SLS 14RS-607 **ORIGINAL**

Regular Session, 2014

SENATE BILL NO. 277

BY SENATOR PERRY

DWI. Provides for changes to DWI laws. (1/1/15)

AN ACT

To amend and reenact R.S. 14:98, 98.1, 98.2, and 98.3, and to enact R.S. 14:98.4, 98.5, 98.6, 98.7, and 98.8, relative to driving offenses; to provide relative to the crimes of operating a motor vehicle while intoxicated, underage operating a vehicle while intoxicated, unlawful refusal to submit to chemical tests, and operating a vehicle while under suspension; to provide definitions; to provide penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:98, 98.1, 98.2, and 98.3 are hereby amended and reenacted and R.S. 14:98.4, 98.5, 98.6, 98.7, and 98.8 are hereby enacted to read as follows:

§98. Operating a vehicle while intoxicated

A.(1) The crime of operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when **any of the following conditions exist**:

(a) The operator is under the influence of alcoholic beverages~~; or~~**.**

(b) The operator's blood alcohol concentration is 0.08 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood~~; or~~**.**

(c) The operator is under the influence of any controlled dangerous substance

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964~~; or~~**.**

(d)(i) The operator is under the influence of a combination of alcohol and one or more drugs ~~which~~ **that** are not controlled dangerous substances and ~~which~~ **that** are legally obtainable with or without a prescription.

(ii) It shall be an affirmative defense to any charge under this Subparagraph ~~pursuant to this Section~~ that the label on the container of the prescription drug or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol.

(e)(i) The operator is under the influence of one or more drugs ~~which~~ **that** are not controlled dangerous substances and ~~which~~ **that** are legally obtainable with or without a prescription.

(ii) It shall be an affirmative defense to any charge under this Subparagraph ~~pursuant to this Section~~ that the operator did not knowingly consume quantities of the drug or drugs ~~which~~ **that** substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.

(2) A valid driver's license shall not be an element of the offense, and the lack thereof shall not be a defense to a prosecution for operating a vehicle while intoxicated.

~~B.(1) On a first conviction, notwithstanding any other provision of law to the contrary, the offender shall be fined not less than three hundred dollars nor more than one thousand dollars, and shall be imprisoned for not less than ten days nor more than six months. Imposition or execution of sentence shall not be suspended unless:~~

~~(a) The offender is placed on probation with a minimum condition that he serve two days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program; or~~

~~(b) The offender is placed on probation with a minimum condition that he perform four eight-hour days of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program, participate in a court-approved substance abuse program, and participate~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~in a court-approved driver improvement program. An offender, who participates in a litter abatement or collection program pursuant to this Subparagraph, shall have no cause of action for damages against the entity conducting the program or supervising his participation therein, including a municipality, parish, sheriff, or other entity, nor against any official, employee, or agent of such entity, for any injury or loss suffered by him during or arising out of his participation in the program, if such injury or loss is a direct result of the lack of supervision or act or omission of the supervisor, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the entity or its official, employee, or agent.~~

~~(2)(a) If the offender had a blood alcohol concentration of 0.15 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, at least forty-eight hours of the sentence imposed pursuant to Paragraph (B)(1) of this Subsection shall be served without the benefit of parole, probation, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless the offender complies with Subparagraph (B)(1)(a) or (b) of this Subsection.~~

~~(b) If the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, the offender shall be fined not less than seven hundred fifty dollars nor more than one thousand dollars and at least forty-eight hours of the sentence imposed pursuant to Paragraph (B)(1) of this Subsection shall be served without the benefit of parole, probation, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless the offender complies with Subparagraph (B)(1)(a) or (b) of this Subsection.~~

~~C.(1) On a conviction of a second offense, notwithstanding any other provision of law to the contrary except as provided in Paragraphs (3) and (4) of this Subsection, regardless of whether the second offense occurred before or after the first conviction, the offender shall be fined not less than seven hundred fifty dollars, nor more than one thousand dollars, and shall be imprisoned for not less than thirty~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~days nor more than six months. At least forty-eight hours of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. Nothing herein shall prohibit a court from sentencing a defendant to home incarceration, if otherwise allowed under the provisions of Article 894.2 of the Code of Criminal Procedure. Imposition or execution of the remainder of the sentence shall not be suspended unless:~~

~~(a) The offender is placed on probation with a minimum condition that he serve fifteen days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program; or~~

~~(b) The offender is placed on probation with a minimum condition that he perform thirty eight-hour days of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program, and participate in a court-approved substance abuse program, and participate in a court-approved driver improvement program. An offender, who participates in a litter abatement or collection program pursuant to this Subparagraph, shall have no cause of action for damages against the entity conducting the program or supervising his participation therein, including a municipality, parish, sheriff, or other entity, nor against any official, employee, or agent of such entity, for any injury or loss suffered by him during or arising out of his participation therein, if such injury or loss is a direct result of the lack of supervision or act or omission of the supervisor, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the entity or its official, employee, or agent.~~

~~(2)(a) If the offender had a blood alcohol concentration of 0.15 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, at least ninety-six hours of the sentence imposed pursuant to Paragraph (1) of this Subsection shall be served without the benefit of parole, probation, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless the offender complies with Subparagraph (1)(a) or (b) of this~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~Subsection.~~

~~(b) If the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, the offender shall be fined one thousand dollars and at least ninety-six hours of the sentence imposed pursuant to Paragraph (1) of this Subsection shall be served without the benefit of parole, probation, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless the offender complies with Subparagraph (1)(a) or (b) of this Subsection.~~

~~(3) Notwithstanding the provisions of Paragraph (1) of this Subsection, on a conviction of a second offense when the first offense was for the crime of vehicular homicide in violation of R.S. 14:32.1, or first degree vehicular negligent injuring in violation of R.S. 14:39.2, the offender shall be imprisoned with or without hard labor for not less than one year nor more than five years, and shall be fined two thousand dollars. At least six months of the sentence of imprisonment imposed shall be without benefit of probation, parole, or suspension of sentence. Imposition or execution of the remainder of the sentence shall not be suspended unless the provisions of Subparagraph (1)(a) or (b) of this Subsection are complied with.~~

~~(4) Notwithstanding the provisions of Paragraph (1) of this Subsection, on a conviction of a second offense when the arrest for the second offense occurs within one year of the commission of the first offense, the offender shall be imprisoned for thirty days without benefit of parole, probation, or suspension of sentence and shall participate in a court-approved substance abuse program and in a court-approved driver improvement program.~~

~~D.(1)(a) On a conviction of a third offense, notwithstanding any other provision of law to the contrary and regardless of whether the offense occurred before or after an earlier conviction, the offender shall be imprisoned with or without hard labor for not less than one year nor more than five years and shall be fined two thousand dollars. Except as provided in Paragraph (4) of this Subsection, one year of the sentence of imprisonment shall be imposed without benefit of probation,~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~parole, or suspension of sentence. The court, in its discretion, may suspend all or any part of the remainder of the sentence of imprisonment. If any portion of the sentence is suspended, except for a suspension of sentence pursuant to the provisions of Paragraph (4) of this Subsection, the offender shall be placed on supervised probation with the Department of Public Safety and Corrections, division of probation and parole, for a period of time equal to the remainder of the sentence of imprisonment, which probation shall commence on the day after the offender's release from custody.~~

~~(b) Any offender placed on probation pursuant to the provisions of this Subsection shall be required as a condition of probation to participate in thirty eight-hour days of court-approved community service activities and to submit to and complete either of the following requirements:~~

~~(i) To immediately undergo an evaluation by the Department of Health and Hospitals, office of behavioral health to determine the nature and extent of the offender's substance abuse disorder and to participate in any treatment plan recommended by the office of behavioral health, including treatment in an inpatient facility approved by the office for a period of not less than four weeks followed by outpatient treatment services for a period not to exceed twelve months.~~

~~(ii) To participate in substance abuse treatment in an alcohol and drug abuse program provided by a drug division subject to the applicable provisions of R.S. 13:5301 et seq. if the offender is otherwise eligible to participate in such program.~~

~~(c) In addition to the requirements set forth in Subparagraph (b) of this Paragraph, any offender placed on probation pursuant to the provisions of Subsection D of this Section shall be placed in a home incarceration program approved by the division of probation and parole for a period of time not less than six months and not more than the remainder of the sentence of imprisonment.~~

~~(d) If any offender placed on probation pursuant to the provisions of Subsection D of this Section fails to complete the substance abuse treatment required by the provisions of this Paragraph or violates any other condition of probation,~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~including conditions of home incarceration, his probation may be revoked, and he may be ordered to serve the balance of the sentence of imprisonment, without credit for time served under home incarceration.~~

~~(2)(a) In addition, the court shall order, subject to the discretion of the prosecuting district attorney, that the vehicle being driven by the offender at the time of the offense shall be seized and impounded, and sold at auction in the same manner and under the same conditions as executions of writ of seizures and sale as provided in Book V, Title II, Chapter 4 of the Code of Civil Procedure. If the district attorney elects to forfeit the vehicle, he shall file a written motion at least five days prior to sentencing stating his intention to forfeit the vehicle. When the district attorney elects to forfeit the vehicle, the court shall order it forfeited.~~

~~(b) The vehicle shall be exempt from sale if it was stolen, or if the driver of the vehicle at the time of the violation was not the owner and the owner did not know that the driver was operating the vehicle while intoxicated. If this exemption is applicable, the vehicle shall not be released from impoundment until such time as towing and storage fees have been paid.~~

~~(c) In addition, the vehicle shall be exempt from sale if all towing and storage fees are paid by a valid lienholder.~~

~~(d) The proceeds of the sale shall first be used to pay court costs and towing and storage costs, and the remainder shall be allocated as follows: sixty percent of the funds shall go to the arresting agency, twenty percent to the prosecuting district attorney, and twenty percent to the Louisiana Property and Casualty Insurance Commission for its use in studying other ways to reduce drunk driving and insurance rates.~~

~~(3)(a) An offender sentenced to home incarceration during probation shall be subject to special conditions to be determined by the court, which shall include but not be limited to the following:~~

~~(i) Electronic monitoring.~~

~~(ii) Curfew restrictions.~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~(iii) Home visitation at least once per month by the Department of Public Safety and Corrections for the first six months. After the first six months, the level of supervision will be determined by the department based upon a risk assessment instrument.~~

