to chemical testing."[34]

A related issue is where the criminal charges are dismissed or the defendant is acquitted: Can the motor vehicle department revoke under the implied consent law? This issue was addressed by the Supreme Court of Minnesota in the Styrbicki[35] and Olsen[36] decisions.

In Styrbicki the defendant was found not guilty by a jury on the charge of driving under the influence of alcohol. However, the defendant had refused the chemical test when arrested and on this ground the motor vehicle department moved

to revoke his license. He argued on appeal to the Minnesota Supreme Court that because he was acquitted of the criminal charge, it followed that the arrest was therefore unlawful and thus the officer did not have the required "reasonable and probable grounds" for the implied consent law to revoke his license.

The court rejected this argument and held that the acquittal did not invalidate the arrest. In doing so the court concluded:

> "Other courts have also held that the fact that a person may have been acquitted of the offense of driving while intoxicated does not preclude an administrative hearing to determine if his driving privileges should be withdrawn for his refusal to submit to a chemical test to determine the alcoholic content of his blood."[37]

In the Olsen[38] case the Supreme Court of Minnesota held that where the driving under the influence charge was dismissed when the defendant pled guilty to the reduction of the charge to careless driving it was not a bar to a revocation of his driver's license for a refusal of the chemical test.

Guilty Plea. There is no provision in the Minnesota implied consent statute which ties a conviction of a drinking-driving offense to the refusal. However, the Supreme Court of Minnesota in the Schlief[39] case held that a driver who pleads guilty to the criminal DWI charge cannot be subjected to a revocation of his driver's license for refusing the chemical test. The court stated that it would serve no useful purpose and would be unreasonable.

In a later decision in the Mulvihill[40] case the court laid down the guidelines for the Schlief doctrine. The court held:

> "In order for a defendant to establish reasonable grounds for refusing to submit to chemical testing as otherwise required by statute and avail himself of the doctrine in the Schlief decision, he must do the following: (1) At the time of the refusal, he must intend to plead guilty to a charge of violating Minn.St. 169.121, subd. 1; (2) he must enter a plea of guilty to a charge which subjects him to automatic revocation under Sec. 169.121, subd. 3; and (3) he must plead guilty at the first available opportunity."

The effect of this approach is to put a lever on the defendant who has refused the test. It encourages him to plead guilty because if he does, there is no revocation for refusing the chemical test. Of course, he receives a revocation on the conviction but if he pleads "not" guilty and is convicted he could receive two revocations—one for the conviction and one for the implied consent refusal.[41]

Thus the Schlief-Mulvihill doctrine has a tendency to chill "not" guilty pleas. Such a practice has been held unconstitutional by the U.S. Supreme Court in United States v. Jackson[42] where the court held that due process forbids convicting a defendant on the basis of a coerced guilty plea.

Arizona had a statutory provision which was similar in effect to the Schlief-Mulvihill doctrine. In holding the statute unconstitutional the U.S. District Court said:

> "The effect of subparagraph H. is to needlessly chill the exercise of basic constitutional rights. See United States v. Jackson, supra. The operation of subparagraph H. obviously places the individual charged in a dilemma as to whether to stand on his rights, and thereby lose his driving privileges, or to enter a plea of guilty, without appeal, and thus retain his driving privileges. Thus, subparagraph H. of the statute imposes an impermissible burden upon the exercise of the accused's Fifth Amendment right not to plead guilty, and his Sixth Amendment right to demand a jury trial, and is, therefore, unconstitutional. See United States v. Jackson, supra, and Pope v. United States, 392 U.S. 651, 88 S.Ct. 2145, 20 L.Ed.2d 1317. Moreover, the obvious difference in treatment of the accused under the Arizona statute, which subparagraph H. includes therein, constitutes a violation of the equal protection clause of the Fourteenth Amendment." [43]

Since the Schlief-Mulvihill approach is not the rule around the country, it would not normally pose a problem in other states which adopted the Minnesota implied consent law since this doctrine is in the case law and not the statute.

FOOTNOTES - Part II.

1. Minnesota Laws 1976, Chapter 341, effective July 1, 1976, and codified as Sec. 169.127. However in 1978 this law was repealed and re-enacted as Sec. 169.123 by Minnesota Laws 1978, Chapter 727, effective September 1, 1978, retaining its substantive aspects.

2. Delaware v. Prouse, 440 U.S. 648, 99 S.CT. 1391, 59 L.Ed.2d 660 (1979).

3. The Supreme Court of Minnesota held that where a driver was under arrest for DWI while being transported went into convulsions and was rushed to the hospital unconscious, a blood test could be taken and if the results were 0.10 or over, his license could be revoked under the "administrative per se" law even though no warnings had been given and the driver did not consent. This conclusion was reached on the grounds that the taking of the blood sample was constitutional because there was "an exigency to preserve evidence, probable cause to support formal arrest, and a highly unobtrusive search," citing State v. Oevering, 268 N.W.2d 68 (Minn.-1978). Also, the court concluded that there was no prohibition in the Minnesota implied consent law which precluded the taking of the blood sample. Since the driver's condition precluded him from refusing the test, his consent remained continuous. This continuing consent permitted use of the results of the test in an implied consent proceeding. State v. Wiehle, 287 N.W.2d 416 (Minn.-1979). See also: State v. Hauge, 286 N.W.2d 727 (Minn.-1979), holding to same effect.

4. State v. Oevering, 268 N.W.2d 68 (Minn.-1978); State v. Dewey, 272 N.W.2d 355 (Minn.-1978); State v. Hauge, 286 N.W.2d 727 (Minn.-1979); State v. Wiehle, 287 N.W.2d 416 (Minn.-1979); State v. Hart, 289 N.W.2d 478 (Minn.-1979); State v. Aguirre, 295 N.W.2d 79 (Minn.-1980).

5. Alabama, Alaska, California, Delaware, Florida, Illinois, Iowa, Maine, Minnesota, Missouri, Nebraska, New York, North Carolina, Oregon, South Dakota, Utah, Vermont, New Hampshire, Washington, and Wisconsin.

6. State v. Basinger, 30 N.C.App. 45, 226 S.E.2d 216, 218 (1976).

7. Coxe v. State, 281 A.2d 606, 607 (Del.-1971).

8. Roberts v. State, 329 So.2d 296, 297 (Fla.-1976); Greaves v. State, 528 P.2d 805 (Utah-1974).

9. State v. Watts, 601 S.W.2d 617 (Mo.-1980).

10. 601 S.W.2d at 619.

11. Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 1591 (1971).

12. See n. 11.

13. State v. Wiehle, 287 N.W.2d 416 (Minn.-1979).

14. 96 ALR2d 612, "Conviction or Acquittal in Previous Criminal Case as Bar to Revocation or Suspension of Driver's License on Same Factual Charges." See also Later Case Service with more decisions to same effect.

15. 96 ALR2d, supra, n. 14.

16. 96 ALR2d 612, supra, n. 14.

17. Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970).

18. Allen v. McCurry, U.S. , 101 S.Ct. 411, 414-415 (1980).

19. Vela v. Alvarez, 507 F.Supp. 887, 889 (D.C.-Tex.-1981).

20. Lomax v. Smith, 501 F.Supp. 119, 122 (D.C.-Pa.-1980).

21. United States v. Utah Construction & Mining Co., 384 U.S. 394, 422, 86 S.Ct. 1545, 1560, 16 L.Ed.2d 642 (1966).

22. International Harvester Co. v. Occupational Safety and Health Review Commission, 628 F.2d 982, 986 (C.A.7th-Ill.-1980).

23. State v. Dupard, 609 P.2d 961, 962-65 (Wash.-1980).

24. Mackey v. Montrym, 443 U.S. 1, 99 S.Ct. 2612, 2621 (1979). See also statements to same effect in Dixon v. Love, 431 U.S. 105, 97 S.Ct. 1723, 52 L.Ed.2d 172 (1977).

25. State, Department of Public Safety v. House, 192 N.W.2d 93 (Minn.-1971).

26. Doherty v. Cuomo, 430 N.Y.S.2d 168 (N.Y.App.-1980).

27. Commonwealth, Dept. of Transportation, 419 A.2d 233 (Pa.Cmwlth.-1980); Kuhn v. State ex rel. Van Natta, 404 N.E.2d 1360 (Ind.App.-1980).

28. Souden v. Hopkins Motor Sales, Inc., 182 N.W.2d 668, 672-73 (Minn.-1971).

29. 96 ALR2d 612, 614, supra, n. 14.

30. North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 2077 (1969).

31. In Wells v. Roberts, 280 S.E.2d 266 (W.Va.-1981), the court noted: "Most courts that have considered similar claims, have consistently held that administrative revocation or suspension of an operator's license is not subject to a double jeopardy challenge. See, e.g., Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971); Keenan v. Hardison, 245 Ga. 599, 266 S.E.2d 205 (1980); Williams v. State, 138 Ga.App. 662, 226 S.E.2d 816 (1976); Hardin v. Van Natta, 376 N.E.2d 518 (Ind.App.-1978); State v. Edwards, 353 So.2d 476 (La.App.-1977); State v. Sinner, 207 N.W.2d 495 (N.D.-1973); Commonwealth v. Levy, 194 Pa. Super. 390, 169 A.2d 596 (1961); Robinson v. Texas Dept. of Public Safety, 586 S.W.2d 604 (Tex.Civ.App. 1979); State v. Scheffel, 82 Wash.2d 872, 514 P.2d 1052 (1973).
See also: 88 ALR2d 1064, 1076, "Suspension or Revocation of Driver's License for Refusal to Take Sobriety Test," citing cases holding

that acquittal of the charge does not bar suspension or revocation of driver's license for refusal of the chemical test.

32. Barnes v. Tofany, 27 N.Y.2d 74, 261 N.E.2d 617 (1970).

33. 261 N.E.2d at 619.

34. State v. Mulvihill, 227 N.W.2d 813, 817 (Minn.-1975).

35. State v. Styrbicki, 169 N.W.2d 225 (Minn.-1969).

36. State v. Olsen, 169 N.W.2d 227 (Minn.-1969).

37. 169 N.W.2d at 227.

38. See n. 36, supra.

39. State v. Schlief, 185 N.W.2d 274 (Minn.-1971).

40. State v. Mulvihill, 227 N.W.2d 813, 817 (Minnn.-1975).

41. Sec. 169.121(3) prohibits a revocation under the implied consent law if the driver has been revoked for a conviction under the criminal statute for DWI. The provision reads as follows: Any person whose license has been revoked pursuant to Section 169.123 (implied consent) is not subject to the mandatory revocation provision of this section." However, officials in Minnesota report if the timing is such that the defendant receives a revocation for a conviction and some time later because of delays, etc., there can be a later revocation under the implied consent law.

42. United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 1216 (1968).

43. Voyles v. Thorneycroft, 398 F.Supp. 706, 707 (D.C.-Ariz.-1975).

PART III

STUDY OF OPERATIONAL IMPACT

In addition to studying the legal and constitutional questions relating to the Minnesota "administrative per se" implied consent law, the questions of—is the law working and how well—are addressed.

