

# IMPAIRED DRIVING UPDATE™

Volume XVIII, No. 2

ISSN 1091-4684

Pages 25 – 48

Spring 2014

## Mileposts

by Denis Foley

### Drivers Who Test Positive for Drugs Have Triple the Risk of Fatal Car Crash

A recent study examined the association of drug use by drivers, in addition to the combination of drugs and alcohol, with the risk of a fatal crash occurring. The research team found that drug use is associated with a significantly increased risk of fatal crash involvement, particularly in combination with alcohol. (Guohua Li, Joanne E. Brady, and Qixuan Chen, "Drug Use and Fatal Motor Vehicle Crashes: A Case-Control Study," 60 Accident Anal. & Prevention 205 (2013).)

### Changing Laws, Attitudes Lead to Better Outcomes for Drug Overdose

Law enforcement officers often are the medical first responders to a drug overdose, but lack clarification as to what should or can be done when responding. A recent study found that a change in the way police respond to drug-related overdose emergencies could contribute to improved outcomes for the victims and the communities in which the overdoses occur. (Traci C. Green, Nickolas Zaller, Wilson R. Palacios, Sarah E. Bowman, Madeline Ray, Robert Heimer, and Patricia Case, "Law Enforcement Attitudes Toward Overdose Prevention and Response," Drug & Alcohol Dependence (2013).)

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# License Revocation as a Tool for Combating Drugged Driving

by Stephen K. Talpins, J.D., Robert L. DuPont, M.D., Robert B. Voas, Ph.D., Erin Holmes, M.A., Kevin A. Sabet, Ph.D., and Corinne L. Shea, M.A.

**Editor's Note:** As more and more states contemplate decriminalizing low-level drugs, law enforcement and policymakers have expressed concerns about the effect of greater access to drugs. Recent reports indicate that more than 25% of high school seniors have either driven after using alcohol or drugs, or been the passenger with someone who has, and the rates are expected to increase. Rates among this cohort of driving after smoking marijuana have increased over the past three years. (Patrick M. O'Malley and Lloyd D. Johnston, "Driving After Drug or Alcohol Use by U.S. High School Seniors, 2001-2011," *Am. J. Publ. Health* (2013).) The article below recommends the use of a regulatory tool with which most law enforcement members are already familiar—the ALR—as a way to stem the predicted increases in these activities. The authors argue that the development of a model ALR provision for drugged drivers would serve as one valuable method of maintaining safety on the roads as other laws and regulations change the landscape of impaired driving.

Forty-one states and the District of Columbia have implemented administrative license revocation (ALR) laws that require law enforcement officers to immediately seize the driver's licenses of individuals they arrest for driving while impaired (DWI)/driving under the influence (DUI) who refuse to provide a blood, breath, or urine sample for toxicological testing or provide a sample and test at or above the 0.08% illegal BAC for alcohol. (The states use varying terminology to describe and define the crime of impaired driving. For the purposes of this article, the authors use the term DWI/DUI.) Traffic safety and alcohol policy experts generally recognize that ALR is an effective strategy to reduce alcohol-impaired driving. (T. Nelson, et al., "Efficacy and the Strength of Evidence of U.S. Alcohol Control Policies," 45(1) *Am. J. Prev. Med.* 19 (2013); National Transportation Safety Board, "Reaching Zero: Actions to Eliminate Alcohol-Impaired Driving," Safety Report (adopted May 14, 2013).)

ALR suspensions protect the public by removing dangerous drivers from

the roadways and deter impaired driving through the provision of swift, certain, and meaningful sanctions. (A. Wagenaar and M. Modonado-Molina, "Effects of Drivers' License Suspension Policies on Alcohol-Related Crash Involvement: Long-Term Follow-Up in 46 States," 31 *Alcohol Clin. Exp. Res.* 1399 (2007).) Unfortunately, only a few states, such as Arizona and Michigan, have a similar provision for drivers who test positive for drugs. (See, e.g., J. Lacey, K. Brainard, and S. Snitow, "Drug Per Se Laws: A Review of Their Use in States," NHTSA (Jul. 2010).) But the development of a model ALR provision for drugged drivers, if it is widely adopted, is crucial to promote traffic safety.

## Prioritizing Drugged Driving

Few people appreciated the dangers and significance of alcohol-impaired driving until the founding of Mothers Against Drunk Driving (MADD) in 1980. MADD humanized the crime by putting a face on its victims. Since that time, states have passed hundreds of laws and justice officials have devoted tremendous resources toward reducing the problem with pronounced and dramatic results.

