

No later than one year after the effective date of sections 30 to 34, the board of pardons may assess whether it has adequate staff, resources, and procedures to perform the duties imposed on the board by Minnesota Statutes, chapter 638.

Sec. 40. TELEPHONE ASSISTANCE PLAN.

Notwithstanding Minnesota Statutes, section 13.46, subdivision 2, until August 1, 1993, welfare data collected by the telephone assistance plan may be disclosed to the department of revenue to conduct an electronic data match to the extent necessary to determine eligibility under Minnesota Statutes, section 237.70, subdivision 4a.

Sec. 41. APPROPRIATION.

\$10,000 is appropriated from the general fund to the commissioner of corrections, for the fiscal year ending June 30, 1993, to be used to computerize the records maintained by the board of pardons and to permit the board to provide statistical analysis of the board's records, as necessary.

Sec. 42. EFFECTIVE DATE.

Section 12 is effective the day following final enactment and applies to immunizations administered before, on, or after the effective date. Sections 13, 14, 16, 17, and 25 are effective October 1, 1992. Sections 27 and 28 are effective January 1, 1993, and apply to crimes committed on or after that date. Sections 30, 31, 32, 33, and 34 are effective June 1, 1992.

Presented to the governor April 17, 1992

Signed by the governor April 29, 1992, 8:17 a.m.

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CHAPTER 570—S.F.No. 897

*An act relating to driving while intoxicated; making it a crime to refuse to submit to testing under the implied consent law; expanding the scope of the administrative plate impoundment law; authorizing the forfeiture of vehicles used to commit certain repeat DWI offenses; increasing certain license revocation periods; revising the implied consent advisory; imposing waiting periods on the issuance of limited licenses; increasing certain fees; updating laws relating to operating a snowmobile, all-terrain vehicle, motorboat, or aircraft, and to hunting, while intoxicated; imposing penalties for hunting while intoxicated; changing sentencing provisions; appropriating money; amending Minnesota Statutes 1990, sections 84.91; 84.911; 86B.331; 86B.335, subdivisions 1, 2, 4, 5, and 6; 97B.065; 168.042, subdivisions 1, 2, 4, 10, and 11; 169.121, subdivisions 1a, 3, 3a, 3b, 3c, 4, and 5; 169.123, subdivision 4; 169.126, subdivision 1; 169.129; 360.0752, subdivision 6, and by adding a subdivision; and 360.0753, subdivisions 2, 7, and 9; Minnesota Statutes 1991 Supplement, sections 169.121, subdivision 5a; 169.123, subdivision 2; 169.126, subdivision 2; 169.1265, subdivisions 1 and*

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3; 171.30, subdivision 2a; 171.305, subdivision 2; and 609.135, subdivision 2; proposing coding for new law in Minnesota Statutes, chapters 97B; and 169; repealing Minnesota Statutes 1990, section 169.126, subdivision 4c.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

DRIVING WHILE INTOXICATED PROVISIONS

Section 1. Minnesota Statutes 1990, section 168.042, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Violator" means a person who was driving, operating, or in physical control of the motor vehicle when the violation occurred.

(c) "Violation" means:

(1) a violation of section 169.123 or an impaired driving conviction as defined in section 169.121, subdivision 3, that results in the revocation of a person's driver's license or driving privileges, and also includes an alcohol-related license revocation from another state;

(2) a violation of section 169.129; and

(3) a violation of section 171.24 by a person whose driver's license or driving privileges have been canceled under section 171.04, clause (8).

Sec. 2. Minnesota Statutes 1990, section 168.042, subdivision 2, is amended to read:

Subd. 2. **VIOLATION; ISSUANCE OF IMPOUNDMENT ORDER.** The commissioner shall issue a registration plate impoundment order when:

(1) a person's driver's license or driving privileges are revoked for a third violation, as defined in subdivision 1, paragraph (c), clause (1), within five years or a fourth or subsequent violation, as defined in subdivision 1, paragraph (c), clause (1), within ~~ten~~ 15 years; or

(2) a person is arrested for or charged with a violation described in subdivision 1, paragraph (c), clause (2) or (3).

The order shall require the impoundment of the registration plates of the vehicle involved in the violation and all vehicles owned by, registered, or leased in the name of the violator, including vehicles registered jointly or leased in the name of the violator and another. An impoundment order shall not be issued for

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the registration plates of a rental vehicle as defined in section 168.041, subdivision 10, or a vehicle registered in another state.

Sec. 3. Minnesota Statutes 1990, section 168.042, subdivision 4, is amended to read:

Subd. 4. **PEACE OFFICER AS AGENT FOR NOTICE OF IMPOUNDMENT.** ~~(a)~~ On behalf of the commissioner, a peace officer issuing a notice of intent to revoke and of revocation under section 169.123 shall also serve a notice of intent to impound and an order of impoundment if the violation is the third violation, as defined in subdivision 1, paragraph (c), clause (1), within five years or the fourth or subsequent violation, as defined in subdivision 1, paragraph (c), clause (1), within ten 15 years. On behalf of the commissioner, a peace officer who is arresting a person for or charging a person with a violation described in subdivision 1, paragraph (c), clause (2) or (3), shall also serve a notice of intent to impound and an order of impoundment. If the vehicle involved in the violation is accessible to the officer at the time the impoundment order is issued, the officer shall seize the registration plates subject to the impoundment order. The officer shall destroy all plates seized or impounded under this section. The officer shall send to the commissioner copies of the notice of intent to impound and the order of impoundment and a notice that registration plates impounded and seized under this section have been destroyed.

Sec. 4. Minnesota Statutes 1990, section 168.042, subdivision 10, is amended to read:

Subd. 10. **PETITION FOR JUDICIAL REVIEW.** (a) Within 30 days following receipt of a notice and order of impoundment under this section, a person may petition the court for review. The petition must include the petitioner's date of birth, driver's license number, and date of the violation. The petition shall state with specificity the grounds upon which the petitioner seeks rescission of the order for impoundment. The petition may be combined with any petition filed under section 169.123, subdivision 5c.

(b) Except as otherwise provided in this section, the judicial review and hearing are governed by section 169.123, subdivisions 5c and 6, and shall take place at the same time as any judicial review of the person's license revocation under section 169.123. The filing of the petition shall not stay the impoundment order. The reviewing court may order a stay of the balance of the impoundment period if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper. The court shall order either that the impoundment be rescinded or sustained, and forward the order to the commissioner of public safety. The court shall file its order within 14 days following the hearing.

(c) In addition to the issues described in section 169.123, subdivision ~~5e~~ 6, the scope of a hearing under this subdivision is limited to:

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(1) whether the violator owns, is the registered owner of, possesses, or has access to the vehicle used in the violation; ~~and~~

(2) whether a member of the violator's household has a valid driver's license, the violator or registered owner has a limited license issued under section 171.30, the registered owner is not the violator and the registered owner has a valid or limited driver's license, or a member of the registered owner's household has a valid driver's license; and

(3) if the impoundment is based on a violation described in subdivision 1, paragraph (c), clause (2) or (3), whether the peace officer had probable cause to believe the violator committed the violation and whether the evidence demonstrates that the violation occurred.

(d) In a hearing under this subdivision, the following shall be admissible in evidence:

(1) certified copies of the violator's driving record; and

(2) certified copies of vehicle registration records bearing the violator's name.

Sec. 5. Minnesota Statutes 1990, section 168.042, subdivision 11, is amended to read:

**Subd. 11. RESCISSION OF REVOCATION ~~AND~~; DISMISSAL OF CHARGES OR ACQUITTAL; ISSUANCE OF NEW PLATES.** If the driver's license revocation that is the basis for an impoundment order is rescinded, the registrar of motor vehicles shall issue new registration plates for the vehicle at no cost, when the registrar receives an application that includes a copy of the order rescinding the driver's license revocation. If the impoundment order was based on a violation described in subdivision 1, paragraph (c), clause (2) or (3), and the charges have been dismissed with prejudice or the violator has been acquitted of the violation, the registrar of motor vehicles shall issue new registration plates for the vehicle at no cost, when the registrar receives an application that includes a copy of the order dismissing the charges or a copy of the judgment of acquittal.

Sec. 6. Minnesota Statutes 1990, section 169.121, subdivision 1a, is amended to read:

**Subd. 1a. REFUSAL TO SUBMIT TO TESTING; CRIME.** It is a crime for any person to refuse to submit to a chemical test of the person's blood, breath, or urine under section 169.123 ~~if the person's driver's license has been suspended, revoked, canceled, or denied once within the past five years, or two or more times within the past ten years, under any of the following: this section or section 169.123; section 171.04, 171.14, 171.16, 171.17, or 171.18 because of an alcohol-related incident; section 609.21, subdivision 1, clause (2) or (3); 609.21, subdivision 2, clause (2) or (3); 609.21, subdivision 3, clause (2) or (3); or 609.21, subdivision 4, clause (2) or (3).~~

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Sec. 7. Minnesota Statutes 1990, section 169.121, subdivision 3, is amended to read:

Subd. 3. **CRIMINAL PENALTIES.** (a) As used in this subdivision:

(1) "prior impaired driving conviction" means a prior conviction under this section; section 84.91, subdivision 1, paragraph (a); 86B.331, subdivision 1, paragraph (a); 169.129; 360.0752; 609.21, subdivision 1, clauses (2) to (4); 609.21, subdivision 2, clauses (2) to (4); 609.21, subdivision 2a, clauses (2) to (4); 609.21, subdivision 3, clauses (2) to (4); 609.21, subdivision 4, clauses (2) to (4); or an ordinance from this state, or a statute or ordinance from another state in conformity with any of them. A prior impaired driving conviction also includes a prior juvenile adjudication that would have been a prior impaired driving conviction if committed by an adult; and

(2) "prior license revocation" means a driver's license suspension, revocation, or cancellation under this section; section 169.123; 171.04; 171.14; 171.16; 171.17; or 171.18 because of an alcohol-related incident; 609.21, subdivision 1, clauses (2) to (4); 609.21, subdivision 2, clauses (2) to (4); 609.21, subdivision 2a, clauses (2) to (4); 609.21, subdivision 3, clauses (2) to (4); or 609.21, subdivision 4, clauses (2) to (4).

(b) A person who violates subdivision 1 or 1a, or an ordinance in conformity with ~~it~~ either of them, is guilty of a misdemeanor.