There were two principal sources for the responses to the following questions: (1) interviews with a number of state officials in Minnesota who are involved in running the programs under the implied consent law; and (2) statistics from their offices.

The questions to be answered were:

1. "Ascertain to what extent offenders charged with DUI are cited under Minnesota Section 169.123, as opposed to Minnesota Section 169.121, wherein an implied consent BAC test has been administered."

The total number of "arrests" for DWI reported to the Minnesota Criminal Justice Information System in 1980 was 22,788. Also, in 1980 the number of "certificates" from law enforcement officers to the Department of Public Safety that a driver had either refused a chemical test or had submitted and the results were 0.10 alcohol concentration or more totaled 28,429. From the data available it is not possible to determine the number of chemical tests administered in the 22,788 arrests. Under Minnesota law the officer can arrest for DWI without administering any chemical tests.

It is possible for the officer to file a "certificate" of refusal for 0.10 or more with the Department of Public Safety <u>without</u> filing any criminal charges for DWI. Also, there are cases where the driver submitted to the chemical test and the results were less than 0.10 alcohol concentration and thus no

certificate would be sent to the Department of Public Safety yet criminal charges could have been filed. Hence there are several reasons for the number of arrests and number of revocations to differ.

In some of the interviews with Minnesota officials it was reported that the "administrative per se" or implied consent law was popular with law enforcement officers. The number of revocations over arrests appears to support this view.

For further comparison of arrests and certificates see Tables I and IV in Appendix II. Also see Memorandum of Mr. Forst Lowery in Appendix IV explaining differences in the data.

2. "Determine, if possible, to what extent law enforcement officers are using the Subd. 4 provision by submitting to the Commissioner of Public Safety BAC test results of 0.10 percent or more."

The laboratory of the Bureau of Criminal Apprehension in Minnesota performs most of the blood and urine tests in DWI cases, except for St. Paul, Minneapolis, and a few other cities, and receives reports on all the breath tests performed in the state. In 1979 these tests totaled 15,254 where the results were 0.10 or more. In the same year the number of revocations under the implied consent "administrative per se" law was reported as 6,742. On the face of this it would appear that officers were using the law (Subd. 4 of Sec. 169.123) only about half the time.

However, there are some factors which should be noted. The Supreme Court of Minnesota has held that if a driver pleads guilty at the first opportunity to the DWI charge, then his license cannot be revoked under the implied consent law. See the discussion in Part II above of the Schlief-Mulvihill cases under the heading of "Guilty Plea." There is no data available to indicate how much this decreases the number of implied consent revocations.

Another factor impacting on the number of revocations under the implied consent law is that a number of drivers request a hearing. (See Table IX in Appendix II.) As will be noted this number has substantially increased in recent years. Needless to say, when it goes to a hearing the Attorney General does not win them all and this reduces somewhat the number of revocations.

Interviews with Minnesota officials indicate that in their view officers are using this law most of the time. When the factors just discussed are taken into consideration, it would appear that the views of the officials interviewed are supported by the data.

3. "Determine what use is being made by the Motor Vehicle Department of the BAC test results as authorized under Subd. 4. What, if any, are the constitutional, legal and practical problems - how well is it working."

The "certificate" from the officer, that a driver has either refused a chemical test or the results of the test were 0.10 or more, to the Department of Public Safety triggers the action under the implied consent law. The officials interviewed, both in and out of the division in DPS which handles these certificates, reported that the system was working well.

One factor which makes the system work more effectively is that at the time of the refusal or when a breath test is taken and the results are known at the time, the officer serves a "Notice of Revocation" on the driver and picks up the driver's license which is attached to the certificate forwarded to DPS. (See Form in Appendix III.) If it goes to a hearing and the license is not already in the possession of DPS, and the hearing is adverse to the driver, the court picks up the license and sends it to the DPS along with the court's decision. This greatly reduces the administrative problem of notifying the driver of his opportunity for a hearing (which formerly was done by certified mail in all cases) and obtaining possession of the license from the driver.

For the drivers who do not request a hearing, it was reported that there was no significant backlog. However, as will be noted in Table IX in Appendix II, the number of pending cases under the implied consent law is steadily growing. This is due in part to the lack of adequate staff in the Attorney General's Office to handle these cases and at the same time the increase in the number of DWI arrests being made on the street.

4. "Determine to what extent driver license revocation actions are taken pursuant to Subd. 4 (BAC test results of 0.10 percent or higher) under the following situations:

    1) the DUI charge is nolle prossed
    2) the DUI case is continued
    3) the DUI charge is plea bargained down to a lesser offense
    4) the DUI case results in an acquittal."

From the data available in Minnesota, it is very difficult to determine the precise impact the "administrative per se" implied consent law has had on the four areas listed above. In fact, no data was found to determine exactly how many DWI cases were nolle prossed, continued, plea bargained or acquitted on a state wide basis.

However, a general answer can be given by looking at the number of total alcohol-related revocations in Table I (Appendix II). The "administrative per se" law became effective on July 1, 1976. If a comparison is made for 1975 (17,628 revocations) which would be DWI convictions and refusals and 1979 DWI convictions and refusals (18,224 revocations) the impact of revoking under the "administrative per se" law was not negative. It appears the DWI case load has continued to increase since the convictions resulting in revocations has increased. In 1980 there was a significant increase—from 14,797 in 1979 to 17,406 in 1980. It can be concluded that the enactment of the "administrative per se" implied consent law did not decrease the DWI cases in court.

5. "Based on available data, determine the impact the enactment of Minnesota Section 169.123 (Subd. 4) has had on the number of implied consent refusals."

Prior to 1978 the Department of Public Safety did not keep data on the number of revocations for refusal separate from revocations for convictions or for having an alcohol concentration of 0.10 or more. However, the number of revocations for refusals in 1978 was 3,344, in 1979 it was 3,427, and in 1980 it was 3,863. Since this shows a steady increase, it can be concluded that the enactment of the "administrative per se" implied consent law which added revocations for having an alcohol concentration of 0.10 or more had no negative impact. Nor does it appear that this new law greatly increased refusals. (See Table I in Appendix II.)

6. "Determine the extent to which the Commissioner of Public Safety appears through prosecuting attorneys at driver license revocation hearings as provided for in Minnesota Section 169.123 (Subd. 6)."

In the Minnesota law it provides that: "The commissioner of public safety may appear (at the implied consent hearing) through his own attorney or, by agreement with the jurisdiction involved, through the prosecuting authority for that jurisdiction." According to the Minnesota Attorney General's Office no agreements have been entered into with any local jurisdiction to represent the Department of Public Safety at any implied consent hearings.

As will be noted in Table IX in Appendix II the number of pending cases has been steadily growing and to deal with this backlog either the staff in the Attorney General's Office who handles these cases will have to be increased or agreements will have to be made with local prosecutors. The importance of keeping the function in the Attorney General's Office is that it removes any pressure on the local prosecutor concerning the disposition of both the criminal charges and the implied consent revocation proceedings. Also, keeping it

at the state level provides for uniform policies in handling the implied consent cases.

7. "Determine, to the extent practical, the impact of the administrative licensing action on the adjudication process (e.g., conviction rates, sanction involved)."

It is very difficult to determine conviction rates, types of sanctions imposed, and related aspects in DWI cases in the court system. However, one measure that is available is the number of revocations for DWI convictions. These have increased — 15,512 in 1978; 14,797 in 1979; 17,406 in 1980; and 7,861 in the first five months of 1981 (which if the level continues would be about 18,864 in 1981).

Based on the number of revocations for convictions the enactment of the "administrative per se" implied consent law had no negative impact on criminal charges under the DWI statute.

Since the two tracks are separate and the timing is not parallel, the officials interviewed in Minnesota reported they had not observed any impact on conviction rates, sanctions imposed, etc. If anything, tightening the net on drinking drivers has led to increased enforcement activity by law enforcement officers. See especially the 1980 and 1981 revocations in Table I, Appendix II.

8. "Determine, to the extent practical, the impact of the administrative licensing process on the rate of enforcement and support of police officers."

The number of sworn police officers in Minnesota has remained relatively stable in the past few years—going from 5,922 in 1977 to 6,107 in 1980—an increase of only 185 officers. (See Table V in Appendix II.) Such a small increase cannot account for the increase in total number of revocations for alcohol related offenses which went from 17,741 to 30,481 in the same period of time. (See Table I in Appendix II.)

Among the officials interviewed it was reported that the "administrative per se" implied consent law was popular among law enforcement officers. As is true in many jurisdictions the officers express frustration at the courts and their handling of DWI cases. It appears they view the administrative track as providing a method of doing something about the drinking driver regardless of what happens to the criminal charges in court.

PART IV

EXECUTIVE SUMMARY AND CONCLUSIONS

In 1976 the State of Minnesota adopted a rather unique implied consent law. That state already had the traditional implied consent law which provided for a revocation of the driver's license if the driver refused to submit to a chemical test for intoxication. What was added was a provision that when the officer requested a chemical test for intoxication under the implied consent law, and the driver submitted, and the results were an alcohol concentration of 0.10 or more, the officer sent a report to the motor vehicle department (Department of Public Safety). Based on the report the DPS could revoke the driver's license for having 0.10 or more. Of course, there is a notice and opportunity for a hearing. However, if the results of the hearing are adverse to the driver, or if he waives his right to a hearing, then the DPS can revoke on the basis of either the refusal to submit or having 0.10 or more. It has been described as an "administrative per se" law.

At the same time, Minnesota has a criminal statute making it a crime to drive, etc., while under the influence of alcohol which is the traditional DWI charge. Also in recent years at least 20 states, including Minnesota, have enacted criminal statutes making it a crime to drive, etc., with an alcohol concentration of 0.10 or more. This charge has been described as an absolute or "illegal per se" law.

The uniqueness of the Minnesota law is the two tracks—one a criminal "per se" law and the other an administrative "per se" law. They are separate tracks with almost no connection between the two. About the only connection are some restrictions on revoking the driver's license for both but that

connection applies in only some circumstances. In the situation where the driver refuses the test and pleads guilty to the criminal charge at the first opportunity, the Minnesota Supreme Court has held his license cannot be revoked for the refusal.

Another situation is where the timing is such that a revocation takes place for the implied consent law and the driver is later convicted of the criminal charge, then the statute prohibits another revocation unless the driver has had a prior revocation within three years. Then the prohibition does not apply.

If the timing is the opposite—the driver is convicted of the criminal charge first and the implied consent revocation happens later, then the Minnesota statute does not bar two revocations.

This study has two principal objectives. First, to study the legal and constitutional aspects and second, to look at the operation of the law and determine whether or not it is working and its impact on other aspects of the system of control on drinking-drivers.

