

**LAWS RELATING TO DRIVING  
UNDER THE INFLUENCE OF INTOXICANTS  
AND STATUTES RELATING THERETO**

**REPORT OF THE  
VIRGINIA ADVISORY LEGISLATIVE COUNCIL  
to  
THE GOVERNOR  
and  
THE GENERAL ASSEMBLY OF VIRGINIA**



HD 4, 1962

**COMMONWEALTH OF VIRGINIA**  
*Department of Purchases and Supply*  
**Richmond**  
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LAWS RELATING TO DRIVING UNDER THE INFLUENCE OF  
INTOXICANTS AND STATUTES RELATING THERETO

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A REPORT  
OF THE  
VIRGINIA ADVISORY LEGISLATIVE COUNCIL

RICHMOND, VIRGINIA, October 19, 1961.

To:

HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The increased highway death rate and indications that alcoholic intoxication is often a contributing factor led the General Assembly of 1960 to direct the Virginia Advisory Legislative Council to continue its study of the problem of driving under the influence of intoxicants and the statutes relating thereto. The text of the resolution directing this study is as follows:

HOUSE JOINT RESOLUTION NO. 100

*Directing the Virginia Advisory Legislative Council to continue its study of the problem of driving under the influence of intoxicants and the statutes relating thereto.*

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to continue its study of the problem of driving under the influence of intoxicants on the highways of Virginia and means which should be taken to combat it. The Council shall consider what changes in the statutes of Virginia might prove valid, feasible and desirable to eliminate drunken drivers from the highways of Virginia. All agencies of the State shall assist the Council in its study. The Council shall conclude its study and make its report to the Governor and General Assembly not later than September one, nineteen hundred sixty-one and shall set forth in its report such drafts of legislation as it deems appropriate.

Baldwin G. Locher, member of the House of Delegates and member of the Council, Lexington, was named Chairman of the Committee to make the preliminary study. The following were named to serve with

Mr. Locher: Robert F. Baldwin, member of the Senate of Virginia; W. R. Broaddus, Jr., Attorney at Law, Martinsville; Russell M. Carneal, member of the House of Delegates, Williamsburg; Richard C. Edmunds, Halifax; H. H. Harris, State Highway Commissioner, Richmond; Royston Jester, III, Commonwealth's Attorney, Lynchburg; Chester H. Lamb, Commissioner, Division of Motor Vehicles, Richmond; James H. Latimer, Richmond Times Dispatch, Richmond; William T. Robey, Mayor, Buena Vista; Mack I. Shanholtz, State Health Commissioner, Richmond; W. W. Wilkerson, Superintendent of Public Instruction, Richmond; and C. W. Woodson, Jr., Superintendent of State Police, Richmond.

The Committee organized and elected Mr. Broaddus as Vice-Chairman. John B. Boatwright, Jr., and Fletcher W. Harkrader, Jr., served as Secretary and Recording Secretary, respectively, to the Committee.

The Committee began work by compiling data as to the problem which the intoxicated or semi-intoxicated driver causes the law abiding motorist and his family. The danger which every user of the highways faces from the drinking driver is brought sharply into focus when we realize that in 32.84% of the fatal motor vehicle accidents of 1960 in Virginia, the driver had been drinking intoxicants. The instances in which the driver in fatal crashes has been drinking may be considerably higher than that reported due to the fact that intoxication is not always reported when there does not exist enough legal evidence for prosecution. In 1960, the convictions resulting from arrests for operating a motor vehicle while under the influence of intoxicants by the State police alone amounted to 2,315 and this figure represents less than 40% of the total of such convictions throughout the State.

Virginia for several years has provided by law for a voluntary blood test for alcohol. The files of the Chief Medical Examiner's office indicate that in 1958, 6,007 blood alcohol tests were made. In 1959, this figure dropped to 5,759, or a 4.12% reduction from 1958. In 1960, the blood alcohol test dropped to 5,279, or a further reduction of 8.3% from 1959, and 12.1% less blood alcohol tests than were conducted in 1958. These figures indicate that the drinking driver has become aware of the value of blood alcohol tests to the law enforcement agencies of the State and is therefore refusing to take the voluntary test. The above facts alone demonstrate the danger to the law abiding and the pressing need of supplementing the tools available to the law enforcement authorities in order to enable them to protect the public on our highways.