**Decline in Impaired Driving.** The percentage of drivers with BACs at or above 0.08% has steadily declined since the 1980s. In 1973, 7.3% of weekend nighttime drivers had BACs greater than or equal to 0.08%. The percentage declined to 5.4% in 1986 and 4.3% in 1996. In 2007, only 2.2% of drivers had BACs at or above 0.08%, which represents a 70% reduction since 1973. (R. Compton and A. Berning, "Results of the 2007 National Roadside Survey of Alcohol and Drug Use by Drivers," Traffic Safety Facts (DOT HS 811 175), Jul. 2009.) Many factors contributed to this reduction, including the adoption of per se laws, reduction of the illegal limit, increased enforcement, and the passage of ALR laws.

Not surprisingly, this change has helped save thousands of lives. (Other

solutions also have contributed to this, including safer cars, increased seatbelt usage, airbags, and better medical care.) In 1982, over 21,000 people were killed in crashes in which at least one driver had a BAC at or above 0.08%. In 2011, less than 9,900 people were killed in crashes involving a driver with a BAC of 0.08% or higher. During that same time period, the percentage of highway fatalities attributed to alcohol-impaired drivers dropped from 48% to 31%. (National Transportation Safety Board, "Reaching Zero," supra.)

**Drugged Driving Overlooked in Prior Policymaking.** Unfortunately, the increased understanding of alcohol-impaired driving did not result in a commensurate appreciation for drug-impaired driving. In fact, the federal government did not begin to collect data on drug-impaired driving through the National Roadside Survey until the fourth survey administration in 2007 (though researchers conducting the Monitoring the Future study have asked high school students about their drugged driving behavior). That survey revealed that 16.3% of nighttime drivers had a potentially impairing drug or drugs (including medications) in their systems. (Compton and Berning, supra.) This alarming number spurred President Obama's first drug czar to make drugged driving one of three strategic priorities in his office.

Driving is a complex task. Many medications and illicit drugs can impair a person's ability to drive safely and the results may be devastating. (See, e.g., C. Stough and R. King, "The Role of Alcohol and Other Drugs in Road Deaths and Serious Injuries," 12 *Drug Prev. Q. Issue Paper* (Mar. 2010).) In early 2010, researchers at the National Highway Traffic Safety Administration (NHTSA) reviewed data from the Fatality Analysis Reporting System (FARS) between 2005 and 2009 to determine the prevalence of drug use in fatally injured drivers for the

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first time since 1970. In 2005, 28% of the drivers with known results tested positive for a potentially impairing drug or drugs (including medications). In 2009, 33% of drivers with known results tested positive. (U.S. Department of Transportation, NHTSA, "Drug Involvement of Fatally Injured Drivers," Traffic Safety Facts (DOT HS 811 415), Nov. 2010.)

**Target to Reduce Drugged Driving by 2015.** Later that year, the White House Office of National Drug Control Policy (ONDCP) announced its new initiative to decrease the prevalence of drugged driving in the United States by 10% by 2015. While that goal seems unattainable given decades of inertia, it is important to note that progress is being made in recognizing the problem.

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***ALR generally is recognized as one of the most effective strategies to reduce alcohol-impaired driving. Researchers estimate that ALR laws reduce alcohol-related fatalities by 5% to 9%, or approximately 800 lives per year.***

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In 2012, NHTSA Administrator David Strickland and ONDCP Director R. Gil Kerlikowske convened a meeting of national experts to discuss the extent of the drugged driving problem and to identify potential strategies for reducing it. The committee discussed the importance of developing more sensitive, specific, and efficient means for testing drivers for the presence of drugs and implementing per se drugged driving laws. The authors and other experts discuss these solutions at length in other articles. (See, e.g., R. DuPont, R. Voas, J. Walsh, C. Shea, S. Talpins, and M. Nail, "The Need for Drugged Driving Per Se Laws: A Commentary," 13(1) Traffic Inj. Prev. 31 (2012); R. DuPont, B. Logan, C. Shea, S. Talpins, and R. Voas, "Drugged Driving Research: A White Paper," Institute for Behavior and Health, Mar. 31, 2011, available at [http://www.WhiteHouseDrugPolicy.gov/publications/pdf/nida\\_dd\\_paper.pdf](http://www.WhiteHouseDrugPolicy.gov/publications/pdf/nida_dd_paper.pdf).) Following the meeting, the Institute for Behavior and Health, Inc., began developing a model ALR with NHTSA's support.