~~(b) The court shall also require the offender to obtain employment and to participate in a court-approved driver improvement program at his expense. The activities of the offender outside of his home shall be limited to traveling to and from work, church services, Alcoholics Anonymous meetings, or a court-approved driver improvement program.~~

~~(c) Offenders sentenced to home incarceration required under the provisions of this Section shall be subject to all other applicable provisions of Code of Criminal Procedure Article 894.2.~~

~~(4) Notwithstanding the provisions of Subparagraph (1)(a) of this Subsection, the one-year period described in Paragraph (1) of this Subsection which shall otherwise be imposed without the benefit of probation, parole, or suspension of sentence, may also be suspended if the offender is accepted into a drug division probation program pursuant to R.S. 13:5301 et seq. The provisions of Paragraph (2) of this Subsection shall also be applicable to any offender whose sentence is served with the benefit of probation, parole, or suspension of sentence pursuant to the provisions of this Paragraph.~~

~~E.(1)(a) Except as otherwise provided in Subparagraph (4)(b) of this Subsection, on a conviction of a fourth or subsequent offense, notwithstanding any other provision of law to the contrary and regardless of whether the fourth offense occurred before or after an earlier conviction, the offender shall be imprisoned with or without hard labor for not less than ten years nor more than thirty years and shall be fined five thousand dollars. Except as provided in Paragraph (5) of this Subsection, two years of the sentence of imprisonment shall be imposed without benefit of parole, probation, or suspension of sentence. The court, in its discretion, may suspend all or any part of the remainder of the sentence of imprisonment. If any~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~portion of the sentence is suspended, except for a suspension of sentence pursuant to the provisions of Paragraph (5) of this Subsection, the offender shall be placed on supervised probation with the Department of Public Safety and Corrections, division of probation and parole, for a period of time not to exceed five years, which probation shall commence on the day after the offender's release from custody.~~

~~(b) Any offender placed on probation pursuant to the provisions of this Subsection shall be required, as a condition of probation, to participate in forty eight-hour days of court-approved community service activities and to submit to and complete either of the following requirements:~~

~~(i) To immediately undergo an evaluation by the Department of Health and Hospitals, office of behavioral health to determine the nature and extent of the offender's substance abuse disorder and to participate in any treatment plan recommended by the office of behavioral health, including treatment in an inpatient facility approved by the office for a period of not less than four weeks followed by outpatient treatment services for a period not to exceed twelve months.~~

~~(ii) To participate in substance abuse treatment in an alcohol and drug abuse program provided by a drug division subject to the applicable provisions of R.S. 13:5301 et seq. if the offender is otherwise eligible to participate in such program.~~

~~(c) In addition to the requirements set forth in Subparagraph (b) of this Paragraph, any offender placed on probation pursuant to the provisions of Subsection E of this Section shall be placed in a home incarceration program approved by the division of probation and parole for a period of time not less than one year nor more than the remainder of the term of supervised probation.~~

~~(d) If any offender placed on probation pursuant to the provisions of Subsection E of this Section fails to complete the substance abuse treatment required by the provisions of this Paragraph or violates any other condition of probation, including conditions of home incarceration, his probation may be revoked, and he may be ordered to serve the balance of the sentence of imprisonment, without credit for time served under home incarceration.~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~(2)(a) In addition, the court shall order, subject to the discretion of the prosecuting district attorney, that the vehicle being driven by the offender at the time of the offense be seized and impounded, and be sold at auction in the same manner and under the same conditions as executions of writ of seizure and sale as provided in Book V, Title II, Chapter 4 of the Code of Civil Procedure. If the district attorney elects to forfeit the vehicle, he shall file a written motion at least five days prior to sentencing stating his intention to forfeit the vehicle.~~

~~(b) The vehicle shall be exempt from sale if it was stolen, or if the driver of the vehicle at the time of the violation was not the owner and the owner did not know that the driver was operating the vehicle while intoxicated. If this exemption is applicable, the vehicle shall not be released from impoundment until such time as towing and storage fees have been paid.~~

~~(c) In addition, the vehicle shall be exempt from sale if all towing and storage fees are paid by a valid lienholder.~~

~~(d) The proceeds of the sale shall first be used to pay court costs and towing and storage costs, and the remainder shall be allocated as follows: sixty percent of the funds shall go to the arresting agency, twenty percent to the prosecuting district attorney, and twenty percent to the Louisiana Property and Casualty Insurance Commission for its use in studying other ways to reduce drunk driving and insurance rates.~~

~~(3)(a) An offender sentenced to home incarceration during probation shall be subject to special conditions to be determined by the court, which shall include but not be limited to the following:~~

~~(i) Electronic monitoring.~~

~~(ii) Curfew restrictions.~~

~~(iii) Home visitation at least once per month by the Department of Public Safety and Corrections for the first six months. After the first six months, the level of supervision will be determined by the department based upon a risk assessment instrument.~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~(b) The court shall also require the offender to obtain employment and to participate in a court-approved driver improvement program at his expense. The activities of the offender outside of his home shall be limited to traveling to and from work, church services, Alcoholics Anonymous meetings, or a court-approved driver improvement program.~~

~~(c) Offenders sentenced to home incarceration required under the provisions of this Section shall be subject to all other applicable provisions of Code of Criminal Procedure Article 894.2.~~

~~(4)(a) If the offender has previously been required to participate in substance abuse treatment and home incarceration pursuant to Subsection D of this Section, the offender shall not be sentenced to substance abuse treatment and home incarceration for a fourth or subsequent offense, but shall be imprisoned at hard labor for not less than ten nor more than thirty years, and at least three years of the sentence shall be imposed without benefit of suspension of sentence, probation, or parole.~~

~~(b) If the offender has previously received the benefit of suspension of sentence, probation, or parole as a fourth offender, after serving the mandatory sentence required by Subparagraph (E)(1)(a), no part of the remainder of the sentence may be imposed with benefit of suspension of sentence, probation, or parole, and no portion of the sentence shall be imposed concurrently with the remaining balance of any sentence to be served for a prior conviction for any offense.~~

~~(5)(a) Notwithstanding the provisions of Subparagraph (1)(a) of this Subsection, the two-year period described in Paragraph (1) of this Subsection which shall otherwise be imposed without the benefit of parole, probation, or suspension of sentence may also be suspended if the offender is accepted into a drug division probation program pursuant to R.S. 13:5301 et seq. The provisions of Paragraph (2) of this Subsection shall also be applicable to any offender whose sentence is served with the benefit of probation, parole, or suspension of sentence pursuant to the provisions of this Subparagraph.~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~(b) If the offender has previously participated in a drug division probation program pursuant to the provisions of Paragraph (D)(4) of this Section, the offender shall not be eligible to serve his sentence with the benefit of probation, parole, or suspension of sentence pursuant to the provisions of Subparagraph (a) of this Paragraph, but shall be imprisoned at hard labor for not less than ten nor more than thirty years, and at least three years of the sentence shall be imposed without benefit of suspension of sentence, probation, or parole.~~

~~F.(1) For purposes of determining whether a defendant has a prior conviction for violation of this Section, a conviction under either R.S. 14:32.1, vehicular homicide, R.S. 14:39.1, vehicular negligent injuring, or R.S. 14:39.2, first degree vehicular negligent injuring, or a conviction under the laws of any state or an ordinance of a municipality, town, or similar political subdivision of another state, which prohibits the operation of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance while intoxicated, while impaired, or while under the influence of alcohol, drugs, or any controlled dangerous substance shall constitute a prior conviction. This determination shall be made by the court as a matter of law.~~

~~(2) For purposes of this Section, a prior conviction shall not include a conviction for an offense under this Section, under R.S. 14:32.1, R.S. 14:39.1, or R.S. 14:39.2, or under a comparable statute or ordinance of another jurisdiction, as described in Paragraph (1) of this Subsection, if committed more than ten years prior to the commission of the crime for which the defendant is being tried and such conviction shall not be considered in the assessment of penalties hereunder. However, periods of time during which the offender was awaiting trial, on probation or parole for an offense described in Paragraph (1) of this Subsection, under an order of attachment for failure to appear, or incarcerated in a penal institution in this or any other state shall be excluded in computing the ten-year period.~~

~~G. The legislature hereby finds and declares that conviction of a third or subsequent DWI offense is presumptive evidence of the existence of a substance abuse disorder in the offender posing a serious threat to the health and safety of the~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~public. Further, the legislature finds that there are successful treatment methods available for treatment of addictive disorders. Court-approved substance abuse programs provided for in Subsections B, C, and D of this Section shall include a screening procedure to determine the portions of the program which may be applicable and appropriate for individual offenders and shall assess the offender's degree of alcohol abuse.~~

~~H. "Community service activities" as used in this Section may include duty in any morgue, coroner's office, or emergency treatment room of a state-operated hospital or other state-operated emergency treatment facility, with the consent of the administrator of the morgue, coroner's office, hospital, or facility.~~

~~I. An offender ordered to participate in a substance abuse program in accordance with the provisions of this Section shall pay the cost incurred in participating in the program. Failure to make such payment shall subject the offender to revocation of probation, unless the court determines that the offender is unable to pay. If the court determines that the offender is unable to pay, the state shall pay for the cost of the substance abuse treatment. An offender sentenced to home incarceration and to participate in a driver improvement program shall pay the cost incurred in participating in home incarceration and a driver improvement program unless the court determines that the offender is unable to pay. However, if the court determines that an offender is unable to pay the costs incurred for participating in a substance abuse treatment program, driver improvement program, or home incarceration, the court may, upon completion of such program or home incarceration, require that the offender reimburse the state for all or a portion of such costs pursuant to a payment schedule determined by the court.~~

~~J. This Subsection shall be cited as the "Child Endangerment Law". When the state proves in addition to the elements of the crime as set forth in Subsection A of this Section that a minor child twelve years of age or younger was a passenger in the motor vehicle, aircraft, watercraft, vessel, or other means of motorized conveyance at the time of the commission of the offense, of the sentence imposed by the court,~~

Coding: Words which are ~~struck through~~ are deletions from existing law;
words in **boldface type and underscored** are additions.