Legal Conclusions. Since a number of states, including Minnesota, have had appellate court challenges to the "illegal per se" law, this was one method of determining possible court challenges to the "administrative per se" law. One possible challenge is that the legislature was arbitrary and capricious when it chose the alcohol concentration of 0.10 or more as an element of the statute. This argument has been rejected by the appellate courts because of the numerous scientific studies which have shown that every person with an alcohol concentration of 0.10 or more is an unsafe driver. Consequently, the legislative determination is based on scientific research.

Another possible legal challenge is that the law is vague and indefinite because the driver cannot tell when he is approaching the 0.10 concentration without a chemical test for intoxication. At least two appellate courts have rejected this argument because any person of ordinary intelligence who has consumed an alcoholic beverage, and particularly a substantial amount, knows that he should not attempt to drive or take control of a vehicle.

A third possible legal challenge is based on due process of law. In the Bell v. Burson case the U.S. Supreme Court held that a driver's license was an "important interest" to which the due process clause of the 14th Amendment attached. Thus a driver is entitled to notice and opportunity to a hearing in most circumstances before any action can be taken against his license. The Minnesota implied consent law complies with these requirements and the Minnesota Supreme Court has upheld its constitutionality.

A fourth possible challenge is "double jeopardy" or "collateral estoppel." Since there is both a criminal charge of driving, etc., with an alcohol concentration of 0.10 or more as well as administrative action for 0.10 or more, do corrective sanctions against the driver under both laws constitute double jeopardy? The appellate court decisions almost unanimously hold there is no double jeopardy between criminal and administrative sanctions. Collateral estoppel means that once an "issue" has been litigated, that "issue" (in this case the issue of 0.10 or more) cannot be litigated again. Normally, collateral estoppel has not been applied by the courts between criminal and administrative proceedings.

In some cases a driver can receive a revocation for being convicted of the criminal charge and also receive a separate revocation (not running concurrently) under the implied consent law. Since double jeopardy also prohibits double punishment does this constitute a violation of double jeopardy? The

answer is no since the appellate courts have regularly held that double jeopardy does not bar both civil or administrative sanctions on one hand and criminal sanctions on the other arising out of the same event.

If another state should enact the Minnesota implied consent law, care should be taken not to add a provision which bars a revocation for refusal if the driver pleads guilty to the criminal charge. While this ruling is not in the Minnesota statute it was imposed by the Minnesota Supreme Court. It has been held unconstitutional in Arizona by the U.S. District Court because it has a tendency to "chill" the defendant's constitutional right to plead not guilty.

Many observers feel that the law should not impose two revocations—one for a conviction and one for the implied consent law. If any state adopts the Minnesota "administrative per se" law, this point should be addressed.

In summary it appears clear that the Minnesota implied consent law with its provisions on "administrative per se" as a parallel track to the criminal drinking-driving charges is legally sound and constitutional.

Operational Conclusions. Based on data from Minnesota, interviews with a number of state officials, and review of the appellate court decisions in Minnesota, it appears the "administrative per se" law is working quite well.

On the national level, Professor Robert F. Borkenstein has estimated that police arrest only about 1 in 2,000 cases of drinking and driving. In Minnesota the Office of Traffic Safety estimates the figure is 1 in 300.

Because of the difficulty in collecting data on every aspect of the system, it is not possible to have precise figures. However, a reduction from about 1 in 2,000 to 1 in 300 is impressive even if only approximately correct.

A review of the number of revocations for alcohol related offenses, both criminal and implied consent in Table I (Appendix II), indicates the system is catching more drinking drivers each year and would tend to support, in part, the estimate of 1 in 300.

The addition of the "administrative per se" law appears to have had no negative impact on the operation of the criminal track for handling drinking drivers. In fact, the increase in the number of revocations for convictions in recent years appears to indicate it has had a "shot in the arm" effect upon the criminal system.

The officials interviewed reported that the "administrative per se" provisions are popular with law enforcement officers. Because of the typical frustration many officers have with the criminal handling of drinking drivers, the "administrative per se" law gives them an out for that frustration.

A factor which has helped make the system work is the notice of revocation and pick up of the driver's license at the time of refusal, or a breath test of 0.10 or more, along with the pick up at the time of the hearing if the decision is against the defendant and the license is not already in the hands of the Department of Public Safety. This greatly reduces the cost and gives personal service of the notice of an opportunity for a hearing which expedites the entire system.

It must be remembered that the so-called political and safety climate in Minnesota has been favorable to the enactment of new legislation in the area of drinking and driving. While the consumption of alcoholic beverages has steadily increased in Minnesota in recent years (see Table VIII in Appendix II) the efforts of the traffic safety community have been fairly well received. This is in contrast to other states where efforts to control the drunk driver have very rough sledding in the state legislatures and any new

legislation is strongly resisted. This factor needs to be kept in mind by any "transplant" of this type of law to another state.

As with any such system, the dedication, experience, and expertise of the officials and public employees operating the system are extremely important. In Minnesota the officials and employees appear to be well motivated and really make the system work.

However, the increasing case load is starting to cause problems and this is particularly a problem in the Office of the Attorney General. The file of pending cases waiting for a hearing under the implied consent law has grown significantly in recent years. It is clear a larger staff is needed for this function.

Overall the conclusion is that Minnesota does a good job in making the "administrative per se" system work and other states should be encouraged to consider adopting similar provisions.

APPENDIX I

TEXT OF RELEVANT MINNESOTA STATUTES

Source: Minnesota Statutes 1980, Embracing laws of a general and permanent nature and certain other laws in force or to be in force after the 1980 Session of the Legislature, Official Publication of the State of Minnesota.

169.121 MOTOR VEHICLE DRIVERS UNDER INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCE.

Subdivision 1. It is a misdemeanor for any person to drive, operate or be in physical control of any motor vehicle within this state:

(a) When the person is under the influence of alcohol;

(b) When the person is under the influence of a controlled substance;

(c) When the person is under the influence of a combination of any two or more of the elements named in clauses (a) and (b); or

(d) When the person's alcohol concentration is 0.10 or more.

The provisions of this subdivision apply, but are not limited in application, to any person who drives, operates, or is in physical control of any motor vehicle in the manner prohibited by this subdivision upon the ice of any lake, stream, or river, including but not limited to the ice of any boundary water.

Subd. 2. Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for driving, operating, or being in physical control of a motor vehicle in violation of subdivision 1, the court may admit evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine as shown by a medical or chemical analysis thereof, if the test is taken voluntarily or pursuant to section 169.123.

For the purposes of this subdivision:

(a) evidence that there was at the time an alcohol concentration of 0.05 or less is prima facie evidence that the person was not under the influence of alcohol;

(b) evidence that there was at the time an alcohol concentration of more than 0.05 and less than 0.10 is relevant evidence in indicating whether or not the person was under the influence of alcohol.

The foregoing provisions do not limit the introduction of any other competent evidence bearing upon the question whether or not the person was under the influence of alcohol or a controlled substance.

Subd. 3. Every person convicted of a violation of this section or an ordinance in conformity therewith is punishable by imprisonment of not more than 90 days, or by a fine of not more than $500, or both, and his driver's license shall be revoked for not less than 30 days, except that every person who is convicted of a violation of this section or an ordinance in conformity therewith, when the violation is found to be the proximate cause of great bodily harm as defined in section 609.02, subdivision 8, or death to another person, shall be punished by imprisonment for not more than 90 days, or by fine of not more

than $500, or both, and his driver's license shall be revoked for not less than 90 days.

Any person whose license has been revoked pursuant to section 169.123 is not subject to the mandatory revocation provision of this subdivision.

Subd. 4. Every person who is convicted of a violation of this section or an ordinance in conformity therewith within three years of any previous such conviction shall be punished by imprisonment for not more than 90 days, or a fine of not more than $500, or both, and his driver's license shall be revoked for not less than 90 days.

Subd. 5. The court may stay imposition or execution of any sentence authorized by subdivision 3 or 4 on the condition that the convicted person submit to treatment by a public or private institution or a facility providing rehabilitation for chemical dependency licensed by the department of public welfare. A stay of imposition or execution shall be in the manner provided in section 609.135. The court shall report to the commissioner of public safety any stay of imposition or execution of sentence granted under the provisions of this section.

Subd. 6. When a peace officer has reason to believe from the manner in which a person is driving, operating, or controlling a motor vehicle, or has driven, operated, or controlled a motor vehicle, that the driver may be violating or has violated subdivision 1, he may require the driver to provide a sample of his breath for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of this preliminary screening test shall be used for the purpose of deciding whether an arrest should be made and whether to require the chemical tests authorized in section 169.123, but shall not be used in any court action except to prove that a chemical test was properly required of a person pursuant to section 169.123, subdivision 2. Following the screening test additional tests may be required of the driver pursuant to the provisions of section 169.123.

The driver of a motor vehicle who refuses to furnish a sample of his breath is subject to the provisions of section 169.123 unless, in compliance with section 169.123, he submits to a blood, breath or urine test to determine the presence of alcohol or a controlled substance.

Subd. 7. On behalf of the commissioner of public safety a court shall serve notice of revocation on a person convicted of a violation of this section. The court shall take the license or permit of the driver, if any, or obtain a sworn affidavit stating that the license or permit cannot be produced, and send it to the commissioner with a record of the conviction and issue a temporary license effective only for the period during which an appeal from the conviction may be taken. No person who is without driving privileges at the time shall be issued a temporary license and any temporary license issued shall bear the same restrictions and limitations as the driver's license or permit for which it is exchanged.

The commissioner shall issue additional temporary licenses until the final determination of whether there shall be a revocation under this section.

History: *1957 c 297 s 1; 1961 c 454 s 9; 1967 c 283 s 1; 1967 c 569 s 1; 1969 c 744 s 1; 1971 c 244 s 1; 1971 c 893 s 1,2; Ex1971 c 27 s 6; 1973 c 421 s 1; 1973 c 494 s 8; 1975 c 370 s 1; 1976 c 298 s 2; 1976 c 341 s 1; 1978 c 727 s 2*

169.122 OPEN BOTTLE LAW; PENALTY.

Subdivision 1. No person shall drink or consume intoxicating liquors or nonintoxicating malt liquors in any motor vehicle when such vehicle is upon a public highway.

Subd. 2. No person shall have in his possession on his person while in a private motor vehicle upon a public highway, any bottle or receptacle containing intoxicating liquor or nonintoxicating malt liquor which has been opened, or the seal broken, or the contents of which have been partially removed.

Subd. 3. It shall be unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway any bottle or receptacle containing intoxicating liquors or nonintoxicating malt liquors which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle shall be kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

Subd. 4. Whoever violates the provisions of subdivisions 1 to 3 is guilty of a misdemeanor.

History: *1959 c 255 s 1-4*

169.123 CHEMICAL TESTS FOR INTOXICATION.

Subdivision 1. **Peace officer defined.** For purposes of this section and section 169.121, the term peace officer means a state highway patrol officer, university of Minnesota peace officer, a constable as defined in section 367.40, subdivision 3, or police officer of any municipality, including towns having powers under section 368.01, or county.