**Potential Efficacy of ALR Laws**

As noted above, ALR generally is recognized as one of the most effective strategies to reduce alcohol-impaired driving. Researchers estimate that ALR laws reduce alcohol-related fatalities by 5% to 9%, or approximately 800 lives per year. (National Transportation Safety Board, "Reaching Zero," supra.) Illinois, New Mexico, Maine, North Carolina, Colorado, and Utah experienced significant drops in their fatality rates after passing ALR laws. (U.S. Department of Transportation, NHTSA, "Administrative License Revocation," Traffic Safety Facts (DOT HS 810 878), Jan. 2008.)

ALR laws are successful in no small part because they provide immediate, certain, and meaningful sanctions. Swift-ness is critical because:

[a]ll else equal, consequences that occur close in time to the behavior are more reinforcing or punishing than those that occur later. . . . Timing matters—punishments experienced soon after the offending behavior are much more effective in shaping behavior than punishments that occur later. (Wagenaar and Moldonado-Molina, supra, at 1399.)

To illustrate this point, contrast the immediacy and certainty of ALR suspensions with criminal prosecutions. DWI/DUI cases often take between six months and two years to prosecute in criminal court. Research shows that the lack of celerity in the process undermines the effectiveness of post-conviction sanctions. (Id.)

Fortunately, traffic safety professionals are beginning to recognize the potential for an ALR law for drugged drivers. On July 24, 2013, Chris Murphy, then-director of the California Office of Traffic Safety, in consultation with the authors, proposed that the Governors Highway Safety Association (GHSA)

adopt a policy position on ALR for drugged drivers: "GHSA encourages States to consider expanding their existing Administrative License Revocation (ALR) laws or enacting new ALR laws for drug-impaired drivers who fail or refuse a drug test." On August 23, 2013, the resolution passed. (See GHSA, <http://www.GHSA.org/html/issues/impaireddriving/index.html>.)

**Convicting Drugged Drivers**

Most justice professionals believe that the conviction rate for drugged drivers is lower than it is for alcohol-impaired drivers for multiple reasons, most notably because there is no "per se" limit for drug use like there is for alcohol in most states. (Currently, 17 states have some type of per se drugged driving law.) Unfortunately, the few jurisdictions that consistently track their respective conviction rates for DWI/DUI offenders do not distinguish between alcohol- and drug-impaired drivers so there is a lack of data to support this belief. Regardless, ALR suspensions generally are not affected by what happens in criminal court. ALR thus ensures that the public receives at least some protection from drivers who evade successful prosecution.

**Model ALR Law for Drugged Drivers**

The Institute for Behavior and Health (IBH) model ALR law for drugged drivers currently in development requires officers who have probable cause to believe that a person drove while impaired by alcohol and/or drugs to suspend that person's license if (a) the driver refuses to be tested for drugs; or (b) tests positive for any chemical or controlled substance (regardless of amount). An officer who seizes a driver's license must issue the driver a 10-day temporary permit if the driver is otherwise eligible to drive and also give the driver a notice of suspension. The driver may request administrative review of the suspension in accordance with federal law. (The United States Supreme Court has repeatedly recognized that the suspension or revocation of a driver's license implicates a property interest and that a state cannot suspend a person's license without due process of law; see, e.g., **Bell v. Burson**, 402 U.S. 5359 (1971).)

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**Broadly Covers Chemical Substances.** The current draft model is written in broad terms to apply to all chemical and controlled substances. States may choose to limit their laws to controlled substances or even specific controlled substances; of course, the broader the statute, the wider the net and the greater

the potential effect of these laws. This is particularly important since people are creating synthetic drugs far more quickly than the federal government can list them. Note, however, that if the statute is extremely broad, there will be a greater demand for resources to enact and enforce it compared to a more narrowly defined statute. Policymakers are cautioned to consult with law

enforcement and other practitioners about the magnitude and characteristics of their respective jurisdiction's drugged driving problem before drafting such legislation.

**Need for On-Site Testing Capabilities.** The model assumes that law enforcement officers have the capability of testing drivers for drugs on-site (i.e., at roadside or at the police station during

## Highlights of Model Law

Following are some points and highlights that pertain to the IBH model law.