~~(b)~~ (c) A person is guilty of a gross misdemeanor ~~who~~ under any of the following circumstances:

(1) the person violates subdivision 1 ~~or an ordinance in conformity with it~~ within five years of a prior impaired driving conviction, or within ten years of the first of two or more prior impaired driving convictions:

For purposes of this paragraph, a prior impaired driving conviction is a prior conviction under this section; section 84.91, subdivision ~~1~~, paragraph (a); 169.129; 360.0752; 361.12, subdivision ~~1~~, paragraph (a); 609.21, subdivision ~~1~~, clause (2) or (3); 609.21, subdivision 2, clause (2) or (3); 609.21, subdivision 3, clause (2) or (3); 609.21, subdivision 4, clause (2) or (3); or an ordinance from this state, or a statute or ordinance from another state in conformity with any of them. A prior impaired driving conviction also includes a prior juvenile adjudication that would have been a prior impaired driving conviction if committed by an adult.

(e) A person who violates subdivision ~~1a~~ is guilty of a gross misdemeanor;

(2) the person violates subdivision 1a within five years of a prior license revocation, or within ten years of the first of two or more prior license revocations; or

(3) the person violates section 169.26 while in violation of subdivision 1.

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(d) The attorney in the jurisdiction in which the violation occurred who is responsible for prosecution of misdemeanor violations of this section shall also be responsible for prosecution of gross misdemeanor violations of this section.

When an attorney responsible for prosecuting gross misdemeanors under this section requests criminal history information relating to prior impaired driving convictions from a court, the court must furnish the information without charge.

~~(e) A person is guilty of a gross misdemeanor if the person violates section 169.26 while in violation of subdivision 1.~~

Sec. 8. Minnesota Statutes 1990, section 169.121, subdivision 3a, is amended to read:

Subd. 3a. **HABITUAL OFFENDER PENALTIES.** (a) If a person has been convicted under this section, section 169.129, an ordinance in conformity with either of them, or a statute or ordinance from another state in conformity with either of them, and if the person is then convicted of violating a gross misdemeanor violation of this section, a violation of section 169.129, or an ordinance in conformity with either of them (1) once within five years after the first conviction or (2) two or more times within ten years after the first conviction, the person must be sentenced to a minimum of 30 days imprisonment or to eight hours of community work service for each day less than 30 days that the person is ordered to serve in jail. Provided, that if a person is convicted of violating this section, section 169.129, or an ordinance in conformity with either of them two or more times within five years after the first conviction, or within five years after the first of two or more license revocations, as defined in section 169.121, subdivision 3, clause (2), the person must be sentenced to a minimum of 30 days imprisonment and the sentence may not be waived under paragraph (b) or (c). Notwithstanding section 609.135, the above sentence must be executed, unless the court departs from the mandatory minimum sentence under paragraph (b) or (c).

(b) Prior to sentencing the prosecutor may file a motion to have the defendant sentenced without regard to the mandatory minimum sentence established by this subdivision. The motion must be accompanied by a statement on the record of the reasons for it. When presented with the prosecutor's motion and if it finds that substantial mitigating factors exist, the court shall sentence the defendant without regard to the mandatory minimum term of imprisonment established by this subdivision.

(c) The court may, on its own motion, sentence the defendant without regard to the mandatory minimum term of imprisonment established by this subdivision if it finds that substantial mitigating factors exist and if its sentencing departure is accompanied by a statement on the record of the reasons for it.

(d) The court may sentence the defendant without regard to the mandatory minimum term of imprisonment established by this subdivision if the defendant is sentenced to probation and ordered to participate in a program established under section 169.1265.

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(d) (e) When any portion of the sentence required by this subdivision is not executed, the court should impose a sentence that is proportional to the extent of the offender's prior criminal and moving traffic violation record.

Sec. 9. Minnesota Statutes 1990, section 169.121, subdivision 3b, is amended to read:

Subd. 3b. **HABITUAL OFFENDERS; CHEMICAL USE ASSESSMENT.** If a person has been convicted under subdivision 1, subdivision 1a, section 169.129, an ordinance in conformity with ~~either any~~ either any of them, or a statute or ordinance from another state in conformity with ~~either any~~ either any of them, and if the person is then convicted of violating subdivision 1, subdivision 1a, section 169.129, or an ordinance in conformity with ~~either any~~ either any of them (1) once within five years of the first conviction or (2) two or more times within ten years after the first conviction, the court must order the person to submit to the level of care recommended in the chemical use assessment required under section 169.126.

~~If a person is convicted under section 169.121, subdivision 1a, the court shall order the person to submit to the level of care recommended in the chemical use assessment report required under section 169.126.~~

Sec. 10. Minnesota Statutes 1990, section 169.121, subdivision 3c, is amended to read:

Subd. 3c. **NOTICE OF ENHANCED PENALTIES.** When a court sentences a person for a misdemeanor or gross misdemeanor violation of this section, it shall inform the defendant of the statutory provisions that provide for enhancement of criminal penalties for repeat violators. The failure of a court to provide this information to a defendant does not affect the future applicability of these enhanced penalties to that defendant.

Sec. 11. Minnesota Statutes 1990, section 169.121, subdivision 4, is amended to read:

Subd. 4. **ADMINISTRATIVE PENALTIES.** (a) The commissioner of public safety shall revoke the driver's license of a person convicted of violating this section or an ordinance in conformity with it as follows:

(a) (1) first offense under subdivision 1: not less than 30 days;

(2) first offense under subdivision 1a: not less than 90 days;

(b) (3) second offense in less than five years: (i) if the current conviction is for a violation of subdivision 1, not less than ~~90~~ 180 days and until the court has certified that treatment or rehabilitation has been successfully completed where prescribed in accordance with section 169.126; or (ii) if the current conviction is for a violation of subdivision 1a, not less than one year and until the court has certified that treatment or rehabilitation has been successfully completed where prescribed in accordance with section 169.126;

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(e) ~~(4)~~ third offense in less than five years: not less than one year, together with denial under section 171.04, clause (8), until rehabilitation is established in accordance with standards established by the commissioner;

(d) ~~(5)~~ fourth or subsequent offense on the record: not less than two years, together with denial under section 171.04, clause (8), until rehabilitation is established in accordance with standards established by the commissioner.

(b) If the person convicted of violating this section is under the age of 18 years, the commissioner of public safety shall revoke the offender's driver's license or operating privileges until the offender reaches the age of 18 years or for a period of six months or for the appropriate period of time under paragraph (a), clauses ~~(a)~~ (1) to ~~(d)~~ (5), for the offense committed, whichever is the greatest period.

(c) For purposes of this subdivision, a juvenile adjudication under this section, section 169.129, an ordinance in conformity with either of them, or a statute or ordinance from another state in conformity with either of them is an offense.

(d) Whenever department records show that the violation involved personal injury or death to any person, not less than 90 additional days shall be added to the base periods provided above.

(e) Any person whose license has been revoked pursuant to section 169.123 as the result of the same incident is ~~not~~ subject to the mandatory revocation provisions of ~~clause (a) or (b)~~ paragraph (a), clause (1) or (2), in lieu of the mandatory revocation provisions of section 169.123.

Sec. 12. Minnesota Statutes 1990, section 169.121, subdivision 5, is amended to read:

Subd. 5. Except as otherwise provided in subdivision 3b, when a court sentences a person convicted of ~~violating a misdemeanor or gross misdemeanor violation~~ of this section, section 169.129, or an ordinance in conformity with either of them, 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 the level of care recommended in the chemical use assessment report required under section 169.126. If the court does not order a level of care in accordance with the assessment report recommendation as a condition of a stay of imposition or execution, it shall state on the record its reasons for not following the assessment report recommendation. 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. 13. Minnesota Statutes 1991 Supplement, section 169.121, subdivision 5a, is amended to read:

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Subd. 5a. **CHEMICAL DEPENDENCY ASSESSMENT CHARGE, SURCHARGE.** When a court sentences a person convicted of an offense enumerated in section 169.126, subdivision 1, it shall impose a chemical dependency assessment charge of ~~\$76~~ \$125. A person shall pay an additional surcharge of \$5 if the person is convicted of (i) a violation of section 169.129, or (ii) a violation of this section within five years of a prior impaired driving conviction, as defined in subdivision 3, or a prior conviction for an offense arising out of an arrest for a violation of section 169.121 or 169.129. This section applies when the sentence is executed, stayed, or suspended. The court may not waive payment or authorize payment of the assessment charge and surcharge in installments unless it makes written findings on the record that the convicted person is indigent or that the assessment charge and surcharge would create undue hardship for the convicted person or that person's immediate family.

The ~~court~~ county shall collect and forward to the commissioner of finance the ~~total amount of \$25~~ of the chemical dependency assessment charge and surcharge within 60 days after sentencing or explain to the commissioner in writing why the money was not forwarded within this time period. The commissioner shall credit the money to the general fund. The county shall collect and keep \$100 of the chemical dependency assessment charge.

The chemical dependency assessment charge and surcharge required under this section are in addition to the surcharge required by section 609.101.

Sec. 14. **[169.1216] IMPOUNDMENT OF MOTOR VEHICLES UNDER LOCAL ORDINANCE; PREREQUISITES TO REDEMPTION.**

Subdivision 1. DEFINITION. As used in this section, "impoundment" means the removal of a motor vehicle, as defined in section 169.121, subdivision 11, to a storage facility or impound lot as authorized by a local ordinance.

Subd. 2. REDEMPTION; PREREQUISITES. If a motor vehicle is impounded by a peace officer following the arrest or taking into custody of a driver for a violation of section 169.121, an ordinance in conformity with it, or section 169.129, the impounded vehicle shall only be released from impoundment:

(1) to the registered owner, a person authorized by the registered owner, a lienholder of record, or a person who has purchased the vehicle from the registered owner, who provides proof of ownership of the vehicle, proof of valid Minnesota driving privileges, and proof of insurance required by law to cover the vehicle;

(2) if the vehicle is subject to a rental or lease agreement, to a renter or lessee with valid Minnesota driving privileges who provides a copy of the rental or lease agreement and proof of insurance required by law to cover the vehicle; or

(3) to an agent of a towing company authorized by a registered owner if the owner provides proof of ownership of the vehicle and proof of insurance required by law to cover the vehicle.

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Subd. 3. TO WHOM INFORMATION PROVIDED. The proof of ownership and insurance or, where applicable, the copy of the rental or lease agreement required by subdivision 2 shall be provided to the law enforcement agency impounding the vehicle or to a person or entity designated by the law enforcement agency to receive the information.

Subd. 4. LIABILITY FOR STORAGE COSTS. No law enforcement agency, local unit of government, or state agency is responsible or financially liable for any storage fees incurred due to an impoundment under this section.