Subd. 2. **Implied consent; conditions; election as to type of test.** (a) Any person who drives, operates, or is in physical control of a motor vehicle within this state consents, subject to the provisions of this section and section 169.121, to a chemical test of his blood, breath, or urine for the purpose of determining the presence of alcohol or a controlled substance. The test shall be administered at the direction of a peace officer. The test may be required of a person when an officer has reasonable and probable grounds to believe the person was driving, operating, or in physical control of a motor vehicle in violation of section 169.121 and one of the following conditions exist: (1) the person has been lawfully placed under arrest for violation of section 169.121, or an ordinance in conformity therewith; or (2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death; or (3) the person has refused to take the screening test provided for by section 169.121, subdivision 6; or (4) the screening test was administered and recorded an alcohol concentration of 0.10 or more. Any person may decline to take a direct blood test and elect to take either a breath or urine test, whichever is available and offered. No action may be taken against the person for declining to take a direct blood test unless either a breath or urine test was available and offered.

(b) At the time a chemical test specimen is requested, the person shall be informed:

(1) that if testing is refused, the person's right to drive will be revoked for a period of six months; and

(2) that if a test is taken and the results indicate that the person is under the influence of alcohol or a controlled substance, the person will be subject to criminal penalties and the person's right to drive may be revoked for a period of 90 days; and

(3) that the person has a right to consult with an attorney but that this right is limited to the extent that it cannot unreasonably delay administration of the test or the person will be deemed to have refused the test; and

(4) that after submitting to testing, the person has the right to have additional tests made by a person of his own choosing.

Subd. 2a. **Requirement of urine test.** Notwithstanding subdivision 2, if there are reasonable and probable grounds to believe there is impairment by a controlled substance which is not subject to testing by a blood or breath test, a urine test may be required even after a blood or breath test has been administered.

Subd. 3. **Manner of making test; additional tests.** Only a physician, medical technician, physician's trained mobile intensive care paramedic, registered nurse, medical technologist or laboratory assistant acting at the request of a peace officer may withdraw blood for the purpose of determining the presence of alcohol or controlled substance. This limitation does not apply to the taking of a breath or urine specimen. The person tested has the right to have a person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer; provided, that the additional test specimen on behalf of the person is obtained at the place where the person is in custody, after the test administered at the direction of a peace officer, and at no expense to the state. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission in evidence of the test taken at the direction of a peace officer unless the additional test was prevented or denied by the peace officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the direction of the peace officer shall be made available to him. The physician, medical technician, physician's trained mobile intensive care paramedic, medical technologist, laboratory assistant or registered nurse drawing blood at the request of a peace officer for the purpose of determining alcohol concentration shall in no manner be liable in any civil or criminal action except for negligence in drawing the blood. The person administering a test at the request and direction of a peace officer shall be fully trained in the administration of the tests pursuant to standards promulgated by rule by the commissioner of public safety.

Subd. 4. **Refusal, consent to permit test; revocation of license.** If a person refuses to permit chemical testing, none shall be given, but the peace officer shall report the refusal to the commissioner of public safety and the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the acts occurred. If a person submits to chemical testing and the test results indicate an alcohol concentration of 0.10 or more, the results of the test shall be reported to the commissioner of public safety and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the acts occurred.

Upon certification by the peace officer that there existed reasonable and probable grounds to believe the person had been driving, operating, or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance and that the person refused to submit to chemical testing, the commissioner of public safety shall revoke the person's license or permit to drive, or his nonresident operating privilege, for a period of six months. Upon certification by the peace officer that there existed reasonable and probable grounds to believe the person had been driving, operating or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance and that the person submitted to chemical testing and the test results indicate an alcohol concentration of 0.10 or more, the commissioner of public safety shall revoke the person's license or permit to drive, or his nonresident operating privilege, for a period of 90 days.

If the person is a resident without a license or permit to operate a motor vehicle in this state, the commissioner of public safety shall deny to the person the issuance of a license or permit for the same period after the date of the alleged violation as provided herein for revocation, subject to review as hereinafter provided.

Subd. 5. **Notice of revocation or determination to deny; request for hearing.** No revocation under subdivision 4 is effective until the commissioner of public safety or a peace officer acting on his behalf notifies the person of the intention to revoke and of revocation and allows the person a 30 day period to request of the commissioner of public safety, in writing, a hearing as herein provided. If no request is filed within the 30 day period the order of revocation becomes effective. If a request for hearing is filed, a revocation is not effective until a final judicial determination resulting in a decision adverse to the person.

Subd. 5a. **Peace officer agent for notice of revocation.** On behalf of the commissioner of public safety a peace officer offering a chemical test or directing the administration of a chemical test may serve immediate notice of intention to revoke and of revocation on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate an alcohol concentration of 0.10 or more. The officer shall take the license or permit of the driver, if any, and issue a temporary license effective only for 30 days. The peace officer shall send the person's driver's license to the commissioner of public safety along with the certificate required by subdivision 4.

If the person requests a hearing within the 30 day period, the commissioner shall issue additional temporary licenses until the final determination of whether there shall be a revocation under this section.

Subd. 6. **Hearing.** A hearing under this section shall be before a municipal or county judge, in the county where the alleged offense occurred, unless there is agreement that the hearing may be held in some other county. The hearing shall be to the court and may be conducted at the same time and in the same manner as hearings upon pre-trial motions in the criminal prosecution under section 169.121, if any. The hearing shall be recorded. The commissioner of public safety may appear through his own attorney or, by agreement with the jurisdiction involved, through the prosecuting authority for that jurisdiction.

The scope of the hearing shall cover the issues of: (1) whether the peace officer had reasonable and probable grounds to believe the person was driving, operating, or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance, and whether the person was lawfully placed under arrest for violation of section 169.121, or the person was involved in a motor vehicle accident or collision resulting in property damage, personal injury or death, or the person refused to take a screening test provided for by section 169.121, subdivision 6, or the screening test was administered and recorded an alcohol concentration of 0.10 or more; and (2) whether at the time of the request for the test the peace officer informed the person of his rights and the consequences of taking or refusing the test as required by subdivision 2; and (3) either (a) whether the person refused to permit the test, or (b) whether a test was taken and the test results indicated an alcohol concentration of 0.10 or more, and whether the testing method used was valid and reliable, and whether the test results were accurately evaluated.

It shall be an affirmative defense for the person to prove that his refusal to permit the test was based upon reasonable grounds.

The court shall order either that the revocation be rescinded or sustained and forward the order to the commissioner of public safety. If the revocation is sustained, the court shall also forward the person's driver's license to the commissioner of public safety for his further action if the license is not already in the commissioner's possession.

Subd. 7. **Review by district court.** If the revocation or denial is sustained, the person whose license or permit to drive, or nonresident operating privilege has been revoked or denied, may within 20 days after notice of the determination by the commissioner of public safety file a petition for a hearing of the

matter in the district court in the county where the hearing pursuant to subdivision 6 was held unless there is agreement that the hearing may be held in some other county. The petition shall be filed with the clerk of the court together with proof of service of a copy thereof on the commissioner of public safety. It is the duty of the court to set the matter for hearing on a day certain with reasonable notice thereof to the parties. The hearing shall be on the record and shall be conducted in the same manner provided in sections 487.39 and 484.63 for appeal of misdemeanor convictions.

Subd. 8. **Notice of action to other states.** When it has been finally determined that a nonresident's privilege to operate a motor vehicle in this state has been revoked or denied, the commissioner of public safety shall give information in writing of the action taken to the official in charge of traffic control or public safety of the state of the person's residence and of any state in which he has a license.

Subd. 9. **Limited license.** In any case in which a license has been revoked under this section, the commissioner may issue a limited license to the driver. The commissioner in issuing a limited license may impose the conditions and limitations which in his judgment are necessary to the interests of the public safety and welfare, including re-examination of the driver's qualifications, attendance at a driver improvement clinic, or attendance at counseling sessions. The license may be limited to the operation of particular vehicles and to particular classes and time of operation. The limited license issued by the commissioner shall clearly indicate the limitations imposed and the driver operating under a limited license shall have the license in his possession at all times when operating as a driver. In determining whether to issue a limited license, the commissioner shall consider the number and the seriousness of prior convictions and the entire driving record of the driver.

Subd. 10. **Termination of revocation period.** If the commissioner receives notice of the driver's attendance at a driver improvement clinic, attendance at counseling sessions, or participation in treatment for an alcohol problem the commissioner may, 30 days prior to the time the revocation period would otherwise expire, terminate the revocation period. The commissioner shall not terminate the revocation period under this subdivision for a driver who has had a license revoked under section 169.121 or this section for another incident during the preceding three year period.

History: *1961 c 454 s 1-8; 1967 c 284 s 1-6; 1969 c 620 s 1; 1969 c 742 s 1; 1969 c 1129 art 1 s 18; 1971 c 893 s 3; Ex1971 c 36 s 1; 1973 c 35 s 36; 1973 c 123 art 5 s 7; 1973 c 555 s 1; 1974 c 406 s 35-38; 1977 c 82 s 2; 1978 c 727 s 3; 1980 c 395 s 1; 1980 c 483 s 1*

169.124 ALCOHOL SAFETY PROGRAM.

Subdivision 1. The county board of every county having a population of more than 10,000 shall and the county board of every county having a population of less than 10,000 may establish an alcohol safety program designed to provide alcohol problem assessment and evaluation of persons convicted of one of the offenses enumerated in section 169.126, subdivision 1.

Subd. 2. The alcohol problem assessment shall be conducted under the direction of the court and by such persons or agencies as the court deems qualified to provide the alcohol problem assessment and assessment report as described in section 169.126. The alcohol problem assessment may be conducted by court services probation officers having the required knowledge and skills in the assessment of alcohol problems, by alcoholism counselors, by persons conducting court sponsored driver improvement clinics if in the judgment of the court such persons have the required knowledge and skills in the assessment of

alcohol problems, by appropriate staff members of public or private alcohol treatment programs and agencies or mental health clinics, by court approved volunteer workers such as members of Alcoholics Anonymous, or by such other qualified persons as the court may direct. The commissioner of public safety shall provide the courts with information and assistance in establishing alcohol problem assessment programs suited to the needs of the area served by each court. The commissioner shall consult with the alcohol and other drug abuse section in the department of public welfare and with local community mental health boards in providing such information and assistance to the courts. The commissioner of public safety shall promulgate rules and standards, consistent with this subdivision, for reimbursement under the provisions of subdivision 3. The promulgation of such rules and standards shall not be subject to chapter 15.

Subd. 3. The cost of alcohol problem assessment outlined in this section shall be borne by the county. Upon application by the county to the commissioner of public safety, the commissioner shall reimburse the county up to 50 percent of the cost of each alcohol problem assessment not to exceed $25 in each case. Payments shall be made annually and prorated if insufficient funds are appropriated.