## THE STUDY

The Committee collected information, including reports and statutes from other states, which dealt with the curtailment of the occurrence of drinking drivers on the highways, and studied these as well as pertinent court decisions. Representatives of the Commonwealth Attorneys Association, the Association of County and Municipal Judges of Virginia, the Virginia Association of Chiefs of Police, the Sheriffs and City Sergeants Association, the Virginia State Bar Association, and the State Medical Examiner were invited to meet with and give the Committee the benefit of their advice as to what laws the General Assembly could adopt to reduce the number of drinking drivers on the highways. After these meetings, the Committee considered the data in hand and the views presented to it and made its recommendations to the Council. The Council has considered carefully the Committee's report and now makes the following recommendations.

## SUMMARY OF RECOMMENDATIONS

Our bill, if enacted by the General Assembly, will require that any person who operates a motor vehicle upon a public highway of this State is deemed to have consented to permit a sample of his blood to be taken for chemical test to determine the alcoholic content if he is arrested for operating a motor vehicle while under the influence of intoxicants. If he refuses to take such a test when requested to do so his license can be revoked for a period of 90 days for the first refusal and for 6 months for the second or subsequent refusal. Provision is made for an appeal to the county or municipal court of the county or city in which the violation occurred. The court would take evidence relating to the reasonableness of the refusal of the appellant to allow a sample of his blood to be taken. The appellant must prove that his refusal was reasonable; the Commonwealth need only prove that the person arrested was requested to allow a sample of blood to be taken and refused to do so.

The suspension of the driving permit for refusal to take the blood test would not be a bar to prosecution under § 18.1-54 or similar ordinance. The suspension of the license provided for upon conviction of driving under the influence of intoxicants is in addition to and runs consecutively with the suspension for refusal to take the blood test. Acquittal under a prosecution for violation of § 18.1-54 or similar ordinance would not affect suspension for refusal to allow a blood sample to be taken as required by § 18.1-55.

Provision is made for appeal from the judgment of the county or municipal court to the circuit or corporation court of the county or city.

We have been particularly careful to afford every protection and safeguard for the individual. The arresting officer is required to inform the person arrested under § 18.1-54 or similar local ordinance that the law of Virginia requires that he permit a blood sample to be taken and that refusal to do so constitutes grounds for revocation of the driving privilege. If the person refuses to take the test the officer must take him before a committing justice (justice of the peace) and request that he take the test. A certificate is provided which contains a statement of the law concerning the taking of the blood sample, the penalties for refusal, a place for signatures of witnesses to the refusal, and a place for a declaration of refusal. If the arrested person cannot or will not sign, the committing justice certifies to this fact. This certificate is then forwarded to the Commissioner of Motor Vehicles within 15 days of the arrest.

## REASONS FOR RECOMMENDATIONS

Based on the information gathered and consultations had with law enforcement officers we believe the bill herein recommended will be useful to the law enforcement authorities of the State in providing for our greater safety while at the same time protecting the rights and privileges of the individual to the maximum degree.

Ten states have already adopted implied consent statutes; they are Kansas, Idaho, Nebraska, New York, North Dakota, Rhode Island, South Dakota, Utah, Vermont and Minnesota. Other states have bills pending to create such laws.

Drinking drivers recognize, respect and fear the blood test. This is illustrated by the decreasing number of persons arrested for operating

motor vehicles while under the influence of intoxicants who consent to the voluntary blood test.

The compulsory blood test may actually work to the advantage of many people arrested for operating a motor vehicle while under the influence of intoxicants. Some persons now may fear to take the voluntary blood test when, actually, it would be in their best interest to do so.

The most important reason of all for the implied consent provision is not the punishment of the guilty or the protection of the innocent but the tremendous deterrent force that such a law will exercise on an individual who, having taken several drinks, might be kept from driving by the knowledge of the existence of such a law. This would protect his own life as well as those of other motorists and pedestrians.

### SPECIFIC RECOMMENDATIONS

We recommend that § 18.1-55, which as presently written sets up the procedure for the voluntary blood test, be amended to provide that any person who operates a motor vehicle upon a public highway of the Commonwealth shall be deemed to have agreed to permit a sample of his blood to be taken for chemical testing to determine its alcoholic content if he is arrested for violating § 18.1-54. This statute prohibits the driving of a motor vehicle under the influence of alcohol or narcotic drugs or other self-administered intoxicants. The requirement applies in the case of a similar ordinance of a county, city or town. The sample of blood must be taken within two hours of the alleged offense.

Under the present statute, provision is made for testing of the sample by the Chief Medical Examiner or an Assistant Chief Medical Examiner. We recommend that this be changed to permit the Chief Medical Examiner to cause the blood sample to be examined and upon such examination he or his assistant will issue a certificate of the findings. The new language will afford a wider latitude to the Chief Medical Examiner. The certificate must include a statement that the container was one provided by the Chief Medical Examiner. This will eliminate the difficulty of establishing this fact in court. Provision should be continued in the revised section that individuals given a chemical test have the results of such test made available to them on request.

