

SENATE BILL NO. 277

BY SENATORS PERRY, DORSEY-COLOMB AND GUILLORY

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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 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

1 manufacturer's package of the drug does not contain a warning against combining
2 the medication with alcohol.

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

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

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

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

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

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

1 the injury or loss was caused by the intentional or grossly negligent act or omission
2 of the entity or its official, employee, or agent.

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

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

18 ~~C.(1) On a conviction of a second offense, notwithstanding any other~~
19 ~~provision of law to the contrary except as provided in Paragraphs (3) and (4) of this~~
20 ~~Subsection, regardless of whether the second offense occurred before or after the~~
21 ~~first conviction, the offender shall be fined not less than seven hundred fifty dollars,~~
22 ~~nor more than one thousand dollars, and shall be imprisoned for not less than thirty~~
23 ~~days nor more than six months. At least forty-eight hours of the sentence imposed~~
24 ~~shall be served without benefit of parole, probation, or suspension of sentence.~~
25 ~~Nothing herein shall prohibit a court from sentencing a defendant to home~~
26 ~~incarceration, if otherwise allowed under the provisions of Article 894.2 of the Code~~
27 ~~of Criminal Procedure. Imposition or execution of the remainder of the sentence~~
28 ~~shall not be suspended unless:~~

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

1 and participate in a court-approved driver improvement program; or

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

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

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

30 ~~(3) Notwithstanding the provisions of Paragraph (1) of this Subsection, on a~~

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

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

15 D.(1)(a) On a conviction of a third offense, notwithstanding any other
16 provision of law to the contrary and regardless of whether the offense occurred
17 before or after an earlier conviction, the offender shall be imprisoned with or without
18 hard labor for not less than one year nor more than five years and shall be fined two
19 thousand dollars. Except as provided in Paragraph (4) of this Subsection, one year
20 of the sentence of imprisonment shall be imposed without benefit of probation,
21 parole, or suspension of sentence. The court, in its discretion, may suspend all or
22 any part of the remainder of the sentence of imprisonment. If any portion of the
23 sentence is suspended, except for a suspension of sentence pursuant to the provisions
24 of Paragraph (4) of this Subsection, the offender shall be placed on supervised
25 probation with the Department of Public Safety and Corrections, division of
26 probation and parole, for a period of time equal to the remainder of the sentence of
27 imprisonment, which probation shall commence on the day after the offender's
28 release from custody.

29 (b) Any offender placed on probation pursuant to the provisions of this
30 Subsection shall be required as a condition of probation to participate in thirty eight-

1 ~~hour days of court-approved community service activities and to submit to and~~
2 ~~complete either of the following requirements:~~

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

9 ~~(ii) To participate in substance abuse treatment in an alcohol and drug abuse~~
10 ~~program provided by a drug division subject to the applicable provisions of R.S.~~
11 ~~13:5301 et seq. if the offender is otherwise eligible to participate in such program.~~

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

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

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

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

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

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

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

17 ~~(i) Electronic monitoring.~~

18 ~~(ii) Curfew restrictions.~~

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

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

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

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

9 ~~E.(1)(a) Except as otherwise provided in Subparagraph (4)(b) of this~~
10 ~~Subsection, on a conviction of a fourth or subsequent offense, notwithstanding any~~
11 ~~other provision of law to the contrary and regardless of whether the fourth offense~~
12 ~~occurred before or after an earlier conviction, the offender shall be imprisoned with~~
13 ~~or without hard labor for not less than ten years nor more than thirty years and shall~~
14 ~~be fined five thousand dollars. Except as provided in Paragraph (5) of this~~
15 ~~Subsection, two years of the sentence of imprisonment shall be imposed without~~
16 ~~benefit of parole, probation, or suspension of sentence. The court, in its discretion,~~
17 ~~may suspend all or any part of the remainder of the sentence of imprisonment. If any~~
18 ~~portion of the sentence is suspended, except for a suspension of sentence pursuant~~
19 ~~to the provisions of Paragraph (5) of this Subsection, the offender shall be placed on~~
20 ~~supervised probation with the Department of Public Safety and Corrections, division~~
21 ~~of probation and parole, for a period of time not to exceed five years, which~~
22 ~~probation shall commence on the day after the offender's release from custody.~~

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

27 ~~(i) To immediately undergo an evaluation by the Department of Health and~~
28 ~~Hospitals, office of behavioral health to determine the nature and extent of the~~
29 ~~offender's substance abuse disorder and to participate in any treatment plan~~
30 ~~recommended by the office of behavioral health, including treatment in an inpatient~~

1 facility approved by the office for a period of not less than four weeks followed by
2 outpatient treatment services for a period not to exceed twelve months.