History: *1976 c 298 s 1; 1978 c 727 s 4*

169.125 COUNTY COOPERATION.

County boards may enter into an agreement to establish a regional alcohol problem assessment alcohol safety program. County boards may contract with other counties and agencies for alcohol problem assessment services.

History: *1976 c 298 s 3; 1978 c 727 s 5*

169.126 ALCOHOL PROBLEM ASSESSMENT.

Subdivision 1. An alcohol problem assessment shall be conducted in counties of more than 10,000 population and an assessment report submitted to the court by the county agency administering the alcohol safety counseling program when:

(a) The defendant is convicted of an offense described in section 169.121; or

(b) The defendant is arrested for committing an offense described in section 169.121, is not convicted therefor, but is convicted of another offense arising out of the circumstances surrounding such arrest.

Subd. 2. The assessment report shall contain an evaluation of the convicted defendant concerning his prior traffic record, characteristics and history of alcohol problems, and amenability to rehabilitation through the alcohol safety program. The assessment report shall include a recommendation as to a treatment or rehabilitation program for the defendant. The assessment report shall be classified as private data on individuals as defined in section 15.162, subdivision 5a.

Subd. 3. The assessment report required by this section shall be prepared by a person knowledgeable in diagnosis of chemical dependency.

Subd. 4. The court shall give due consideration to the agency's assessment report.

Subd. 5. Whenever a person is convicted of a second or subsequent offense described in subdivision 1 and the court is either provided with an appropriate treatment or rehabilitation recommendation from sources other than the alcohol problem assessment provided for in this section, or has sufficient knowledge both of the person's need for treatment and an appropriate treatment or rehabilitation plan, and the court finds that requiring an alcohol problem assessment would not substantially aid the court in sentencing, such an alcohol problem assessment need not be conducted.

Subd. 6. This section shall not apply to persons who are not residents of the state of Minnesota at the time of the offense and at the time of the alcohol problem assessment.

History: *1976 c 298 s 4; 1978 c 727 s 6*

169.1261 REINSTATEMENT OF DRIVING PRIVILEGES; NOTICE.

Upon expiration of any period of revocation under section 169.121 or 169.123, the commissioner of public safety shall notify the person of the terms upon which his driving privileges can be reinstated, which terms are: (1) successful completion of a driving test and proof of compliance with any terms of alcohol treatment or counseling previously prescribed, if any; and (2) any other requirements imposed by the commissioner and applicable to that particular case. The commissioner shall also notify the person that if driving is resumed without reinstatement of driving privileges, the person will be subject to criminal penalties.

History: *1978 c 727 s 7*

169.127 [Repealed, 1978 c 727 s 11]

169.128 RULES OF THE COMMISSIONER OF PUBLIC SAFETY.

The commissioner of public safety may promulgate rules to carry out the provisions of sections 169.121 and 169.123. The rules may include forms for notice of intention to revoke, which shall describe clearly the right to a hearing, the procedure for requesting a hearing, and the consequences of failure to request a hearing; forms for revocation and notice of reinstatement of driving privileges as provided in section 169.1261; and forms for temporary licenses.

Rules promulgated pursuant to this section are exempt from the procedure required by sections 15.0411 to 15.052.

History: *1978 c 727 s 8*

169.129 AGGRAVATED VIOLATIONS; PENALTY.

Any person who drives, operates, or is in physical control of a motor vehicle, the operation of which requires a driver's license, within this state in violation of section 169.121 or an ordinance in conformity therewith before his driver's license or driver's privilege has been reinstated following its cancellation, suspension or revocation (1) because he drove, operated, or was in physical control of a motor vehicle while under the influence of alcohol or a controlled substance or while he had an alcohol concentration of 0.10 or more or (2) because he refused to take a test which determines the presence of alcohol or a controlled substance when requested to do so by a proper authority, is guilty of a gross misdemeanor. Jurisdiction over prosecutions under this section is in the district court.

History: *1978 c 727 s 9*

169.13 RECKLESS OR CARELESS DRIVING.

Subdivision 1. Any person who drives any vehicle in such a manner as to indicate either a wilful or a wanton disregard for the safety of persons or property is guilty of reckless driving and such reckless driving is a misdemeanor.

Subd. 2. Any person who shall operate or halt any vehicle upon any street or highway carelessly or heedlessly in disregard of the rights or the safety of others, is guilty of a misdemeanor.

Subd. 3. **Application.** The provisions of this section apply, but are not limited in application, to any person who drives any vehicle in the manner prohibited by this section upon the ice of any lake, stream, or river, including but not limited to the ice of any boundary water.

1981 Legislative Session

Note: The only change in the text of the Minnesota statutes relating to drinking and driving was to prohibit the court from staying the revocation of the driver's license. The text of the change is found in Laws 1981, Chapter 9 as follows:

DRIVER'S LICENSE—REVOCATION—STAY BY COURT

CHAPTER 9

S.F.No. 13

An Act relating to crimes; eliminating the power of a sentencing court to stay the revocation of the driver's license of a person convicted of driving, operating or being in physical control of a motor vehicle while under the influence of alcohol or controlled substances or a combination thereof; amending Minnesota Statutes 1980, Sections 169.121, Subdivision 5; and 609.135, Subdivision 1.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1980, Section 169.121, Subdivision 5, is amended to read:

Subd. 5. The court may stay imposition or execution of any sentence authorized by subdivision 3 or 4, except the revocation of the driver's license, on the condition that the convicted person submit to treatment by a public or private institution or a facility providing rehabilitation for chemical dependency licensed by the department of public welfare. A stay of imposition or execution shall be in the manner provided in section 609.135. The court shall report to the commissioner of public safety any stay of imposition or execution of sentence granted under the provisions of this section.

Sec. 2. Minnesota Statutes 1980, Section 609.135, Subdivision 1, is amended to read:

Subdivision 1. Except when a sentence of life imprisonment is required by law, or when a person is convicted of one of the crimes specified under section 609.11, subdivision 1, and had in his possession a firearm or used another dangerous weapon, any court, including a justice of the peace to the extent otherwise authorized by law, may stay imposition or execution of sentence and place the defendant on probation with or without supervision and on such terms as the court may prescribe, including restitution when practicable. The court may order the supervision to be under the probation officer of the court, or, if there is none and the conviction is for a felony, by the commissioner of corrections, or in any case by some other suitable and consenting person.

A court may not stay the revocation of the driver's license of a person convicted of violating the provisions of section 169.121.

Sec. 3. **Effective date.**

This act is effective the day following its final enactment and applies to offenses committed after that date.

Approved March 25, 1981.

Underscoring and ~~strikeouts~~ are as shown in enrolled act.

APPENDIX II

TABLES OF DATA

TABLE I

Revocation of Driver's Licenses
for Alcohol Related Offenses in Minnesota

	DWI (§ 169.121)	Test Refusal (§ 169.123)	Over 0.10 BAC (§ 169.123)	Total
1974	*	*	-	15,396
1975	*	*	*	17,628
1976	*	*	*	14,251***
1977	*	*	*	17,741
1978	15,512	3,344	5,501	24,357
1979	14,797	3,427	6,742	24,966
1980	17,406	3,863	9,212	30,481
1981	7,861**	1,827**	3,598**	13,286**

* Data not broken down and not available

** Through May of 1981 (five months).

*** The lower number in 1976 is attributable to the decision of the Minnesota Supreme Court in Prideaux v. Department of Public Safety, 247 N.W.2d 385 (1976), which held that a driver had a right to counsel when submitting to a chemical test for intoxication. It caused the dismissal of a number of pending cases. Also, there was a loss of ASAP money to pay officers for overtime work.

Source: Motor Vehicle Department and Office of Traffic Safety of Minnesota Department of Public Safety.

TABLE II

Number of Chemical Tests for Intoxication in Minnesota with BAC of 0.10 or More

		0.10	0.15	0.20	0.25	0.30	0.35 & over	Total	Total of All Tests by Year
1973	Blood & Urine	780	1,830	1,660	630	161	81	5,142	
	Breath	2,725	4,048	2,548	826	181	39	10,367	15,509
1974	Blood & Urine	1,019	2,021	1,847	718	182	40	5,827	
	Breath	3,642	4,715	2,746	864	181	35	12,183	18,010
1975	Blood & Urine	1,146	2,175	1,861	678	169	34	6,063	
	Breath	3,087	4,299	2,595	755	172	19	10,927	16,990
1976	Blood & Urine	1,190	2,391	1,947	723	171	42	6,464	
	Breath	3,416	4,442	2,675	731	150	35	11,449	17,913
1977	Blood & Urine	1,119	2,111	1,820	714	161	54	5,979	
	Breath	2,646	3,757	2,179	610	121	28	9,341	15,320
1978	Blood & Urine	1,171	2,405	1,995	719	184	43	6,517	
	Breath	2,913	4,218	2,410	629	159	33	10,362	16,879
1979	Blood & Urine	1,025	1,999	1,701	598	120	22	5,465	
	Breath	2,788	3,984	2,314	558	125	20	9,789	15,254
1980	Blood & Urine	*	*	*	*	*	*	8,735***	
	Breath	3,598	5,011	2,883	750	149	32	12,423	21,158
1981	Blood & Urine	**							
	Breath	**							

* Not broken down and not available.

** Data not yet available for 1981

*** Includes all blood and urine tests for 1980, as well as tests below 0.10 BAC and negative tests. Based on previous years, tests below 0.10 BAC and negative tests constitute about 10%.

Source: Laboratory, Bureau of Criminal Apprehension, Minnesota Department of Public Safety.

TABLE III

Total DWI Arrests by Minnesota State Patrol

1974	4,832
1975	5,137
1976	4,689
1977	3,593
1978	4,082
1979	3,879
1980	5,255
1981	3,179*

* Through June 1981. In comparison the number of DWI arrests in 1980 for same period was 2,307.

Source: Minnesota State Patrol,
Department of Public Safety.

TABLE IV

TOTAL DWI ARRESTS REPORTED TO MINNESOTA CRIMINAL JUSTICE INFORMATION SYSTEM BY ALL OFFICERS

1974	19,422
1975	18,715
1976	19,419
1977	16,976
1978	18,078
1979	18,092
1980	22,788

Source: Minnesota Crime Information, Annual Reports, Minnesota Department of Public Safety, Bureau of Criminal Apprehension, Criminal Justice Information Systems Section.

TABLE V

NUMBER OF SWORN POLICE OFFICERS IN MINNESOTA

1974	5,553
1975	5,688
1976	5,804
1977	5,922
1978	5,997
1979	6,037
1980	6,107

Source: Minnesota Crime Information, Annual Reports
Minnesota Department of Public Safety,
Bureau of Criminal Apprehension,
Criminal Justice Information Systems Section.

