

**16 GCA VEHICLES
CH. 18 SAFE STREETS ACT**

**CHAPTER 18
SAFE STREETS ACT**

NOTE: Chapter 18 was added by P.L. 22-20:2.

- Article 1. Offenses Involving Alcohol and Controlled Substances.
- Article 2. Implied Consent and Suspension or Revocation of Driving Privileges and License.
- Article 3. Probation and General Considerations of Probation.
- Article 4. Ignition Interlock Devices.

ARTICLE 1

OFFENSES INVOLVING ALCOHOL AND CONTROLLED SUBSTANCES

- § 18101. Definitions.
- § 18102. Influence of Alcohol and Controlled Substances; Causing Bodily Injury to Person Other Than Driver; Alcoholic Content in Blood; Proof.
- § 18103. Driving While Intoxicated; Presumptions.
- § 18104. Conviction of First Violation of § 18102; Punishment.
- § 18105. Second Conviction of § 18102; Punishment.
- § 18106. Conviction of Violation of § 18102 Within Five Years After Two Violations; Punishment.
- § 18107. Conviction of Violation of § 18102 Within Five Years of Three or More Violations of Designated Sections; Punishment.
- § 18108. Forfeiture of Vehicle.
- § 18109. Conviction Involving a Child.
- § 18110. Vehicular Negligence; Third Degree Felony.
- § 18111. Vehicular Homicide; Classified.
- § 18112. Impoundment of Vehicle of Registered Owner Convicted or Charged of Violation of § 18102; Prior Offenses; Considerations; Exemption.
- § 18113. Charging a Violation of § 18102 After Convictions of Violations of § 18102; Effect of Prior Convictions on Sentencing and Driving Privilege.
- § 18114. Use of Controlled Substance as Defense to Violations.
- § 18115. Participation in Driver Improvement or Treatment Programs; No Suspension or Stay of Proceedings Prior to Acquittal or

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

Conviction of Violations of § 18102; Effect After Conviction and Sentencing.

- § 18116. Restriction on Privilege to Operate Motor Vehicles; Markings on Licenses and Records; Removal of Restriction; Notice and Recordation of Probation.
- § 18117. Separate Conviction; Challenge to Constitutional Validity; Use in Judicial or Administrative Proceedings.
- § 18118. Dismissal of Allegation of Violation of § 18102 of This Chapter; Substitution of Lesser Offense or Dismissal or Striking of Separate Conviction; Reasons by Court and Prosecution.
- § 18119. Drinking While Driving a Motor Vehicle Upon Any Highway.
- § 18120. Drinking in Motor Vehicle Upon Highway.
- § 18121. Possession of Opened Container in a Motor Vehicle.
- § 18122. Storage of Opened Container.
- § 18123. Suspension of Driver's License.
- § 18124. Restriction or Suspension of Driving Privilege; Probation with Conditions; Revocation of License.
- § 18124.1. Driving While License Suspended.
- § 18125. Safe Street Fund.

§ 18101. Definitions.

As used in this Chapter:

(a) *Driving under the influence ("DUI") or while intoxicated* means any person driving a vehicle under the influence of an alcoholic beverage or a controlled substance or a combination thereof, when as a result of consuming such alcoholic beverage or controlled substance or the combination thereof, his or her physical or mental abilities are impaired to such a degree that he or she no longer has the ability to drive a vehicle with the caution characteristics of a sober person of ordinary prudence, under the same or similar circumstance, and includes any person operating or in actual physical control of a motor vehicle who has eight one-hundredths of one percent (0.08%) or more, by weight, of alcohol in his or her blood.

(b) *Percent of alcohol by weight* shall be based upon grams of alcohol per one hundred (100) milliliters of blood.

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

(c) *Prior offense of driving under the influence* includes a conviction based on drunk driving laws in effect prior to enactment of this Chapter, or under drunk driving laws in any other jurisdiction in the world if the offense upon which the conviction is based would, if committed in Guam, be a violation of § 18102 of this Chapter.

(d) *Controlled substances* means those so defined by Chapter 67, Title 9, Guam Code Annotated the Uniform Controlled Dangerous Substances Act.

(e) *Vehicular homicide* means a person who does any act forbidden by law in the driving of a vehicle or who negligently drives a vehicle, which act or negligence proximately causes death to any person other than the driver.

(f) *Vehicular homicide while intoxicated* means a person, while driving a vehicle under the influence does any act forbidden by law in the driving of the vehicle or if he or she negligently drives a vehicle, which act or negligence proximately causes death to any person other than the driver.

(g) *Negligence* means the failure to use the ordinary or reasonable care which a person of ordinary prudence would use in order to avoid injury to himself or others under similar circumstances.

(h) *Reasonable cause* means such a state of facts as would lead a person of ordinary care and prudence to believe and conscientiously entertain an honest strong suspicion that the person driving and in physical control of a vehicle is under the influence of alcohol or of a controlled substance or of a combination thereof.

(i) *Working day* means any day of the week other than Saturday or Sunday or a legal holiday.

SOURCE: Subsection (h) amended by P.L. 22-146:2 (12/29/94). Subsection (i) added by P.L. 22-146:3.

§ 18102. Influence of Alcohol and Controlled Substances; Causing Bodily Injury to Person Other Than Driver; Alcoholic Content in Blood; Proof.

(a) It is unlawful for any person, while under the influence of an alcoholic beverage or any controlled substance, or under the combined

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

influence of an alcoholic beverage and any controlled substance, to operate or be in physical control of a motor vehicle.

(b) It is unlawful for any person, while having eight one-hundredths of one percent (0.08%) or more, by weight, of alcohol in his or her blood to operate or be in physical control of a motor vehicle.

(c) It is unlawful for any person, while under the influence of an alcoholic beverage or any controlled substance, or under the combined influence of an alcoholic beverage and any controlled substance, to operate or be in physical control of a motor vehicle and, when doing so, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle or who negligently drives a vehicle, which act or neglect or negligence proximately causes bodily injury to any person other than the driver.

(d) It is unlawful for any person, while having eight one-hundredths of one percent (0.08%) or more, by weight, of alcohol in his or her blood to operate or be in physical control of a motor vehicle and, when doing so, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(e) In any prosecution under this section, it is a rebuttable presumption that the person with eight one-hundredths of one percent (0.08%) or more, by weight, of alcohol in his or her blood at the time of operating or in actual physical control of a motor vehicle is under the influence of alcohol if the person had eight one-hundredths of one percent (0.08%) or more, by weight, of alcohol in his or her blood at the time of the performance of a blood or breath test within three (3) hours after the driving.

(f) In proving the person neglected any duty imposed by law in the driving of the vehicle, it is not necessary to prove that any specific section of this title was violated.

(g) (1) Notwithstanding the other provisions of this section, a person under the age of eighteen (18) shall be guilty of a violation of subsections (b) or (d) of this section if such person shall be found within three (3) hours of his or her arrest for a violation of this section to have four one-hundredths of one percent (0.04%) or more, by weight, of alcohol in his or her blood.