3 (ii) ~~To participate in substance abuse treatment in an alcohol and drug abuse~~
4 ~~program provided by a drug division subject to the applicable provisions of R.S.~~
5 ~~13:5301 et seq. if the offender is otherwise eligible to participate in such program.~~

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

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

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

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

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

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

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

10 ~~(i) Electronic monitoring.~~

11 ~~(ii) Curfew restrictions.~~

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

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

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

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

30 ~~(b) If the offender has previously received the benefit of suspension of~~

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

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

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

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

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

11 ~~G. The legislature hereby finds and declares that conviction of a third or~~
12 ~~subsequent DWI offense is presumptive evidence of the existence of a substance~~
13 ~~abuse disorder in the offender posing a serious threat to the health and safety of the~~
14 ~~public. Further, the legislature finds that there are successful treatment methods~~
15 ~~available for treatment of addictive disorders. Court-approved substance abuse~~
16 ~~programs provided for in Subsections B, C, and D of this Section shall include a~~
17 ~~screening procedure to determine the portions of the program which may be~~
18 ~~applicable and appropriate for individual offenders and shall assess the offender's~~
19 ~~degree of alcohol abuse.~~

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

24 ~~I. An offender ordered to participate in a substance abuse program in~~
25 ~~accordance with the provisions of this Section shall pay the cost incurred in~~
26 ~~participating in the program. Failure to make such payment shall subject the offender~~
27 ~~to revocation of probation, unless the court determines that the offender is unable to~~
28 ~~pay. If the court determines that the offender is unable to pay, the state shall pay for~~
29 ~~the cost of the substance abuse treatment. An offender sentenced to home~~
30 ~~incarceration and to participate in a driver improvement program shall pay the cost~~

1 incurred in participating in home incarceration and a driver improvement program
2 unless the court determines that the offender is unable to pay. However, if the court
3 determines that an offender is unable to pay the costs incurred for participating in a
4 substance abuse treatment program, driver improvement program, or home
5 incarceration, the court may, upon completion of such program or home
6 incarceration, require that the offender reimburse the state for all or a portion of such
7 costs pursuant to a payment schedule determined by the court.

8 J. This Subsection shall be cited as the "Child Endangerment Law". When the
9 state proves in addition to the elements of the crime as set forth in Subsection A of
10 this Section that a minor child twelve years of age or younger was a passenger in the
11 motor vehicle, aircraft, watercraft, vessel, or other means of motorized conveyance
12 at the time of the commission of the offense, of the sentence imposed by the court,
13 the execution of the minimum mandatory sentence provided by Subsection B or C
14 of this Section, as appropriate, shall not be suspended. If imprisonment is imposed
15 pursuant to the provisions of Subsection D, the execution of the minimum mandatory
16 sentence shall not be suspended. If imprisonment is imposed pursuant to the
17 provisions of Subsection E, at least two years of the sentence shall be imposed
18 without benefit of suspension of sentence.

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

30 (2)(a) In addition to any penalties imposed under this Section, upon

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

7 (b) ~~In addition to any penalties imposed under this Section and~~
8 ~~notwithstanding the provisions of Subparagraph (2)(a) of this Subsection, upon~~
9 ~~conviction of a second offense if the offender had a blood alcohol concentration of~~
10 ~~0.20 percent or more by weight based on grams of alcohol per one hundred cubic~~
11 ~~centimeters of blood, the driver's license of the offender shall be suspended for four~~
12 ~~years. The offender may apply for a restricted license to be in effect during the~~
13 ~~period of suspension upon proof to the Department of Public Safety and Corrections~~
14 ~~that his motor vehicle has been equipped with a functioning ignition interlock device~~
15 ~~in compliance with the requirements of R.S. 32:378.2. The ignition interlock device~~
16 ~~shall remain installed and operative on his vehicle during the first three years of the~~
17 ~~four-year period of the suspension of his driver's license.~~