TABLE VI

TOTAL MOTOR VEHICLE REGISTRATIONS
IN MINNESOTA

1974	2,532,219
1975	2,662,517
1976	2,919,700
1977	2,962,335
1978	3,103,406
1979	3,576,041
1980	3,941,296

Source: Highway Statistics, U.S. Department of Transportation, Washington, D.C. for years 1975, 1976, 1977, 1978 and 1979; Minnesota Motor Vehicle Crash Facts, Office of Traffic Safety, Minnesota Department of Public Safety, for 1980.

TABLE VII

TOTAL LICENSED DRIVERS IN MINNESOTA

1974	2,402,550
1975	2,416,869
1976	2,571,540
1977	2,598,123
1978	2,234,646
1979	2,286,218
1980	2,766,032

Source: Highway Statistics, U.S. Department of Transportation, Washington, D.C., for years 1974, 1975, 1976, 1977, 1978 and 1979; Minnesota Motor Vehicle Crash Facts, Office of Traffic Safety, Minnesota Department of Public Safety, for 1980.

TABLE VIII

STATE OF MINNESOTA

BEVERAGE ALCOHOL CONSUMPTION 1967-1980
(In Gallons)

Calendar Year	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
Population*	2,490,260	2,541,888	2,601,071	2,655,544	2,716,086	2,793,046	2,837,071	2,891,104	2,935,351	2,994,058	3,034,718	3,088,303	3,116,100	3,129,261
3.2 Beer	22,682,359	21,928,966	21,381,847	21,539,420	20,630,438	19,575,353	20,335,256	19,655,470	18,494,197	16,973,058	15,964,194	15,026,289	14,534,412	13,997,325
(per capita)	9.12	8.63	8.22	8.11	7.60	7.01	7.17	6.80	6.30	5.67	5.26	4.87	4.66	4.47
Over 3.2 Beer	37,517,099	40,188,369	43,346,494	47,686,339	51,148,109	51,891,055	58,165,858	64,475,133	67,994,749	71,532,562	73,894,421	76,867,879	81,734,445	85,570,495
(per capita)	15.07	15.81	16.66	17.96	18.83	18.58	19.80	22.30	23.16	23.89	24.34	24.89	26.23	27.35
Liquor	6,468,781	6,958,610	7,550,802	7,483,893	8,053,868	7,735,466	8,149,172	8,636,851	8,425,563	8,528,288	8,719,793	8,659,862	9,024,449	9,240,406
(per capita)	2.60	2.74	2.90	2.82	2.97	2.77	2.87	2.99	2.87	2.85	2.87	2.80	2.90	2.95
Sparkling Wines	75,859	89,740	119,039	158,970	224,504	212,654	204,608	220,931	232,423	289,571	335,127	367,984	430,736	523,469
(per capita)	.03	.04	.05	.06	.08	.08	.07	.08	.08	.10	.11	.12	.14	.17
Wine 14-21%	1,273,118	1,270,673	1,268,749	1,174,318	1,202,639	1,135,721	1,057,291	1,032,029	962,413	890,753	835,091	759,578	701,753	657,139
(per capita)	.51	.50	.49	.44	.44	.44	.37	.36	.33	.30	.28	.25	.23	.21
Wine Under 14%	749,668	850,046	1,004,338	1,358,772	2,136,958	2,563,043	2,657,476	2,729,253	2,986,392	3,266,807	3,776,194	4,243,496	4,693,746	4,987,758
(per capita)	.30	.33	.39	.51	.79	.92	.94	.94	1.02	1.09	1.24	1.37	1.51	1.59
TOTAL	68,766,884	71,286,404	74,671,269	79,401,712	83,396,516	83,113,292	90,569,661	96,759,667	99,095,737	101,481,039	103,524,820	105,925,088	111,119,591	114,976,622
(per capita)	27.61	28.04	28.71	29.90	30.70	29.76	31.92	33.47	33.76	33.89	34.11	34.30	35.66	36.74

*Age 15 and Older
Source: Alcohol, Tobacco and Special Taxes Division, Minnesota Department of Revenue
Note: Population figures are derived from vital statistics published by the Minnesota Department of Health
Change, per capita consumption, 1967-1980, increase 33%

TABLE IX

IMPLIED CONSENT HEARING CASELOAD
1974 - 1981

IMPLIED CONSENT CASELOAD

MONTH	NEW CASES	CASES CLOSED	CASES PENDING
1974			
JANUARY	91		634
FEBRUARY	121		656
MARCH	93		645
APRIL	96		610
MAY	110		603
JUNE	79		610
JULY	109		633
AUGUST	103		677
SEPTEMBER	79		689
OCTOBER	100		682
NOVEMBER	104		688
DECEMBER	84		637
1975			
JANUARY	146		593
FEBRUARY	152		630
MARCH	55		692
APRIL	108		609
MAY	94		593
JUNE	91		535
JULY	109		502
AUGUST	65		547
SEPTEMBER	62		550
OCTOBER	63		504
NOVEMBER	94		463
DECEMBER	86		466

IMPLIED CONSENT CASELOAD

MONTH	NEW CASES	CASES CLOSED	CASES PENDING
1976			
JANUARY	97		462
FEBRUARY	78		459
MARCH	114		446
APRIL	104		471
MAY	118		471
JUNE	87		488
JULY	89		456
AUGUST	227		439
SEPTEMBER	321		568
OCTOBER	297		738
NOVEMBER	242		930
DECEMBER	249		1011
1977			
JANUARY	451		1050
FEBRUARY	420		1322
MARCH	395		1478
APRIL	317		1589
MAY	320		1632
JUNE	411		1628
JULY	270		1780
AUGUST	151		1782
SEPTEMBER	258		1849
OCTOBER	357		1834
NOVEMBER	348		1812
DECEMBER	321		1819

IMPLIED CONSENT CASELOAD

MONTH	NEW CASES	CASES CLOSED	CASES PENDING
1978			
JANUARY	316		1817
FEBRUARY	377		1817
MARCH	370		1815
APRIL	329		1869
MAY	413		1728
JUNE	419		1722
JULY	363		1739
AUGUST	301		1805
SEPTEMBER	623		1700
OCTOBER	500		2010
NOVEMBER	539		2366
DECEMBER	426		2282
1979			
JANUARY	603		2247
FEBRUARY	384		2327
MARCH	613		2247
APRIL	509		2341
MAY	567		2378
JUNE	517		2363
JULY	591		2451
AUGUST	457		2511
SEPTEMBER	474		2478
OCTOBER	533		2553
NOVEMBER	440		2362
DECEMBER	535	446	2451

IMPLIED CONSENT CASELOAD

MONTH	NEW CASES	CASES CLOSED	CASES PENDING
1980			
JANUARY	680	456	2675
FEBRUARY	381	667	2389
MARCH	492	508	2373
APRIL	790	461	2702
MAY	467	534	2635
JUNE	934	492	3077
JULY	292	581	2788
AUGUST	846	498	3136
SEPTEMBER	652	632	3156
OCTOBER	577	819	2914
NOVEMBER	676	562	3028
DECEMBER	1158	530	3656
1981			
JANUARY	809	760	3705
FEBRUARY	506	679	3532
MARCH	977	809	3700
APRIL	1034	840	3894
MAY	335	738	3491
JUNE	1049	793	3747
JULY			
AUGUST			
SEPTEMBER			
OCTOBER			
NOVEMBER			
DECEMBER			

Source: Office of Attorney General, State of Minnesota.

APPENDIX III

FORMS USED IN PROCESSING OF DRIVER

PS31123-02

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
SAINT PAUL 55155

085451

→ *Date Issued _____
Enf. Agency _____
Ticket or Case# _____
DOB _____
Court _____

Name _____ (First / Middle / Last)

Address _____ D/L# _____

City _____ State _____ Zip _____

NOTICE OF REVOCATION

You are hereby notified that on the date shown above (*date issued) you were asked to submit to a chemical test to determine the alcohol concentration of your blood pursuant to M.S. 169.123, the Implied Consent Law.

☐ Because you refused to submit to testing, the Commissioner of Public Safety will revoke your driver license and/or driving privileges for six months, unless you request a hearing as indicated on the other side of this notice.

☐ Because you submitted to a breath test which disclosed an alcohol concentration of 0.10 or more, the Commissioner of Public Safety will revoke your driver license and/or driving privileges for 90 days unless you request a hearing as indicated on the other side of this notice. Results of breath test indicated_____blood alcohol concentration.

This revocation will take effect 30 days after the (*date issued) shown above.

ORDER OF REVOCATION

☑ If the Commissioner of Public Safety does not receive a request for hearing within 30 days or a certificate of conviction reporting plea of guilty to the related charges of violating M.S. 169.121 (DWI), your driver license and/or privilege to drive in this state is hereby REVOKED. THIS IS YOUR OFFICIAL NOTICE OF THE REVOCATION. If a hearing request is received within 30 days, the revocation will be postponed until a final judicial determination resulting in a decision adverse to you.

SURRENDER OF DRIVER LICENSE

By law, the officer is required to take all license certificates in your possession, and if you have a valid license, issue a temporary license effective only for 30 days.

TEMPORARY LICENSE

This entire notice is valid as a temporary license from (*date issued) shown above for 30 days. NOT VALID IF DETACHED. If hearing requested, additional temporary license can only be obtained from Driver Evaluation Section, Driver & Vehicle Services Division. SEE REVERSE SIDE FOR ADDRESS. **Temporary license valid only if record so indicates.**

Licensee Height: _____ Weight: _____ Class: _____

Restriction: _____

☐ No temporary license issued because: _____

AFFIDAVIT OF LOST DRIVER LICENSE

I have lost or destroyed my license. I promise that if it is found I will immediately forward it to the Driver License Office, 108 Transportation Building, St. Paul, Mn. 55155. I fully realize that in making this affidavit, the license certificate is rendered null and void and may not be used for operating a motor vehicle.

Date _____ Signature of Licensee _____

Signed: _____ Signature of Peace Officer

_____ Telephone Number

WHITE COPY TO DRIVER

REQUEST FOR HEARING – PROCEDURES AND INFORMATION

You have the right to request a hearing. Hearing requests must be received within 30 days. Request must be in writing, and directed to the Commissioner of Public Safety, Driver & Vehicle Services Division, 108 Transportation Building, St. Paul, Minnesota 55155. The Hearing would cover the issues of:

a. Whether the peace officer had reasonable and probable grounds to believe that you were driving, operating or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance.

b. Whether you were lawfully placed under arrest for violation of Section 169.121, or were involved in a motor vehicle accident or collision resulting in property damage, personal injury or death, or refused to take screening test provided in Section 169.121, or took screening test and failed.

c. Whether you were advised of your rights and responsibilities under the law.

d. Whether you refused the test, or whether you submitted to testing which was properly conducted and showed an alcohol concentration of 0.10 or more.

GENERAL INFORMATION

If your license is revoked, you may not drive again in Minnesota under any condition including using a driver license from another jurisdiction until you have complied with Minnesota's requirements and received a notice of reinstatement. ANY ADDITIONAL TEMPORARY LICENSES CAN ONLY BE ISSUED BY DRIVER EVALUATION SECTION, DEPARTMENT OF PUBLIC SAFETY.