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

(2) A person convicted for the first time of a violation of item (1) of this subsection shall be guilty of a misdemeanor and shall have his or her license or permit to operate a motor vehicle suspended for six (6) months. Upon any subsequent conviction of the person while under the age of eighteen (18), the person's license or permit to operate a motor vehicle shall be suspended for one (1) year with no exception for occupational driving privileges. Upon any conviction the court shall notify the Department of Revenue and Taxation of such suspension of the person's privilege to drive and confiscate the person's license or permit to operate a motor vehicle. In addition to the required mandatory suspension of a person's license or permit to operate a motor vehicle, the court may impose such additional penalty as may be permitted by law for conviction of a misdemeanor.

§ 18103. Driving While Intoxicated; Presumptions.

(a) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving or being in actual physical control of a vehicle while under the influence of an alcoholic beverage in violation of subsections (b) or (d) of § 18102 of this Chapter, the amount of alcohol in the person's blood at the time of the test as shown by an analysis of that person's blood or breath shall give rise to the following presumptions affecting the burden of proof

(1) If there was at that time less than eight one-hundredths of one percent (0.08%) by weight of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(2) If there was at that time eight one-hundredths of one percent (0.08%) or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(b) Before such presumptions are made in cases involving a breath test, the prosecuting attorney must show the following by a preponderance of the evidence

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

(1) That the instrument used for the test was properly checked and in proper working order at the time of conducting the test;

(2) That any chemicals employed in the test were of the correct kind and compounded in the proper proportions;

(3) That the person had nothing in his mouth at the time of the test and that he had taken no food or drink within fifteen (15) minutes prior to taking the test;

(4) That the test was given by a qualified operator and in the proper manner.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

§ 18104. Conviction of First Violation of § 18102; Punishment.

(a) If any person is convicted of a first violation of § 18102 of this Chapter, that person shall be guilty of a misdemeanor and shall be punished by imprisonment in the custody of the Department of Corrections ("DOC") or the Guam Police Department ("GPD") for not less than a mandatory forty-eight (48) hours nor more than one (1) year and a fine of not less than One Thousand Dollars (\$1,000) nor more than Five Thousand Dollars (\$5,000). In addition, the judge may impose any additional penalties, including requiring the offenders to pay restitution to persons injured or for property damaged.

(b) The court may order that any person punished under this section, who is to be punished by imprisonment by DOC or GPD, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(c) Any person who has been granted probation under the conditions of § 18301 of this Chapter, may, after six (6) months have elapsed since the commencement of participation in the treatment program, petition the court to have the restriction on that person's privilege to operate a motor vehicle removed, and the court may, for good cause shown, order the Department of Revenue and Taxation to remove the restrictions upon a showing that the person has successfully participated in the treatment program and complied with the terms and conditions of probation, has given proof of insurance,

**16 GCA VEHICLES
CH. 18 SAFE STREETS ACT**

and has made a showing to the court that there is little likelihood of a repeat offense.

(d) The court shall suspend and confiscate the person's operator's or chauffeur's license or permit and shall notify the Department of Revenue and Taxation that the privilege to operate a motor vehicle of a person punished under this section has been suspended for six (6) months.

§ 18105. Second Conviction of § 18102; Punishment.

If any person is convicted of a violation of § 18102 of this Chapter and the offense occurred within five (5) years of a separate conviction of a violation of said § 18102 or of conviction of a prior offense as defined in § 18101(c) of this Chapter, that person shall be guilty of a misdemeanor and shall be punished by imprisonment in the custody of DOC or GPD for not less than a mandatory seven (7) days nor more than two (2) years and by a fine of not less than Two Thousand Dollars (\$2,000) nor more than Five Thousand Dollars (\$5,000). The person's privilege to operate a motor vehicle shall be suspended for one (1) year, with no exceptions for occupational driving privileges, by the Department of Revenue and Taxation pursuant to § 18124 of this Chapter.

§ 18106. Conviction of Violation of § 18102 Within Five Years After Two Violations; Punishment.

(a) If any person is convicted of a violation of § 18102 of this Chapter and the offense occurred within five (5) years of two (2) separate convictions of a violation of said § 18102 or of two (2) separate convictions of a prior offense as defined in § 18101(c) of this Chapter, or any combination thereof resulting in two (2) or more prior convictions, that person shall be guilty of a felony of the third degree and shall be punished by imprisonment in the custody of DOC or GPD for not less than a mandatory ninety (90) days and not more than five (5) years and by a fine of not less than Three Thousand Dollars (\$3,000) nor more than Five Thousand Dollars (\$5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Revenue and Taxation pursuant to § 18201 of this Chapter for a period of not less than two (2) years.

**16 GCA VEHICLES
CH. 18 SAFE STREETS ACT**

§ 18107. Conviction of Violation of § 18102 Within Five Years of Three or More Violations of Designated Sections; Punishment.

If any person is convicted of a violation of § 18102 of this Chapter and the offense occurred within five (5) years of three (3) or more separate convictions of a violation of said § 18102 or of three (3) or more separate convictions of a prior offense as defined in § 18101(c) of this Chapter, or any combination thereof resulting in three (3) or more prior convictions, that person shall be punished by imprisonment in the custody of DOC or GPD for not less than a mandatory one (1) year nor more than six (6) years, and by a fine of not less than Four Thousand Dollars (\$4,000) nor more than Seven Thousand Dollars (\$7,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Revenue and Taxation pursuant to § 18201 of this Chapter for a period of not less than five (5) years.

§ 18108. Forfeiture of Vehicle.

Any person convicted of violating the provisions of § 18102 of this Chapter three (3) or more times, as provided in § 18107 of this Chapter, shall forfeit the vehicle in which the third offense, or more, was committed. However, in those cases where there is a showing of extreme circumstances, or where the vehicle is owned by a person other than the person convicted of three (3) or more violations of said § 18102, and the owner had no knowledge that the vehicle would be driven by an intoxicated person and that the driver had been convicted of prior violations of said § 18102, the Court, instead of ordering the forfeiture of the vehicle, shall suspend the convicted person's driving privilege for a minimum period of five (5) years, and no limited privilege to operate a motor vehicle shall be granted.

At the time of arrest for an offense under said § 18102, the vehicle in which the offense was committed shall be impounded by GPD and released only upon the approval of the Prosecution Division of the Attorney General's Office when it is determined that the vehicle is not subject to forfeiture under this Section. The seizure and forfeiture of the vehicle shall be enforced by the GPD and the vehicle shall be disposed of in accordance with those provisions of law relating to assets forfeiture by public sale or auction at such times as GPD may choose to conduct such sale or auction.

The profits made from such sale or auction shall be deposited in the Special Assets Forfeiture Fund, under the Local Assets Forfeiture Account.

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

The Chief of Police of GPD shall convey clear title as owner of said confiscated vehicles, subject to any perfected security interests in said vehicles.

SOURCE: Amended by P.L. 26-120:4.

§ 18109. Conviction Involving a Child.