**Sec. 15. [169.1217] FORFEITURE OF MOTOR VEHICLES USED TO COMMIT CERTAIN TRAFFIC OFFENSES.**

Subdivision 1. DEFINITIONS. As used in this section, the following terms have the meanings given them:

(a) "Appropriate authority" means a law enforcement agency that has the authority to make an arrest for a violation of a designated offense.

(b) "Designated offense" includes a violation of section 169.121, an ordinance in conformity with it, or 169.129:

(1) within five years of three prior driving under the influence convictions or three prior license revocations based on separate incidents;

(2) within 15 years of the first of four or more prior driving under the influence convictions or the first of four or more prior license revocations based on separate incidents;

(3) by a person whose driver's license or driving privileges have been canceled under section 171.04, clause (8); or

(4) by a person who is subject to a restriction on the person's driver's license under section 171.09 which provides that the person may not use or consume any amount of alcohol or a controlled substance.

(c) "Motor vehicle" and "vehicle" have the meaning given "motor vehicle" in section 169.121, subdivision 11. The terms do not include a vehicle which is stolen or taken in violation of the law.

(d) "Owner" means the registered owner of the motor vehicle according to records of the department of public safety and includes a lessee of a motor vehicle if the lease agreement has a term of 180 days or more.

(e) "Prior driving under the influence conviction" means a prior conviction under section 169.121; 169.129; or 609.21, subdivision 1, clauses (2) to (4); 2, clauses (2) to (4); 2a, clauses (2) to (4); 3, clauses (2) to (4); or 4, clauses (2) to (4); or an ordinance from this state, or a statute or ordinance from another state in conformity with any of them. A prior driving under the influence conviction also includes a prior juvenile adjudication that would have been a prior driving under the influence conviction if committed by an adult.

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(f) "Prior license revocation" has the meaning given it in section 169.121, subdivision 3.

(g) "Prosecuting authority" means the attorney in the jurisdiction in which the designated offense occurred who is responsible for prosecuting violations of a designated offense.

Subd. 2. SEIZURE. A motor vehicle subject to forfeiture under this section may be seized by the appropriate agency upon process issued by any court having jurisdiction over the vehicle. Property may be seized without process if:

(1) the seizure is incident to a lawful arrest or a lawful search;

(2) the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(3) the appropriate agency has probable cause to believe that the delay occasioned by the necessity to obtain process would result in the removal or destruction of the vehicle. If property is seized without process under clause (3), the prosecuting authority must institute a forfeiture action under this section as soon as is reasonably possible.

Subd. 3. RIGHT TO POSSESSION VESTS IMMEDIATELY; CUSTODY OF SEIZED VEHICLE. All right, title, and interest in a vehicle subject to forfeiture under this section vests in the appropriate agency upon commission of the designated offense giving rise to the forfeiture. Any vehicle seized under this section is not subject to replevin, but is deemed to be in the custody of the appropriate agency subject to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When a vehicle is so seized, the appropriate agency may:

(1) place the vehicle under seal;

(2) remove the vehicle to a place designated by it;

(3) place a disabling device on the vehicle; and

(4) take other steps reasonable and necessary to secure the vehicle and prevent waste.

Subd. 4. BOND BY OWNER FOR POSSESSION. If the owner of a vehicle that has been seized under this section seeks possession of the vehicle before the forfeiture action is determined, the owner may, subject to the approval of the appropriate agency, give security or post bond payable to the appropriate agency in an amount equal to the retail value of the seized vehicle. On posting the security or bond, the seized vehicle may be returned to the owner only if a disabling device is attached to the vehicle. The forfeiture action shall proceed against the security as if it were the seized vehicle.

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Subd. 5. EVIDENCE. Certified copies of motor vehicle records concerning prior license revocations are admissible as substantive evidence where necessary to prove the commission of a designated offense.

Subd. 6. MOTOR VEHICLES SUBJECT TO FORFEITURE. A motor vehicle is subject to forfeiture under this section if it was used in the commission of a designated offense.

Subd. 7. LIMITATIONS ON FORFEITURE OF MOTOR VEHICLES. (a) A vehicle is subject to forfeiture under this section only if the driver is convicted of the designated offense upon which the forfeiture is based.

(b) A vehicle encumbered by a bona fide security interest, or subject to a lease that has a term of 180 days or more, is subject to the interest of the secured party or lessor unless the party or lessor had knowledge of or consented to the act upon which the forfeiture is based.

(c) Notwithstanding paragraph (b), the secured party's or lessor's interest in a vehicle is not subject to forfeiture based solely on the secured party's or lessor's knowledge of the act or omission upon which the forfeiture is based if the secured party or lessor took reasonable steps to terminate use of the vehicle by the offender.

(d) A motor vehicle is subject to forfeiture under this section only if its owner knew or should have known of the unlawful use or intended use.

Subd. 8. FORFEITURE PROCEDURE. (a) A motor vehicle used to commit a designated offense is subject to forfeiture under this subdivision.

(b) A separate complaint shall be filed against the vehicle, describing it, and specifying that it was used in the commission of a designated offense and specifying the time and place of its unlawful use. If the person charged with a designated offense is not convicted of the offense, the court shall dismiss the complaint against the vehicle and order the property returned to the person legally entitled to it. If the lawful ownership of the vehicle used in the commission of a designated offense can be determined and it is found the owner was not privy to commission of a designated offense, the vehicle shall be returned immediately.

Subd. 9. DISPOSITION OF FORFEITED VEHICLES. (a) If the court finds under subdivision 8 that the vehicle is subject to forfeiture, it shall order the appropriate agency to:

- (1) sell the vehicle and distribute the proceeds under paragraph (b); or
- (2) keep the vehicle for official use.

(b) The proceeds from the sale of forfeited vehicles, after payment of seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens against the property, must be forwarded to the treasury of the political subdivision that

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employs the appropriate agency responsible for the forfeiture for use in DWI-related enforcement, training and education. If the appropriate agency is an agency of state government, the net proceeds must be forwarded to the state treasury and credited to the general fund.

Sec. 16. Minnesota Statutes 1991 Supplement, section 169.123, subdivision 2, is amended to read:

**Subd. 2. IMPLIED CONSENT; CONDITIONS; ELECTION OF TEST.**

(a) Any person who drives, operates, or is in physical control of a motor vehicle within this state or upon the ice of any boundary water of this state consents, subject to the provisions of this section and section 169.121, to a chemical test of that person's 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 probable cause 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 with it;

(2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death;

(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~~ indicated an alcohol concentration of 0.10 or more.

The test may also be required of a person when an officer has probable cause to believe the person was driving, operating, or in physical control of a commercial motor vehicle with the presence of any alcohol.

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

(1) that Minnesota law requires the person to take a test to determine if the person is under the influence of alcohol or a controlled substance or, if the motor vehicle was a commercial motor vehicle, that Minnesota law requires the person to take a test to determine the presence of alcohol;

(2) ~~that if testing is refused, the person's right to drive will be revoked for a minimum period of one year or, if the person is under the age of 18 years, for a period of one year or until the person reaches the age of 18 years, whichever is greater and, if the vehicle was a commercial motor vehicle, that the person will be disqualified from operating a commercial motor vehicle for a minimum period of one year;~~

(3) ~~that if a test is taken and the results indicate an alcohol concentration of~~

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0.10 or more, the person's right to drive will be revoked for a minimum period of 90 days or, if the person is under the age of 18 years, for a period of six months or until the person reaches the age of 18 years, whichever is greater; and, if the vehicle was a commercial motor vehicle, that if the test results indicate the presence of any alcohol, the person will be prohibited from operating a commercial motor vehicle for 24 hours from issuance of an out-of-service order, and if the results indicate an alcohol concentration of 0.04 or more, the person will be disqualified from operating a commercial motor vehicle for a minimum period of one year;

(4) that whether refusal to take a test is taken or refused, the person may be subject to criminal prosecution for an alcohol or controlled substance related driving offense;

(5) that if testing is refused and the person's right to drive has been revoked once within the past five years or two or more times within the past ten years for an alcohol or controlled substance related driving offense, the person may be subject to criminal prosecution because the person refused testing a crime;

(6) ~~(3) if the peace officer has probable cause to believe the person has violated the criminal vehicular homicide and injury laws, that a test will be taken with or without the person's consent; and~~

(4) that after submitting to testing, the person has the right to consult with an attorney and to have additional tests made by someone of the person's own choosing; and

(7) that if the person refuses to take a test, the refusal may be offered into evidence against the person at trial, but that this right is limited to the extent that it cannot unreasonably delay administration of the test.

(c) The peace officer who requires a test pursuant to this subdivision may direct whether the test shall be of blood, breath, or urine. Action may be taken against a person who refuses to take a blood test only if an alternative test was offered and action may be taken against a person who refuses to take a urine test only if an alternative test was offered.

Sec. 17. Minnesota Statutes 1990, section 169.123, subdivision 4, is amended to read:

Subd. 4. **REFUSAL; REVOCATION OF LICENSE.** If a person refuses to permit a test, 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. However, if a peace officer has probable cause to believe that the person has violated section 609.21, a test may be required and obtained despite the person's refusal. A refusal to submit to an alcohol concentration test does not constitute a violation of section 609.50, unless the refusal was accompanied by force or violence or the threat of force or violence. If a person submits to a test

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and the test results indicate an alcohol concentration of 0.10 or more, or if a person was driving, operating, or in physical control of a commercial motor vehicle and the test results indicate an alcohol concentration of 0.04 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 probable cause 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 a test, the commissioner of public safety shall revoke the person's license or permit to drive, or nonresident operating privilege, for a period of one year even if a test was obtained pursuant to this section after the person refused to submit to testing. Upon certification by the peace officer that there existed probable cause to believe the person had been driving, operating, or in physical control of a commercial motor vehicle with the presence of any alcohol and that the person refused to submit to a test, the commissioner shall disqualify the person from operating a commercial motor vehicle for a period of one year under section 171.165 and shall revoke the person's license or permit to drive or nonresident operating privilege for a period of one year. If the person refusing to submit to testing is under the age of 18 years, the commissioner shall revoke the person's license or permit to drive, or nonresident operating privilege, for a period of one year or until the person reaches the age of 18 years, whichever is greater. Upon certification by the peace officer that there existed probable cause 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 a test 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 nonresident operating privilege, for: (1) a period of 90 days; or; (2) if the person is under the age of 18 years, for a period of six months or until the person reaches the age of 18 years, whichever is greater; or (3) if the person's driver's license or driving privileges have been revoked within the past five years under this section or section 169.121, for a period of 180 days. On certification by the peace officer that there existed probable cause to believe the person had been driving, operating, or in physical control of a commercial motor vehicle with any presence of alcohol and that the person submitted to a test and the test results indicated an alcohol concentration of 0.04 or more, the commissioner of public safety shall disqualify the person from operating a commercial motor vehicle under section 171.165.

