

ENROLLMENT(S)



COUNCIL OF THE DISTRICT OF COLUMBIA

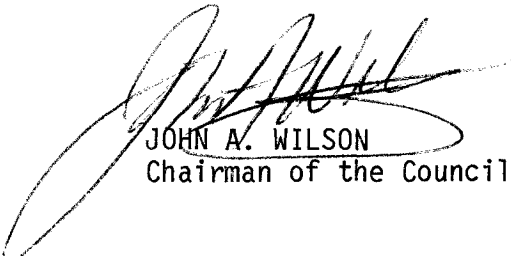
NOTICE

D.C. LAW 9-96

"Comprehensive Anti-Drunk Driving Amendment Act of 1991".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 9-34 on first and second readings, October 1, 1991, and November 5, 1991 respectively. Following the signature of the Mayor on November 25, 1991, this legislation was assigned Act No. 9-98, published in the December 6, 1991, edition of the D.C. Register, (Vol 39 page 7274) and transmitted to Congress on November 26, 1992 for a 60-day review, in accordance with Section 602(c)(2) of the Act.

The Council of the District of Columbia hereby gives notice that the 60-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 9-96, effective May 5, 1992.



JOHN A. WILSON
Chairman of the Council

Dates Counted During the 60-day Congressional Review Period:

November 26,27
January 21,22,23,24,27,28,29,30,31
February 3,4,5,6,18,19,20,21,24,25,26,27,28
March 2,3,4,5,6,9,10,11,12,13,16,17,18,19,20,23,24,25,26,27,30,31
April 1,2,3,6,7,8,9,10,28,29,30
May 1,4

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 25, 1991

To amend the Anti-Drunk Driving Act of 1982 to eliminate the presumption that a person is not under the influence or impaired where the alcohol in the blood, urine or breath is below the level constituting prima facie proof; the District of Columbia Implied Consent Act to provide a definition of chemical test; the District of Columbia Traffic Act of 1925 to increase the fees for the restoration and reinstatement of an offender's operator's permit, permit police officers to administer preliminary breath tests for alcohol under certain circumstances, establish mandatory minimum fines, establish a pretrial alcohol diversion program and assess the cost of the program to offenders, and permit the impoundment of vehicles operated by those arrested for drunk driving; D.C. Code §23-581 to authorize police officers to make warrantless arrests of drunk drivers based on a probable cause determination; and Title 18 District of Columbia Municipal Regulations to prohibit a person from operating or riding in a vehicle when any opened alcoholic beverage is in or on the vehicle except where certain guidelines are followed.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Comprehensive Anti-Drunk Driving Amendment Act of 1991".

Sec. 2. Section 2 and 3 of the Anti-Drunk Driving Act of 1982, effective September 14, 1982 (D.C. Law 4-145; D.C. Code §§40-717.1 and 40-717.2), are amended as follows:

(a) Section 2 (D.C. Code §40-717.1) is amended by amending paragraphs (1) and (2) to read as follows:

Section
40-717.1

"(1) Defendant's blood contained less than .05 percent by weight, of alcohol, or defendant's urine contained less than .06 percent, by weight, of alcohol, or that at the time of the test less than .24 micrograms of alcohol were contained in 1 milliliter of his or her breath, consisting of substantially alveolar air, this evidence shall not establish a presumption that the defendant was or was not, at the time, under the influence of intoxicating liquor, but it may be considered with other competent evidence in determining whether the defendant was under the influence of intoxicating liquor; and

"(2) Defendant's blood contained .05 or more, by weight, of alcohol, or defendant's urine contained .06 percent or more, by weight, of alcohol, or that at the time of the test, .24 micrograms or more of

alcohol were contained in 1 milliliter of his or her breath, consisting of substantially alveolar air, this evidence shall constitute prima facie proof that the defendant was, at the time, under the influence of intoxicating liquor and that, while the defendant was operating or in physical control of a vehicle, his or her ability to operate a vehicle was impaired by the consumption of intoxicating liquor."

(b) Section 3 (D.C. Code §40-717.2) is amended by striking the phrase "the testimony has been certified" and inserting the phrase "the test of the specimen has been certified" in its place. Section 40-717.2

Sec. 3. The District of Columbia Implied Consent Act, approved October 21, 1972 (86 Stat. 1016; D.C. Code §40-501 *et seq.*), is amended as follows:

(a) Section 1 (D.C. Code §40-501) is amended by adding a new paragraph (9) to read as follows: Section 40-501

"(9) The term 'chemical test' means a test which measures or relates to the properties or actions of chemicals."