REINSTATEMFNT INFORMATION

You may not drive in Minnesota until:

a. The expiration of the period of time designated on the front side of this notice or expiration of additional period of time as indicated in correspondence from Driver & Vehicle Services Division, and

b. You have successfully completed a re-examination, and paid $2.50 fee if required and

c. Prior to reinstatement of your privilege to drive in the State of Minnesota, you must submit proof of an alcohol problem assessment. This is an assessment interview relative to your use of alcohol. If this assessment was done by the court (termed a presentence investigation) you can submit a copy of that assessment to this office. If no assessment was done by the court, you must schedule an assessment interview with our office.

Assessment Scheduling (612) 296-2040
Assessment Information (612) 296-8599

d. You have made application for and have received new license, and

e. Received a notice of reinstatement.

f. If you are not a resident of Minnesota, you will receive a notice or reinstatement only.

LIMITED LICENSE INFORMATION

If this is the first time your license has been withdrawn, you may be eligible for a limited license.

▶ Any additional information may be obtained by writing Driver Evaluation Section, Driver & Vehicle Services Division, Room 108 Transportation Building, St. Paul, Minnesota 55155 or by telephone at (612) 296-2025.

State of Minnesota
Department of Public Safety
Driver and Vehicle Services Division
Implied Consent Section
108 Transportation Building
St. Paul, MN 55155

IMPLIED CONSENT ADVISORY

▶INSTRUCTIONS: To be used to request the test and to record the individual's responses. Complete both sides of this form.

Printed Name of Officer Requesting Test		Badge Number	ICR Number
Date	Time Reading Started	Time Reading Completed	Location Where Advisory Read

I believe that you have been driving, operating or controlling a motor vehicle while under the influence of alcohol or a controlled substance.

Printed Name of Individual Being Advised

In addition: (X all applicable grounds)

☐ You have been placed under arrest for this offense.

☐ You have been involved in a motor vehicle accident or collision resulting in property damage, personal injury or death.

☐ You have refused to take the preliminary screening test authorized by law and requested of you.

☐ A preliminary screening test has been administered to you, and has shown your alcohol concentration to be .10 or more.

I request that you give a sample of your blood for testing to determine the presence of alcohol or controlled substance. This sample would be taken by a qualified person at:

Hospital or Other Location (PRINT)

If you do not wish to give a blood sample, I request you give a sample of your: ☐ Breath ☐ Urine

The sample would be taken at: Name of Facility (PRINT)

The sample would be taken by: Name of Person Obtaining Sample (PRINT)

If you refuse to provide the test sample, your right to drive will be revoked for six months. If you refuse to answer or make a decision, it will be considered a refusal to take the test.

If you provide the test sample, and if the results indicate that you are under the influence of alcohol or a controlled substance, you will be subject to criminal penalties, and your right to drive may be revoked for 90 days.

If you provide the test sample, you have the right to have additional tests made by a person of your choice. Any additional test must be at your own expense. It must be taken while still in custody. You will be permitted to contact any person you choose to arrange for any additional test.

You have the right to consult with an attorney. If you wish to do so, a telephone will be made available to you. If you are unable to contact an attorney, you must make the decision on your own. You must make your decision within a reasonable time.

Yes	No		Comments
		The information you have been given is based upon the Minnesota Implied Consent Law. Do you understand what I have just explained?	
		Do you wish to consult with an attorney? — Phone Call to Attorney: Time Started / Time Completed	
		Will you give a sample of your blood?	
		Will you give a sample of your (breath) (urine)?	
		Are you refusing with the understanding that you may lose your driving privileges for six months?	

What is your reason for refusing? _____

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IMPLIED CONSENT LAW
PEACE OFFICER'S CERTIFICATE

▶(PLEASE TYPE OR PRINT LEGIBLY, CROSS OUT REFERENCES TO INAPPLICABLE ITEMS.)

Name of Peace Officer	Name of Policy Agency

I certify to the Commissioner of Public Safety, State of Minnesota, that I am a member of the above police agency and:

1. I am a "peace officer" within the meaning of Minnesota Statutes, Section 169.123, Subdivision 1.

2. On (Date)_____, I had reasonable and probable grounds to believe that the person named below had been driving, operating or in physical control of a motor vehicle within the State of Minnesota at _____ in the City or Township of _____ in _____ County, while under the influence of alcohol or a controlled substance, contrary to law.

Full Name		Date of Birth
Address		City, State, Zip
Driver License Number	Date of Issue	

3. The person was requested to submit to a chemical test to determine (alcohol concentration) (or) (presence of a controlled substance), pursuant to the provisions of Minnesota Statutes, Section 169.123, and was advised as indicated on the other side of this form.

4. The person: (X APPLICABLE BOX)
   - ☐ Refused to provide a test sample to determine the presence of (alcohol) (or) (controlled substance).
   - ☐ Provided a sample of (blood) (breath) (urine) for analysis. The sample was obtained at my request by:

Name	Job Title
Police Station, Hospital, or Other Location	
Date Obtained	Time Obtained A.M. P.M.

The sample was submitted for analysis to:

Name of Agency, Analyst or Breathalyzer Operator
Address of Agency or Analyst
City, State, Zip
Sample Identification Number (Blood or Urine Tests Only)

The sample was analyzed and interpreted, and the test result indicated (an alcohol concentration of .____) (the presence of a controlled substance,_____).

(ATTACH COPY OF BREATHALYZER CHECK LIST AND TEST SCORE SHEET OR LABORATORY TEST REPORT.)

SEND WITH COPY OF ALCOHOL INFLUENCE REPORT, ARREST OR ACCIDENT REPORT, OR MEMORANDUM OF CIRCUMSTANCES TO:

Department of Public Safety
Driver and Vehicle Services Division
Implied Consent Section
108 Transportation Building
St. Paul, MN 55155

(Attach Form

Signature of Peace Officer
Printed Name of Peace Officer
Badge Number
Business Telephone Number
Date

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X one or more
☐ Driver ☐ Accident
☐ Pedestrian ☐ Violation
☐ Passenger ☐ Other

MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
STATE PATROL DIVISION

ALCOHOLIC INFLUENCE REPORT

ICR Number
1821 Number
Date

NAME, LAST	FIRST	MIDDLE	TIME
			Drivers License No. / State

Date of Birth

Month	Day	Year

Arresting Officer: Badge No.

Location of Arrest:

Actions of the driver prior to stop (X) one or more

(A) ☐ Weave from lane to lane.
(B) ☐ Proceed in lanes provided for oncoming traffic.
(C) ☐ Proceed off the road from his lane or lanes of traffic.
(D) ☐ Make an improper turn.
(E) ☐ Proceed at excessive - reduced speed.
(F) ☐ Strike any gutter or other obstacles on a near road.
(G) ☐ Hit or narrowly miss hitting any person or property.
(H) ☐ Proceed contrary to any traffic control sign or signal.
(I) ☐ Involved in any accident.
(J) ☐ Other (explain on reverse side.)
(K) ☐ Type of road ☐ Two Way ☐ Divided ☐ Interstate

PBT - ☐ Pass ☐ Fail ☐ Refused ☐ Not Offered

Field Sobriety Tests

Pass Fail Straight line walking
Pass Fail Finger to nose
Pass Fail One legged stand and count to ten
Pass Fail Pick up coins

YOUR CONSTITUTIONAL RIGHTS (TIME _____)

1. You have the right to remain silent.
2. Anything you say can and will be used against you in court.
3. You have the right to a lawyer and to have the lawyer present while you are being questioned.
4. If you cannot financially afford to hire a lawyer, the State, after investigation as to your finances, will appoint a lawyer to represent you prior to any questioning if you wish one.

DO YOU UNDERSTAND THESE RIGHTS? ☐ YES ☐ NO

1. Having these rights in mind, do you wish to answer my questions at this time? ☐ Yes ☐ No

2. Were you driving or operating a motor vehicle?		3. What type vehicle were you operating?
4. Are you under a doctor or dentist's care?		5. If so, what is your doctor or dentist's name?
6. Are you taking any medication?	7. What Kind?	8. Date/Time last taken / 9. How much did you take?
10. Do you have diabetes?	11. What medication do you take?	12. Date/Time last taken
13. Do you have any physical disability?		14. Describe your disability?
15. Do you have any speech difficulty?		16. Describe your difficulty?
17. Have you been in an accident?		18. Did you get a bump on the head or any other injury?
19. What time is it?		20. Where are you now?
21. Have you been drinking?	22. What did you drink?	23. Where were you drinking?
24. When did you have your first drink?	25. When did you have your last drink?	26. How many drinks?
27. Have you had anything to drink since the accident or arrest?		28. What did you have?

29. Do you feel the effects of what you have had to drink?

30. Do you feel that what you have had to drink has effected your ability to drive?

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Examination: (Place an "X" in squares describing observed conditions)

Indication of Alcoholic Beverage on Breath
- ☐ None
- ☐ Moderate
- ☐ Faint
- ☐ Strong

Observed Reactions:
- ☐ Average
- ☐ Reserved
- ☐ Fighting
- ☐ Indignant
- ☐ Talkative
- ☐ Slow
- ☐ Excited
- ☐ Belligerent
- ☐ Other

Color of Face:
- ☐ Normal
- ☐ Flushed
- ☐ Pale
- ☐ Dark

Eyes:
- ☐ Normal
- ☐ Watery
- ☐ Bloodshot
- ☐ Staring
- ☐ Glassy

Pupils:
- ☐ Normal
- ☐ Dilated
- ☐ Contracted

Reaction to Light:
- ☐ None
- ☐ Poor
- ☐ Fair

Balance:
- ☐ Good
- ☐ Wobbling
- ☐ Fair
- ☐ Falling
- ☐ Swaying
- ☐ Cannot Stand

Walk:
- ☐ Sure
- ☐ Uncertain
- ☐ Fair
- ☐ Staggering
- ☐ Swaying
- ☐ Falling

Turning:
- ☐ Sure
- ☐ Uncertain
- ☐ Fair
- ☐ Staggering
- ☐ Swaying
- ☐ Falling

Speech:
- ☐ Good
- ☐ Confused
- ☐ Fair
- ☐ Incoherent
- ☐ Slurred
- ☐ Other
- ☐ Stuttering

Conclusion:
Effects of Alcohol
- ☐ None
- ☐ Extreme
- ☐ Slight
- ☐ Other
- ☐ Obvious

Ability To Understand Instructions
- ☐ Poor
- ☐ Fair
- ☐ Good

REMARKS:

SIGNATURE (Officer Completing Report) Date

APPENDIX IV

Minnesota Drunken Driving Apprehensions, Arrests, Criminal Charges, Convictions and Driver License Revocations - and the differences between them.

by Mr. Forst Lowery, Alcohol Program Coordinator, Office of Traffic Safety, Minnesota Department of Public Safety,
July 31, 1981

Minnesota has a two-track system of acting against drunken drivers. One is the conventional criminal justice procedure in which a driver is arrested, charged with a violation of M.S. 169.121 (drunken driving), and if convicted is penalized by a fine or jail. The other track involves the unique-to-Minnesota law within M.S. 169.123 (implied consent) which provides for administrative revocation of the driver license when a test shows .10 alcohol concentration or higher. Most accused drivers go down both tracks. This results in an extremely high ratio of penalties imposed on apprehended drunken drivers. Indeed, this ratio is the highest in the country.