Notwithstanding any other provision of law, a person convicted of a violation of § 18102 of this Chapter shall be guilty of a felony of the third degree if at the time of his or her arrest the person was operating a vehicle in which a child under the age of sixteen (16) was a passenger or if a child under the age of sixteen (16) was injured as a result of an accident in which the vehicle operated by the person was involved.

§ 18110. Vehicular Negligence; Third Degree Felony.

Any violation of subsections (c) or (d) of § 18102 of this Chapter shall be a felony of the third degree.

SOURCE: Amended by P.L. 22-146:4218202 (12/29/94).

§ 18111. Vehicular Homicide; Classified.

(a) A person is guilty of vehicular homicide if, while driving a vehicle, he or she does any act forbidden by law in the driving of the vehicle or if he or she negligently drives a vehicle, which act or negligence proximately causes death to any person other than himself or herself. As allowed in § 4.45 of Title 9, Guam Code Annotated, in proving that the person did any act forbidden by law, it shall not be necessary to prove that the person possessed a culpable mental state. Vehicular homicide is a felony of the second degree and shall be punishable by imprisonment in the custody of DOC and GPD for up to eight (8) years.

(b) A person is guilty of vehicular homicide while intoxicated if, while driving a vehicle in violation of § 18102 of this Chapter, he or she does any act forbidden by law in the operating or driving of the vehicle or if he or she negligently operates or drives a vehicle, which act or negligence proximately causes death to any person other than himself or herself. As allowed in § 4.45 of Title 9, Guam Code Annotated, in proving that the person did any act forbidden by law, it shall not be necessary to prove that the person possessed a culpable mental state. Vehicular homicide while intoxicated is a felony of the second degree and shall be punishable by

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

imprisonment in the custody of DOC or GPD for not less than a mandatory five (5) years, and up to fifteen (15) years.

§ 18112. Impoundment of Vehicle of Registered Owner Convicted or Charged of Violation of § 18102; Prior Offenses; Considerations; Exemption.

The interest of any owner of a motor vehicle which has been used in the commission of a violation of § 18102 of this Chapter for which the owner was convicted, is subject to impoundment as provided in this section. Upon conviction the court may order the vehicle impounded by GPD or its authorized agent at such locations as shall be designated by the Chief of Police at the owner's expense for not less than one (1) day nor more than thirty (30) days. For purposes of section, "owner of a motor vehicle" includes the registered owners, legal owner, or the lessee of said vehicle at the time of the offense.

If the offense occurred within five (5) years of a prior conviction of a violation of § 18102 of this Chapter or of a prior offense as defined in § 18101(c) of this Chapter, the prior conviction shall also be charged in the accusatory pleading and if admitted or found to be true by the jury upon a jury trial or by the court upon a court trial, the court, except in an unusual case where the interests of justice would best be served by not ordering impoundment, shall order the vehicle impounded at the owner's expense for not less than thirty (30) or more than ninety (90) days.

For purposes of this section the court may consider in the interests of justice factors such as whether impoundment of the vehicle would result in a loss of employment of the offender or the offender's family, impair the ability of the offender or the offender's family to attend school or obtain medical care, result in the loss of the vehicle because of inability to pay impoundment fees, or unfairly infringe upon community property rights or any other facts the court finds relevant. When no impoundment is ordered in an unusual case pursuant to this section, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

§ 18113. Charging a Violation of § 18102 After Convictions of Violations of § 18102; Effect of Prior Convictions on Sentencing and Driving Privilege.

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

(a) In any case charging a violation of § 18102 of this Chapter and the offense occurred within five (5) years of one (1) or more separate convictions of a violation of said § 18102 or of prior offenses as defined in § 18101(c) of this Chapter, the court shall not strike any separate conviction of those offenses for purposes of sentencing in order to avoid imposing as part of the sentence or term of probation, the minimum time of imprisonment and the minimum fine, as provided in this chapter, or for purposes of avoiding revocation, suspension, or restriction of the privilege to operate a motor vehicle, as provided in this Chapter.

(b) In any case charging a violation of § 18102 of this Chapter, the court shall obtain a copy of the driving record of the person charged from the Department of Revenue and Taxation and may obtain any records or any other source to determine if one (1) or more convictions have occurred within five (5) years of the charged offense.

(c) If any separate convictions of violations of § 18102 of this Chapter or of said prior offenses, are reported to have occurred within five (5) years of the charged offense, the court shall notify each court where any of the separate convictions occurred for the purpose of enforcing terms and conditions of probation pursuant to Article 3 of this Chapter.

§ 18114. Use of Controlled Substance as Defense to Violations.

The fact that any person charged with driving under the influence of alcohol or any controlled substance or a combination thereof, in violation of § 18102 of this Chapter, is or has been entitled to use a controlled substance shall not constitute a defense against any violation of said § 18102.

§ 18115. Participation in Driver Improvement or Treatment Programs; No Suspension or Stay of Proceedings Prior to Acquittal or Conviction of Violations of § 18102; Effect After Conviction and Sentencing.

(a) In any case in which a person is charged with a violation of § 18102 of this Chapter, prior to acquittal or conviction, the court shall not suspend or stay the proceedings for the purpose of allowing the accused person to attend or participate, nor shall the court consider dismissal of or entertain a motion to dismiss the proceedings because the accused person attends or participates during that suspension, in any one (1) or more education, training, or treatment programs, including, but not limited to, a driving improvement program, a treatment program for persons who are habitual users of alcohol or other alcoholism program, a program designed to offer

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

alcohol service to problem drinkers, an alcohol or drug education program, or a treatment program for persons who are habitual users of controlled substances or other drug-related program.

(b) This section shall not apply to any attendance or participation in any education, training, or treatment programs after conviction and sentencing, including attendance or participation in any of those programs as a condition of probation granted after conviction when permitted pursuant to this article.

(c) The court may at its discretion allow credit for therapeutic treatment.

§ 18116. Restriction on Privilege to Operate Motor Vehicles; Markings on Licenses and Records; Removal of Restriction; Notice and Recordation of Probation.

(a) If a person's privilege to operate a motor vehicle is restricted by a court pursuant to this Chapter, the court shall issue an occupational driving permit in a form designed by the Division of Motor Vehicle, Department of Revenue and Taxation. The permit shall be displayed in the rear window of any vehicle driven by the motorist granted limited driving privileges. The court shall promptly notify the Department of Revenue and Taxation (the "Department") of the terms of the restriction in a manner prescribed by the Department. The clerk of court shall punch a hole in the lower right hand side of the person's license, indicating a restriction. The Department shall place that restriction on the person's records in the Department and enter the restriction on any license subsequently issued by the Department to that person during the period of the restriction. If the person removes the permit or fails to produce the punched license, he or she shall be guilty of a felony of the third degree.

(b) The cost of the permit shall be borne by the person whose privilege to operate a motor vehicle is restricted.

(c) If the court removes a restriction before the end of the previously specified term pursuant to § 18110 of this Chapter, the court shall so mark the person's driver's license in a manner prescribed by the Department and promptly notify the Department of the removal of the restriction.