~~the execution of the minimum mandatory sentence provided by Subsection B or C of this Section, as appropriate, shall not be suspended. If imprisonment is imposed pursuant to the provisions of Subsection D, the execution of the minimum mandatory sentence shall not be suspended. If imprisonment is imposed pursuant to the provisions of Subsection E, at least two years of the sentence shall be imposed without benefit of suspension of sentence.~~

~~K.(1) In addition to any penalties imposed under this Section, upon conviction of a first offense if the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood the driver's license of the offender shall be suspended for two years. Such offender may apply for a restricted license to be in effect during the entire period of suspension upon proof to the Department of Public Safety and Corrections that his motor vehicle has been equipped with a functioning ignition interlock device in compliance with the requirements of R.S. 32:378.2. The ignition interlock device shall remain installed and operative on his vehicle during the first twelve-month period of suspension of his driver's license following the date of conviction.~~

~~(2)(a) In addition to any penalties imposed under this Section, upon conviction of a second offense, any vehicle, while being operated by the offender, shall be equipped with a functioning ignition interlock device in accordance with the provisions of R.S. 15:306. This requirement shall remain in effect for a period of not less than six months. In addition, the device shall remain installed and operative during any period that the offender's operator's license is suspended under law and for any additional period as determined by the court.~~

~~(b) In addition to any penalties imposed under this Section and notwithstanding the provisions of Subparagraph (2)(a) of this Subsection, upon conviction of a second offense if the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, the driver's license of the offender shall be suspended for four~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~years. The offender may apply for a restricted license to be in effect during the period of suspension upon proof to the Department of Public Safety and Corrections that his motor vehicle has been equipped with a functioning ignition interlock device in compliance with the requirements of R.S. 32:378.2. The ignition interlock device shall remain installed and operative on his vehicle during the first three years of the four-year period of the suspension of his driver's license.~~

~~(3)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection and R.S. 32:414(D)(1)(b), upon conviction of a third or subsequent offense of the provisions of this Section, any motor vehicle, while being operated by the offender, shall be equipped with a functioning ignition interlock device in accordance with the provisions of R.S. 15:306. The ignition interlock device shall remain installed and operative until the offender has completed the requirements of substance abuse treatment and home incarceration, or, if applicable, the requirements of the drug division probation program provided in R.S. 13:5301 et seq., pursuant to the provisions of Subsections D and E of this Section.~~

~~(b) Any offender convicted of a third or subsequent offense of the provisions of this Section shall, after one year of the suspension required by R.S. 32:414(D)(1)(a), upon proof of the Department of Public Safety and Corrections that the motor vehicles being operated by the offender are equipped with functioning interlock devices, be issued a restricted driver's license. The restricted license shall be effective for the period of time that the offender's driver's license is suspended. The restricted license shall entitle the offender to operate the vehicles equipped with a functioning interlock device in order to earn a livelihood and to travel to and from the places designated in Paragraphs (D)(3) and (E)(3) of this Section.~~

~~(4) The provisions of this Subsection shall not require installation of an ignition interlock device in any vehicle described in R.S. 32:378.2(I).~~

B.(1) This Subsection shall be cited as the "Child Endangerment Law".

(2) When the state proves, in addition to the elements of the crime as set forth in Subsection A of this Section, that a minor child twelve years of age or

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

younger was a passenger in the motor vehicle, aircraft, watercraft, vessel, or other means of motorized conveyance at the time of the commission of the offense:

(a) Except as provided in Subparagraphs (b) and (c) of this Paragraph, the execution of the minimum mandatory sentence provided by R.S. 14:98.1 or 98.2, as appropriate, shall not be suspended.

(b) Notwithstanding any provision of law to the contrary, if imprisonment is imposed pursuant to the provisions of R.S. 14:98.3, the execution of the minimum mandatory sentence shall not be suspended.

(c) Notwithstanding any provision of law to the contrary, if imprisonment is imposed pursuant to the provisions of R.S. 14:98.4, the execution of the minimum mandatory sentence shall not be suspended.

C. Prior convictions. (1) For purposes of determining whether a defendant has a prior conviction for a violation of this Section, a conviction under any of the following shall constitute a prior conviction:

(a) R.S. 14:32.1, vehicular homicide.

(b) R.S. 14:32.8, third degree feticide.

(c) R.S. 14:39.1, vehicular negligent injuring.

(d) R.S. 14:39.2, first degree vehicular negligent injuring.

(e) A law of any state or an ordinance of a municipality, town, or similar political subdivision of another state that prohibits the operation of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance while intoxicated, while impaired, or while under the influence of alcohol, drugs, or any controlled dangerous substance.

(2) The determination under this Subsection shall be made by the court as a matter of law.

(3) For purposes of this Section, a prior conviction shall not include a conviction for an offense under this Section or under any offense listed in Paragraph (1) of this Subsection if committed more than ten years prior to the

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

commission of the crime for which the defendant is being tried, and such conviction shall not be considered in the assessment of penalties hereunder. However, periods of time during which the offender was awaiting trial, on parole or probation for an offense described in Paragraph (1) of this Subsection, under an order of attachment for failure to appear, or incarcerated in a penal institution in this or any other state shall be excluded in computing the ten-year period.

D. Penalties. (1) On a conviction of a first offense violation of operating while intoxicated under this Section, notwithstanding any other provision of law to the contrary, the offender shall be sentenced under the provisions of R.S. 14:98.1.

(2)(a) Except as provided by Subparagraph (b) of this Paragraph, on a conviction of a second offense violation of operating while intoxicated under this Section, notwithstanding any other provision of law to the contrary and regardless of whether the second offense occurred before or after the first conviction, the offender shall be sentenced under the provisions of R.S. 14:98.2.

(b) If the conviction of a second offense when the first conviction was for the crime of vehicular homicide in violation of R.S. 14:32.1, third degree feticide in violation of R.S. 14:32.8, or first degree vehicular negligent injuring in violation of R.S. 14:39.2, the offender shall be sentenced under the provisions of R.S. 14:98.2(D).

(3) On a conviction of a third offense violation of operating while intoxicated under this Section, notwithstanding any other provision of law to the contrary and regardless of whether the offense occurred before or after an earlier conviction, the offender shall be sentenced under the provisions of R.S. 14:98.3.

(4) On a conviction of a fourth or subsequent offense violation of operating while intoxicated under this Section, notwithstanding any other provision of law to the contrary and regardless of whether the fourth or

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

subsequent offense occurred before or after an earlier conviction, the offender shall be sentenced under the provisions of R.S. 14:98.4.

E. The legislature hereby finds and declares that conviction of a third or subsequent offense of operating while intoxicated is presumptive evidence of the existence of a substance abuse disorder in the offender that poses a serious threat to the health and safety of the public. Further, the legislature finds that there are successful treatment methods available for treatment of addictive disorders.

F. Vehicle seizure and sale. (1) On a third or subsequent conviction of operating while intoxicated pursuant to this Section, in addition to any other sentence, the court shall order, upon motion of the prosecuting district attorney, that the vehicle being operated by the offender at the time of the offense be seized and impounded, and be sold at auction in the same manner and under the same conditions as executions of writs of seizure and sale as provided in Book V, Title II, Chapter 4 of the Code of Civil Procedure.

(2) The vehicle shall be exempt from sale if it was stolen, or if the driver of the vehicle at the time of the violation was not the owner and the owner did not know that the driver was operating the vehicle while intoxicated. If this exemption is applicable, the vehicle shall not be released from impoundment until such time as towing and storage fees have been paid. In addition, the vehicle shall be exempt from sale if all towing and storage fees are paid by a valid lienholder.

(3) If the district attorney elects to forfeit the vehicle, he shall file a written motion at least five days prior to sentencing, stating his intention to forfeit the vehicle. When the district attorney elects to forfeit the vehicle, the court shall order it forfeited.

(4) The proceeds of the sale shall first be used to pay court costs and towing and storage costs, and the remainder shall be allocated as follows:

(a) Sixty percent of the funds shall go to the arresting agency.

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

(b) Twenty percent of the funds shall go to the prosecuting district attorney.

(c) Twenty percent of the funds shall go to the Louisiana Property and Casualty Insurance Commission for its use in studying ways to reduce drunk driving and insurance rates.

G.(1) If an offender placed on probation for a conviction of operating while intoxicated under this Section fails to complete the required substance abuse treatment, or fails to participate in a driver improvement program, or violates any other condition of probation, including conditions of home incarceration, his probation may be revoked, and he may be ordered to serve the balance of the sentence of imprisonment, without credit for time served under home incarceration.

(2) If the offender is found to be in violation of both the terms of his release for good behavior by the Department of Public Safety and Corrections, committee on parole and probation, and in violation of his probation by the court, then the remaining balance of his diminution of sentence shall be served first, with the previously suspended sentence imposed by the court to run consecutively thereafter.

§98.1. ~~Underage driving under the influence~~ **Operating while intoxicated, first offense; penalties**

~~A. The crime of underage operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when the operator's blood alcohol concentration is 0.02 percent or more by weight if the operator is under the age of twenty-one based on grams of alcohol per one hundred cubic centimeters of blood.~~

~~B. Any underage person whose blood alcohol concentration is found to be in violation of R.S. 14:98(A)(1)(b) shall be charged under its provisions rather than under this Section.~~

~~C. On a first conviction, the offender shall be fined not less than one hundred~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~nor more than two hundred fifty dollars, and participate in a court-approved substance abuse and driver improvement program.~~

~~D. On a second or subsequent conviction, regardless of whether the second offense occurred before or after the first conviction, the offender shall be fined not less than one hundred fifty dollars nor more than five hundred dollars, and imprisoned for not less than ten days nor more than three months. Imposition or execution of sentence shall not be suspended unless:~~

~~(1) The offender is placed on probation with a minimum condition that he serve forty-eight hours in jail and participate in a court-approved substance abuse and driver improvement program; or~~

~~(2) The offender is placed on probation with a minimum condition that he perform ten eight-hour days of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program and participate in a court-approved substance and driver improvement program.~~

~~E. Court programs regarding substance abuse provided for in Subsections C and D shall include a screening procedure to determine the portions of the program which may be applicable and appropriate for individual offenders.~~

~~F. An offender ordered to participate in a substance abuse program shall pay the cost incurred in participating in the program. Failure to make such payment shall subject the offender to revocation of probation, unless the court determines that the offender is unable to pay.~~

A.(1) Except as modified by the provisions of Paragraphs (2) and (3) of this Subsection, on a conviction of a first offense violation of R.S. 14:98, the offender shall be fined not less than three hundred dollars nor more than one thousand dollars, and shall be imprisoned for not less than ten days nor more than six months. Imposition or execution of sentence under this Paragraph shall not be suspended unless the offender is placed on probation with the minimum conditions that he:

(a) Serve forty-eight hours in jail, which shall not be suspended, or in lieu

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

thereof, perform no less than thirty-two hours of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program.