(b) Section 2 (D.C. Code §40-502) is amended as follows: Section 40-502

(1) By striking the phrase "or breath" wherever it follows the word "blood"; and

(2) By adding after the phrase "of alcohol" and before the phrase "or that" the following phrase:

"or .48 micrograms or more of alcohol are contained in 1 milliliter of that person's breath, consisting of substantially alveolar air,".

(c) Section 5(a) (D.C. Code §40-505(a)) is amended as follows: Section 40-505

(1) By striking the phrase "or breath"; and

(2) By adding after the phrase "of alcohol" and before the phrase "or defendant's" the following phrase:

"or .48 micrograms or more of alcohol were contained in one milliliter of the individual's breath, consisting of substantially alveolar air,".

Sec. 4. The District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Code §40-701 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Code §40-702) is amended by inserting a new paragraph (11) to read as follows: Section 40-702

"(11) The term 'chemical test' means a test which measures or relates to the properties or actions of chemicals."

(b) Section 6(a)(4) (D.C. Code §40-703(a)(4)) is amended by striking the figure "\$30" and inserting the figure "\$75" in its place. Section 40-703

(c) Section 10 (D.C. Code §40-716) is amended as follows: Section 40-716

(1) Subsection (b)(1) is amended as follows:

(A) By amending the first sentence by striking the phrase "an equivalent quantity of alcohol is contained in at least 2,000 cubic centimeters of his breath" and adding the phrase ".48 micrograms or more of alcohol are contained in 1 milliliter of his breath, consisting of substantially alveolar air" in its place; and

(B) By amending the second sentence to read as follows:

"Any individual violating any provision of this paragraph, upon conviction for the 1st offense, unless the individual has previously been convicted for a violation of paragraph (2) of this subsection, shall be fined \$300 and in addition may be imprisoned for not more than 90 days; upon conviction for the 2nd offense, or for the 1st offense following a

previous conviction for a violation of paragraph (2) of this subsection, within a 15-year period, shall be fined an amount not less than \$1,000 and not more than \$5,000 and in addition may be imprisoned for not more than 1 year; and, upon conviction for the 3rd or any subsequent offense, or for the 2nd offense following a previous conviction for a violation of paragraph (2) of this subsection, within a 15-year period, shall be fined an amount not less than \$2,000 and not more than \$10,000 and in addition may be imprisoned for not more than 1 year."

(2) Subsection (b)(2) is amended by amending the second sentence to read as follows:

"Any individual violating any provision of this paragraph, upon conviction for the 1st offense, unless the individual has previously been convicted for a violation of paragraph (1) of this subsection, shall be fined not less than \$200 and not more than \$300 and in addition may be imprisoned for not more than 30 days; upon conviction for the 2nd offense, or for the 1st offense following a previous conviction for a violation of paragraph (1) of this subsection, within a 15-year period, shall be fined an amount not less \$300 and not more than \$500 and in addition may be imprisoned for not more than 90 days; and, upon conviction for the 3rd or any subsequent offense, or for the 2nd offense following a previous conviction for a violation of paragraph (1) of this subsection, within a 15-year period, shall be fined an amount not less than \$1,000 and not more than \$5,000 and in addition may be imprisoned for not more than 1 year."

(3) Subsection (b)(5) is amended by adding 3 sentences at the end to read as follows:

"The Corporation Counsel is authorized to request that a person who is charged with a violation of any provision of paragraph (1) of this subsection agree, as a condition to acceptance into a diversion program in lieu of prosecution, to pay the District of Columbia or its agents, a reasonable fee for the costs to the District of the person's participation in the diversion program; provided, that the Corporation Counsel shall set the fee by rule and at a level which the Corporation Counsel determines will not unreasonably discourage persons from entering the diversion program. The Corporation Counsel may reduce or waive the fee if it finds that the person is indigent. The Mayor shall determine the provider, the content, and eligibility requirements for any diversion program."

(4) A new subsection (b-1) is added to read as follows:

"(b-1)(1) A law enforcement officer who has reasonable grounds to believe that a person is or has been violating subsection (b) of this section, without making an arrest or issuing a violation notice, may request the person to submit to a preliminary breath test, to be administered by the officer, who shall use a device which the Mayor has by rule approved for that purpose.

"(2) Before administering the test the officer shall advise the person to be tested that the test is voluntary and that the results of the test will be used to aid in the officer's decision whether to arrest the person.