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

27 (b) ~~Any offender convicted of a third or subsequent offense of the provisions~~
28 ~~of this Section shall, after one year of the suspension required by R.S.~~
29 ~~32:414(D)(1)(a), upon proof of the Department of Public Safety and Corrections that~~
30 ~~the motor vehicles being operated by the offender are equipped with functioning~~

1 interlock devices, be issued a restricted driver's license. The restricted license shall
 2 be effective for the period of time that the offender's driver's license is suspended.
 3 The restricted license shall entitle the offender to operate the vehicles equipped with
 4 a functioning interlock device in order to earn a livelihood and to travel to and from
 5 the places designated in Paragraphs (D)(3) and (E)(3) of this Section.

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

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

9 **(2) When the state proves, in addition to the elements of the crime as set**
 10 **forth in Subsection A of this Section, that a minor child twelve years of age or**
 11 **younger was a passenger in the motor vehicle, aircraft, watercraft, vessel, or**
 12 **other means of motorized conveyance at the time of the commission of the**
 13 **offense:**

14 **(a) Except as provided in Subparagraphs (b) and (c) of this Paragraph,**
 15 **the execution of the minimum mandatory sentence provided by R.S. 14:98.1 or**
 16 **98.2, as appropriate, shall not be suspended.**

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

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

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

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

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

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

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

30 **(e) A law of any state or an ordinance of a municipality, town, or similar**

1 political subdivision of another state that prohibits the operation of any motor
2 vehicle, aircraft, watercraft, vessel, or other means of conveyance while
3 intoxicated, while impaired, or while under the influence of alcohol, drugs, or
4 any controlled dangerous substance.

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

7 (3) For purposes of this Section, a prior conviction shall not include a
8 conviction for an offense under this Section or under any offense listed in
9 Paragraph (1) of this Subsection if committed more than ten years prior to the
10 commission of the crime for which the defendant is being tried, and such
11 conviction shall not be considered in the assessment of penalties in this Section.
12 However, periods of time during which the offender was awaiting trial, on
13 parole or probation for an offense under this Section or any offense described
14 in Paragraph (1) of this Subsection, under an order of attachment for failure to
15 appear, or incarcerated in a penal institution in this or any other state shall be
16 excluded in computing the ten-year period.

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

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

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

30 (3) On a conviction of a third offense violation of the provisions of this

1 Section, notwithstanding any other provision of law to the contrary and
2 regardless of whether the offense occurred before or after an earlier conviction,
3 the offender shall be sentenced under the provisions of R.S. 14:98.3.

4 (4) On a conviction of a fourth or subsequent offense violation of the
5 provisions of this Section, notwithstanding any other provision of law to the
6 contrary and regardless of whether the fourth or subsequent offense occurred
7 before or after an earlier conviction, the offender shall be sentenced under the
8 provisions of R.S. 14:98.4.

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

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

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

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

1 court shall order it forfeited.

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

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

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

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

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

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

22 §98.1. ~~Underage driving under the influence~~ Operating while intoxicated, first
 23 offense; penalties

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

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

1 under this Section.

2 C. ~~On a first conviction, the offender shall be fined not less than one hundred~~
3 ~~nor more than two hundred fifty dollars, and participate in a court-approved~~
4 ~~substance abuse and driver improvement program.~~

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

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

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

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

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

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

1 (a) Serve forty-eight hours in jail, which shall not be suspended, or in lieu
2 thereof, perform no less than thirty-two hours of court-approved community
3 service activities, at least half of which shall consist of participation in a litter
4 abatement or collection program.

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

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

11 (d) Except as provided by Subparagraph (3)(c) of this Subsection, the
12 court may order that the offender not operate a motor vehicle during the period
13 of probation, or such shorter time as set by the court, unless any vehicle, while
14 being operated by the offender, is equipped with a functioning ignition interlock
15 device in compliance with the requirements of R.S. 14:98.5(C) and R.S.
16 32:378.2.