(b) Participate in a court-approved substance abuse program, which may include an assessment by a licensed clinician to determine if the offender has a diagnosis of substance abuse disorder. Nothing herein shall prohibit the court from modifying the portions of the program as may be applicable and appropriate to an individual offender as shown by the assessment.

(c) Participate in a court-approved driver improvement program.

(d) Except as provided by Subparagraph (3)(c) of this Subsection, the court may order that the offender not operate a motor vehicle during the period of probation, or such shorter time as set by the court, unless any vehicle, while being operated by the offender, is equipped with a functioning ignition interlock device in compliance with the requirements of R.S. 14:98.5(C) and R.S. 32:378.2.

(2) If the offender had a blood alcohol concentration of 0.15 percent or more but less than 0.20 percent by weight based on grams of alcohol per one hundred cubic centimeters of blood, at least forty-eight hours of the sentence imposed pursuant to Paragraph (1) of this Subsection shall be served without the benefit of parole, probation, or suspension of sentence, and is to be served in addition to any sentence of imprisonment imposed pursuant to Subparagraph (1)(a) of this Subsection, provided that the total period of imprisonment upon conviction of the offense, including imprisonment for default in payment of a fine or costs, shall not exceed six months.

(3)(a) If the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, the offender shall be fined not less than seven hundred fifty dollars nor more than one thousand dollars and at least forty-eight hours of the sentence imposed pursuant to Paragraph (1) of this Subsection shall be served without

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

the benefit of parole, probation, or suspension of sentence, and is to be served in addition to any sentence of imprisonment imposed pursuant to Subparagraph (1)(a) of this Subsection, provided that the total period of imprisonment upon conviction of the offense, including imprisonment for default in payment of a fine or costs, shall not exceed six months.

(b) In addition to any penalties imposed under this Section, upon conviction of a first offense, if the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, the driver's license of the offender shall be suspended for two years.

(c) The court shall require that the offender not operate a motor vehicle during the period of probation unless any vehicle, while being operated by the offender, is equipped with a functioning ignition interlock device in compliance with the requirements of R.S. 14:98.5(C) and R.S. 32:378.2. The ignition interlock device shall remain installed and operative on his vehicle during the first twelve-month period of suspension of his driver's license following the date of conviction.

B. Nothing herein shall prohibit a court from sentencing an offender to serve any portion of the sentence under home incarceration pursuant to R.S. 14:98.5, either in lieu of, or in addition to, a term of imprisonment if otherwise allowed under the provisions of Code of Criminal Procedure Article 894.2 and R.S. 14:98.5(B).

C. An offender may apply for a restricted driver's license to be in effect during the entire period of suspension upon proof to the Department of Public Safety and Corrections that his motor vehicle has been equipped with a functioning ignition interlock device in compliance with the requirements of R.S. 32:378.2.

§98.2. ~~Unlawful refusal to submit to chemical tests; arrests for driving while intoxicated~~ **Operating while intoxicated, second offense; penalties**

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~A. No person under arrest for a violation of R.S. 14:98, 98.1, or any other law or ordinance which prohibits operating a vehicle while intoxicated may refuse to submit to a chemical test when requested to do so by a law enforcement officer if he has refused to submit to such test on two previous and separate occasions of any previous such violation.~~

~~B.(1) Whoever violates the provisions of this Section shall be fined not less than three hundred dollars nor more than one thousand dollars, and shall be imprisoned for not less than ten days nor more than six months.~~

~~(2) Imposition or execution of sentence shall not be suspended unless one of the following circumstances occurs:~~

~~(a) The offender is placed on probation with a minimum condition that he serve two days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program.~~

~~(b) The offender is placed on probation with a minimum condition that he perform four eight-hour days of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program, participate in a court-approved substance abuse program, and participate in a court-approved driver improvement program. An offender who participates in a litter abatement or collection program pursuant to this Subparagraph shall have no cause of action for damages against the entity conducting the program or supervising his participation therein, including a municipality, parish, sheriff, or other entity, nor against any official, employee, or agent of such entity, for any injury or loss suffered by him during or arising out of his participation in the program, if such injury or loss is a direct result of the lack of supervision or act or omission of the supervisor, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the entity or its official, employee, or agent.~~

A.(1) Except as modified by the provisions of Paragraphs (2), (3), and (4) of this Subsection, or as provided by Subsection D of this Section, on a conviction of a second offense violation of R.S. 14:98, regardless of whether the

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

second offense occurred before or after the first conviction, the offender shall be fined not less than seven hundred fifty dollars nor more than one thousand dollars, and shall be imprisoned for not less than thirty days nor more than six months. At least forty-eight hours of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. Imposition or execution of the remainder of sentence shall not be suspended unless the offender is placed on probation with the minimum conditions that he:

(a) Serve at least fifteen days in jail, without benefit of parole, probation, or suspension of sentence, or in lieu thereof, perform two hundred forty hours of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program. If imprisonment is imposed under this Subparagraph, the sentence is to be imposed pursuant to Paragraph (1) of this Subsection, provided that the total period of imprisonment upon conviction of the offense, including imprisonment for default in payment of a fine or costs, shall not exceed six months.

(b) Participate in a court-approved substance abuse program, which may include an assessment by a licensed clinician to determine if the offender has a diagnosis of substance abuse disorder. Nothing herein shall prohibit the court from modifying the portions of the program as may be applicable and appropriate to an individual offender as shown by the assessment.

(c) Participate in a court-approved driver improvement program.

(d) Except as the period of time may be increased in accordance with Subparagraph (3)(c) of this Subsection, the court shall order that the offender not operate a motor vehicle during the period of probation unless any vehicle, while being operated by the offender, is equipped with a functioning ignition interlock device in compliance with the requirements of R.S. 14:98.5(C), R.S. 15:306, and R.S. 32:378.2, which requirement shall remain in effect for a period of not less than six months from the date of conviction. In addition, the device shall remain installed and operative during any period that the offender's

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

driver's license is suspended under law and for any additional period as determined by the court.

(2) If the offender had a blood alcohol concentration of 0.15 percent or more but less than 0.20 percent by weight based on grams of alcohol per one hundred cubic centimeters of blood, at least ninety-six hours of the sentence imposed pursuant to Paragraph (1) of this Subsection shall be served without the benefit of parole, probation, or suspension of sentence.

(3)(a) If the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, the offender shall be fined one thousand dollars and at least ninety-six hours of the sentence imposed pursuant to Paragraph (1) of this Subsection shall be served without the benefit of parole, probation, or suspension of sentence.

(b) In addition to any penalties imposed under this Section, upon conviction of a second offense if the offender had a blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, the driver's license of the offender shall be suspended for four years.

(c) The court shall require that the offender not operate a motor vehicle during the period of probation unless any vehicle, while being operated by the offender, is equipped with a functioning ignition interlock device in compliance with the requirements of R.S. 14:98.5(C), R.S. 15:306, and R.S. 32:378.2. The ignition interlock device shall remain installed and operative on his vehicle during the first three years of the four-year period of the suspension of his driver's license.

(4) If the arrest for the second offense occurs within one year of the commission of the first offense, at least thirty days of the sentence imposed pursuant to Paragraph (1) of this Subsection shall be served without benefit of parole, probation, or suspension of sentence. In addition, if the offender had a

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

blood alcohol concentration of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, he shall be fined one thousand dollars and also be subject to the provisions of Subparagraphs (3)(b) and (c) of this Subsection.

B. Nothing herein shall prohibit a court from sentencing an offender to serve any portion of the sentence under home incarceration pursuant to R.S. 14:98.5, either in lieu of, or in addition to, a term of imprisonment if otherwise allowed under the provisions of Code of Criminal Procedure Article 894.2 and R.S. 14:98.5(B).

C. An offender may apply for a restricted driver's license to be in effect during the entire period of suspension upon proof to the Department of Public Safety and Corrections that his motor vehicle has been equipped with a functioning ignition interlock device in compliance with the requirements of R.S. 32:378.2.

D. Notwithstanding any other provision of law to the contrary, on a conviction of a second offense violation of R.S. 14:98, and regardless of whether the second offense occurred before or after the first conviction, when the offense was for the crime of vehicular homicide in violation of R.S. 14:32.1, third degree feticide in violation of R.S. 14:32.8, or first degree vehicular negligent injuring in violation of R.S. 14:39.2, the offender shall be fined two thousand dollars and imprisoned, with or without hard labor, for not less than one year nor more than five years. At least six months of the sentence of imprisonment imposed shall be without benefit of parole, probation, or suspension of sentence except in compliance with R.S. 14:98.5(B)(1), the mandatory minimum sentence cannot be served on home incarceration.

(1) Imposition or execution of the remainder of the sentence shall not be suspended unless the offender is placed on probation with the minimum conditions that he:

(a) Perform two hundred forty hours of court-approved community

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

service activities, at least one-half of which shall consist of participation in a litter abatement or collection program.

(b) Participate in a court-approved substance abuse program, which may include an assessment by a licensed clinician to determine if the offender has a diagnosis of substance abuse disorder. Nothing herein shall prohibit the court from modifying the portions of the program as may be applicable and appropriate to an individual offender as shown by the assessment.

(c) Participate in a court-approved driver improvement program.

(2) In accordance with the provisions of R.S. 14:98.5(B), any offender placed on probation pursuant to the provisions of Subsection D of this Section shall be placed in a home incarceration program approved by the division of probation and parole for a period of time not less than six months and not more than the remainder of the sentence of imprisonment.

(3) Except as the period of time may be increased in accordance with Subparagraph (A)(3)(b) and (c) of this Section, in addition to any penalties imposed under this Section, the court shall order that the offender not operate a motor vehicle during the period of probation unless any vehicle, while being operated by the offender, is equipped with a functioning ignition interlock device in compliance with the requirements of R.S. 14:98.5(C), R.S. 15:306, and R.S. 32:378.2, which requirement shall remain in effect for a period of not less than six months from the date of conviction. In addition, the device shall remain installed and operative during any period that the offender's driver's license is suspended under law and for any additional period as determined by the court.