"(3) The results of the preliminary breath test shall be used by the officer to aid in the decision whether to arrest the person. Except as provided in subsection (d) of this section, the results of the test shall

not be used as evidence by the District in any prosecution, and shall not be admissible in any judicial proceeding.

"(4) The results of the test may be used, and shall be admissible in any judicial or other proceeding in which the validity of the arrest or the conduct of the officer is an issue."

(5) A new subsection (c-1) is added to read as follows:

"(c-1)(1) Except as provided in paragraph (2) of this subsection, when a law enforcement officer arrests a person for a violation of any provision of subsection (b) of this section, the officer shall cause the motor vehicle which the arrested person operated or controlled to be impounded.

"(2) The officer shall not cause the vehicle to be impounded if:

"(A) A registered owner of the vehicle authorizes the officer to release the vehicle to a person:

"(i) Who is in the company of the arrested person;

"(ii) Who has in his or her immediate possession a valid permit to operate a motor vehicle; and

"(iii) Who the officer determines to be in physical condition to operate the vehicle without violating subsection (b) of this section;

"(B) A registered owner of the vehicle:

"(i) Is present to take custody of the vehicle;

"(ii) Has in his or her immediate possession a valid permit to operate a motor vehicle; and

"(iii) Is determined by the officer to be in physical condition to operate the vehicle without violating subsection (b) of this section; or

"(C) The arrested person authorizes the officer to release the vehicle to a person:

"(i) Who is not in the company of the arrested person;

"(ii) Who has in his or her immediate possession a valid permit to operate a motor vehicle;

"(iii) Who the officer determines to be in physical condition to operate the vehicle without violating subsection (b) of this section; and

"(iv) Who shall take possession of the vehicle within a reasonable period of time from a public parking space to be determined by the arresting officer.

"(3)(A) Except as provided in paragraph (4) of this subsection or in subparagraph (B) of this paragraph, an impounded vehicle shall be released:

"(i) At any time, to a registered owner of the vehicle, other than the arrested person; or

"(ii) 24 hours after the arrest, to the arrested person.

"(B) No vehicle shall be released to a person unless a law enforcement officer determines that the person is in physical condition to operate a motor vehicle without violating subsection (b) of this section.

"(C) If the law enforcement officer has a reasonable doubt that the person is in the physical condition required by subparagraph (B) of this paragraph, the officer may direct that a

chemical test be administered to determine the person's blood-alcohol or blood-drug content. The results of the test may not be used as evidence in any criminal proceeding. If the person refuses to submit to a chemical test, the officer may determine that the person does not meet the condition of subparagraph (B) of this paragraph.

"(4) Any motor vehicle that is impounded shall be subject to an impoundment charge of \$50, which shall be paid prior to the release of the motor vehicle. Any motor vehicle that remains impounded and unclaimed for more than 72 hours shall be processed and handled as an abandoned vehicle, and shall be subject to any other charges and costs, including storage fees and relocation costs, as are otherwise provided and assessed by the Mayor.

"(5)(A) Except as provided in subparagraph (B) of this paragraph, neither the District of Columbia nor any employee of the District of Columbia shall be liable for injury to persons or damage to property which results from any act or omission in the implementation of any provision of this subsection.

"(B) An employee of the District of Columbia may be liable for injury or damage which results from the gross negligence of the employee. If the act or omission of the employee which constitutes gross negligence occurred while the employee was engaged in furthering the governmental interest of the District of Columbia, the District of Columbia may also be liable for the resulting injury or damage."

Sec. 5. Section 23-581(a) of the District of Columbia Code is amended as follows:

Section
23-581

(a) By striking the period at the end of subparagraph (C) and adding the phrase "; and" in its place;

(b) By adding a new subparagraph (D) to read as follows:

"(D) a person who he has probable cause to believe has committed any offense which is listed in paragraph (3) of this section, if the officer has reasonable grounds to believe that, unless the person is immediately arrested, reliable evidence of alcohol or drug use may become unavailable or the person may cause personal injury or property damage."; and

(c) By adding a new paragraph (3) to read as follows:

"(3) The offenses which are referred to in subparagraph (D) of paragraph (1) are the following offenses specified in the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Code §40-701 *et seq.*), and listed in the following table:

Offense:	Specified in -
Reckless driving	section 9(b) (D.C. Code §40-712(b))
fleeing from the scene of an accident	section 10(a) (D.C. Code §40-716(a))
operating or physically controlling a vehicle when under the influence of intoxicating liquor or drugs, when operating ability is impaired by intoxicating liquor, or when the operator's blood, breath, or urine contains the amount of alcohol which is	

prohibited by section 10(b) . section 10(b) (D.C. Code §40-716(b))
operating a motor vehicle
when the operator's permit
is revoked or suspended . . .section 13(e) (D.C. code §40-302(e))."