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

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

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

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

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

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

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

28 ~~§98.2. Unlawful refusal to submit to chemical tests; arrests for driving while~~
 29 ~~intoxicated~~ Operating while intoxicated, second offense; penalties

30 ~~A. No person under arrest for a violation of R.S. 14:98, 98.1, or any other law~~

1 ~~or ordinance which prohibits operating a vehicle while intoxicated may refuse to~~
2 ~~submit to a chemical test when requested to do so by a law enforcement officer if he~~
3 ~~has refused to submit to such test on two previous and separate occasions of any~~
4 ~~previous such violation.~~

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

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

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

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

26 **A.(1) Except as modified by the provisions of Paragraphs (2), (3), and (4)**
27 **of this Subsection, or as provided by Subsection D of this Section, on a**
28 **conviction of a second offense violation of R.S. 14:98, regardless of whether the**
29 **second offense occurred before or after the first conviction, the offender shall**
30 **be fined not less than seven hundred fifty dollars nor more than one thousand**

1 dollars, and shall be imprisoned for not less than thirty days nor more than six
2 months. At least forty-eight hours of the sentence imposed shall be served
3 without benefit of parole, probation, or suspension of sentence. Imposition or
4 execution of the remainder of sentence shall not be suspended unless the
5 offender is placed on probation with the minimum conditions that he complete
6 all of the following:

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

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

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

22 (d) Except as the period of time may be increased in accordance with
23 Subparagraph (3)(c) of this Subsection, the court shall order that the offender
24 not operate a motor vehicle during the period of probation unless any vehicle,
25 while being operated by the offender, is equipped with a functioning ignition
26 interlock device in compliance with the requirements of R.S. 14:98.5(C), R.S.
27 15:306, and R.S. 32:378.2, which requirement shall remain in effect for a period
28 of not less than six months from the date of conviction. In addition, the device
29 shall remain installed and operative during any period that the offender's
30 driver's license is suspended under law and for any additional period as

1 determined by the court.

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

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

13 (b) In addition to any penalties imposed under this Section, upon
14 conviction of a second offense violation of R.S. 14:98, if the offender had a blood
15 alcohol concentration of 0.20 percent or more by weight based on grams of
16 alcohol per one hundred cubic centimeters of blood, the driver's license of the
17 offender shall be suspended for four years.

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

25 (4) If the arrest for the second offense occurs within one year of the
26 commission of the first offense, at least thirty days of the sentence imposed
27 pursuant to Paragraph (1) of this Subsection shall be served without benefit of
28 parole, probation, or suspension of sentence. In addition, if the offender had a
29 blood alcohol concentration of 0.20 percent or more by weight based on grams
30 of alcohol per one hundred cubic centimeters of blood, he shall be fined one

1 thousand dollars and also be subject to the provisions of Subparagraphs (3)(b)
2 and (c) of this Subsection.

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

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

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

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

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

30 (b) Participate in a court-approved substance abuse program, which may

1 include an assessment by a licensed clinician to determine if the offender has a
 2 diagnosis of substance abuse disorder. Nothing in this Section shall prohibit the
 3 court from modifying the portions of the program as may be applicable and
 4 appropriate to an individual offender as shown by the assessment.

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

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

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

22 ~~§98.3. Operating a vehicle while under suspension for certain prior offenses~~

23 Operating while intoxicated, third offense; penalties

24 ~~A. It is unlawful to operate a motor vehicle on a public highway where the~~
 25 ~~operator's driving privileges have been suspended under the authority of R.S.~~
 26 ~~32:414(A)(1), (B)(1) or (2), (D)(1)(a), or 667. It shall not be a violation of the~~
 27 ~~provisions of this Section when a person operates a motor vehicle to obtain~~
 28 ~~emergency medical care for himself or any other person.~~

29 ~~B. Whoever violates the provisions of this Section shall be imprisoned for not~~
 30 ~~less than fifteen days nor more than six months without benefit of suspension of~~