§98.3. ~~Operating a vehicle while under suspension for certain prior offenses~~

Operating while intoxicated, third offense; penalties

~~A. It is unlawful to operate a motor vehicle on a public highway where the operator's driving privileges have been suspended under the authority of R.S. 32:414(A)(1), (B)(1) or (2), (D)(1)(a), or 667. It shall not be a violation of the~~

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

~~provisions of this Section when a person operates a motor vehicle to obtain emergency medical care for himself or any other person.~~

~~B. Whoever violates the provisions of this Section shall be imprisoned for not less than fifteen days nor more than six months without benefit of suspension of imposition or execution of sentence, except as provided in Subsection C.~~

~~C. When the operator's driving privileges were suspended for manslaughter, vehicular homicide, or negligent homicide, the offender shall be imprisoned for not less than sixty days nor more than six months without benefit of suspension of imposition or execution of sentence.~~

A.(1) Except as provided in Subsection B of this Section, on a conviction of a third offense violation of R.S. 14:98, regardless of whether the third offense occurred before or after a previous conviction, the offender shall be fined two thousand dollars and shall be imprisoned, with or without hard labor, for not less than one year nor more than five years. Except as provided in Paragraph (2) of this Subsection, at least one year of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. Except in compliance with R.S. 14:98.5(B)(1), the mandatory minimum sentence cannot be served on home incarceration.

(2) The one-year period described in Paragraph (1) of this Subsection, which shall otherwise be imposed without the benefit of parole, probation, or suspension of sentence, may be suspended if the offender is accepted into a drug division probation program pursuant to R.S. 13:5301 et seq. The provisions of R.S. 14:98(F) relative to vehicle seizure and sale shall also be applicable to any offender whose sentence is served with the benefit of parole, probation, or suspension of sentence pursuant to the provisions of this Paragraph.

(3)(a) The court, in its discretion, may suspend all or any part of the remainder of the sentence of imprisonment imposed pursuant to Paragraph (A)(1) of this Section. If any of the remainder of the sentence is suspended, the offender shall be placed on supervised probation with the Department of Public

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

Safety and Corrections, division of probation and parole, for not more than a period of five years but not less than a period of time equal to the remainder of the sentence of imprisonment, which probation shall commence on the day after the offender's release from imprisonment after serving the mandatory sentence required by this Section, unless the offender was released by diminution of sentence for good behavior pursuant to R.S. 15:571.3, in which case the probation shall commence simultaneously with the period of supervision provided by R.S. 15:571.5 and shall run concurrently therewith. The offender must comply with both the conditions of his release as set by the parole board in accordance with R.S. 15:571.5 and with the conditions of probation set by the sentencing court.

(b) Any offender placed on probation pursuant to this Paragraph shall be required as a condition of probation to participate in two hundred forty hours of court-approved community service activities, obtain employment, participate in a court-approved driver improvement program at his expense, and submit to and complete either of the following requirements:

(i) Immediately undergo an evaluation by the Department of Health and Hospitals, office of behavioral health, to determine the nature and extent of the offender's substance abuse disorder and to participate in any treatment plan recommended by the office of behavioral health, including treatment in an inpatient facility approved by the office for a period of not less than four weeks, followed by outpatient treatment services for a period not to exceed twelve months.

(ii) Participate in substance abuse treatment in an alcohol and drug abuse program provided by a drug division subject to the applicable provisions of R.S. 13:5301 et seq. if the offender is otherwise eligible to participate in such program.

(c) In addition to the requirements set forth in Subparagraphs (a) and (b) of this Paragraph, any offender placed on probation pursuant to the

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

provisions of this Subsection shall be placed in a home incarceration program approved by the division of probation and parole for a period of time not less than six months and not more than the remainder of the sentence of imprisonment. The terms of home incarceration shall be in compliance with the provisions of R.S. 14:98.5(B) and Code of Criminal Procedure Article 894.2.

(d)(i) Notwithstanding any law to the contrary and the provisions of R.S. 32:414(D)(1)(b), upon conviction of a third offense violation of R.S. 14:98, any motor vehicle, while being operated by the offender, shall be equipped with a functioning ignition interlock device in accordance with the provisions of R.S. 15:306. The ignition interlock device shall remain installed and operative until the offender has completed the requirements of substance abuse treatment and home incarceration, or, if applicable, the requirements of the drug division probation program provided in R.S. 13:5301 et seq.

(ii) Any offender convicted of a third offense violation of R.S. 14:98 shall, after one year of the suspension required by R.S. 32:414(D)(1)(a), upon proof to the Department of Public Safety and Corrections that the motor vehicles being operated by the offender are equipped with functioning ignition interlock devices, be issued a restricted driver's license. The restricted license shall be effective for the period of time that the offender's driver's license is suspended. The restricted license shall entitle the offender to operate the vehicles equipped with a functioning ignition interlock device in order to earn a livelihood and to travel to and from the places designated in R.S. 14:98.5(B)(1)(e).

(e) If an offender placed on probation pursuant to the provisions of this Paragraph fails to complete the substance abuse treatment required by this Subsection or violates any other condition of probation, including conditions of home incarceration, his probation may be revoked, and he may be ordered to serve the balance of the sentence of imprisonment, without credit for time served under home incarceration.

B.(1) If the offender has previously received the benefit of parole,

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

probation, or suspension of sentence on a conviction of a third or subsequent offense violation of R.S. 14:98, or if the offender has previously participated in a drug division probation program pursuant to R.S. 13:5301 et seq., pursuant to a sentence imposed on a conviction of a third or subsequent offense violation of R.S. 14:98, or if the offender has previously been required to participate in substance abuse treatment or home incarceration pursuant to a sentence imposed on a conviction of a third or subsequent offense violation of R.S. 14:98, then on a conviction of a subsequent third offense violation of R.S. 14:98, notwithstanding any other provision of law to the contrary and regardless of whether the offense occurred before or after an earlier conviction, the offender shall be fined two thousand dollars and imprisoned, with or without hard labor, for not less than two nor more than five years. At least two years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. Except in compliance with R.S. 14:98.5(B)(1), the mandatory minimum sentence cannot be served on home incarceration.

(2) Except where inconsistent with the provisions of this Subsection, the conditions of probation shall include but not be limited to the conditions of probation provided by Paragraph (A)(3) of this Section, except that the offender shall not be sentenced to substance abuse treatment provided for by Items (A)(3)(b)(i) and (ii) of this Section. Nothing herein shall prohibit the court from ordering substance abuse treatment if it determines that the offender is able to pay for the substance abuse treatment.

C. In addition to any other penalty, the court shall order, upon motion of the prosecuting district attorney, that the vehicle being operated by the offender at the time of the offense be seized and impounded, and sold at auction in accordance with the provisions of R.S. 14:98(F).

§98.4. Operating while intoxicated, fourth offense; penalties

A.(1) Except as modified by Subparagraphs (a) and (b) of this Subsection, or as provided by Subsections B and C of this Section, on a

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

conviction of a fourth or subsequent offense violation of R.S. 14:98, regardless of whether the fourth offense occurred before or after an earlier conviction, the offender shall be fined five thousand dollars and imprisoned, with or without hard labor, for not less than ten years nor more than thirty years. Two years of the sentence of imprisonment shall be imposed without benefit of parole, probation, or suspension of sentence. Except in compliance with R.S. 14:98.5(B)(1), the mandatory minimum sentence cannot be served on home incarceration.

(a) Except as prohibited by Subparagraph (b) of this Paragraph, the two-year period, which shall otherwise be imposed without benefit of parole, probation, or suspension of sentence, may be suspended if the offender is accepted into a drug division probation program pursuant to R.S. 13:5301 et seq. The provisions of R.S. 14:98(F) relative to vehicle seizure and sale shall also be applicable to any offender whose sentence is served with the benefit of parole, probation, or suspension of sentence pursuant to the provisions of this Paragraph.

(b) If the offender has previously participated in a drug division probation program pursuant to R.S. 13:5301 et seq., pursuant to a sentence imposed on a third or subsequent offense conviction under R.S. 14:98, three years of the sentence imposed in Paragraph (1) of this Subsection shall be imposed without benefit of parole, probation, or suspension of sentence. Notwithstanding any other law to the contrary, the offender shall not be eligible to have the mandatory portion of his sentence suspended because of his participation in a drug division program under Item (2)(b)(ii) of this Subsection.

(2)(a) The court, in its discretion, may suspend all or any part of the remainder of the sentence of imprisonment. If any of the sentence is suspended, the offender shall be placed on supervised probation with the Department of Public Safety and Corrections, division of probation and parole, for a period of five years, which probation shall commence on the day after the offender's

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

release from imprisonment after serving the mandatory sentence required by this Section, unless the offender was released by diminution of sentence for good behavior pursuant to R.S. 15:571.3, in which case the probation shall commence simultaneously with the period of supervision provided by R.S. 15:571.5 and shall run concurrently therewith. The offender must comply with both the conditions of his release as set by the parole board in accordance with R.S. 15:571.5 and with the conditions of probation set by the sentencing court.

(b) Any offender placed on probation pursuant to this Paragraph shall be required as a condition of probation to participate in three hundred twenty hours of court-approved community service activities, obtain employment, participate in a court-approved driver improvement program at his expense, and submit to and complete either of the following requirements:

(i) Immediately undergo an evaluation by the Department of Health and Hospitals, office of behavioral health, to determine the nature and extent of the offender's substance abuse disorder, and participate in any treatment plan recommended by the office of behavioral health, including treatment in an inpatient facility approved by the office for a period of not less than four weeks followed by outpatient treatment services for a period not to exceed twelve months.

(ii) Except as provided in R.S. 14:98(A)(1)(b), participate in substance abuse treatment in an alcohol and drug abuse program provided by a drug division subject to the applicable provisions of R.S. 13:5301 et seq. if the offender is otherwise eligible to participate in such program.

(c) In addition to the requirements set forth in Subparagraphs (a) and (b) of this Paragraph, any offender placed on probation pursuant to the provisions of this Subsection shall be placed in a home incarceration program approved by the division of probation and parole for the remainder of the term of supervised probation. The terms of home incarceration shall be in compliance with the provisions of R.S. 14:98.5(B) and Code of Criminal

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

Procedure Article 894.2.

(d)(i) Notwithstanding any law to the contrary and the provisions of R.S. 32:414(D)(1)(b), upon conviction of a fourth or subsequent offense, any motor vehicle, while being operated by the offender, shall be equipped with a functioning ignition interlock device in accordance with the provisions of R.S. 15:306. The ignition interlock device shall remain installed and operative until the offender has completed the requirements of substance abuse treatment and home incarceration or, if applicable, the requirements of the drug division probation program provided for in R.S. 13:5301 et seq.