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 herein-after provided.

Sec. 18. Minnesota Statutes 1990, section 169.126, subdivision 1, is amended to read:

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Subdivision 1. **CHEMICAL USE ASSESSMENT.** A chemical use assessment shall be conducted and an assessment report submitted to the court and to the department of public safety by the county agency administering the alcohol safety program when:

(a) The defendant is convicted of an offense described in section 169.121 or 169.129; or

(b) The defendant is arrested for committing an offense described in section 169.121 or 169.129 but is convicted of another offense arising out of the circumstances surrounding the arrest.

Sec. 19. Minnesota Statutes 1991 Supplement, section 169.126, subdivision 2, is amended to read:

Subd. 2. **REPORT.** (a) The assessment report shall be on a form prescribed by the commissioner of public safety and shall contain an evaluation of the convicted defendant concerning the defendant's prior traffic record, characteristics and history of alcohol and chemical use problems, and amenability to rehabilitation through the alcohol safety program. The report shall be classified as private data on individuals as defined in section 13.02, subdivision 12.

(b) The assessment report must include:

(1) a recommended level of care for the offender in accordance with the criteria contained in rules adopted by the commissioner of human services under section 254A.03, subdivision 3;

(2) recommendations for other appropriate remedial action or care, that may consist of educational programs, one-on-one counseling, a program or type of treatment that addresses mental health concerns, or a combination of them; or

(3) a specific explanation why no level of care or action was recommended.

Sec. 20. Minnesota Statutes 1991 Supplement, section 169.1265, subdivision 1, is amended to read:

Subdivision 1. **GRANT APPLICATION.** The commissioner of public safety, in cooperation with the commissioners of human services and corrections, shall administer a program to provide grants to counties to establish programs of intensive probation for repeat violators of the driving while intoxicated laws. The commissioner shall adopt an application form on which a county or a group of counties may apply for a grant to establish a DWI repeat offender program.

Sec. 21. Minnesota Statutes 1991 Supplement, section 169.1265, subdivision 3, is amended to read:

Subd. 3. **PROGRAM ELEMENTS.** To be considered for a grant under this section, a county program must contain the following elements:

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(1) an initial assessment of the offender's chemical dependency, based on the results of a chemical use assessment conducted under section 169.126, with recommended treatment and aftercare, and a requirement that the offender follow the recommended treatment and aftercare;

(2) several stages of probation supervision, including:

(i) a period of ~~at least 30 days'~~ incarceration in a local or regional detention facility;

(ii) a period during which an offender is, at all times, either working, on home detention, being supervised at a program facility, or traveling between two of these locations;

(iii) a period of home detention; and

(iv) a period of gradually decreasing involvement with the program;

(3) decreasing levels of intensity and contact with probation officials based on the offender's successful participation in the program and compliance with its rules;

(4) a provision for increasing the severity of the program's requirements when an offender offends again or violates the program's rules;

(5) a provision for offenders to continue or seek employment during their period of intensive probation;

(6) a requirement that offenders abstain from alcohol and controlled substances during the probation period and be tested for such use on a routine basis; and

(7) a requirement that all or a substantial part of the costs of the program be paid by the offenders.

Sec. 22. Minnesota Statutes 1990, section 169.129, is amended to read:

**169.129 AGGRAVATED VIOLATIONS; PENALTY.**

Any person is guilty of a gross misdemeanor who drives, operates, or is in physical control of a motor vehicle, the operation of which requires a driver's license, within this state or upon the ice of any boundary water of this state in violation of section 169.121 or an ordinance in conformity with it before the person's driver's license or driver's privilege has been reinstated following its cancellation, suspension, revocation, or denial under any of the following: section 169.121 or 169.123; section 171.04, 171.14, 171.16, 171.17, or 171.18 because of an alcohol-related incident; section 609.21, subdivision 1, ~~clause clauses~~ (2) ~~or (3)~~ to (4); 609.21, subdivision 2, ~~clause clauses~~ (2) ~~or (3)~~ to (4); 609.21, subdivision 2a, clauses (2) to (4); 609.21, subdivision 3, ~~clause clauses~~ (2) ~~or (3)~~ to (4); or 609.21, subdivision 4, ~~clause clauses~~ (2) ~~or (3)~~ to (4). ~~Jurisdiction over prosecutions under this section is in the county court.~~

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Sec. 23. Minnesota Statutes 1991 Supplement, section 171.30, subdivision 2a, is amended to read:

Subd. 2a. ~~180-DAY WAITING PERIOD PERIODS.~~ Notwithstanding subdivision 2, a limited license shall not be issued for a period of:

(1) 15 days, to a person whose license or privilege has been revoked or suspended for a violation of section 169.121 or 169.123;

(2) 90 days, to a person who submitted to testing under section 169.123 if the person's license or privilege has been revoked or suspended for a second or subsequent violation of section 169.121 or 169.123;

(3) 180 days to an individual whose, to a person who refused testing under section 169.123 if the person's license or privilege has been revoked or suspended for a second or subsequent violation of section 169.121 or 169.123; or to a person whose license or privilege has been revoked or suspended for commission of the offense of manslaughter resulting from the operation of a motor vehicle or criminal vehicular homicide or injury under section 609.21.

Sec. 24. Minnesota Statutes 1991 Supplement, section 171.305, subdivision 2, is amended to read:

Subd. 2. **PILOT PROGRAM.** The commissioner shall establish a ~~one-year~~ statewide pilot program for the use of an ignition interlock device by a person whose driver's license or driving privilege has been canceled and denied by the commissioner for an alcohol or controlled substance related incident. ~~After one year~~ The commissioner shall evaluate the program and shall report to the legislature by February 1, ~~1993~~ 1994, on whether changes in the program are necessary and whether the program should be permanent. No limited license shall be issued under this program after August 1, ~~1992~~ 1993.

Sec. 25. Minnesota Statutes 1991 Supplement, section 609.135, subdivision 2, is amended to read:

Subd. 2. (a) If the conviction is for a felony the stay shall be for not more than three years or the maximum period for which the sentence of imprisonment might have been imposed, whichever is longer.

(b) If the conviction is for a gross misdemeanor violation of section 169.121 or 169.129, the stay shall be for not more than three years. The court shall provide for unsupervised probation for the last one year of the stay unless the court finds that the defendant needs supervised probation for all or part of the last one year.

(c) If the conviction is for a gross misdemeanor not specified in paragraph (b), the stay shall be for not more than two years.

(d) If the conviction is for any misdemeanor under section 169.121 or for a misdemeanor under section 609.224, subdivision 1, in which the victim of

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the crime was a family or household member as defined in section 518B.01, the stay shall be for not more than two years. The court shall provide for unsupervised probation for the second year of the stay unless the court finds that the defendant needs supervised probation for all or part of the second year.

~~(d)~~ (e) If the conviction is for a misdemeanor not specified in paragraph ~~(e)~~ (d), the stay shall be for not more than one year.

~~(e)~~ (f) The defendant shall be discharged when the stay expires, unless the stay has been revoked or extended under paragraph ~~(f)~~ (g), or the defendant has already been discharged.

~~(f)~~ (g) Notwithstanding the maximum periods specified for stays of sentences under paragraphs (a) to ~~(e)~~ (f), a court may extend a defendant's term of probation for up to one year if it finds, at a hearing conducted under subdivision 1a, that:

(1) the defendant has not paid court-ordered restitution in accordance with the payment schedule or structure; and

(2) the defendant is likely to not pay the restitution the defendant owes before the term of probation expires.

This one-year extension of probation for failure to pay restitution may be extended by the court for up to one additional year if the court finds, at another hearing conducted under subdivision 1a, that the defendant still has not paid the court-ordered restitution that the defendant owes.

#### Sec. 26. SENTENCING GUIDELINES MODIFICATION.

The sentencing guidelines commission shall modify sentencing guideline II.B.3 to provide that the criminal history score of any person convicted of violating section 609.21 shall include one-half of one criminal history point for each previous violation of section 169.121, 169.1211, or 169.129.

#### Sec. 27. SENTENCING GUIDELINES MODIFICATION; CRIMINAL VEHICULAR HOMICIDE.

The sentencing guidelines commission is requested to consider modifying the sentencing guidelines by ranking violations of section 609.21, subdivisions 1, clauses (3) and (4), and 3, clauses (3) and (4), in severity level VII of the sentencing guidelines grid.

#### Sec. 28. [171.043] DEPARTMENT OF PUBLIC SAFETY; NOTICE CONCERNING CERTAIN PERSONS UNDER DRIVER'S LICENSE CANCELLATION.

The commissioner of public safety shall develop a program under which the commissioner provides a monthly notice to local law enforcement agencies of the names and addresses of persons residing within the local agency's jurisdic-

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tion whose driver's licenses or driving privileges have been canceled under section 171.04, clause (8). At the commissioner's discretion, the commissioner may adopt necessary procedures so that the information is current and accurate. Data in the notice are private data on individuals and are available to law enforcement agencies.

**Sec. 29. COMMISSION ON CONFINEMENT AND TREATMENT OF DWI RECIDIVISTS.**

Subdivision 1. MEMBERSHIP. The subcommittee on committees in the senate and the speaker of the house of representatives shall appoint up to 18 members to a commission on the confinement and treatment of DWI recidivists. The members shall be chosen to represent the following: legislators, the commissioners of human services, public safety, and corrections, experts in chemical dependency treatment, researchers in matters relating to the driving while intoxicated laws, county commissioners, local corrections officials, the sentencing guidelines commission, city and county attorneys, defense attorneys, private chemical dependency treatment providers, and other interested parties.

Subd. 2. SPECIFIC PROPOSAL. By January 15, 1993, the commission shall present to the chairs of the committees on the judiciary and health and human services in the senate and house of representatives a specific proposal to provide for the effective treatment, or if treatment is unsuccessful, for confinement for a period of up to five years, to protect society from those who have violated the DWI laws a fourth time within five years or a fifth or subsequent time. The recommendation shall include a means of committing these individuals to treatment, including the potential for confinement as a sanction for leaving or failing treatment, using alcohol or drugs, or reoffending.