1 ~~imposition or execution of sentence, except as provided in Subsection C.~~

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

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

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

22 **(3)(a) The court, in its discretion, may suspend all or any part of the**
23 **remainder of the sentence of imprisonment imposed pursuant to Paragraph (1)**
24 **of this Subsection. If any of the remainder of the sentence is suspended, the**
25 **offender shall be placed on supervised probation with the Department of Public**
26 **Safety and Corrections, division of probation and parole, for not more than a**
27 **period of five years but not less than a period of time equal to the remainder of**
28 **the sentence of imprisonment, which probation shall commence on the day after**
29 **the offender's release from imprisonment after serving the mandatory sentence**
30 **required by this Section, unless the offender was released by diminution of**

1 sentence for good behavior pursuant to R.S. 15:571.3, in which case the
2 probation shall commence simultaneously with the period of supervision
3 provided by R.S. 15:571.5 and shall run concurrently therewith. The offender
4 must comply with both the conditions of his release as set by the committee on
5 parole in accordance with R.S. 15:571.5 and with the conditions of probation set
6 by the sentencing court.

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

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

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

23 (c) In addition to the requirements set forth in Subparagraphs (a) and
24 (b) of this Paragraph, any offender placed on probation pursuant to the
25 provisions of this Subsection shall be placed in a home incarceration program
26 approved by the division of probation and parole for a period of time not less
27 than six months and not more than the remainder of the sentence of
28 imprisonment. The terms of home incarceration shall be in compliance with the
29 provisions of R.S. 14:98.5(B) and Code of Criminal Procedure Article 894.2.

30 (d)(i) Notwithstanding any law to the contrary and the provisions of R.S.

1 32:414(D)(1)(b), upon conviction of a third offense violation of R.S. 14:98, any
2 motor vehicle, while being operated by the offender, shall be equipped with a
3 functioning ignition interlock device in accordance with the provisions of R.S.
4 15:306. The ignition interlock device shall remain installed and operative until
5 the offender has completed the requirements of substance abuse treatment and
6 home incarceration, or, if applicable, the requirements of the drug division
7 probation program provided in R.S. 13:5301 et seq.

8 (ii) Notwithstanding any provision of law to the contrary, any offender
9 convicted of a third offense violation of R.S. 14:98 shall, after one year of the
10 suspension required by R.S. 32:414(D)(1)(a), upon proof to the Department of
11 Public Safety and Corrections that the motor vehicles being operated by the
12 offender are equipped with functioning ignition interlock devices, be issued a
13 restricted driver's license. The restricted license shall be effective for the period
14 of time that the offender's driver's license is suspended. The restricted license
15 shall entitle the offender to operate the vehicles equipped with a functioning
16 ignition interlock device in order to earn a livelihood and to travel to and from
17 the places designated in R.S. 14:98.5(B)(3)(e).

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

24 B.(1) If the offender has previously received the benefit of parole,
25 probation, or suspension of sentence on a conviction of a third or subsequent
26 offense violation of R.S. 14:98, or if the offender has previously participated in
27 a drug division probation program pursuant to R.S. 13:5301 et seq., pursuant
28 to a sentence imposed on a conviction of a third or subsequent offense violation
29 of R.S. 14:98, or if the offender has previously been required to participate in
30 substance abuse treatment or home incarceration pursuant to a sentence

1 imposed on a conviction of a third or subsequent offense violation of R.S. 14:98,
2 then on a conviction of a subsequent third offense violation of R.S. 14:98,
3 notwithstanding any other provision of law to the contrary and regardless of
4 whether the offense occurred before or after an earlier conviction, the offender
5 shall be fined two thousand dollars and imprisoned, with or without hard labor,
6 for not less than two nor more than five years. At least two years of the
7 sentence imposed shall be served without benefit of parole, probation, or
8 suspension of sentence. Except in compliance with R.S. 14:98.5(B)(1), the
9 mandatory minimum sentence cannot be served on home incarceration.