(ii) Any offender convicted of a fourth or subsequent offense shall, after one year of the suspension required by R.S. 32:414(D)(1)(a), upon proof to the Department of Public Safety and Corrections that the motor vehicles being operated by the offender are equipped with functioning ignition interlock devices, be issued a restricted driver's license. The restricted license shall be effective for the period of time that the offender's driver's license is suspended. The restricted license shall entitle the offender to operate the vehicles equipped with a functioning ignition interlock device in order to earn a livelihood and to travel to and from the places designated in R.S. 14:98.5(B)(1)(e).

(e) If an offender placed on probation pursuant to the provisions of this Paragraph fails to complete the substance abuse treatment required by this Subsection or violates any other condition of probation, including conditions of home incarceration, his probation may be revoked, and he may be ordered to serve the balance of the sentence of imprisonment, without credit for time served under home incarceration.

B.(1) If the offender has previously been required to participate in substance abuse treatment or home incarceration pursuant to a sentence imposed on a conviction of a third offense violation of R.S. 14:98, then on a conviction of a fourth or subsequent offense, notwithstanding any other provision of law to the contrary and regardless of whether the fourth offense

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

occurred before or after an earlier conviction, the offender shall be fined five thousand dollars and imprisoned at hard labor for not less than ten nor more than thirty years, at least three years of which shall be imposed without benefit of parole, probation, or suspension of sentence. Notwithstanding any provision of law to the contrary, the offender shall not be eligible to have the mandatory portion of his sentence suspended because of his participation in a drug division program under Item (2)(b)(ii) of Subsection A of this Section, and except in compliance with R.S. 14:98.5(B)(1), the mandatory minimum sentence cannot be served on home incarceration.

(2) After serving the mandatory sentence, if any of the remainder of the sentence is suspended, the offender shall be placed on supervised probation with the Department of Public Safety and Corrections, division of probation and parole, for a period of five years, which probation shall commence on the day after the offender's release from imprisonment after serving the mandatory sentence required by this Section, unless the offender was released by diminution of sentence for good behavior pursuant to R.S. 15:571.3, in which case the probation shall commence simultaneously with the period of supervision provided by R.S. 15:571.5 and shall run concurrently therewith. The offender must comply with both the conditions of his release as set by the parole board in accordance with R.S. 15:571.5 and with the conditions of probation set by the sentencing court.

(3) Except where inconsistent with the provisions of this Subsection, the conditions of probation shall include but not be limited to the conditions of probation provided by Paragraph (A)(2) of this Section, but the offender shall not be sentenced to substance abuse treatment provided for by Items (A)(2)(b)(i) and (ii) of this Section. Nothing herein shall prohibit the court from ordering substance abuse treatment if it determines that the offender is able to pay for the substance abuse treatment.

C. If the offender has previously received the benefit of parole,

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

probation, or suspension of sentence on a conviction of a fourth or subsequent offense violation of R.S. 14:98, then on a subsequent conviction of a fourth or greater offense, notwithstanding any other provision of law to the contrary and regardless of whether the offense occurred before or after an earlier conviction, the offender shall be fined five thousand dollars and imprisoned at hard labor for not less than ten nor more than thirty years. No part of the sentence shall be imposed with benefit of parole, probation, or suspension of sentence, and no portion of the sentence shall be imposed concurrently with the remaining balance of any sentence to be served for a prior conviction for any offense.

D. In addition to any other penalty, the court shall order, upon motion of the prosecuting district attorney, that the vehicle being operated by the offender at the time of the offense be seized and impounded, and sold at auction in accordance with the provisions of R.S. 14:98(F).

§98.5. Special provisions and definitions

A. Substance abuse programs. (1) An offender ordered to participate in a substance abuse program, home incarceration, or a driver improvement program in accordance with the penalty provisions of R.S. 14:98, 98.1, 98.2, 98.3, and 98.4 shall pay the cost incurred in participating in the program. Failure to make such payment shall subject the offender to revocation of probation, unless the court determines that the offender is unable to pay.

(2) On a conviction of a third or subsequent offense violation of R.S. 14:98, if the court determines that the offender is unable to pay, the state shall pay for the cost of the substance abuse treatment. If the court determines that an offender is unable to pay the costs incurred for participating in a substance abuse treatment program, driver improvement program, or home incarceration, the court may, upon completion of such program or home incarceration, require that the offender reimburse the state for all or a portion of such costs pursuant to a payment schedule determined by the court. This Paragraph shall not apply to substance abuse treatment imposed as a condition

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

of probation under R.S. 14:98.4(B)(3).

B. Home incarceration. (1) For felony violations of R.S. 14:98, the mandatory minimum sentence imposed by the court shall not be served on home incarceration unless either:

(a) The Department of Public Safety and Corrections, through the division of probation and parole, recommends home incarceration of the defendant and specific conditions of that home incarceration.

(b) The district attorney recommends home incarceration.

(2) Except as provided by Paragraph (B)(4) of this Section and unless otherwise authorized or prohibited, on a misdemeanor violation of R.S. 14:98 or on a felony violation of R.S. 14:98 after the offender has served the mandatory minimum sentence, the court may sentence the offender to home incarceration.

(3) Except as modified by Paragraph (B)(5) of this Section, when the court sentences an offender to home incarceration, the offender shall be subject to special conditions to be determined by the court, which shall include but not be limited to the following:

(a) Electronic monitoring. However, nothing herein shall prohibit a court from ordering nonelectronic monitored home incarceration as a condition of probation for a first or second conviction where the period of home incarceration is less than five days.

(b) Curfew restrictions.

(c) The court shall require the offender to obtain employment.

(d) The court shall require the offender to participate in a court-approved driver improvement program, if not already a condition of his probation.

(e) The activities of the offender outside of his home shall be limited to traveling to and from work, church services or other religious services, Alcoholics Anonymous meetings, Narcotics Anonymous meetings, other secular-

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

based addiction recovery group meetings, accredited educational institutions, meetings with his probation or parole officer, court-ordered community service activities, court-ordered substance abuse treatments, and a court-approved driver improvement program.

(f) Except as inconsistent with the provisions of this Subsection, an offender sentenced to home incarceration shall be subject to all other applicable provisions of Code of Criminal Procedure Article 894.2.

(4) An offender who has been convicted of any second violation of any state or local law or ordinance prohibiting operating a vehicle while intoxicated, committed within five years of the commission of any prior operating while intoxicated violation, shall not be eligible for home incarceration until the offender has first served a minimum of forty-eight consecutive hours of imprisonment.

(5) When the offender is on probation for a third or subsequent offense, or on a second offense under R.S. 14:98.2(B), a home visitation shall be conducted at least once per month by the Department of Public Safety and Corrections for the first six months. After the first six months, the level of supervision shall be determined by the department based upon a risk assessment instrument.

C. Ignition interlock devices. (1) No offender who is ordered to install an ignition interlock device as a condition of probation shall:

(a) Fail to comply with all applicable provisions of R.S. 15:306 and 307 and R.S. 32:378.2 and 414(D)(1)(b).

(b) Violate the conditions of his restricted driver's license as set by the Department of Public Safety and Corrections.

(c) Operate, rent, lease, or borrow a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device.

(d) Request or solicit any other person to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

providing the offender with an operable motor vehicle.

(2) If the court imposes the use of an ignition interlock device as a condition of probation, the offender shall provide proof of compliance to the court or the probation officer within thirty days. If the offender fails to provide proof of installation within that period, absent a finding by the court of good cause for the failure that is entered into the court record, the court shall revoke the offender's probation.

(3) The provisions of this Subsection shall not require installation of an ignition interlock device in any vehicle described in R.S. 32:378.2(I).

D.(1) "Community service activities" as used in this Section and R.S. 14:98.1, 98.2, 98.3, and 98.4, in addition to participation in a litter abatement or collection program, may include duty in any morgue, coroner's office, or emergency treatment room of a state-operated hospital or other state-operated emergency treatment facility, with the consent of the administrator of the morgue, coroner's office, hospital, or facility.

(2) An offender who participates in a litter abatement or collection program pursuant to this Subsection shall have no cause of action for damages against the entity conducting the program or supervising the offender's participation therein, including a municipality, parish, sheriff, or other entity, nor against any official, employee, or agent of such entity, for any injury or loss suffered by him during or arising out of his participation therein, if such injury or loss is a direct result of the lack of supervision or act or omission of the supervisor, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the entity or its official, employee, or agent.

§98.6. Underage operating while intoxicated

A. The crime of underage operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when the operator's blood alcohol concentration is 0.02 percent or more by weight based on grams of alcohol per one hundred cubic centimeters

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

of blood, if the operator is under the age of twenty-one.

B. Any underage person whose blood alcohol concentration is found to be in violation of R.S. 14:98(A)(1)(b) shall be charged under the provisions of that Subparagraph rather than under this Section.

C.(1) On a first conviction, the offender shall be fined not less than one hundred dollars nor more than two hundred fifty dollars, and imprisoned for not less than ten days nor more than three months. Imposition or execution of sentence shall not be suspended unless the offender is placed on probation with the minimum conditions that he:

(a) Perform thirty-two hours of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program.

(b) Participate in a court-approved substance abuse and driver improvement program.

(2) On a second or subsequent conviction, regardless of whether the second offense occurred before or after the first conviction, the offender shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, and imprisoned for not less than thirty days nor more than six months. Imposition or execution of sentence under this Paragraph shall not be suspended unless the offender is placed on probation with the minimum conditions that he:

(a) Serve forty-eight hours in jail without benefit of parole, probation, or suspension of sentence, or in lieu thereof, perform no less than eighty hours of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program.

(b) Participate in a court-approved substance abuse program, which may include an assessment by a licensed clinician to determine if the offender has a diagnosis of substance abuse disorder. Nothing herein shall prohibit the court from modifying the portions of the program as may be applicable and

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

appropriate to an individual offender as shown by the assessment.

(c) Participate in a court-approved driver improvement program.

(3) Nothing herein shall prohibit a court from sentencing an offender to serve any portion of the sentence under home incarceration either in lieu of, or in addition to, a term of imprisonment if otherwise allowed under the provisions of Code of Criminal Procedure Article 894.2 and R.S. 14:98.5(B).