(d) If a person is placed on probation pursuant to this Chapter, the court shall promptly notify the Department of the probation and probationary term and conditions in a manner prescribed by the

**16 GCA VEHICLES
CH. 18 SAFE STREETS ACT**

Department. The Department shall place the fact of probation and the probationary term and conditions on the person's record in the Department.

(e) If a person's privilege to operate a motor vehicle is required or ordered to be suspended or revoked by the Department pursuant to other provisions of this title upon the conviction of an offense under this Chapter, at the time for sentencing, that person shall be present in court and each and every operator's license of that person shall be surrendered to the court where the Clerk of Court shall punch a hole in such license.

(f) Upon such person completing his or her sentence for such conviction, the court shall transmit the license or licenses to the Department for reissuance if such person passes the drivers license examination given by the Department.

§ 18117. Separate Conviction; Challenge to Constitutional Validity; Use in Judicial or Administrative Proceedings.

Only one (1) challenge shall be permitted to the constitutionality of a separate conviction of a violation of § 18102 of this Chapter, which was entered in a separate proceeding to declare a separate judgment of conviction constitutionally invalid. A determination by the court that the separate conviction is constitutional precludes any subsequent attack on constitutional grounds in a subsequent prosecution in which the same separate conviction is charged. Any determination that a separate conviction is unconstitutional precludes any allegation or use of that separate conviction in any judicial or administrative proceeding, and the Department shall strike that separate conviction from its records. Pursuant to § 18124 of this Chapter, the court shall report to the Department any determination upholding a conviction on constitutional grounds and any determination that a conviction is unconstitutional.

This § 18117 shall not preclude a subsequent challenge to a conviction if, at a later time, a subsequent statute or appellate court decision having retroactive application affords any new basis to challenge the constitutionality of the conviction.

§ 18118. Dismissal of Allegation of Violation of § 18102 of This Chapter; Substitution of Lesser Offense or Dismissal or Striking of Separate Conviction; Reasons by Court and Prosecution.

When an allegation of a violation of § 18102 of this Chapter is dismissed by the court, an allegation of a different or lesser offense is

**16 GCA VEHICLES
CH. 18 SAFE STREETS ACT**

substituted for an allegation of a violation of said § 18102, or an allegation of a separate conviction is dismissed or stricken, the court shall specify on the record its reason or reasons for the order. The court shall also specify on the record whether the dismissal, substitution, or striking was requested by the prosecution and whether the prosecution concurred in or opposed the dismissal, substitution, or striking.

When the prosecution makes a motion for a dismissal or substitution, or for the striking of a separate conviction, the prosecution shall submit a written statement which shall become part of the court records and which gives the specific reasons for the motion. The reasons shall include, but need not be limited to, problems of proof, the interests of justice, why another offense is more properly charged, if applicable, and any other pertinent reasons. If the reasons include the "interests of justice", the written statement shall specify all of the factors which contributed to this conclusion.

§ 18119. Drinking While Driving a Motor Vehicle Upon Any Highway.

No person shall drink any alcoholic beverage or consume a controlled substance while driving a motor vehicle upon any highway. The penalties for violation of this § 18119 shall be the same as the first offense in § 18104 of this Chapter.

§ 18120. Drinking in Motor Vehicle Upon Highway.

Any person who drinks any alcoholic beverage or consumes a controlled substance while in a motor vehicle upon a highway shall be guilty of a misdemeanor.

§ 18121. Possession of Opened Container in a Motor Vehicle.

(a) It shall be a misdemeanor for any person to transport or possess in any moving vehicle upon a public highway, street or alley any alcoholic beverage, or any intoxicating beverage, *except* in the original container which shall *not* have been opened and from which the original cap or seal shall *not* have been removed, *unless* the opened container be in a sealed, secured or rear compartment *not* accessible to the driver or any other person in the vehicle while it is in motion. Any person violating the provisions of this Section and its Subsections shall be deemed guilty of a misdemeanor.

(b) The provisions of Subsection (a) of this Section shall *not* apply to the passenger area of a bus or limousine provided the operator is enclosed within a driver's compartment *not* accessible to passengers, clients or

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

customers where alcohol is present while the vehicle is in motion.

(c) No employee, driver or agent of any limousine or bus company shall consume, nor be permitted to consume, any alcoholic beverage while on duty.

(d) Unless authorized by license and as prescribed by the Alcoholic Beverage Control Board by regulation, no alcoholic beverage shall be sold, offered or consumed by any person within the premises of any limousine or bus. Each limousine and bus authorized by this Act to sell, offer or allow alcoholic beverage within the premises of the limousine or bus shall be individually licensed and shall be required to display such license within the limousine or bus. The license shall include the vehicle identification number of the vehicle.

(e) No alcoholic beverages shall be sold, offered or consumed by any person within the premises of any limousine or bus, *except* during hours prescribed by the Alcoholic Beverage Control Board.

(f) The exemption in Subsection (b) of this Section shall *not* apply if any passenger is a minor below the age of eighteen (18) unaccompanied by a parent or legal guardian. It shall be the duty of the driver of the vehicle to verify the age of all passengers.

(g) As used in this Section:

(1) ‘*Bus*’ means a vehicle chartered for transportation of persons for hire. It shall *not* mean a school bus transporting children, open vehicles resembling trolleys, or a vehicle operated pursuant to a public or private franchise operating over a regularly scheduled route; and

(2) ‘*Limousine*’ means a chauffeur-driven motor vehicle, other than a bus or taxicab, designed and used for transportation of persons for compensation.

SOURCE: Amended by P.L. 28-22:1.

§ 18122. Storage of Opened Container.

A person shall be guilty of a misdemeanor if he or she is the registered owner of any motor vehicle or the driver, if the registered owner is not then present in the vehicle, keeps in a motor vehicle, when the vehicle is upon any highway, any bottle, can, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, unless the container is kept in the trunk of the

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This Section shall *not* apply to the living quarters of a house, car or camper. This Section shall *not* apply to persons and vehicles exempted by §18121, *supra*.

SOURCE: Amended by P.L. 28-22:2.

§ 18123. Suspension of Driver's License.

The Department shall immediately suspend or revoke the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of a violation of § 18102 of this Chapter. For purposes of this section, suspension or revocation shall be as follows:

(1) Violation of § 18102; first offense. Upon a conviction of a violation of § 18102 of this Chapter, the privilege to operate a motor vehicle shall be suspended for a period of six (6) months and restricted during this period to travel to and from that person's place of employment and to and from the program described in § 18115(b) of this Chapter. The clerk of court shall take possession of the driver's license and mutilate it by punching a hole in the lower right hand corner. The Department shall issue a restricted license if the license expires during the suspension. The restricted license shall also contain a hole punched in the lower right hand corner.

(2) Violation of § 18102; second offense within five years of conviction of § 18102. Upon conviction or finding of a violation of § 18102 of this Chapter within five (5) years of a conviction of said § 18102 or of a prior offense as defined in § 18101(c) of this Chapter, the privilege to operate a motor vehicle shall be suspended for a period of one (1) year with no exceptions for occupational privileges or travelling to and from the program described in § 18116(b). The clerk of court shall take possession of the person's driver's license and shall notify the Department of the revocation.