Subd. 3. SPECIFIC DETERMINATIONS. In developing the recommendation required by subdivision 2, the commission shall make specific determinations concerning the following:

(1) whether the offenders should be confined through a civil commitment process, through the criminal justice system, or through a system that combines features of the civil and criminal systems;

(2) what types of treatment programs hold the most promise for changing the behavior of those with entrenched chemical dependency problems;

(3) what types of correctional programs, including intensive supervision, hold the most promise for changing the behavior of those with entrenched chemical dependency problems;

(4) the best way to allocate the costs of treatment and confinement among the offender, local governments, and the state;

(5) if a criminal justice system approach is selected, whether imposing a felony penalty or a gross misdemeanor penalty on offenders with the DWI history described above would be more effective in giving a high priority to the repeat

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DWI cases within prosecutors' offices, and whether probation officers who supervise gross misdemeanants would be better suited to supervise repeat DWI offenders than would probation officers who supervise felons;

(6) if a civil commitment approach is selected, whether changes are needed in the civil commitment laws and recommendations for making those changes;

(7) what secure treatment facilities are available, including private, state, and locally owned facilities;

(8) the feasibility of using innovative treatment approaches, such as the use of pharmacologic agents, including deterrent chemicals, in the control of those who are unsuccessful in treatment programs;

(9) the need for culturally appropriate chemical dependency treatment programs; and

(10) the characteristics and treatment and incarceration history of the typical fourth-time DWI offender.

#### Sec. 30. APPROPRIATION.

(a) \$23,000 is appropriated from the trunk highway fund to the commissioner of public safety for the purposes of sections 2 and 29.

(b) \$500,000 is appropriated from the general fund to the commissioner of public safety for the purpose of funding grant applications under section 169.1265. The appropriation is available until expended.

(c) \$15,000 is appropriated from the general fund to the legislative coordinating commission for the expenses of the commission on the confinement and treatment of DWI recidivists.

(d) The appropriations in this section are one-time appropriations and do not increase the agency's appropriation base for the 1994-1995 biennium.

#### Sec. 31. REPEALER.

Minnesota Statutes 1990, section 169.126, subdivision 4c, is repealed.

#### Sec. 32. EFFECTIVE DATE.

Sections 13, 18, 19, and 32 are effective July 1, 1992. Sections 1 to 12, 14 to 17, and 21 to 31 are effective January 1, 1993, and apply to crimes committed on or after that date, except that section 16, paragraph (b), clause (4), is effective the day following final enactment. Courts may consider prior convictions and license revocations in sentencing repeat offenders and forfeiting vehicles under this article.

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ARTICLE 2  
OPERATING A SNOWMOBILE  
OR ALL-TERRAIN VEHICLE  
WHILE INTOXICATED

Section 1. Minnesota Statutes 1990, section 84.91, is amended to read:

**84.91 OPERATION OF SNOWMOBILES AND ALL-TERRAIN VEHICLES BY PERSONS UNDER THE INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCES.**

Subdivision 1. **ACTS PROHIBITED.** (a) No person shall operate or be in physical control of any snowmobile or all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state ~~while under the influence of:~~

(1) ~~when the person is under the influence of alcohol; as provided in section 169.121, subdivision 1, clauses (a) and (d);~~

(2) ~~when the person is under the influence of a controlled substance, as defined in section 152.01, subdivision 4; or~~

(3) ~~when the person is under the influence of a combination of any two or more of the elements named in clauses (1) and (2), and (6);~~

(4) when the person's alcohol concentration is 0.10 or more;

(5) when the person's alcohol concentration as measured within two hours of the time of operating is 0.10 or more; or

(6) when the person is knowingly under the influence of any chemical compound or combination of chemical compounds that is listed as a hazardous substance in rules adopted under section 182.655 and that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to operate the snowmobile or all-terrain vehicle.

(b) No owner or other person having charge or control of any snowmobile or all-terrain vehicle shall authorize or permit any individual the person knows or has reason to believe is under the influence of alcohol or a controlled substance or other substance, as provided under paragraph (a), to operate the snowmobile or all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state.

(c) No owner or other person having charge or control of any snowmobile or all-terrain vehicle shall knowingly authorize or permit any person, who by reason of any physical or mental disability is incapable of operating the vehicle, to operate the snowmobile or all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state.

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Subd. 2. **ARREST.** Conservation officers of the department of natural resources, sheriffs, sheriff's deputies, and other peace officers may arrest a person for a violation under subdivision 1 without a warrant upon probable cause; ~~if, without regard to whether~~ the violation was committed in the officer's presence. ~~If the violation did not occur in the officer's presence, the officer may arrest the person if the person was involved in a snowmobile or all-terrain vehicle accident resulting in death, personal injury, or property damage.~~

Subd. 3. **PRELIMINARY SCREENING TEST.** When an officer authorized under subdivision 2 to make arrests has reason to believe from the manner in which a person is operating, controlling, or acting upon departure from a snowmobile or all-terrain vehicle, or has operated or been in control of the vehicle, that the operator may be violating or has violated subdivision 1, paragraph (a), the officer may require the operator to provide a breath sample for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of the preliminary screening test shall be used for the purpose of deciding whether an arrest should be made under this section and whether to require the chemical tests authorized in section 84.911, but may not be used in any court action except: (1) to prove that a test was properly required of an operator under section 84.911; or (2) in a civil action arising out of the operation or use of a snowmobile or all-terrain vehicle. Following the preliminary screening test, additional tests may be required of the operator as provided under section 84.911. An operator who refuses a breath sample is subject to the provisions of section 84.911 unless, in compliance with that section, the operator submits to a blood, breath, or urine test to determine the presence of alcohol or a controlled substance.

Subd. 4. **EVIDENCE.** In a prosecution for a violation of subdivision 1, paragraph (a), or an ordinance in conformity with it, the admission of evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine, is governed by section 86B.331, subdivision 4.

Subd. 5. **PENALTIES.** (a) A person who violates any prohibition contained in subdivision 1, or an ordinance in conformity with it, is guilty of a misdemeanor.

(b) A person who violates any prohibition contained in subdivision 1 within five years of a prior conviction under that subdivision or civil liability under section 84.911, subdivision 2, or an ordinance in conformity with either of them, or within ten years of the first of two or more prior convictions under that subdivision or civil liability under section 84.911, subdivision 2, or an ordinance in conformity with either of them, is guilty of a gross misdemeanor.

(c) The attorney in the jurisdiction where the violation occurred who is responsible for prosecuting misdemeanor violations of this section is also responsible for prosecuting gross misdemeanor violations of this section. When an attorney responsible for prosecuting gross misdemeanors under this section requests criminal history information relating to prior convictions from a court, the court must furnish the information without charge.

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(b) (d) A person who operates a snowmobile or all-terrain vehicle during the period the person is prohibited from operating the vehicle under subdivision 6 is guilty of a misdemeanor.

Subd. 5a. NOTICE OF ENHANCED PENALTIES. When a court sentences a person for a misdemeanor violation of this section, it shall inform the defendant of the statutory provisions that provide for enhancement of criminal penalties for repeat violators. The failure of a court to provide this information to a defendant does not affect the future applicability of these enhanced penalties to that defendant.

**Subd. 6. OPERATING PRIVILEGES SUSPENDED.** Upon conviction under this section, or an ordinance in conformity with it, and in addition to any penalty imposed under subdivision 5, the person is prohibited for one year from operating a snowmobile or all-terrain vehicle, whichever was involved in the violation.

**Subd. 7. DUTIES OF COMMISSIONER.** The court shall promptly forward to the commissioner copies of all convictions and criminal and civil penalties imposed under subdivision 5 and section 84.911, subdivision 2. The commissioner shall notify the convicted person of the period during which the person is prohibited from operating a snowmobile or all-terrain vehicle under subdivision 6 or section 84.911, subdivision 2. The commissioner shall also periodically circulate to appropriate law enforcement agencies a list of all persons who are prohibited from operating a snowmobile or all-terrain vehicle under subdivision 6 or section 84.911, subdivision 2.

**Subd. 8. IMMUNITY FROM LIABILITY.** The state or political subdivision that employs an officer who is authorized under subdivision 2 to make an arrest for violations of subdivision 1 is immune from any liability, civil or criminal, for the care or custody of the snowmobile or all-terrain vehicle being operated by or in the physical control of the person arrested if the officer acts in good faith and exercises due care.

Sec. 2. Minnesota Statutes 1990, section 84.911, is amended to read:

**84.911 CHEMICAL TESTING.**

**Subdivision 1. MANDATORY CHEMICAL TESTING.** A person who operates or is in physical control of a snowmobile or all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state is required, subject to the provisions of this section, to take or submit to a test of the person's blood, breath, or urine for the purpose of determining the presence and amount of alcohol or a controlled substance. The test shall be administered at the direction of an officer authorized to make arrests under section 84.91, subdivision 2. Taking or submitting to the test is mandatory when requested by an officer who has probable cause to believe the person was operating or in physical control of a snowmobile or all-terrain vehicle in violation of section 84.91, subdivision 1, paragraph (a), and one of the following conditions exists:

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(1) the person has been lawfully placed under arrest for violating section 84.91, subdivision 1, paragraph (a);

(2) the person has been involved while operating a snowmobile or all-terrain vehicle in an accident resulting in property damage, personal injury, or death;

(3) the person has refused to take the preliminary screening test provided for in section 84.91, subdivision 3; or

(4) the screening test was administered and ~~recorded~~ indicated an alcohol concentration of 0.10 or more.

**Subd. 2. PENALTIES; REFUSAL; REVOCATION OF SNOWMOBILE OR ALL-TERRAIN VEHICLE OPERATING PRIVILEGE.** (a) If a person refuses to take a test required under subdivision 1, none must be given, but the officer authorized to make arrests under section 84.91, subdivision 2, shall report the refusal to the commissioner of natural resources and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the incident occurred that gave rise to the test demand and refusal. However, if a peace officer has probable cause to believe that the person has violated section 609.21, a test may be required and obtained despite the person's refusal.

On certification by the officer that probable cause existed to believe the person had been operating or in physical control of a snowmobile or all-terrain vehicle while under the influence of alcohol or a controlled substance, and that the person refused to submit to testing, the commissioner shall impose a civil penalty of \$500 and shall prohibit the person from operating a snowmobile or all-terrain vehicle, whichever was involved in the violation, for a period of one year even if a test was obtained pursuant to this section after the person refused to submit to testing.