### Driving Not a Right

Though a person has a property interest in his or her license, driving is a privilege, not a right. (See, e.g., J. Bourdeau, et al., "Motor Vehicles," 60 C.J.S. Motor Vehicles § 257; **Duncan v. Cone**, 2000 U.S. App. Lexis 33221 (6th Cir. 2000); **Smelser v. Troutdale**, 2000 U.S. App. Lexis 16134 (9th Cir. 2000); **Roberts v. State**, 2000 U.S. App. Lexis 22753; 2000 Colo. J. C.A.R. 5225 (10th Cir. 2000); **John Doe No. 1 v. Ga. Dep't of Pub. Safety**, 147 F. Supp. 2d 1369 (U.S.D.C. N. D. Ga. 2001); **McFarland v. Mackey**, 1988 U.S. Dist. Lexis 15638 (U.S.D.C. Mass. 1988); **Flatt v. Miller**, 1996 U.S. Dist. Lexis 1883 (W. D. Mich. 1996); **League of United Latin Am. Citizens v. Bredesen**, 2004 U.S. Dist. Lexis 26507 (M. D. Tn. 2004); **Wells v. Malloy**, 402 F. Supp. 856 (DC. Vt. 1975).) Society has a compelling interest in the promotion of traffic safety and ensuring that drivers follow the law and refrain from endangering themselves and others.

### Showing Specified Limit Exceeded Not Required

There are thousands of impairing substances available commercially or otherwise in the market. These drugs do not affect people in consistent ways like alcohol does. There is no chance that we will ever establish illegal limits equivalent to the 0.08% standard used for alcohol for most drugs because of the well-documented complex relationship between driving impairment and blood

levels of these drugs. (G. Reisfield, B. Goldberger, M. Gold, and R. DuPont, "The Mirage of Impairing Drug Concentration Thresholds: A Rationale for Zero Tolerance per se Driving Under the Influence of Drugs Laws," 36(5) J. Anal. Toxicol. 353 (2012); R. DuPont, G. Reisfield, B. Goldberger, and M. Gold, "The Seductive Mirage of a 0.08 g/dL BAC Equivalent for Drugged Driving," 6 DATIA Focus 36 (2013).) Thus, unlike the alcohol model, the model drugged driving provision does not require a showing that the driver exceeded a specified limit. (DuPont, et al., Mar. 2011, supra.) States with zero tolerance drugged driving laws may want to adopt a more stringent ALR law than the IBH model.

### On-Site Testing

The model is dependent upon the ability of law enforcement officers to test a driver for drugs at roadside or during the booking process. The authors believe that an ALR law that fails to provide for immediate seizure is unlikely to have a deterrent effect.

### Probable Cause Required

Today's sophisticated on-site drug test kits and laboratory testing may detect the presence of drugs in a person's blood, breath, urine, or oral fluid after a person is no longer impaired by them. (DuPont, et al., Mar. 2011, supra.) Accordingly, the IBH model requires that officers have probable cause to believe that the driver's behavior was impaired by alcohol or drugs. Thus, the model does not apply to unimpaired drivers who happen to have drugs in their system at the time of testing.

### Prescription Drugs

The model applies to prescription drugs, as well as illicit drugs. Just as a person can be guilty of driving under the influence of alcohol even if their blood alcohol level is below the illegal 0.08% limit (despite that fact that it is generally legal to drink and drive), a person can be held accountable for driving after taking prescription medications *so long as the arresting officer had probable cause to arrest the driver for driving while impaired*. (R. Voas, R. DuPont, C. Shea, and S. Talpins, "Prescription Drugs, Drugged Driving and per se Laws," 19(3) Injury Prev. 218 (2013).)

### Due Process

Even though driving is a privilege, drivers have an interest in keeping their licenses. Our model follows established law by allowing drivers to apply for administrative review of all suspensions quickly and easily, thus ensuring that their licenses are not taken without the affordance of due process. (See, e.g., **Mackey v. Montromy**, 443 U.S. 1 (1979) (an ALR system that provides for swift post-suspension hearings is constitutional).)

### Testing Standards

In order to encourage the development and use of effective and reliable technology, the model authorizes an appropriate state agency to create standards for testing. For efficiency's sake, states should rely on the same agency responsible for evidential breath testing or the agency responsible for public health.