(3) Violation of § 18102 within five years after three violations of § 18102. If any person is convicted of a violation of § 18102 of this Chapter and the offense occurred within five (5) years of three (3) or more separate convictions of a violation of said § 18102 or of prior offenses as defined in § 18101(c) of this Chapter, or any combination

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

thereof, that person's driving privileges shall be revoked by the Department for a period of not less than five (5) years.

§ 18124. Restriction or Suspension of Driving Privilege; Probation with Conditions; Revocation of License.

(a) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the Department shall not suspend, pursuant to paragraph (2) of § 18123 of this Chapter, but shall suspend for one (1) year and, thereafter, restrict for two (2) additional years the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated § 18102 of this Chapter, but only if the court has certified to the Department that the court has granted probation to the person on conditions which include the conditions specified in § 18301 of this Chapter and the court has restricted the privilege to operate a motor vehicle as provided in that section.

(b) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the Department shall not revoke, pursuant to paragraph (2) of said § 18123, but shall revoke for five (5) years, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated said § 18102, but only if the court has certified to the Department that the court has granted probation to the person on conditions which include the conditions specified in said § 18301, and the court has ordered the Department to suspend the privilege to operate a motor vehicle as provided in that section.

(c) So much of the Fund as is required is appropriated to the Department of Corrections to be used to compensate staff and provide supplies or facilities to house incarcerated persons convicted of misdemeanors and persons convicted of acts made unlawful in Article 1, Chapter 18 of 16 GCA.

(d) The Director of Corrections may expend not more than Eight Thousand Dollars (\$8,000) per month from the fund for the purpose outlined in Subsection (c) of this Section, which the Administrative Director of the Court shall pay over to the Director of Corrections on a regular basis. Any funds in excess of the monthly payment to the Director of Corrections and all funds accumulated shall be disbursed in accordance with Subsection (c) of § 9211 of 7 GCA.

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

(e) All abstracts of record showing a conviction that are forwarded to the Department shall state whether the court has granted probation to the person on conditions which include the conditions specified in said § 18301 and state the date on which the person consented to participate in the program.

§ 18124.1. Driving While License Suspended.

(a) No person shall drive a motor vehicle on a highway in Guam while knowing or having reason to know that his or her driver's license is suspended.

(b) As used in this Section, *suspended driver's license* means an operator's license, chauffeur's license, or driving privilege that has been suspended or revoked by judicial or administrative action, or seized by a police officer pursuant to law.

(c) In any prosecution for driving while license suspended, competent evidence that defendant's license was surrendered to a police officer, or was suspended or revoked by order of a judge in open court, or that written notice of the suspension was mailed to defendant's last known address by the Department of Revenue and Taxation shall be prima facie evidence of defendant's knowledge of the suspension or revocation.

(d) Driving while license suspended is a misdemeanor, punishable by imprisonment for not more than one (1) year, or by a fine of not more than One Thousand Dollars (\$1,000.00), or both. In addition to any other penalty imposed upon a conviction, the sentencing court may order the defendant's driver's license to be suspended for an additional consecutive period of up to five (5) years.

SOURCE: Added by P.L. 24-124:1.

§ 18125. Safe Street Fund.

(a) There is created within the Superior Court of Guam the *Safe Streets Fund* (the "Fund"), which shall be maintained separate and apart from the other funds of the Superior Court. The fund shall be held in an interest bearing account. All interest earned shall remain in the Fund.

(b) All fines collected for any of the acts made unlawful in §§ 18102, 18109, 18111, 18120, and 18121 of Title 16, Guam Code Annotated, as amended from time to time, and for which punishment is prescribed in §§ 18104, 18105, 18106, 18107, 18109, 18110, 18111, 18119, 18120 and

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

18121 of Title 16, Guam Code Annotated, as amended from time to time, shall be deposited in the Safe Streets Fund.

(c) So much of the Fund as is required is appropriated to the Department of Corrections to be used to compensate staff and provide supplies or facilities to house incarcerated persons convicted of misdemeanors and persons convicted of acts made unlawful in Article 1, Chapter 18 of Title 16, Guam Code Annotated.

(d) The Director of Corrections may expend not more than Eight Thousand Dollars (\$8,000) per month from the fund for the purpose outlined in Subsection (c) of this Section, which the Administrative Director of the Courts shall pay over to the Director of Corrections on a regular basis. Any funds in excess of the monthly payment to the Director of Corrections and all funds accumulated shall be disbursed in accordance with Subsection (c) of § 9211 of Title 7, Guam Code Annotated.

(e) The Administrator of the Courts and the Director of Corrections *shall* submit an annual report to *I Maga'lahañ Guãhan* and to the Speaker of *I Liheslaturan Guãhan* regarding the status of the Fund *no later than* ninety (90) days after the close of the preceding fiscal year. Such report *shall* be included in the financial statements of the Judiciary of Guam, including its year-end financial statements.

SOURCE: Added by P.L. 22-41:52. Subsections (c) & (d) amended by P.L. 22-140:IV:7 (9/29/94). Subsection (e) amended P.L. 29-002:VI:4 (May 18, 2007).

ARTICLE 2
IMPLIED CONSENT AND SUSPENSION OR REVOCATION OF DRIVING
PRIVILEGES AND LICENSE

- § 18201. Implied Consent of Driver of Motor Vehicle to Submit to Blood, or Breath Testing to Determine Alcohol or Controlled Substances Content of Blood.
- § 18202. Sanctions for Refusal to Submit to or Failure to Complete a Blood, or Breath Test.
- § 18203. Administrative Revocation or Suspension of Driving Privilege and License Procedures.
- § 18204. Suspension; Refusal Under Implied Consent Law; Time to Run Consecutively With Other Restrictions, Suspensions or Revocations.

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

§ 18205. Filing of Rules.

§ 18206. Effective date of implementation.

§ 18201. Implied Consent of Driver of Motor Vehicle to Submit to Blood or Urine, or Breath Testing to Determine Alcohol or Controlled Substances Content of Blood and Urine.

(a) Any person who operates a motor vehicle on the public highways or roadways of Guam shall be deemed to have given consent to a blood or urine, or breath test for the purpose of determining the alcohol or controlled substance content of the person's blood or urine.

(b) The blood or urine, or breath tests shall be administered at the request of the peace officer having reasonable cause to believe the person driving or in actual physical control of a motor vehicle upon the public highways or roadways is under the influence of alcohol or controlled substances only after: (1) a lawful arrest, and (2) the person has been informed by a peace officer of the sanctions that may result from his or her refusal to be tested.

(c) If there is probable cause to believe that a person is in violation of § 18102 of this Chapter, then the person shall have the option of using a blood or urine, or breath test for the purpose of determining the alcohol or controlled substance content of that person's blood or urine.