On behalf of the commissioner, an officer requiring a test or directing the administration of a test shall serve on a person who refused to permit a test immediate notice of intention to prohibit the operation of a snowmobile or all-terrain vehicle, and to impose the civil penalty set forth in this subdivision. If the officer fails to serve a notice of intent to suspend operating privileges, the commissioner may notify the person by mail, and the notice is deemed received three days after mailing. The notice must advise the person of the right to obtain administrative and judicial review as provided in this section. The prohibition imposed by the commissioner takes effect ten days after receipt of the notice. The civil penalty is imposed on receipt of the notice and must be paid within 30 days of imposition.

(b) A person who operates a snowmobile or all-terrain vehicle during the period the person is prohibited from operating the vehicle as provided under paragraph (a) is guilty of a misdemeanor.

**Subd. 3. RIGHTS AND OBLIGATIONS.** At the time a test is requested, the person must be informed:

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(1) that Minnesota law requires a person to take a test to determine if the person is under the influence of alcohol or a controlled substance;

(2) that ~~if the person refuses to take the test, the~~ a person is subject to a civil penalty of \$500 ~~for refusing to take the test and, in addition,~~ is prohibited for a one-year period from operating a snowmobile or an all-terrain vehicle; ~~as provided under subdivision 2;~~

(3) that ~~if testing is refused it will not affect the person's motor vehicle driver's license;~~

(4) that ~~if the 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 in addition to any other penalties the court may impose, the person's operating privileges will be suspended as provided under section 84.91, subdivision 6;~~

(5) that, ~~after submitting to testing, the person has the right to have additional tests made by someone of the person's own choosing; and~~

(6) that ~~a refusal to take a test will be offered into evidence against the person at trial if the peace officer has probable cause to believe the person has violated the criminal vehicular homicide and injury laws, that a test will be taken with or without the person's consent; and~~

(4) that the person has the 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.

Subd. 4. **REQUIREMENT OF URINE TEST.** Notwithstanding subdivision 1, if there is probable cause to believe there is impairment by a controlled substance that is not subject to testing by a breath test, a blood or urine test may be required even after a breath test has been administered.

Subd. 5. **CHEMICAL TESTS.** Chemical tests administered under this section are governed by section 86B.335, subdivisions 8, 9, and 10.

Subd. 6. **JUDICIAL AND ADMINISTRATIVE REVIEW; ENFORCEMENT.** Judicial and administrative review of sanctions imposed under this section is governed by section 86B.335, subdivisions 3, 4, and 5. Payment and enforcement of the civil penalty imposed under this section is governed by section 86B.335, subdivisions 11 and 12.

### Sec. 3. EFFECTIVE DATE.

Sections 1 and 2 are effective August 1, 1992, and apply to crimes committed on or after that date.

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## ARTICLE 3

## BOATING WHILE INTOXICATED

Section 1. Minnesota Statutes 1990, section 86B.331, is amended to read:

**86B.331 OPERATION WHILE USING ALCOHOL OR DRUGS OR WITH A PHYSICAL OR MENTAL DISABILITY.**

Subdivision 1. **ACTS PROHIBITED.** (a) A person may not operate or be in physical control of a motorboat in operation on the waters of this state ~~while under the influence of:~~

(1) when the person is under the influence of alcohol; as provided in section 169.121, subdivision 1, paragraphs (a) and (c);

(2) when the person is under the influence of a controlled or other substance, as provided defined in section 169.121 152.01, subdivision 1 4; or

(3) when the person is under the influence of a combination of any two or more of the elements named in clauses (1) and (2), and (6);

(4) when the person's alcohol concentration is 0.10 or more;

(5) when the person's alcohol concentration as measured within two hours of the time of operating is 0.10 or more; or

(6) when the person is knowingly under the influence of any chemical compound or combination of chemical compounds that is listed as a hazardous substance in rules adopted under section 182.655 and that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to operate the motorboat.

(b) An owner or other person having charge or control of a motorboat may not authorize or allow an individual the person knows or has reason to believe is under the influence of alcohol or a controlled or other substance, as provided under paragraph (a), to operate the motorboat in operation on the waters of this state.

(c) An owner or other person having charge or control of a motorboat may not knowingly authorize or allow a person, who by reason of a physical or mental disability is incapable of operating the motorboat, to operate the motorboat in operation on the waters of this state.

(d) For purposes of this subdivision, a motorboat "in operation" does not include a motorboat that is anchored, beached, or securely fastened to a dock or other permanent mooring.

Subd. 2. **ARREST.** Conservation officers of the department of natural resources, sheriffs, sheriff's deputies, and other peace officers may arrest a person for a violation under subdivision 1 without a warrant upon probable cause ~~if,~~

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~~without regard to whether the violation was committed in the officer's presence. If the violation did not occur in the officer's presence, the officer may arrest the person if the person was involved in a motorboat accident resulting in death, personal injury, or property damage.~~

Subd. 3. **PRELIMINARY SCREENING TEST.** (a) If an officer authorized under subdivision 2 to make arrests has reason to believe from the manner in which a person is operating, controlling, or acting upon departure from a motorboat, or has operated or been in control of a motorboat, that the operator may be violating or has violated subdivision 1, paragraph (a), the officer may require the operator to provide a breath sample for a preliminary screening test using a device approved by the commissioner of public safety for this purpose.

(b) The results of the preliminary screening test shall be used for the purpose of deciding whether an arrest should be made under this section and whether to require the chemical tests authorized in section 86B.335, but may not be used in a court action except: (1) to prove that a test was properly required of an operator pursuant to section 86B.335; or (2) in a civil action arising out of the operation or use of the motorboat.

(c) Following the preliminary screening test, additional tests may be required of the operator as provided under section 86B.335.

(d) An operator who refuses a breath sample is subject to the provisions of section 86B.335 unless, in compliance with that section, the operator submits to a blood, breath, or urine test to determine the presence of alcohol or a controlled substance.

Subd. 4. **EVIDENCE.** (a) Upon the trial of a prosecution arising out of acts alleged to have been committed by a person arrested for operating or being in physical control of a motorboat in violation of subdivision 1, paragraph (a), or an ordinance in conformity with it, 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 an analysis of those items.

(b) For the purposes of this subdivision:

(1) 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; and

(2) 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.

(c) Evidence of the refusal to take a preliminary screening test required under subdivision 3 or a chemical test required under section 86B.335 is admissible into evidence in a prosecution under this section or an ordinance in conformity with it.

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(d) This subdivision does not limit the introduction of other competent evidence bearing upon the question of whether or not the person violated this section, including tests obtained more than two hours after the alleged violation and results obtained from partial tests on an infrared breath-testing instrument. A result from a partial test is the measurement obtained by analyzing one adequate breath sample. A sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient.

(e) If proven by a preponderance of the evidence, it shall be an affirmative defense to a violation of subdivision 1, paragraph (a), clause (5), that the defendant consumed a sufficient quantity of alcohol after the time of operating or physical control of a motorboat and before the administration of the evidentiary test to cause the defendant's alcohol concentration to exceed 0.10. Provided, that this evidence may not be admitted unless notice is given to the prosecution prior to the omnibus or pretrial hearing in the matter.

Subd. 5. **PENALTIES.** (a) A person who violates a prohibition contained in subdivision 1, or an ordinance in conformity with it, is guilty of a misdemeanor; except that,

(b) A person who violates a prohibition contained in subdivision 1 within five years of a prior conviction under that subdivision or civil liability under section 86B.335, subdivision 2, or an ordinance in conformity with either of them, or within ten years of the first of two or more prior convictions under that subdivision or civil liability under section 86B.335, subdivision 2, or an ordinance in conformity with either of them, is guilty of a gross misdemeanor.

(c) The attorney in the jurisdiction where the violation occurred who is responsible for prosecution of misdemeanor violations of this section is also responsible for prosecution of gross misdemeanor violations of this section. When an attorney responsible for prosecuting gross misdemeanors under this section requests criminal history information relating to prior convictions from a court, the court must furnish the information without charge.

(b) (d) A person who operates a motorboat on the waters of this state during the period the person is prohibited from operating any motorboat or after the person's ~~motorboat~~ watercraft operator's permit has been revoked, as provided under subdivision 6, is guilty of a misdemeanor.

Subd. 5a. NOTICE OF ENHANCED PENALTIES. When a court sentences a person for a misdemeanor violation of this section, it shall inform the defendant of the statutory provisions that provide for enhancement of criminal penalties for repeat violators. The failure of a court to provide this information to a defendant does not affect the future applicability of these enhanced penalties to that defendant.

Subd. 6. **SUSPENSION AND REVOCATION OF OPERATING PRIVILEGES.** (a) Upon conviction under this section, or an ordinance in conformity with it, and in addition to any penalty imposed under subdivision 5, the person

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is prohibited from operating any motorboat on the waters of this state for a period of 90 days between May 1 and October 31, extending over two consecutive years if necessary.

(b) A person with a ~~motorboat~~ watercraft operator's permit 13 years of age or older but less than 18 years of age and who violates any prohibition contained in subdivision 1 shall have the permit revoked by the commissioner as required by section 86B.811, subdivision 2, in addition to any other penalty imposed by the court.

Subd. 7. **DUTIES OF COMMISSIONER.** The court shall promptly forward copies of all convictions and criminal and civil penalties imposed under subdivision 5 and section 86B.335, subdivision 2, to the commissioner. The commissioner shall notify the convicted person of the period when the person is prohibited from operating a motorboat as provided under subdivision 6 or section 86B.335, subdivision 2. The commissioner shall also periodically circulate to appropriate law enforcement agencies a list of all persons who are prohibited from operating any motorboat or have had their ~~motorboat~~ watercraft operator's permits revoked pursuant to subdivision 6 or section 86B.335, subdivision 2.

Subd. 8. **GOVERNMENT IMMUNITY FROM LIABILITY FOR BOAT CARE.** The state or political subdivision that is the employer of an officer authorized under subdivision 2 to make an arrest for violations of subdivision 1 is immune from any liability, civil or criminal, for the care or custody of the motorboat being operated by or in the physical control of the person arrested if the officer acts in good faith and exercises due care.

Sec. 2. Minnesota Statutes 1990, section 86B.335, subdivision 1, is amended to read:

Subdivision 1. **CHEMICAL TESTING.** A person who operates or is in physical control of a motorboat in operation on the waters of this state is required, subject to the provisions of this section, to take or submit to a test of the person's blood, breath, or urine for the purpose of determining the presence and amount of alcohol or a controlled substance. A motorboat "in operation" does not include a motorboat that is anchored, beached, or securely fastened to a dock or other permanent mooring. The test shall be administered at the direction of an officer authorized to make arrests under section 86B.331, subdivision 2. Taking or submitting to the test is mandatory when requested by an officer who has probable cause to believe the person was operating or in physical control of a motorboat in violation of section 86B.331, subdivision 1, paragraph (a), and one of the following conditions exist:

(1) the person has been lawfully placed under arrest for violating section 86B.331, subdivision 1, paragraph (a);

(2) the person has been involved in a motorboat accident resulting in property damage, personal injury, or death;

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(3) the person has refused to take the preliminary screening test provided for in section 86B.331, subdivision 3; or

(4) the screening test was administered and ~~recorded~~ indicated an alcohol concentration of 0.10 or more.