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the booking process). Experience in those states such as Arizona and Michigan that have drugged driving ALR laws has shown that the delay involved in sending samples to a laboratory for analysis interferes with implementation of the ALR law. (See, e.g., Lacey, et al., supra.) Unfortunately, few jurisdictions provide officers with the ability to

1. Whom they have probable cause to arrest for driving while impaired; and
2. Who, depending on the state law, test above the limit or just test positive for potentially impairing drugs, or refuse to provide a sample for testing.

It provides for quasi-judicial review of all suspensions to ensure fairness and propriety. States that want to establish and implement a drugged driving ALR

pose a significant danger and should be addressed at the earliest possible opportunity. In Norway, researchers followed 1,102 drivers who were arrested in 1992 for impaired driving for a period of seven years. They determined that the re-arrest rate among drugged drivers was twice that of alcohol-impaired drivers. (A. Christophersen, S. Skurtveit, M. Grung, and J. Moreland, "Re-arrest Rates Among Norwegian Drugged Drivers Compared to Drunken Drivers," 66 Drug and Alc. Depend. 85 (2011).)

ALR reduces alcohol-impaired driving; logic would subsequently dictate that states have the potential to improve traffic safety by expanding their ALR systems to include drugged drivers. Because drugged drivers may be more likely to recidivate than alcohol-impaired drivers, ALR laws may have an even bigger effect among this offender population. The simple truth is that the problem will not solve itself; we need to address drugged driving in order to reduce it. Fortunately, we do not need to start from scratch or reinvent the wheel. We can, and should, replicate and apply methods that have been shown to reduce alcohol-impaired driving in an effort to address the drugged driving problem. (R. DuPont, S. Talpins, and C. Shea, "Commentary on Romano & Pollini: Stopping Drug-Impaired Driving and Alcohol-Impaired Driving—Synergy, Not Competition," 108(8) Addiction 1439 (2013).)

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### *In a Norway study, the re-arrest rate among drugged drivers was twice that of alcohol-impaired drivers.*

conduct such drug tests on account of limited resources.

The model includes numerous authorizing provisions, including the requisite provisions empowering a state agency to administer the program, establishing criteria for approving on-site drug testing devices, and training officers to use approved devices properly. The draft model is quite complex and needs to be tailored to each state's (or jurisdiction's) law before it can be implemented.

#### **Mirrors Traditional ALR Laws**

The IBH model law mirrors traditional ALR laws for drivers arrested for alcohol-impaired driving in many ways. The model provides officers with a quick and easy way to seize the licenses of drivers:

system should tailor it to their respective needs and ensure that it is compatible with current laws, including implied consent laws. (See Sidebar: Highlights of Model Law.)

The model also eliminates the seemingly anomalous situation in which drivers can lose their license administratively for driving at or above the illegal limit without any showing that they were impaired by alcohol, a legal substance, but not for driving with an illicit drug or drugs in their systems unless the state can prove impairment.

#### **Address Drugged Driving to Reduce It**

Drug-impaired driving is a burgeoning problem in the United States that must be addressed. Drugged drivers

## **Adolescent Substance Abuse**

The Substance Abuse and Mental Health Services Administration has reported the sobering statistics of adolescent substance abuse. Among American teens aged 12 to 17, on an average day:

- 881,684 smoked cigarettes;
- 646,707 smoked marijuana; and
- 457,672 drank alcohol.

Although the last decade has seen significant progress made in decreasing the levels of some forms of substance use among adolescents, there are still a great number of youth at

risk. First-time use, on an average day, included the following:

- 7,639 drank alcohol;
- 4,594 used an illicit drug;
- 4,000 used marijuana;
- 3,701 smoked cigarettes; and
- 2,151 misused prescription pain relievers.

Also sobering are the numbers of adolescents receiving treatment on an average day:

- Over 71,000 in outpatient treatment;
- Over 9,302 in non-hospital residential treatment; and

- Over 1,258 in hospital inpatient treatment.

(Substance Abuse and Mental Health Administration, "Substance Use by Adolescents on an Average Day Is Alarming," SAMHSA News Release, Aug. 29, 2013; available at <http://www.SAMHSA.gov/newsroom/advisories/1308285320.aspx>. See also James Swift, "At OJJDP Experts Address Best Ways To Tackle Issue of Underage Drinking," May 16, 2013; available at <http://JJIE.org/at-ojjdp-experts-address-best-ways-to-tackle-issue-of-underage-drinking/>.)