(d) No person other than the authorized staff of a licensed clinical laboratory certified by Health Care Financing Administration Clinical Laboratory Improvement Act ('HCFA-CLIA'), or by the Joint Commission of Accreditation of Health Organization may withdraw blood or urine for the purpose of determining the alcohol or controlled substance content thereof. This limitation shall *not* apply to the taking of a breath specimen. As soon as the results of a blood or urine test performed pursuant to this Section are available, the custodian of the record of the test shall provide, without subpoena, a true copy of the results of the tests to the Guam Police Department or criminal prosecutors. No physician, nurse, hospital, clinical laboratory or any employee thereof, shall be subject to civil liability or suit for providing blood or urine test results as required by the Subsection.

(e) The implied consent of a person to be tested shall not be withdrawn by reason of the person's being dead, unconscious or in any state which renders the person incapable of consenting or refusing to be tested. In such event, a test of the person's blood or urine shall be administered.

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

(f) If a person under arrest refuses to submit to a breath or blood or urine test, none shall be given. The person shall be warned, however, that his or her failure to be tested may be used in evidence against him or her in any charge arising from the arrest.

(g) In addition to the warnings provided in Subsection (f) of this Section, the arresting officer shall warn the person that refusal to submit to a blood or urine, or breath test will result also in the following:

(1) the person must immediately surrender his or her driver's license to the officer;

(2) the officer will take custody of the license and will forward it to the Department of Revenue and Taxation, Motor Vehicle Division, along with the officer's sworn statement, affidavit or written declaration as required by § 18202 of Title 16 of the Guam Code Annotated; and

(3) the driver's license will not be returned and the person's driving privileges restored until completion of all administrative and court proceedings against the person, and it is so ordered by the Director of Revenue and Taxation or the courts.

SOURCE: Repealed and reenacted by P.L. 24-122:1. Subsection (d) amended by P.L. 24-125:1. Amended by P.L. 24-197:1.

§ 18202. Sanctions for Refusal to Submit to or Failure to Complete a Blood, or Breath Test.

If any person refuses a police officer's request to submit to, or fails to complete a blood or breath test or tests, upon receipt of a police officer's sworn statement, affidavit or written declaration under penalty of perjury that the police officer had reasonable cause to believe the person had been operating and in physical control of a motor vehicle in violation of § 18102 of this Chapter and that the person refused to submit to, or failed to complete, the blood or breath tests after having been informed by the police officer of the consequences under subsection (f) of § 18201 and this § 18202 for refusing to submit to or failing to complete the blood or breath test or tests, then the Department of Revenue and Taxation (the *Department*) shall administratively (a) suspend the person's privilege and license or permit to operate a motor vehicle for a period of six (6) months, or (b) revoke the person's privilege and license or permit to operate a motor vehicle for a period of two (2) years if the person has been convicted of a

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

separate prior violation of § 18102 or has been administratively determined to have committed a prior violation of § 18102 of this Chapter or convicted of any prior offense of driving under the influence violation, or any combination thereof, within five (5) years of the date of the refusal, or failure to complete the blood or breath test, or (c) revoke the person's privilege and license or permit to operate a motor vehicle for a period of three (3) years if the person has been convicted of two (2) or more prior violations of § 18102 or has been administratively determined to have committed two (2) or more prior violations of § 18202 of this Chapter or convicted of any two (2) or more offenses of driving under the influence, or any combination thereof, within five (5) years of the date of the refusal or failure to complete the blood or breath test. For the purposes of this Chapter, *police officer* means an officer of the Guam Police Department, or a security officer of either the Guam Airport Authority or the Guam Port Authority but only while such security officer is carrying on his or her duties within the confines of the property under the control and jurisdiction of the Authority by which he or she is employed.

SOURCE: Repealed/reenacted by P.L. 22-146:5 (12/29/94).

§ 18203. Administrative Revocation or Suspension of Driving Privilege and License Procedures.

(a) If a person is arrested for a violation of § 18102 of this Chapter, on a determination by the police officer that there was reasonable cause for the arrest then: (1) the police officer shall inform the person that he or she has the option of taking blood or urine, or breath test, (2) the police officer shall also inform the person that a refusal to submit to or a failure to complete the blood or urine, or breath tests may be used in evidence against him or her in criminal proceedings, and that he or she may be subject to administrative suspension or revocation by the Department of his or her privileges and license or permit to operate a motor vehicle, and (3) the officer also shall inform the person that a refusal to take the test or a failure to complete the test requires the officer to immediately take custody of the person's driver's license for forwarding to the Department.

(b) The police officer complies with the requirements of § 18203(a) of this Chapter and the person refuses to submit to or fails to complete the blood or breath test, then the police officer shall within three (3) working days of the arrest sign and submit to the Department an affidavit or declaration under penalty of perjury setting forth such facts.

**16 GCA VEHICLES
CH. 18 SAFE STREETS ACT**

(c) Upon receipt by the Department of the police officer's affidavit or declaration, an administrative action shall commence and the Department shall within ten (10) working days notify the person in writing of the commencement thereof. Notice of the administrative action shall be provided to the person as follows:

- (1) By delivering a copy thereof to the person; or
- (2) By leaving a copy thereof at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; or
- (3) By mailing a copy thereof to the person at his or her last known address through certified or registered mail.

The notice of the administrative action shall inform the person of the matters set forth in §§ 18202 and 18203 of this Chapter.

(d) Within fifteen (15) working days from the date of receipt of the notice from the Department, the person may request in writing a hearing on a form provided by the Department in its notice of the action taken.

(e) Upon receipt by the Department of the person's written request for a hearing, the Department shall within five (5) working days notify the person of a hearing date in the same manner as set forth in subsection (c), (1), (2), and (3), of this § 18203. The Department shall schedule the hearing to commence within fifteen (15) working days of the person's written request for the hearing. The Director or his designee shall preside at and conduct the hearing.

(f) The scope of the hearing shall be limited to whether the requirements of this § 18203 were met.

(g) At the commencement of the initial or continued hearing, if for any reason the person who is alleged to have refused to submit to or failed to complete blood or urine, or breath testing did not surrender his or her driver's license to the arresting officer, the person shall surrender to the Department any license or permit issued in the name of the person which authorizes the person to drive and be in physical control of a vehicle, and which license or permit was not previously suspended or revoked.

(h) At the hearing the driver has the burden of proof to show by the preponderance of the evidence that the requirements of this § 18203 were not met. If the hearing is continued to another date and time by the Director,

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

or the Director's designee, or if at the conclusion of the initial or continued hearing, the Director, or the Director's designee, dismisses the administrative action, then the Department shall return the person's driver's license or permit to him or her.

(i) At the conclusion of the initial or continued hearing, the Director or his designee shall render a decision to suspend or revoke the person's driving privilege and license or permit, as authorized under § 18202 of this Act, or to dismiss the administrative action. The decision and order of the Director or his designee shall be final but subject to judicial review.