Sec. 3. Minnesota Statutes 1990, section 86B.335, subdivision 2, is amended to read:

Subd. 2. **REFUSAL TO TAKE TEST.** (a) If a person refuses to take a test required under subdivision 1, a test is not to be given, but the officer authorized to make arrests under section 86B.331, subdivision 2, shall report the refusal to the commissioner of natural resources and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction where the incident occurred that gave rise to the test demand and refusal. However, if a peace officer has probable cause to believe that the person has violated section 609.21, a test may be required and obtained despite the person's refusal.

(b) On certification by the officer that probable cause existed to believe the person had been operating or in physical control of a motorboat while under the influence of alcohol or a controlled substance, and that the person refused to submit to testing, the commissioner shall impose a civil penalty of \$500 and shall prohibit the person from operating any motorboat on the waters of this state for a period of one year even if a test was obtained pursuant to this section after the person refused to submit to testing. If the person refusing to submit to testing is under the age of 18 years at the time of the refusal, the person's watercraft operator's permit shall be revoked by the commissioner as set forth in this subdivision and a new permit after the revocation must be issued only after the person successfully completes a watercraft safety course.

(c) On behalf of the commissioner, an officer requiring a test or directing the administration of a test shall serve on a person who refused to permit a test immediate notice of intention to impose the civil penalty set forth in this subdivision, to prohibit the operation of motorboats, and to revoke a watercraft operator's permit. The officer shall take a watercraft operator's permit held by the person, and shall send the permit to the commissioner along with the certification provided for in this subdivision. If the officer fails to serve a notice of intent to revoke, the commissioner may notify the person by mail and the notice is deemed received three days after mailing. The notice must advise the person of the right to obtain administrative and judicial review as provided in this section. The prohibition and revocation, if any, shall take effect ten days after receipt of the notice. The civil penalty is imposed on receipt of the notice and shall be paid within 30 days of imposition.

(d) A person who operates a motorboat on the waters of this state during the period the person is prohibited from operating a motorboat as provided under paragraph (b) or (c) is guilty of a misdemeanor.

Sec. 4. Minnesota Statutes 1990, section 86B.335, subdivision 4, is amended to read:

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Subd. 4. **JUDICIAL REVIEW.** (a) Within 30 days following receipt of a notice and order imposing sanctions under this section, a person may petition the court for review. The petition must be filed with the district court administrator ~~of the county, municipal, or unified trial court~~ in the county where the incident occurred which gave rise to the test demand and refusal, together with proof of service of a copy on the commissioner and the prosecuting authority for misdemeanor offenses for the jurisdiction in which the incident occurred. A responsive pleading is not required of the commissioner of natural resources, and court fees may not be charged for the appearance of the representative of the commissioner in the matter.

(b) The petition must be captioned in the name of the person making the petition as petitioner and the commissioner as respondent. The petition must state specifically the grounds upon which the petitioner seeks rescission of the order imposing sanctions.

(c) The filing of the petition does not stay the revocation or prohibition against operation of a motorboat. However, the filing of a petition stays imposition of the civil penalty. The judicial review shall be conducted according to the rules of civil procedure.

Sec. 5. Minnesota Statutes 1990, section 86B.335, subdivision 5, is amended to read:

Subd. 5. **HEARING.** (a) A hearing under this section must be before a ~~municipal, county, or unified~~ district court judge in the county where the incident occurred which gave rise to the test demand and refusal. The hearing must be to the court and may be conducted at the same time as hearings upon pretrial motions in the criminal prosecution under section 86B.331. The hearing must be recorded. The commissioner must be represented by the prosecuting authority for misdemeanor offenses for the jurisdiction in which the incident occurred which gave rise to the test demand and refusal.

(b) The hearing must be held at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The reviewing court may order a temporary stay of the balance of the prohibition or revocation if the hearing has not been conducted within 60 days after filing of the petition, upon the application of the petitioner and upon terms the court deems proper.

(c) The scope of the hearing must be limited to the issues of:

- (1) whether the officer had probable cause to believe that the person was operating or in physical control of a motorboat in violation of section 86B.331;
- (2) whether one of the conditions in subdivision 1 existed;
- (3) whether the person was informed as prescribed in subdivision 6; and
- (4) whether the person refused to submit to testing.

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(d) It is an affirmative defense for the petitioner to prove that, at the time of the refusal, the petitioner's refusal to permit the test was based upon reasonable grounds.

(e) The court shall order that the prohibition or revocation be either sustained or rescinded and shall either sustain or rescind the civil penalty. The court shall forward a copy of the order to the commissioner.

Sec. 6. Minnesota Statutes 1990, section 86B.335, subdivision 6, is amended to read:

Subd. 6. **RIGHTS AND OBLIGATIONS.** At the time a test is requested, the person must be informed:

(1) that Minnesota law requires a person to take a test to determine if the person is under the influence of alcohol or a controlled substance;

(2) that a person is subject to a civil penalty of \$500 for refusing to take the test and, in addition, the person is may be prohibited from operating any motorboat; ~~as provided under subdivision 2, for refusing to take the test;~~

(3) ~~that if testing is refused it will not affect the person's motor vehicle driver's license;~~

(4) ~~that if the 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, in addition to any other penalties the court may impose, the person's operating privileges will be suspended as provided under section 86B.331, subdivision 6, paragraph (a);~~

(5) ~~that, after submitting to testing, the person has the right to have additional tests made by someone of the person's own choosing; and~~

(6) ~~that a refusal to take a test will be offered into evidence against the person at trial if the peace officer has probable cause to believe the person has violated the criminal vehicular homicide and injury laws, that a test will be taken with or without the person's consent; and~~

(4) that the person has the 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.

Sec. 7. **EFFECTIVE DATE.**

Sections 1 to 6 are effective June 1, 1992, and apply to crimes committed on or after that date.

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## ARTICLE 4

## AIRCRAFT OPERATION WHILE INTOXICATED

Section 1. Minnesota Statutes 1990, section 360.0752, is amended by adding a subdivision to read:

Subd. 2a. REFUSAL TO SUBMIT TO TESTING; CRIME. It is a crime for any person to refuse to submit to a chemical test of the person's blood, breath, or urine under section 360.0753.

Sec. 2. Minnesota Statutes 1990, section 360.0752, subdivision 6, is amended to read:

Subd. 6. **CRIMINAL PENALTIES.** (a) A person who violates subdivision 2, clause (g); or 3, is guilty of a misdemeanor.

(b) A person who violates subdivision 2, clauses (a) to (f), or subdivision 2a, is guilty of a gross misdemeanor.

(c) The attorney in the jurisdiction in which the violation occurred who is responsible for prosecution of misdemeanor violations shall also be responsible for prosecution of gross misdemeanor violations of this section.

Sec. 3. Minnesota Statutes 1990, section 360.0753, subdivision 2, is amended to read:

Subd. 2. **IMPLIED CONSENT; CONDITIONS; ELECTION AS TO TYPE OF TEST.** (a) Any person who operates or attempts to operate an aircraft in or over this state or over any boundary water of this state consents, subject to the provisions of this section and section 360.0752, to a chemical test of that person's 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 probable cause to believe the person was operating or attempting to operate an aircraft in violation of section 360.0752 and one of the following conditions exists:

(1) the person has been lawfully placed under arrest for violation of section 360.0752;

(2) the person has been involved in an aircraft accident or collision resulting in property damage, personal injury, or death;

(3) the person has refused to take the screening test provided for by section 360.0752;

(4) the screening test was administered and recorded an alcohol concentration of 0.04 or more; or

(5) the officer had probable cause to believe that the person was operating or

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attempting to operate an aircraft with any amount of alcohol present in the person's body.

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

(1) that Minnesota law requires the person to take a test to determine the presence of alcohol or to determine if the person is under the influence of alcohol or a controlled substance;

(2) that if testing is refused, the person will be disqualified from operating an aircraft for a minimum period of one year;

(3) that if a test is taken and the results indicate an alcohol concentration of 0.04 or more or that the person is under the influence of a controlled substance, the person will be subject to criminal penalties and the person may be prohibited from operating an aircraft in this state for up to one year;

(4) that after submitting to testing, the person has the right to consult with an attorney and to have additional tests made by someone of the person's own choosing; and

(5) that if the person refuses to take a test, the refusal will be offered into evidence against the person at trial: whether a test is taken or refused, the person may be subject to criminal prosecution for an alcohol or controlled substance related offense relating to the operation of an aircraft;

(3) that if testing is refused, the person may be subject to criminal prosecution because the person refused testing and the person will be disqualified from operating an aircraft for a minimum period of one year;

(4) if the peace officer has probable cause to believe the person has violated the criminal vehicular homicide and injury laws, that a test will be taken with or without the person's consent; and

(5) that the person has the right to consult with an attorney, but that this right is limited to the extent that it cannot unreasonably delay administration of the test.

(c) The peace officer who requires a test pursuant to this subdivision may direct whether the test shall be of blood, breath, or urine. Action may be taken against a person who refuses to take a blood test only if an alternative test was offered, and action may be taken against a person who refuses to take a urine test only if an alternative test was offered.

Sec. 4. Minnesota Statutes 1990, section 360.0753, subdivision 7, is amended to read:

Subd. 7. **REFUSAL TO PERMIT TEST; CEASE AND DESIST ORDER.** If a person under arrest refuses to permit chemical testing, none shall be given, but the commissioner of transportation, upon the receipt of a certificate of the

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peace officer that the officer had reasonable and probable grounds to believe the arrested person had been operating or attempting to operate an aircraft in violation of section 360.0752 and that the person had refused to permit the test, shall issue a cease and desist order prohibiting the operation of an aircraft for a period of one year. However, if a peace officer has probable cause to believe that the person has violated section 609.21, a test may be required and obtained despite the person's refusal. When a test is obtained pursuant to this section after the person refused to submit to testing, the commissioner of transportation shall issue a cease and desist order under this section based on the person's refusal.