(4) The court may require that the offender not operate a motor vehicle during the period of probation unless any vehicle, while being operated by the offender, is equipped with a functioning ignition interlock device in accordance with R.S. 14:98.5(C).

§98.7. Unlawful refusal to submit to chemical tests; arrests for driving while intoxicated

A. No person under arrest for a violation of R.S. 14:98, 98.6, or any other law or ordinance that prohibits operating a vehicle while intoxicated may refuse to submit to a chemical test when requested to do so by a law enforcement officer if he has refused to submit to such test on two previous and separate occasions of any such violation.

B.(1) Whoever violates the provisions of this Section shall be fined not less than three hundred dollars nor more than one thousand dollars, and shall be imprisoned for not less than ten days nor more than six months.

(2) Imposition or execution of sentence shall not be suspended unless one of the following occurs:

(a) The offender is placed on probation with the minimum conditions that he serve two days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program.

(b) The offender is placed on probation with the minimum conditions that he perform thirty-two hours of court-approved community service activities, at least half of which shall consist of participation in a litter

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

abatement or collection program, participate in a court-approved substance abuse program, and participate in a court-approved driver improvement program. An offender who participates in a litter abatement or collection program pursuant to this Subparagraph shall have no cause of action for damages against the entity conducting the program or supervising his participation therein, as provided by R.S. 14:98.5(D).

§98.8. Operating a vehicle while under suspension for certain prior offenses

A. It is unlawful to operate a motor vehicle on a public highway where the operator's driving privileges have been suspended under the authority of R.S. 32:414(A)(1), (B)(1) or (2), (D)(1)(a), or R.S. 32:667. It shall not be a violation of the provisions of this Section when a person operates a motor vehicle to obtain emergency medical care for himself or any other person.

B. Whoever violates the provisions of this Section shall be imprisoned for not less than fifteen days nor more than six months without benefit of suspension of imposition or execution of sentence, except as provided in Subsection C.

C. When the operator's driving privileges were suspended for manslaughter, vehicular homicide, or negligent homicide, the offender shall be imprisoned for not less than sixty days nor more than six months without benefit of suspension of imposition or execution of sentence.

Section 2. The provisions of this Act shall become effective on January 1, 2015.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

Perry (SB 277)

Present law defines the crime of operating a vehicle while intoxicated (DWI) as the operating of any motor vehicle under any of the following conditions:

(1) The operator is under the influence of alcoholic beverages.

(2) The operator is under the influence of a controlled dangerous substance.

(3) The operator is under the influence of one or more drugs that are not controlled dangerous substances, whether alone or in combination with alcohol.

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

(4) The operator's blood alcohol concentration (BAC) is 0.08 percent or more by weight based on grams of alcohol per 100 cubic centimeters of blood.

Proposed law retains present law.

Present law (Child Endangerment Law) provides that when the state proves that a minor child 12 years of age or younger was a passenger in the vehicle, the mandatory minimum sentences for DWI first and subsequent offenses cannot be suspended.

Proposed law retains present law.

Present law provides that a "prior conviction" for purposes of present law DWI sentencing provisions includes a conviction for the present law crimes of DWI, vehicular homicide, vehicular negligent injuring, first degree vehicular negligent injuring, or a conviction under the laws of any other jurisdiction that prohibits the operation of a vehicle while impaired or under the influence of alcohol, drugs, or any controlled dangerous substance. Present law further provides that a "prior conviction" does not include a conviction for an offense committed more than 10 years prior to the commission of the crime for which the defendant is being tried. Present law further provides that periods of time during which the offender was awaiting trial, on parole or probation, under an order of attachment for failure to appear, or incarcerated are to be excluded in computing the 10-year period.

Proposed law retains present law and adds the present law crime of third degree feticide to the list of crimes constituting a prior conviction.

Present law provides that a conviction of a third or subsequent offense DWI is presumptive evidence of the existence of a substance abuse disorder in the offender that poses a serious threat to the health and safety of the public.

Proposed law retains present law.

Present law provides that if an offender placed on probation for a conviction of DWI fails to complete required substance abuse treatment, or fails to participate in a driver improvement program, or violates any other condition of probation, the offender's probation may be revoked, and he may be ordered to serve the balance of the sentence of imprisonment without credit for time served under home incarceration.

Proposed law retains present law.

Present law provides that on a conviction of a first offense DWI, the offender is to be fined between $300 and $1,000, and imprisoned for not less than 10 days nor more than six months. Present law further provides that imposition or execution of sentence can be suspended under certain circumstances provided for by present law, including serving 48 hours in jail or performing at least four eight-hour days of community service, half of which must consist of litter abatement or collection.

Proposed law retains present law but changes the requirement of community service from four eight-hour days to 32 hours. Proposed law also adds the requirement of participation in a court-approved substance abuse program, which may include an assessment to determine if the offender has a substance abuse disorder. Proposed law further provides that the court may require an ignition interlock device be installed on the offender's vehicle.

Present law requires that on a conviction of a first offense DWI, if the offender had a BAC of 0.15 percent or more, then at least 48 hours of the sentence must be served without the benefit of parole, probation, or suspension of sentence. Present law further requires that if the offender had a BAC of 0.20 percent or more, then he is to be fined between $750 and $1,000 and serve at least 48 hours of the sentence without the benefit of parole, probation, or suspension of sentence.

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

Proposed law retains present law.

Present law provides that on a conviction of a first offense DWI when the offender's BAC was 0.20 percent or more, the offender's driver's license is to be suspended for two years. Present law further allows the offender to obtain a restricted driver's license upon proof to the Dept. of Public Safety and Corrections (DPSC) that he has installed an ignition interlock device on his vehicle.

Proposed law retains present law.

Present law provides that all or part of the offender's sentence may be served under home incarceration.

Proposed law retains present law.

Proposed law provides that the total period of imprisonment for first offense DWI, including imprisonment for default in payment of a fine or costs, cannot exceed six months.

Present law provides that on a conviction of a second offense DWI, regardless of whether the second offense occurred before or after the first conviction, the offender is to be fined between $750 and $1,000, and imprisoned for not less than 30 days nor more than six months. Present law further provides that at least 48 hours of the sentence is to be served without benefit of parole, probation, or suspension of sentence. Present law further provides that the offender may be sentenced to home incarceration, and provides that imposition or execution of the remainder of the sentence over 48 hours can be suspended under certain circumstances provided for by present law, including serving 15 days in jail or performing at least 30 eight-hour days of community service, half of which must consist of litter abatement or collection, participating in a court-approved substance abuse program, and participating in a court-approved driver improvement program.

Proposed law requires a minimum of 15 days in jail rather than a fixed period of 15 days in jail as provided for by present law. Proposed law provides that the total period of imprisonment for first offense DWI, including imprisonment for default in payment of a fine or costs, cannot exceed six months. Proposed law further provides that the substance abuse program provided for by present law may include assessment to determine if the offender has a substance abuse disorder. Proposed law further provides that the court is to require an ignition interlock device be installed on the offender's vehicle for at least six months.

Proposed law otherwise retains present law.

Present law requires that on a conviction of a second offense DWI, if the offender had a BAC of 0.15 percent or more, then at least 96 hours of the sentence must be served without the benefit of parole, probation, or suspension of sentence. Present law further requires that if the offender had a BAC of 0.20 percent or more, then he is to be fined $1,000 and serve at least 96 hours of the sentence without the benefit of parole, probation, or suspension of sentence.

Proposed law retains present law .

Present law provides that on a conviction of a second offense DWI when the offender's BAC was 0.20 percent or more, the offender's driver's license is to be suspended for four years. Present law further requires the installation of an ignition interlock device on the offender's vehicle. Present law further allows the offender to obtain a restricted driver's license upon proof to DPSC that the ignition interlock device has been installed on the offender's vehicle.

Proposed law retains present law.

Present law provides that on a conviction of a second offense DWI when the arrest for the

Coding: Words which are ~~struck through~~ are deletions from existing law;
words in **boldface type and underscored** are additions.

second offense occurs within one year of the commission of the first offense, the offender is to be imprisoned for 30 days without benefit of parole, probation, or suspension of sentence and must participate in a court-approved substance abuse program and in a court-approved driver improvement program.

Proposed law retains present law and clarifies that the defendant convicted of a second offense within one year of the first offense is also to be fined $1,000.

Present law provides that all or part of the offender's sentence for a second offense DWI may be served under home incarceration if otherwise allowed under present law relative to home incarceration generally.

Proposed law retains present law.

Present law provides that on a conviction of a second offense DWI when the first offense was for the present law crime of vehicular homicide or first degree vehicular negligent injuring, the offender is to be fined $2,000 and imprisoned, with or without hard labor, for between one year and five years, at least six months of which must be without benefit of parole, probation, or suspension of sentence. Present law further provides that the remainder of the sentence may be suspended if the offender is placed on probation with the requirements that he serve 15 days in jail and participate in a court-approved substance abuse program and a court-approved driver improvement program, or perform 30 eight-hour days of community service.

Proposed law retains present law and adds the present law crime of third degree feticide to the list of crimes resulting in an enhanced sentence for second offense DWI. Proposed law adds that the substance abuse program provided for by present law may include an assessment to determine if the offender has a substance abuse disorder. Proposed law also adds that an offender placed on probation must be placed in a home incarceration program for at least six months.

Present law provides that on a conviction of a third offense DWI, regardless of whether the third offense occurred before or after an earlier conviction, the offender is to be fined $2,000 and imprisoned, with or without hard labor, for between one and five years, with one year of the sentence served without benefit of parole, probation, or suspension of sentence. Present law further provides that the one-year mandatory minimum sentence can be suspended if the offender is accepted into a drug division program as provided for by present law.

Present law further provides that the remainder of the sentence can be suspended and the offender placed on supervised probation with DPSC for the remainder of the sentence, with the conditions that the offender participate in 30 eight-hour days of court-approved community service and either undergo an evaluation by the Dept. of Health and Hospitals (DHH) to determine the nature and extent of the offender's substance abuse disorder and participate in any recommended treatment plan, or participate in substance abuse treatment in a program provided by a drug division pursuant to present law. Present law further requires an offender placed on probation pursuant to present law be placed in a home incarceration program for at least six months. Present law further provides that the offender's vehicle may be seized and sold pursuant to present law.

Proposed law retains present law but changes the community service requirement from 30 eight-hour days to 240 hours.

Present law requires that an ignition interlock device be installed on the offender's vehicle and allows the offender to obtain a restricted driver's license.