(j) If the Director or his designee determines, upon a hearing of the matter, to suspend or revoke the person's privilege and license or permit to operate a motor vehicle, the suspension or revocation decision shall thereupon become effective. If the person does not appear at that hearing, the Director or his designee shall, in writing, determine, based upon a preponderance of the evidence, that the person whose license or permit is to be suspended or revoked is the person so charged and shall declare that by default the license or permit is revoked or suspended. If the person does appear at the hearing, the Director or his designee shall, in writing, based upon the preponderance of the evidence, show that the person was (i) either driving and in physical control of the motor vehicle or not, (ii) either refused to take a breathalyzer or blood test or did not, and (iii) either was given adequate warning of the alternatives before so suspending or revoking the person's license or permit or was not.

(k) If the Director's or his designee's decision is to revoke or suspend the person's privilege and license or permit to drive, the person may file a petition for judicial review in the Superior Court of Guam within ten (10) working days of such decision and order.

(1) The filing of the petition shall not operate as a stay of the administrative revocation or suspension nor shall the court stay the administrative revocation or suspension pending the outcome of the judicial review.

(2) The petition shall state with specificity the grounds upon which the petitioner seeks reversal of the administration revocation.

(3) The court shall schedule the judicial review as soon as practicable, and the review shall be on the record of the administrative hearing without taking additional testimony or evidence.

**16 GCA VEHICLES
CH. 18 SAFE STREETS ACT**

(4) If the petitioner fails to appear without just cause, the court shall affirm the administrative revocation or suspension.

(5) The sole issues before the court shall be whether the Department exceeded constitutional or statutory authority, erroneously interpreted the law, acted in an arbitrary or capricious manner, committed an abuse of discretion, or made a determination that is unsupported by the evidence in the record.

(6) Unless the administrative revocation or suspension is reversed, the revocation or suspension shall become effective as set out in subsection (j) of this § 18203.

(l) Failure of the peace officer or the Department to comply with the requirements in subsections (a), (b), (c), (e) or (i) of this § 18203 shall result in a dismissal of the action in favor of the person.

(m) Failure of the person to comply with subsections (d), (h) and (k) of this § 18203 shall be deemed a waiver of the rights therein, and the revocation or suspension if supported by the affidavit shall become effective pursuant to §§ 18202 and 18203 of this Chapter.

(n) The Department may issue a written subpoena directing any person to attend a hearing before the Director or his designee and in a proper case to bring with him or her any book, record or paper which may be deemed material as evidence in the case. The fee for such attendance shall be the same as the fees of witnesses before the Superior Court, except that if the witness is a government employee, no witness fee shall be given. The subpoena shall be issued in the name of the Department, shall be directed to the witness, and shall be served in the same manner as subpoenas to appear and testify before the court. If any person or persons summoned to testify shall refuse or neglect to obey said subpoena, upon petition, the court may compel the attendance of such person or persons before the Department, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses and their punishment for neglect or refusal to attend the Superior Court.

(o) Article 2 of the Administrative Adjudication Law [5 GCA Chapter 9, Article 2 - Hearing Procedures] shall not apply to administrative actions and hearings under this § 18203.

SOURCE: Subsections (a), (b), (c), (g), (j) and (k) amended by P.L. 22-146:6, 7, 8, 11, 14 and 15, respectively. Subsections (e), (f), (h) and (i) repealed/reenacted by P.L. 22-146:9. 10, 12 and 13, respectively. Subsections (n) and (o) added by P.L. 22-146:16

**16 GCA VEHICLES
CH. 18 SAFE STREETS ACT**

and 17, respectively (12/29/94). Subsection (a) amended by P.L. 24-122:2. Subsection (g) amended by P.L. 24-122:3. Subsection (h) amended by P.L. 24-122:4. Subsection (a) amended by P.L. 24-197:2. Subsection (g) amended by P.L. 24-197:3.

§ 18204. Suspension; Refusal Under Implied Consent Law; Time to Run Consecutively With Other Restrictions, Suspensions or Revocations.

(a) The purpose of this § 18204 is to require that any suspension or revocation under § 18123 of this Chapter and any restriction, suspension or revocation under §§ 18201 or 18124 of this Chapter resulting from the same arrest are cumulative and shall be imposed consecutively, if so ordered by the court.

(b) If (1) an abstract of conviction is received by the Department for an offense which requires the Department to restrict, suspend, or revoke the driving privilege of a person after conviction or finding of a violation pursuant to §§ 18201 or 18202 of this Chapter, and (2) there is a suspension of that person's driving privilege already in effect for refusal to consent to, or for failure to complete, a blood or breath test pursuant to said § 18201, and (3) that suspension is administratively final and resulted from the same arrest, and (4) the sentencing court orders these restrictions, suspensions, revocations, or combination thereof to run consecutively, then the restriction, suspension, or revocation resulting from the conviction or finding pursuant to § 18123 or § 18124 of this Chapter shall commence after the suspension already in effect pursuant to said § 18201 has terminated.

§ 18205. Filing of Rules.

The Department may adopt rules to govern its procedures under this Chapter. Article 3 of the Administrative Adjudication Law [5 GCA Chapter 9 - *Rule-Making Procedure*] is not applicable to such rules so adopted by the Department nor to any procedures prescribed therein.

SOURCE: Repealed/reenacted by P.L. 22-146:18 (12/29/94).

§ 18206. Effective Date of Implementation.

The effective date to implementing the provisions of § 18203 of this Chapter on the Department's administrative revocation or suspension of driving privileges and licenses or permits of persons who refuse to submit to or fail to complete a blood or breath test shall be April 1, 1995.

**16 GCA VEHICLES
CH. 18 SAFE STREETS ACT**

SOURCE: Added by P.L. 22-146:19 (12/29/94).

**ARTICLE 3
PROBATION AND GENERAL CONSIDERATIONS OF PROBATION**

- § 18301. Conditions of Probation for Violation of § 18102.
- § 18302. Probation Granted Under § 18102; Failure to Comply with Terms and Conditions; Revocation or Termination; Procedure.
- § 18303. General Probation Conditions.

§ 18301. Conditions of Probation for Violation of § 18102.

(a) If the court grants probation to any person punished under § 18102 of this Chapter, including any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be subject to the following:

(1) That the driver shall participate in, and successfully complete an alcohol or drug education program, or both of these programs as designated by the court.

(2) That the person be referred to a qualified substance abuse counselor for an assessment of the person's alcohol dependence and need for treatment.

(3) That the counselor shall submit a report with recommendations to the court, which may require the person to obtain appropriate treatment.

(4) That all costs for such assessment or treatment or both shall be borne by the penalized person at the discretion of the court.

§ 18302. Probation Granted Under § 18102; Failure to Comply with Terms and Conditions; Revocation or Termination; Procedure.

(a) If any person has been granted probation under the conditions of § 18301 of this Chapter and fails at any time to participate successfully in the treatment program designated by the court, then the court shall revoke or terminate the probation, and the court may revoke or terminate the probation if the person fails to comply with any other term or condition of

**16 GCA VEHICLES
CH. 18 SAFE STREETS ACT**

probation, and the court shall proceed under either of the following provisions.

(1) Revoke the suspension of sentence and order the Department to suspend the person's privilege to operate a motor vehicle from the date of the order revoking or terminating probation.