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

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

21 **§98.4. Operating while intoxicated, fourth offense; penalties**

22 A.(1) Except as modified by Subparagraphs (a) and (b) of this
23 Paragraph, or as provided by Subsections B and C of this Section, on a
24 conviction of a fourth or subsequent offense violation of R.S. 14:98, regardless
25 of whether the fourth offense occurred before or after an earlier conviction, the
26 offender shall be fined five thousand dollars and imprisoned, with or without
27 hard labor, for not less than ten years nor more than thirty years. Two years
28 of the sentence of imprisonment shall be imposed without benefit of parole,
29 probation, or suspension of sentence. Except in compliance with R.S.
30 14:98.5(B)(1), the mandatory minimum sentence cannot be served on home

1 **incarceration.**

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

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

18 **(2)(a) The court, in its discretion, may suspend all or any part of the**
19 **remainder of the sentence of imprisonment. If any of the sentence is suspended,**
20 **the offender shall be placed on supervised probation with the Department of**
21 **Public Safety and Corrections, division of probation and parole, for a period of**
22 **five years, which probation shall commence on the day after the offender's**
23 **release from imprisonment after serving the mandatory sentence required by**
24 **this Section, unless the offender was released by diminution of sentence for good**
25 **behavior pursuant to R.S. 15:571.3, in which case the probation shall commence**
26 **simultaneously with the period of supervision provided by R.S. 15:571.5 and**
27 **shall run concurrently therewith. The offender must comply with both the**
28 **conditions of his release as set by the committee on parole in accordance with**
29 **R.S. 15:571.5 and with the conditions of probation set by the sentencing court.**

30 **(b) Any offender placed on probation pursuant to this Paragraph shall**

1 be required as a condition of probation to participate in three hundred twenty
2 hours of court-approved community service activities, obtain employment,
3 participate in a court-approved driver improvement program at his expense,
4 and submit to and complete either of the following requirements:

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

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

16 (c) In addition to the requirements set forth in Subparagraphs (a) and
17 (b) of this Paragraph, any offender placed on probation pursuant to the
18 provisions of this Subsection shall be placed in a home incarceration program
19 approved by the division of probation and parole for the remainder of the term
20 of supervised probation. The terms of home incarceration shall be in
21 compliance with the provisions of R.S. 14:98.5(B) and Code of Criminal
22 Procedure Article 894.2.

23 (d)(i) Notwithstanding any law to the contrary and the provisions of R.S.
24 32:414(D)(1)(b), upon conviction of a fourth or subsequent offense, any motor
25 vehicle, while being operated by the offender, shall be equipped with a
26 functioning ignition interlock device in accordance with the provisions of R.S.
27 15:306. The ignition interlock device shall remain installed and operative until
28 the offender has completed the requirements of substance abuse treatment and
29 home incarceration or, if applicable, the requirements of the drug division
30 probation program provided for in R.S. 13:5301 et seq.

1 (ii) Any offender convicted of a fourth or subsequent offense shall, after
2 one year of the suspension required by R.S. 32:414(D)(1)(a), upon proof to the
3 Department of Public Safety and Corrections that the motor vehicles being
4 operated by the offender are equipped with functioning ignition interlock
5 devices, be issued a restricted driver's license. The restricted license shall be
6 effective for the period of time that the offender's driver's license is suspended.
7 The restricted license shall entitle the offender to operate the vehicles equipped
8 with a functioning ignition interlock device in order to earn a livelihood and to
9 travel to and from the places designated in R.S. 14:98.5(B)(3)(e).

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

16 B.(1) If the offender has previously been required to participate in
17 substance abuse treatment or home incarceration pursuant to a sentence
18 imposed on a conviction of a third offense violation of R.S. 14:98, then on a
19 conviction of a fourth or subsequent offense, notwithstanding any other
20 provision of law to the contrary and regardless of whether the fourth offense
21 occurred before or after an earlier conviction, the offender shall be fined five
22 thousand dollars and imprisoned at hard labor for not less than ten nor more
23 than thirty years, at least three years of which shall be imposed without benefit
24 of parole, probation, or suspension of sentence. Notwithstanding any provision
25 of law to the contrary, the offender shall not be eligible to have the mandatory
26 portion of his sentence suspended because of his participation in a drug division
27 program under Item (A)(2)(b)(ii) of this Section, and except in compliance with
28 R.S. 14:98.5(B)(1), the mandatory minimum sentence cannot be served on home
29 incarceration.