Proposed law retains present law.

Coding: Words which are ~~struck through~~ are deletions from existing law;
words in **boldface type and underscored** are additions.

Proposed law provides that if the offender convicted of a third offense DWI has previously received the benefit of parole, probation, or suspension of sentence, then on a subsequent conviction the offender is to be fined $2,000 and imprisoned at hard labor for between two and five years. Proposed law further provides that at least two years of the sentence must be served without benefit of parole, probation, or suspension of sentence. Proposed law further provides that such offender cannot be sentenced to home incarceration unless certain proposed law conditions are met.

Present law provides that on a third or subsequent conviction of DWI, in addition to any other sentence, the court is to order, upon motion of the prosecuting district attorney, that the vehicle being operated by the offender at the time of the offense be seized and impounded, and sold at auction in accordance with present law. Present law further provides that the proceeds of the sale are to be used first to pay court costs and towing and storage costs, and the remainder is to be allocated pursuant to present law.

Proposed law retains present law.

Present law provides that on a conviction of a fourth offense DWI or subsequent DWI offense, regardless of whether the fourth or subsequent offense occurred before or after an earlier conviction, the offender is to be fined $5,000 and imprisoned, with or without hard labor, for between ten and 30 years, with two years of the sentence served without benefit of parole, probation, or suspension of sentence. Present law further provides that the two-year mandatory minimum sentence can be suspended if the offender is accepted into a drug division program as provided for by present law.

Proposed law retains present law and adds that the mandatory minimum sentence of two years for fourth offense DWI cannot be served on home incarceration.

Present law provides that if the offender has previously participated in a drug division probation program pursuant to present law pursuant to a sentence imposed on a third or subsequent offense DWI conviction, then three years of the sentence must be imposed without benefit of parole, probation, or suspension of sentence.

Proposed law retains present law and adds that the offender is not to be eligible to have the mandatory portion of his sentence suspended because of his participation in a drug division program.

Present law provides that the court may suspend all or any part of the remainder of the sentence of imprisonment, provided that the offender is placed on supervised probation with DPSC for a period of five years, participate in 40 eight-hour days of court-approved community service, be placed in a home incarceration program, and submit to either an evaluation by DHH and participate in any treatment plan recommended or participate in substance abuse treatment in a program provided by a drug division pursuant to present law.

Proposed law retains present law but changes the requirement of community service from 40 eight-hour days to 320 hours.

Present law requires the installation of an ignition interlock device on the offender's vehicle. Present law further allows the offender to obtain a restricted driver's license after one year of suspension upon proof to DPSC that the ignition interlock device has been installed on the offender's vehicle.

Proposed law retains present law.

Present law provides that if the offender has previously been required to participate in substance abuse treatment or home incarceration pursuant to a sentence imposed on a conviction of a third offense DWI violation, then on a conviction of a fourth or subsequent offense the offender is to be imprisoned at hard labor for not less than ten nor more than 30

Coding: Words which are ~~struck through~~ are deletions from existing law;
words in **boldface type and underscored** are additions.

years, at least three years of which are to be imposed without benefit of parole, probation, or suspension of sentence. Present law further provides that the offender is not eligible to have the mandatory portion of his sentence suspended because of his participation in a drug division program and the mandatory minimum sentence cannot be served on home incarceration.

Proposed law retains present law except to change the mandatory minimum sentence from three years to five years and adds a fine of $5,000.

Present law provides that if the remainder of the sentence is suspended, the offender is to be placed on supervised probation with DPSC for a period of five years but the offender cannot be sentenced to substance abuse treatment.

Proposed law retains present law and adds that nothing in proposed law prohibits the court from ordering substance abuse treatment if it determines that the offender is able to pay for the substance abuse treatment.

Present law provides that if the offender has previously received the benefit of suspension of sentence, probation, or parole on a conviction of a fourth or subsequent offense DWI, then on a subsequent conviction of a fourth or greater offense, the offender is to be imprisoned at hard labor for between ten and 30 years.

Proposed law retains present law and adds a fine of $5,000.

Present law provides that the offender's vehicle may be seized and sold pursuant to present law.

Proposed law retains present law.

Present law provides that the state will pay the costs of substance abuse treatment.

Proposed law provides that the state will pay the costs of substance abuse treatment only on third and subsequent DWI convictions, except where imposed as a condition of probation.

Proposed law provides that for felony DWI violations, the mandatory minimum sentence imposed by the court cannot be served on home incarceration unless either DPSC recommends home incarceration and specific conditions of that home incarceration, or the district attorney recommends home incarceration.

Present law provides that except as otherwise provided by present law, on a misdemeanor DWI violation or on a felony DWI violation after the offender has served the mandatory minimum sentence, the court may sentence the offender to home incarceration. Present law further provides that when the court sentences an offender to home incarceration, the offender is subject to special conditions to be determined by the court, including electronic monitoring, curfew restrictions, obtaining employment, and participation in a court-approved driver improvement program.

Proposed law retains present law and adds that the court may also order nonelectronic monitored home incarceration as a condition of probation for a first or second conviction where the period of home incarceration is less than five days.

Present law provides that the activities of the offender outside of his home are to be limited to traveling to and from work, church services, Alcoholics Anonymous meetings, and a court-approved driver improvement program.

Proposed law retains present law and adds Narcotics Anonymous meetings and other secular-based addiction recovery group meetings, accredited educational institutions, meetings with a probation or parole officer, court-ordered community service activities, and

Coding: Words which are ~~struck through~~ are deletions from existing law;
words in **boldface type and underscored** are additions.

court-ordered substance abuse treatments to the list of approved activities outside the home during the period of home incarceration.

Proposed law provides that an offender who has been convicted of any second violation of any state or local law or ordinance prohibiting operating a vehicle while intoxicated, committed within five years of the commission of any prior DWI violation, is not eligible for home incarceration until the offender has first served a minimum of 48 consecutive hours of imprisonment.

Present law provides that when the offender is on probation for a third or subsequent offense, or on a second offense with home incarceration, a home visitation is to be conducted at least once per month by DPSC for the first six months, and after the first six months, the level of supervision is to be determined based upon a risk assessment instrument.

Proposed law retains present law.

Present law provides that an offender who is ordered to install an ignition interlock device as a condition of probation cannot operate, rent, lease, or borrow a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, or request another person to blow into an ignition interlock device or to start a vehicle equipped with the device to provide an operable vehicle.

Proposed law retains present law and adds the condition that the offender cannot violate the conditions of his restricted driver's license as set by DPSC.

Proposed law provides that if the court imposes the use of an ignition interlock device as a condition of probation, the offender must provide proof of compliance to the court or the probation officer within 30 days, or the court is to revoke the offender's probation.

Proposed law retains present law.

Present law defines "community service activities" to include participation in a litter abatement or collection program and duty in any morgue, coroner's office, or emergency treatment room of a state-operated hospital or other state-operated emergency treatment facility, with the consent of the administrator of the morgue, coroner's office, hospital, or facility.

Proposed law retains present law.

Present law provides that an offender who participates in a litter abatement or collection program has no cause of action for damages against the entity conducting the program or supervising the offender's participation therein, nor against any official, employee, or agent of such entity, for any injury or loss suffered during his participation in the program, if such injury is a direct result of the lack of supervision or act or omission of the supervisor, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the entity or its official, employee, or agent.

Proposed law retains present law.

Present law defines the crime of underage operating while intoxicated (underage DWI) as the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when the operator's BAC is 0.02 percent or more, if the operator is under the age of 21.

Proposed law retains present law.

Present law provides that if the offender's BAC is 0.08 percent or more, he is to be charged under present law relative to DWI rather than underage DWI.

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

Present law provides that on a first conviction of underage DWI the offender is to be fined between $100 and $250 and participate in a court-approved substance abuse and driver improvement program.

Proposed law retains present law and adds a term of imprisonment of between ten days and three months, which sentence can be suspended if the offender performs 32 hours of community service and participates in a court-approved substance abuse and driver education program.

Present law provides that on a second or subsequent conviction of underage DWI the offender is to be fined between $150 and $500 and imprisoned for between ten days and three months, which sentence can be suspended if the offender performs ten eight-hour days of community service and participates in a substance abuse and driver improvement program.

Proposed law increases the minimum fine from $150 to $250 and increases the minimum term of imprisonment from ten days to 30 days and increases the maximum sentence from three months to six months, which sentence can be suspended if the offender is placed on probation with the minimum conditions that he serve 48 hours in jail or perform at least 80 hours of community service, participate in a driver improvement program, and participate in a substance abuse program, which may include an assessment by a licensed clinician to determine if the offender has a substance abuse disorder.

Proposed law adds that the court may sentence an offender to home incarceration for underage DWI and that the court may order the offender to install an ignition interlock device on his vehicle.

Proposed law otherwise retains present law.

Present law provides relative to the crime of refusal to submit to chemical tests, and provides that no person under arrest for DWI or any other similar law or ordinance may refuse to submit to a chemical test when requested to do so by a law enforcement officer, if he has refused to submit to such test on two previous and separate occasions of any such violation.

Proposed law retains present law.

Present law provides that whoever violates the provisions of present law is to be fined between $300 and $1,000 and imprisoned for between ten days and six months, which sentence can be suspended only if the offender is either placed on probation with the minimum conditions that he serve two days in jail and participate in substance abuse and driver improvement programs, or perform 32 hours of community service and participate in substance abuse and driver improvement programs.

Proposed law retains present law.

Present law provides relative to the crime of operating a vehicle while under suspension for certain prior offenses, and provides that it is unlawful to operate a motor vehicle on a public highway where the operator's driving privileges have been suspended under the authority of certain provisions of present law, unless the person is operating the vehicle to obtain emergency medical care for himself or any other person.

Proposed law retains present law.

Present law provides that whoever violates the provisions of present law is to be imprisoned for between 15 days and six months without benefit of suspension of imposition or execution of sentence, except that when the operator's driving privileges were suspended for manslaughter, vehicular homicide, or negligent homicide, the offender is to be imprisoned for between 60 days and six months without benefit of suspension of imposition or execution

Coding: Words which are ~~struck through~~ are deletions from existing law;
words in **boldface type and underscored** are additions.

of sentence.

Proposed law retains present law.

Effective January 1, 2015.

(Amends R.S. 14:98, 98.1, 98.2, and 98.3; adds R.S. 14:98.4, 98.5, 98.6, 98.7, and 98.8)

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.