Sec. 6. Title 18, District of Columbia Municipal Regulations, (18 DCMR), is amended as follows: 18 DCMR

(a) Subsection 1034.2 (18 DCMR 1034.2) is amended to read as follows:

"1034.2 If the operator's blood contained less than .05 percent by weight, of alcohol, or the operator's urine contained less than .06 percent, by weight, of alcohol, or that at the time of the test less than .24 micrograms of alcohol were contained in 1 milliliter of his breath, consisting of substantially alveolar air, it shall not establish a presumption that the operator at such time was or was not under the influence of intoxicating liquor, but this fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor."

(b) Subsection 1034.3 (18 DCMR 1034.3) is amended to read as follows:

"1034.3 If the operator's blood contained .05 percent or more, by weight, of alcohol, or the operator's urine contained .06 percent or more, by weight, of alcohol, or that at the time of the test .24 micrograms or more of alcohol were contained in 1 milliliter of his breath, consisting of substantially alveolar air, it shall be deemed prima facie proof that the operator at the time was under the influence of intoxicating liquor."

(c) A new section 2219a is added to read as follows:

"2219a ALCOHOLIC BEVERAGES IN MOTOR VEHICLES

"2219a.1 Except as provided in subsections 2219a.2 and 2219a.3, no person shall operate or ride in a vehicle when any opened alcoholic beverage is in or on the vehicle.


"2219a.2 If the vehicle has a trunk, cargo area, or storage compartment that is inaccessible from the passenger area, an opened alcoholic beverage container may be carried in the trunk, cargo area, or storage compartment.


"2219a.3 If the vehicle does not have a trunk, cargo area, or storage compartment that is inaccessible from the passenger area, an opened alcoholic beverage may be carried in the vehicle if the container has been capped, corked, or otherwise closed, and the container is completely enclosed in a manner that does not allow a person to consume the alcoholic beverage.

"2219a.4 For purposes of this section, the term "opened alcoholic beverage container" means an alcoholic beverage in a bottle, can, or other container which is open or from which the top, cap, cork, seal, or tab seal has at some time been removed; and the term "alcoholic beverage" means an alcoholic beverage as defined in section 3 of the District of Columbia Alcoholic Beverage Control Act, approved January 24, 1934 (48 Stat. 319; D.C. Code §25-103)."

Sec. 7. This act shall take effect after a 60-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act,

approved December 24, 1973 (87 Stat. 813; D.C. Code §1-233(c)(2)), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.


Chairman
Council of the District of Columbia


Mayor
District of Columbia

APPROVED: November 25, 1991



COUNCIL OF THE DISTRICT OF COLUMBIA

Council Period Nine

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: Bill 9-34

[X] Item on Consent Calendar

[X] ACTION & DATE: Adopted First Reading, 10-1-91

[X] VOICE VOTE: Approved

Recorded vote on request

Absent: all present

[] ROLL CALL VOTE: - RESULT

Table with 15 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. (repeated 3 times). Rows include CHMN. WILSON, BRAZIL, CRAWFORD, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, RAY, ROLARK, SMITH, JR., THOMAS, SR.

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

Secretary to the Council (Signature)

Date: November 12, 1991

[X] Item on Consent Calendar

[X] ACTION & DATE: Adopted Final Reading, 11-5-91

[X] VOICE VOTE: Approved

Recorded vote on request

Absent: all present

[] ROLL CALL VOTE: - RESULT

Table with 15 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. (repeated 3 times). Rows include CHMN. WILSON, BRAZIL, CRAWFORD, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, RAY, ROLARK, SMITH, JR., THOMAS, SR.

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

Secretary to the Council (Signature)

Date: November 12, 1991

[] Item on Consent Calendar

[] ACTION & DATE:

[] VOICE VOTE:

Recorded vote on request

Absent:

[] ROLL CALL VOTE: - RESULT

Table with 15 columns: COUNCIL MEMBER, AYE, NAY, N.V., A.B. (repeated 3 times). Rows include CHMN. WILSON, BRAZIL, CRAWFORD, CROPP, EVANS, JARVIS, LIGHTFOOT, MASON, NATHANSON, RAY, ROLARK, SMITH, JR., THOMAS, SR.

X - Indicates Vote A.B. - Absent N.V. - Present, not voting

CERTIFICATION RECORD

Secretary to the Council

Date