In discussing this subject, however, some caveats should be noted. The high rate of drunken driving cases resulting in a penalty should not be called a "conviction rate" even though in many ways it is the equivalent.

Likewise, an "apprehension" is not necessarily the same thing as an "arrest". All arrests result from apprehensions, but not all apprehensions result in an arrest. In a similar way, not all arrests result in a criminal charge of drunken driving (169.121) even though the arrested person may be subject to, and receive, penalties under 169.123 for either refusing a test or failing a test.

The statistical information on the following pages describes the driver license revocations resulting from drinking and driving offenses. Notes are to clarify precisely what is conveyed and to warn against misinterpretation.

A. APPREHENSIONS (Minimum number; plus cases described below) 28,429

The figure shown here (28,429) is actually the number of "Peace Officer's Certificates" received by the Department of Public Safety (DPS). These report that a person either (a.) refused to take a test, or (b.) took a test and the result showed .10 alcohol concentration or more. This report is required by M.S. 169.123, often called the Implied Consent Law. In addition to the apprehensions included in the above figure there are some additional drinking driver apprehensions which should be included in order to provide a total, but their actual numbers are unknown. These are made up of those cases in which (a.) a test was not requested but an arrest was made on other evidence, or (b.) a test showed less than .10 but an arrest was made. Both situations are perfectly proper under Minnesota law, but the number of such cases is unknown. They are included, however, within (D.) below, "Drunken Driving Criminal Charges". Items (B.) and (C.) below break out the two variations of the "Peace Officer's Certificate" which make up the 28,429 total figure shown above, (See Figure 1.)

B. REPORTS TO DPS OF REFUSALS TO TAKE TEST 6,649

C. REPORTS TO DPS OF TEST RESULTS SHOWING .10 21,780

D. DRUNKEN DRIVING CRIMINAL CHARGES (M.S. 169.121) 22,788

This figure is the number of "arrests" reported to Minnesota Criminal Justice Information System when a 169.121 charge is placed. All of these cases would be included within the number of "Apprehensions" (item A. above) except those in which a test was not requested or in which a lower than .10 alcohol contentration was shown, as described above. "Apprehensions" includes, however, those cases in which a "Peace Officer's Certificate" was filed but a criminal charge was not, and therefore these cases are not included in the 22,788 figure for item D., Criminal Charges (169.121). (See Figure 1.)

DRIVER LICENSE REVOCATIONS (ALCOHOL)

The three principal kinds of driver license revocations associated with drunken driving are shown below, together with some notes on how they mesh and how they do not overlap except in rare circumstances. They are shown in descending order of their numbers, beginning with conventional revocations resulting from a court conviction. This is not necessarily the chronological order in which action against the driver license is taken, and as we note below, the chronological order of such actions is important.

E. REVOCATIONS FOR CONVICTION OF 169.121 (Minimum 30 days) 17,406

It should be emphasized that this figure does not represent the total number of convictions for drunken driving. It is the number of revocations resulting from a 169.121 conviction. Those persons convicted under 169.121 whose driver license has already been revoked under one of the provisions of 169.123 do not get another revocation and are not included in the 17,406 figure. Further discussion below.

F. REVOCATION FOR TEST RESULT SHOWING .10 (Ninety days) 9,212

G. REVOCATION FOR REFUSING TO TAKE TEST (Six months) 3,863

Note that a person may purge himself or herself of eligibilty for this revocation by pleading guilty to the criminal charge under 169.121 at the first opportunity. Many do. This does not apply if there is first a not-guilty plea, even if there is a subsequent conviction.

H. TOTAL REVOCATIONS FOR CONVICTION OR TEST FAIL (E + F) 26,618

I. TOTAL ALL THREE KINDS ALCOHOL-RELATED REVOCATIONS (E + F + G) 30,481

This figure included an unknown number of revocations for test refusal (G.) where the person was not convicted of 169.121 (E.) Note also that the unknown number of persons charged for 169.121 but not offered a test would increase total number of "Apprehensions" above the minimum figure (28,429) shown in (A.)

RATIOS OF REVOCATIONS TO NUMBER OF CASES

J. APPROX. PERCENT OF APPREHENDED DRIVERS RECEIVING REVOCATION — 93.6%

Number of revocations for conviction plus number of revocations for failing test (.10) divided by the minimum number of apprehensions. $(\frac{H}{A})$

K. PERCENT OF KNOWN APPREHENSIONS RESULTING IN A REVOCATION — 107.2%

Total of all three kinds of alcohol-related driver license revocations divided by minimum number of apprehensions. $(\frac{I}{A})$

The apparent anomaly of a greater-than-100% figure is the result, again, of there being a somewhat higher number of actual apprehensions than will be shown by "Peace Officer's Certificate" reports. See note under (I.) above. In addition, there may be some cases in which a license may be revoked for conviction under 169.121 while proceedings under 169.123 are still under way. In this kind of case, while Minnesota law says there shall be no mandatory revocation under 169.121 if the license has been revoked under 169.123, the opposite is not true. It is possible to revoke for test refusal if that proceeding should happen to come after revocation for conviction, or even after the conviction revocation period of 30 days, for example, has been completed. This is not likely. Neither is it likely that a person would receive an administrative revocation for failing the test if that person has already

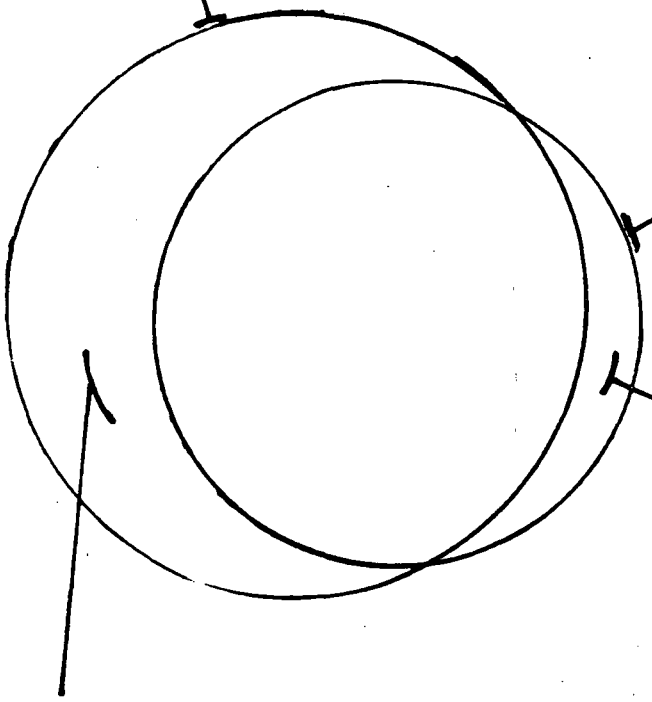
received a revocation for a conviction. These possibilities are described to show that in a two-track system like Minnesota's, with drinking drivers going down both tracks, the problems are with statistical meshing, rather than with actual clashing of the gears. (See Figure 2.)

In point of fact, Minnesota draws a pretty tight net around the drunken drivers who are apprehended and there are not very many holes in that net.

Figure 1.

APPREHENSIONS (Not necessarily with arrest)
("Peace Officer's Certificates" filed
with DPS)

28,429



Arrests resulting in
criminal charge of DWI

22,788

a. Arrests without a
test request,

or

b. Arrests when test
result was below .10

Numbers unknown

a, Refused test
but DWI charge
not made,

or

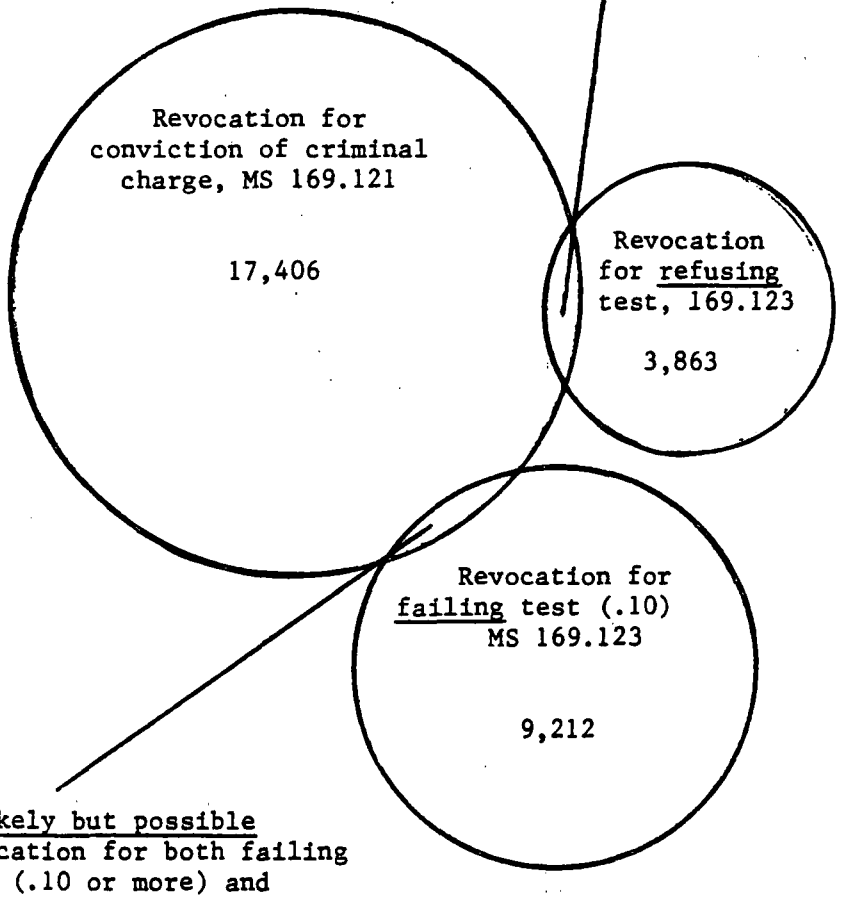
b. Failed test (.10 or more)
but DWI charge not made

(Most of both "a" and "b" above
are probably accident scene cases,
where officer did not witness and
probable cause for an arrest was
less than the best.

Some of "b" may result from individual
prosecutor policy on charging DWI.)

Numbers unknown

The three principal kinds of alcohol-related driver license revocations
1980



Unlikely but possible revocation for both refusal of test and conviction of charge.

Unknown number, if any.

Unlikely but possible revocation for both failing test (.10 or more) and conviction of criminal charge.

Unknown number, if any.

Figure 2.