30 (2) After serving the mandatory sentence, if any of the remainder of the

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

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

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

30 D. In addition to any other penalty, the court shall order, upon motion

1 of the prosecuting district attorney, that the vehicle being operated by the
2 offender at the time of the offense be seized and impounded, and sold at auction
3 in accordance with the provisions of R.S. 14:98(F).

4 §98.5. Special provisions and definitions

5 A. Substance abuse programs. (1) An offender ordered to participate in
6 a substance abuse program, home incarceration, or a driver improvement
7 program in accordance with the penalty provisions of R.S. 14:98, 98.1, 98.2,
8 98.3, and 98.4 shall pay the cost incurred in participating in the program.
9 Failure to make such payment shall subject the offender to revocation of
10 probation, unless the court determines that the offender is unable to pay.

11 (2) On a conviction of a third or subsequent offense violation of R.S.
12 14:98, if the court determines that the offender is unable to pay, the state shall
13 pay for the cost of the substance abuse treatment. If the court determines that
14 an offender is unable to pay the costs incurred for participating in a substance
15 abuse treatment program, driver improvement program, or home
16 incarceration, the court may, upon completion of such program or home
17 incarceration, require that the offender reimburse the state for all or a portion
18 of such costs pursuant to a payment schedule determined by the court. This
19 Paragraph shall not apply to substance abuse treatment imposed as a condition
20 of probation under R.S. 14:98.3(B)(2) or R.S. 14:98.4(B)(3).

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

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

27 (b) The district attorney recommends home incarceration.

28 (2) Except as provided by Paragraph (4) of this Subsection and unless
29 otherwise authorized or prohibited, on a misdemeanor violation of R.S. 14:98
30 or on a felony violation of R.S. 14:98 after the offender has served the

1 mandatory minimum sentence, the court may sentence the offender to home
2 incarceration.

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

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

11 (b) Curfew restrictions.

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

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

16 (e) The activities of the offender outside of his home shall be limited to
17 traveling to and from work, church services or other religious services,
18 Alcoholics Anonymous meetings, Narcotics Anonymous meetings, other secular-
19 based addiction recovery group meetings, accredited educational institutions,
20 meetings with his probation or parole officer, court-ordered community service
21 activities, court-ordered substance abuse treatments, and a court-approved
22 driver improvement program.

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

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

1 imprisonment.

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

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

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

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

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

16 (d) Request or solicit any other person to blow into an ignition interlock
17 device or to start a motor vehicle equipped with the device for the purpose of
18 providing the offender with an operable motor vehicle.

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

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

27 D.(1) "Community service activities" as used in this Section and R.S.
28 14:98.1, 98.2, 98.3, and 98.4, in addition to participation in a litter abatement or
29 collection program, may include duty in any morgue, coroner's office, or
30 emergency treatment room of a state-operated hospital or other state-operated

1 emergency treatment facility, with the consent of the administrator of the
2 morgue, coroner's office, hospital, or facility.

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

12 §98.6. Underage operating while intoxicated

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

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

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

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

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

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

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

12 (b) Participate in a court-approved substance abuse program.

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

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

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

22 D. Court programs regarding substance abuse as provided for by
23 Subsection C of this Section shall include a screening procedure to determine
24 the portions of the program that may be applicable and appropriate for
25 individual offenders.

26 §98.7. Unlawful refusal to submit to chemical tests; arrests for driving while
27 intoxicated

28 A. No person under arrest for a violation of R.S. 14:98, 98.6, or any other
29 law or ordinance that prohibits operating a vehicle while intoxicated may refuse
30 to submit to a chemical test when requested to do so by a law enforcement

1 officer if he has refused to submit to such test on two previous and separate
2 occasions of any such violation.

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

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

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

12 (b) The offender is placed on probation with the minimum conditions
13 that he perform thirty-two hours of court-approved community service
14 activities, at least half of which shall consist of participation in a litter
15 abatement or collection program, participate in a court-approved substance
16 abuse program, and participate in a court-approved driver improvement
17 program. An offender who participates in a litter abatement or collection
18 program pursuant to this Subparagraph shall have no cause of action for
19 damages against the entity conducting the program or supervising his
20 participation therein, as provided by R.S. 14:98.5(D).

21 §98.8. Operating a vehicle while under suspension for certain prior offenses

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

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

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

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

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____