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The authors recommend piloting an ALR law that applies to drugged drivers and researching its effect. All aspects of such a law should be studied, including feasibility, implementation, effect, and effectiveness.

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*The authors wish to thank Jeff Michael, associate administrator of the National Highway Traffic Safety Administration, for helping initiate this effort; Mark Neil, former Senior Attorney with the National Traffic Law Center; and Christopher J. Murphy, former director of the California Office of Traffic Safety, for peer-reviewing our model and this article.*

*We invite those interested in implementing and evaluating ALR drug laws to join the Institute for Behavior and Health's Drugged Driving Committee by contacting Corinne Shea at Corinne.Shea@ibhinc.org. For more information about drugged driving, visit [www.StopDruggedDriving.org](http://www.StopDruggedDriving.org).* ■

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violation of a certain prohibition on the use of a handheld telephone while operating a motor vehicle.

Act No. 371, signed by the governor on May 2, 2013, alters the definition of a motor vehicle to expand the types of vehicles for which an occupant is prohibited from consuming or possessing an alcoholic beverage in the passenger area while on a highway to include low speed vehicles, mopeds, and motor scooters.

**Michigan.** Act No. 36, signed by the governor on May 21, 2013, restricts sending and receiving text messages, and using a handheld mobile phone, while operating a commercial vehicle or school bus. Act No. 23, signed by the governor on May 9, 2013, maintains the alcohol content for individuals operating a vehicle under the influence of alcoholic liquor at 0.08% without a reversion back to 0.10%.

**Mississippi.** Act No. 489, signed by the governor on April 11, 2013:

- Provides that persons convicted of DUI will only be allowed to operate a vehicle equipped with an ignition interlock device;
- Provides for a ignition-interlock-restricted driver's license;
- Removes hardship provisions;
- Creates an aggravated level of the offense;
- Requires mandatory probation; and
- Provides for the expunction of certain convictions under specified conditions.

**Missouri.** S 327, signed by the governor on July 3, 2013, authorizes the use of a court-approved private probation service by the DWI court, and makes changes concerning house arrest orders and the cost of electronic monitoring.

**Montana.** Act No. 153, signed by the governor on April 5, 2013, provides a legal limit for the amount of delta-9-tetrahydrocannabinol allowed to be present in a person's blood while operating a motor vehicle. Act No. 309, signed by the governor on April 26, 2013, expanded the state's 24/7 sobriety program to include other crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.

Act No. 327, signed by the governor on April 29, 2013, revised alcohol enforcement laws regarding penalties within ranges based on mitigating and aggravating circumstances on the part of a licensee. Act No. 312, signed by the governor on April 26, 2013, raised the five-year look-back provision for certain alcohol- and drug-related driving offenses, and provides that all prior convictions are counted for determining the number of convictions in the case of a third or subsequent DUIs.

**Nebraska.** L 158, signed by the governor on April 24, 2013, made substantive changes to provisions of existing law relating to eligibility for and use of ignition interlock devices.

**Nevada.** Act No. 394, signed by the governor on June 3, 2013, prohibits a person from operating a motor vehicle with a dynamic display device or mobile billboard on which the images or other content change periodically unless the

motor vehicle is equipped with a display management system that allows the image or content that is displayed to be changed only when the motor vehicle is not moving or in a location where the image or content may be changed without causing undue distraction to the other vehicles. This act also prohibits moving content.

Act No. 34, signed by the governor on May 21, 2013, provides that a violation of a city or county ordinance prohibiting driving under the influence is deemed to be a violation of the state law prohibiting the same or similar conduct for all purposes other than the imposition of certain criminal penalties. Act No. 295, signed by the governor on June 1, 2013, prohibits a person from petitioning the court to seal records related to driving, operating, or controlling a vehicle or vessel while under the influence of intoxicating liquor or a controlled substance.

Act No. 87, signed by the governor on May 24, 2013, provides that the chemical solution or gas used in calibrating a blood alcohol detection device is presumed to be properly prepared and suitable for use in calibrating a device if a person who is certified to calibrate a device makes an affidavit or declaration. Act No. 373, signed by the governor on June 2, 2013, requires a court to impose a fee of \$100, in addition to any other administrative assessment, penalty, or fine imposed, if a person pleads guilty, guilty but mentally ill, or nolo contendere to, or is found guilty of, a charge of driving under the influence of intoxicating liquor or a controlled substance that is punishable as a misdemeanor.

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