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## **TOWARD A MODEL DUI LAW**

### ***DUI National Model Law Initiative: Defining the Crimes***

An estimated 9,967 people were killed in alcohol-impaired driving crashes in 2014, comprising 31% of all traffic-related deaths in the United States.<sup>i</sup> An unknown number were killed in drugged driving crashes. Every state and territory in the United States has a system of laws designed to address impaired driving; however, the laws vary dramatically in scope and effectiveness. In order to remedy this, the Institute for Behavior and Health, Inc. (IBH) and National Partnership on Alcohol Misuse and Crime (NPAMC) began collaborating on a national model Driving Under the Influence (DUI) law in April 2010.

They convened a committee of prosecutors, toxicologists and other traffic safety experts to review a model drafted by NPAMC CEO Stephen Talpins based on effective laws from around the country. The committee was co-chaired by Omaha City Prosecutor Marty Conboy and the National District Attorneys Association's (NDAA) National Traffic Law Center (NTLC) Senior Attorney, Mark Neil. Committee members included: Clay Abbot, Laura Bailey, Lara Baker, Bruce Chalk, Lee Cohen, Roger Doherty, Elizabeth Earleywine, Laurel Farrell, Paul Glover, Susan Hackworthy, Robert Forrest, Jennifer Messick, Rodney Owen, Corinne Shea, Robert Voas, and David Wallace.

The committee recommended several changes which were reviewed by Stephen Talpins and IBH President Robert L. DuPont. They adopted most of the recommended changes resulting in a model that represented the thinking of the nation's DUI experts. On November 1, 2010, they released the first set of provisions defining the crimes of alcohol and/or drugged driving and "internal possession" of chemical and controlled substances.

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<sup>i</sup> National Center for Statistics and Analysis. (2015, December). Alcohol-impaired driving: 2014 data. (Traffic Safety Facts. DOT HS 812 231). Washington, DC: National Highway Traffic Safety Administration

***Model DUI Law: DUI and Internal Possession of a Chemical or Controlled Substance, Defined***

**Section \_\_\_\_\_**

**Prohibiting driving under the influence of alcohol or drugs; definition**

(1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle anywhere within this state and:

- (a) The person is under the influence of alcoholic beverages, a chemical or controlled substance as defined in s. \_\_\_\_\_, any other impairing substance or any combination of two or more of these substances while impaired to the slightest degree; or
- (b) The person has an alcohol concentration of 0.080 or more grams of alcohol per 100 milliliters of blood, 0.080 or more grams of alcohol per 210 liters of breath at the time of driving; or
- (c) The person has an alcohol concentration of 0.080 or more grams of alcohol per 100 milliliters of blood or 0.080 or more grams of alcohol per 210 liters of breath at the time of driving or any time after driving as a result of alcohol consumed before or during driving; or
- (d) There is any amount of a Schedule 1 chemical or controlled substance as defined in s. \_\_\_\_\_<sup>1</sup> or one of its metabolites or analogs in the person's blood, saliva, urine, or any other bodily fluid; or
- (e) There is any amount of a Schedule 2, 3 or 4 chemical or controlled substance as defined in s. \_\_\_\_\_ or one of its metabolites or analogs in the person's blood, saliva, urine or any other bodily fluid. The fact that a person charged with violating this provision consumed the drug pursuant to a prescription issued by a licensed health professional authorized to prescribe it and injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions shall constitute an absolute affirmative defense against any charge of violating this provision related to that particular drug, but no other substance and not any other provision under subsection 1.
- (f) With the exception of (1)(e), the fact that any person charged with violating this subsection is or was legally entitled to consume alcohol or to use a controlled substance, medication, drug or other impairing substance, shall not constitute a defense against any charge of violating subsection 1.

**Section \_\_\_\_\_**

**Prohibiting the Internal Possession of Chemical or Controlled Substances**

Any person who provides a bodily fluid sample containing any amount of a chemical or controlled substance as defined in s. \_\_\_\_\_ commits an offense punishable in the same manner as if the person otherwise possessed that substance.<sup>2</sup> The fact that a person charged with violating this provision consumed the drug pursuant to a prescription issued by a licensed health professional authorized to prescribe it and

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<sup>1</sup> Pursuant to 21 USC Sec. 812, Schedule 1 drugs or substances have a "high level of abuse" and "no currently accepted medical use in treatment in the United States."

<sup>2</sup> This crime would be the equivalent of possession of a controlled substance and would be punished in the same manner.

injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions shall constitute an absolute affirmative defense against any charge of violating this provision.

*NOTE: This provision is not a DUI specific law. Rather, it applies to any person who tests positive for chemical or controlled substances. Because so many DUI offenders are tested for drugs, we include this provision in our model.*

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#### **About the National Partnership on Alcohol Misuse and Crime**

The National Partnership on Alcohol Misuse and Crime (NPAMC) is a public-private partnership established to bring together stakeholders in the issue of alcohol misuse and crime in order to effectively change the way the United States justice system manages and rehabilitates offenders who misuse alcohol. Established in April 2008, NPAMC is comprised of more than 50 participating organizations and their representatives, including scientists and researchers, justice professionals, victims groups, treatment professionals, the corrections industry, pharmaceutical and technology companies, policy experts and distilleries. For more information, please visit the NPAMC website at [www.alcoholandcrime.org](http://www.alcoholandcrime.org).

#### **About the Institute for Behavior and Health, Inc.**

Founded in 1978, the Institute for Behavior and Health, Inc. (IBH) is a 501(c)3 non-profit organization that identifies, develops and promotes new ideas to reduce the use of illegal drugs. For more information, please visit [www.ibhinc.org](http://www.ibhinc.org) and [www.StopDruggedDriving.org](http://www.StopDruggedDriving.org).