Sec. 5. Minnesota Statutes 1990, section 360.0753, subdivision 9, is amended to read:

Subd. 9. **HEARING.** The hearing shall be before a district court in the county where the arrest occurred, unless there is agreement that the hearing may be held in some other county. The hearing shall be recorded and proceed as in a criminal matter, without the right of trial by jury, and its scope shall cover the issues of whether the peace officer had reasonable and probable grounds to believe the person was operating or attempting to operate an aircraft in violation of section 360.0752; whether the person was lawfully placed under arrest; whether the person refused to permit the test, and if the person refused whether the person had reasonable grounds for refusing to permit the test; and whether at the time of request for the test the peace officer informed the person that the right to fly ~~might~~ will be denied if the person refused to permit the test and of the right to have additional tests made by someone of the person's own choosing. The court shall order either that the denial be rescinded or sustained and refer the order to the commissioner of transportation for further action.

Sec. 6. **EFFECTIVE DATE.**

Sections 1 to 5 are effective August 1, 1992, and apply to crimes committed on or after that date.

## ARTICLE 5

### HUNTING WHILE INTOXICATED

Section 1. Minnesota Statutes 1990, section 97B.065, is amended to read:

#### 97B.065 HUNTING WHILE UNDER THE INFLUENCE OF ALCOHOL OR A CONTROLLED SUBSTANCE.

Subdivision 1. ACTS PROHIBITED. (a) A person may not take ~~protected~~ wild animals with a firearm or by archery ~~while under the influence of alcohol or a controlled substance.~~

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- (1) when the person is under the influence of alcohol;
  - (2) when the person is under the influence of a controlled substance, as defined in section 152.01, subdivision 4;
  - (3) when the person is under the influence of a combination of any two or more of the elements in clauses (1) and (2);
  - (4) when the person's alcohol concentration is 0.10 or more;
  - (5) when the person's alcohol concentration as measured within two hours of the time of taking is 0.10 or more; or
  - (6) when the person is knowingly under the influence of any chemical compound or combination of chemical compounds that is listed as a hazardous substance in rules adopted under section 182.655 and that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to operate a firearm or bow and arrow.
- (b) An owner or other person having charge or control of a firearm or bow and arrow may not authorize or permit an individual the person knows or has reason to believe is under the influence of alcohol or a controlled substance, as provided under paragraph (a), to possess the firearm or bow and arrow in this state or on a boundary water of this state.

Subd. 2. ARREST. A peace officer may arrest a person for a violation under subdivision 1 without a warrant upon probable cause, without regard to whether the violation was committed in the officer's presence.

Subd. 3. PRELIMINARY SCREENING TEST. When an officer authorized under subdivision 2 to make arrests has reason to believe that the person may be violating or has violated subdivision 1, paragraph (a), the officer may require the person to provide a breath sample for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of the preliminary screening test must be used for the purpose of deciding whether an arrest should be made under this section and whether to require the chemical tests authorized in section 2, but may not be used in any court action except: (1) to prove that a test was properly required of a person under section 2, or (2) in a civil action arising out of the operation of a firearm or bow and arrow. Following the preliminary screening test, additional tests may be required of the person as provided under section 2. A person who refuses a breath sample is subject to the provisions of section 2 unless, in compliance with that section, the person submits to a blood, breath, or urine test to determine the presence of alcohol or a controlled substance.

Subd. 4. EVIDENCE. In a prosecution for a violation of subdivision 1, paragraph (a), or an ordinance in conformity with it, the admission of evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine is governed by section 86B.331, subdivision 4.

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 5. PENALTIES. (a) A person who violates a prohibition in subdivision 1, or an ordinance in conformity with it, is subject to the penalties provided in section 97A.331.

(b) A person who hunts during the period the person is prohibited from hunting under subdivision 6 is guilty of a misdemeanor.

Subd. 6. HUNTING PRIVILEGES SUSPENDED. Upon conviction, and in addition to any penalty imposed under subdivision 5, the person is subject to the limitations on hunting provided in section 97A.421.

Subd. 7. DUTIES OF COMMISSIONER. The court shall promptly forward to the commissioner copies of all convictions and criminal and civil penalties imposed under subdivision 5 and section 2, subdivision 2. The commissioner shall notify the convicted person of the period during which the person is prohibited from hunting under subdivision 6 and section 97A.421. The commissioner shall also periodically circulate to appropriate law enforcement agencies a list of all persons who are prohibited from hunting under subdivision 6 and section 97A.421.

Subd. 8. IMMUNITY FROM LIABILITY. The state or political subdivision that employs an officer who is authorized under subdivision 2 to make an arrest for violations of subdivision 1 is immune from any liability, civil or criminal, for the care or custody of the hunting equipment in the physical control of the person arrested if the officer acts in good faith and exercises due care.

## Sec. 2. [97B.066] CHEMICAL TESTING.

Subdivision 1. MANDATORY CHEMICAL TESTING. A person who takes wild animals with a bow or firearm in this state or on a boundary water of this state is required, subject to the provisions of this section, to take or submit to a test of the person's blood, breath, or urine for the purpose of determining the presence and amount of alcohol or a controlled substance. The test shall be administered at the direction of an officer authorized to make arrests under section 97B.065, subdivision 2. Taking or submitting to the test is mandatory when requested by an officer who has probable cause to believe the person was hunting in violation of section 97B.065, subdivision 1, paragraph (a), and one of the following conditions exists:

(1) the person has been lawfully placed under arrest for violating section 97B.065, subdivision 1, paragraph (a);

(2) the person has been involved while hunting in an accident resulting in property damage, personal injury, or death;

(3) the person has refused to take the preliminary screening test provided for in section 97B.065, subdivision 3; or

(4) the screening test was administered and indicated an alcohol concentration of 0.10 or more.

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**Subd. 2. PENALTIES; REFUSAL; REVOCATION OF HUNTING PRIVILEGE.** (a) If a person refuses to take a test required under subdivision 1, none must be given but the officer authorized to make arrests under section 97B.065, subdivision 2, shall report the refusal to the commissioner of natural resources and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the incident occurred that gave rise to the test demand and refusal.

On certification by the officer that probable cause existed to believe the person had been hunting while under the influence of alcohol or a controlled substance, and that the person refused to submit to testing, the commissioner shall impose a civil penalty of \$500 and shall prohibit the person from hunting for one year.

On behalf of the commissioner, an officer requiring a test or directing the administration of a test shall serve on a person who refused to permit a test immediate notice of intention to prohibit the person from hunting, and to impose the civil penalty set forth in this subdivision. If the officer fails to serve a notice of intent to suspend hunting privileges, the commissioner may notify the person by certified mail to the address on the license of the person. The notice must advise the person of the right to obtain administrative and judicial review as provided in this section. The prohibition imposed by the commissioner takes effect ten days after receipt of the notice. The civil penalty is imposed 30 days after receipt of the notice or upon return of the certified mail to the commissioner, and must be paid within 30 days of imposition.

(b) A person who hunts during the period the person is prohibited from hunting as provided under paragraph (a) is guilty of a misdemeanor.

**Subd. 3. RIGHTS AND OBLIGATIONS.** At the time a test is requested, the person must be informed that:

(1) Minnesota law requires a person to take a test to determine if the person is under the influence of alcohol or a controlled substance;

(2) if the person refuses to take the test, the person is subject to a civil penalty of \$500 and is prohibited for a one-year period from hunting, as provided under subdivision 2; and

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

**Subd. 4. REQUIREMENT OF URINE TEST.** Notwithstanding subdivision 1, if there is probable cause to believe there is impairment by a controlled substance that is not subject to testing by a breath test, a blood or urine test may be required even after a breath test has been administered.

**Subd. 5. CHEMICAL TESTS.** Chemical tests administered under this section are governed by section 86B.335, subdivisions 8, 9, and 10.

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Subd. 6. JUDICIAL AND ADMINISTRATIVE REVIEW; ENFORCEMENT. Judicial and administrative review of sanctions imposed under this section is governed by section 86B.335, subdivisions 3, 4, and 5. Payment and enforcement of the civil penalty imposed under this section is governed by section 86B.335, subdivisions 11 and 12.

Sec. 3. EFFECTIVE DATE.

Sections 1 and 2 are effective August 1, 1992, and apply to crimes committed on or after that date.

Presented to the governor April 17, 1992

Signed by the governor April 29, 1992, 8:20 a.m.

CHAPTER 571—H.F.No. 1849

*An act relating to crime; antiviolenace education, prevention and treatment; increasing penalties for repeat sex offenders; providing for life imprisonment for certain repeat sex offenders; providing for life imprisonment without parole for certain persons convicted of first degree murder; increasing penalties for other violent crimes and crimes committed against children; increasing penalty for second degree assault resulting in substantial bodily harm; removing the limit on consecutive sentences for felonies; increasing supervision of sex offenders; requiring review of sex offenders for psychopathic personality commitment before prison release; providing a fund for sex offender treatment; eliminating the "good time" reduction in prison sentences; allowing the extension of prison terms for disciplinary violations in prison; authorizing the commissioner of corrections to establish a challenge incarceration program; authorizing the imposition of fees for local correctional services on offenders; requiring the imposition of minimum fines on convicted offenders; expanding certain crime victim rights; providing programs for victim-offender mediation; enhancing protection of domestic abuse victims; requiring city and county attorneys to adopt a domestic abuse prosecution plan; creating a civil cause of action for minors used in a sexual performance; providing for a variety of antiviolenace education, prevention, and treatment programs; requiring training of peace officers regarding crimes of violence and sensitivity to victims; creating an advisory task force on the juvenile justice system; providing for chemical dependency treatment for children, high-risk youth, and pregnant women, and women with children; providing for violence prevention training and campus safety and security; appropriating money; amending Minnesota Statutes 1990, sections 8.01; 121.882, by adding a subdivision; 127.46; 135A.15; 169.791; 169.792; 169.793; 169.796; 171.07, subdivision 1a; 171.19; 241.021, by adding a subdivision; 241.67, subdivisions 1, 2, 3, 6, and by adding a subdivision; 242.195, subdivision 1; 243.53; 244.01, subdivision 8; 244.03; 244.04, subdivisions 1 and 3; 244.05, subdivisions 1, 3, 4, 5, and by adding subdivisions; 245.4871, by adding a subdivision; 253B.18, subdivision 2; 254A.14, by adding a subdivision; 254A.17, subdivision 1, and by adding a subdivision; 259.11; 260.125, subdivision 3a; 260.151, subdivision 1; 260.155, subdivision 1, and by adding a subdivision; 260.161, subdivision 1, and by adding a subdivision; 260.172, subdivi-*

New language is indicated by underline, deletions by ~~strikeout~~.