(2) Grant a new term of probation on the condition that the person be placed in the custody by DOC or GPD for at least thirty (30) days and order the Department to suspend the person's privilege to operate a motor vehicle from the date of the new grant of probation.

§ 18303. General Probation Conditions.

(a) If any person is convicted of a violation of § 18102 of this Chapter, the court shall not stay or suspend pronouncement of sentencing and shall pronounce sentence in conjunction with the conviction in a reasonable time, including time for receipt of any pre-sentence investigation report.

(b) If any person is convicted of a violation of § 18102 of this Chapter and is granted probation, the terms and conditions of probation shall include, but not be limited to the following:

(1) A period of probation not less than two (2) years if it is a misdemeanor and not less than five (5) years if it is a felony.

(2) A requirement that the person shall not consume alcohol or any controlled substances or any combination thereof not prescribed by a medical doctor.

(3) A requirement that the person, if arrested for a violation of § 18102 of this Chapter, shall not refuse to submit to a blood or breath test for the purpose of determining the alcohol or controlled substance content of his or her blood.

(4) A requirement that the person shall not commit any criminal offense.

(5) A requirement that the person be referred to a qualified substance abuse counselor for an assessment of the person's alcohol dependency and need for treatment.

ARTICLE 4

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

IGNITION INTERLOCK DEVICES

§ 18401. Ignition Interlock Devices, Requiring; Unlawful Acts.

§ 18402. Ignition Interlock Devices, Certification; Warning Label.

§ 18401. Ignition Interlock Devices, Requiring; Unlawful Acts.

(a) In addition to any other authorized penalties, the Court may require that any person who is convicted of driving under the influence in violation of this Chapter shall *not* operate a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device certified by the Department as provided in §18402 of this Article, and installed in such a manner that the vehicle will *not* start if the operator's blood alcohol level is in excess of five one-hundredths of one percent (0.05%) *or* as otherwise specified by the court. The court may require the use of an approved ignition interlock device for a period of *not less than* six (6) months, *if* the person is permitted to operate a motor vehicle, whether *or* not the privilege to operate a motor vehicle is restricted, as determined by the court. The court, however, *shall* order placement of an ignition interlock device in those circumstances required by this Chapter.

(b) *If* the court imposes the use of an ignition interlock device, the court *shall*:

(1) stipulate on the record the requirement for, and the period of, the use of a certified ignition interlock device;

(2) order that the records of the Department reflect such requirement;

(3) order that an ignition interlock device be installed, as the court may determine necessary, on any vehicle owned *or* operated by the person;

(4) determine the person's ability to pay for installation of the device if the person claims inability to pay. *If* the court determines that the person is unable to pay for installation of the device, the court may order that any portion of a fine paid by the person for a violation of this Chapter *shall* be allocated to defray the costs of installing the device; and

(5) require proof of installation of the device and periodic reporting to the Department for verification of the operation of the

**16 GCA VEHICLES
CH. 18 SAFE STREETS ACT**

device in the person's vehicle.

(c) *If* the court imposes the use of an ignition interlock device on a person whose driving privilege is not suspended *or* revoked, the court *shall* require the person to provide proof of compliance to the Department within thirty (30) days. *If* the person fails to provide proof of installation within that period, absent a finding by the court of good cause for that failure which is entered in the court record, the court *shall* notify the Department of Revenue and Taxation.

(d) *If* the court imposes the use of an ignition interlock device on a person whose driving privilege is suspended *or* revoked for a period of less than three (3) years, the department *shall* require proof of compliance before reinstatement of the person's driving privilege.

(e) (1) In addition to any other provision of law upon conviction of a violation of this Section, the Department *shall* revoke the person's driving privilege for one (1) year from the date of conviction. Upon conviction of a separate violation of this Section during the same period of required use of an ignition interlock device, the Department *shall* revoke the person's driving privilege for five (5) years from the date of conviction.

(2) Any person convicted of a violation of Subsection (f) hereof who does not have a driver's license *shall*, in addition to any other penalty provided by law, pay a fine of *not less than* Two Hundred Fifty Dollars (\$250) *or more than* Five Hundred Dollars (\$500) per each such violation. In the event that the person is unable to pay any such fine, the fine *shall* become a lien against the motor vehicle used in violation of Subsection (f) hereof and payment *shall* be made pursuant to Title 16 GCA, §7172.

(f) (1) It is unlawful to tamper with *or* to circumvent the operation of a court-ordered ignition interlock device.

(2) It is unlawful for any person whose driving privilege is restricted pursuant to this Section to request *or* solicit any other person to blow into an ignition interlock device *or* to start a motor vehicle equipped with the device for the purpose of providing the person so restricted with an operable motor vehicle.

(3) It is unlawful to blow into an ignition interlock device *or* to start a motor vehicle equipped with the device for the purpose of

16 GCA VEHICLES
CH. 18 SAFE STREETS ACT

providing an operable motor vehicle to a person whose driving privilege is restricted pursuant to this Section.

(4) It is unlawful to knowingly lease *or* lend a motor vehicle to a person who has had his *or* her driving privilege restricted as provided in this Section, unless the vehicle is equipped with a functioning, certified ignition interlock device. Any person whose driving privilege is restricted under a condition of probation requiring an ignition interlock device *shall* notify any other person who leases *or* loans a motor vehicle to him *or* her of such driving restriction.

(g) Notwithstanding the provisions of this Section, *if* a person is required to operate a motor vehicle in the course and scope of his *or* her employment and *if* the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device *if* the employer has been notified of such driving privilege restriction and *if* proof of that notification is with the vehicle. This employment exemption does *not* apply, however, *if* the business entity which owns the vehicle is owned *or* controlled by the person whose driving privilege has been restricted.

(h) In addition to the penalties provided in this Section, a violation of this Section is a traffic violation, punishable as a nonmoving violation as provided in Title 16 GCA, Chapter 9.

SOURCE: Added by P.L. 29-050:1 (Jan. 2, 2008).

§ 18402. Ignition Interlock Devices, Certification; Warning Label.

(a) The Department of Revenue and Taxation *shall* certify *or* cause to be certified the accuracy and precision of the breath-testing component of the ignition interlock devices as required by §18401 of this Article, and *shall* publish a list of approved devices, together with rules governing the accuracy and precision of the breath-testing component of such devices as adopted by rule in compliance with §18401 of this Article. The cost of certification *shall* be borne by the manufacturers of ignition interlock devices.

(b) No model of ignition interlock device *shall* be certified *unless* it meets the accuracy requirements specified by rule of the Department.

(c) The Department of Revenue and Taxation *shall* design and adopt by rule, a warning label which *shall* be affixed to each ignition interlock device upon installation. The label *shall* contain a warning that *any* person

**16 GCA VEHICLES
CH. 18 SAFE STREETS ACT**

tampering, circumventing *or* otherwise misusing the device is guilty of a violation of law and may be subject to civil liability.

SOURCE: Added by P.L. 29-050:1 (Jan. 2, 2008).