The five dollar fee to cover the cost of taking the blood and making an analysis which in the present law is required to be taxed as a part of the costs should remain as a part of the revised section; however, by inserting the word "criminal" before the word "case" the intent of the paragraph is clarified. This fee will be taxed as a part of the costs if the individual tested is found guilty of a violation of § 18.1-54 or a similar local ordinance.

When Title 18 of the Code was revised at the 1960 Session of the General Assembly the sentence setting out that the failure of the accused to request a blood alcohol test is not to be considered evidence and shall not be subject to comment in the trial of the case was omitted from the section authorizing the voluntary blood test, according to the Acts of the Assembly for the 1960 Session. This sentence was carried in the Code Replacement Volume covering Title 18.1. It is desirable to re-insert this

sentence under the new procedure, modified to accord with the proposed amendment.

Every effort is made to safeguard the rights of an individual under this implied consent procedure. A person arrested under § 18.1-54 or a similar local ordinance is informed that he is required to give a blood sample for testing and that refusal to do so constitutes grounds for revocation of his driving privilege. If he refuses he is asked the second time to allow the sample to be taken, this time in the presence of a committing justice. The second refusal must be in writing and take place within two hours of the offense.

The refusal is recorded on a form containing a brief statement of the law requiring the blood sample, the penalties for refusal, a declaration of refusal, and spaces for the signature of the person refusing to give the blood sample and the date and the signature of a witness. If the person from whom the blood sample is sought is physically or mentally unable to consent or refuses to sign the certificate, the committing justice certifies such fact upon the form.

The declaration of refusal or certificate of the committing justice along with the summons or warrant is forwarded to the Commissioner of Motor Vehicles by the committing justice within 15 days of the date of the warrant of arrest.

§ 18.1-59 provides for the forfeiture of a driver's license for violation of § 18.1-54 or a similar local offense. We recommend that the section be amended so as to provide that the suspension for violation of § 18.1-54, or of a similar local ordinance, run consecutively with any period for suspension for failure to permit a blood sample to be taken as required by § 18.1-55.

§ 46.1-430.1 is added to provide that when the Commissioner of the Division of Motor Vehicles receives notice of a refusal to allow a blood sample to be taken as required by § 18.1-55 he shall revoke the license or operating privilege of the person so refusing and notify such person by mail. The suspension of driving privilege or license shall be for 90 days for the first refusal and for 6 months for the second or subsequent refusal within one year of the first or any other subsequent refusal. Provision is made for appeal to the county or municipal court of the county or city in which the violation occurred within 30 days of the date notice is mailed. On such appeal the person refusing the blood test may give evidence of the reasonableness of his refusal. The Commonwealth is required only to prove that the person was arrested upon a charge for a violation of § 18.1-54 or similar local ordinance, was requested to allow a sample of blood to be taken and refused to do so. The result of the appeal shall not be a bar to prosecution on the driving under the influence charge. Provision is made for the suspension for driving under the influence and the suspension for refusing to give the blood sample to run consecutively. Acquittal on the driving under the influence charge shall not affect the suspension of the driving privilege for refusal to allow a blood sample to be taken.

We recommend that appeal from the judgment of the county or municipal court be allowed to the circuit or corporation court of the county or city.

## ACKNOWLEDGMENT

The Council expresses its appreciation to the Committee and to the many persons, organizations, and associations which have aided it in the study of this problem.

Draft legislation necessary to carry out the recommendations above follows.

Respectfully submitted,

ROBERT Y. BUTTON

C. W. CLEATON

JOHN WARREN COOKE

JOHN H. DANIEL

CHARLES R. FENWICK

TOM N. FROST

J. D. HAGOOD

EDWARD M. HUDGINS

CHARLES K. HUTCHENS

BALDWIN G. LOCHER

LEWIS A. McMURRAN, JR.

EDWARD E. WILLEY

### STATEMENT OF C. W. CLEATON

I have signed the report, however, I reserve the right to support amendments which I may feel are beneficial.

### STATEMENT OF MOSBY G. PERROW, JR.

I have examined the report and attached bill carefully. The bill, in my judgment, is not in keeping with our concepts that a defendant is entitled to trial by jury and that a person has a right, both in civil and criminal cases, to demand that a jury exercise its discretion in passing upon the issues. The increasing death toll upon our highways, the position taken by the other members of the Council, and the evidence set forth in the report, lead me to concur in the report and bill under the following conditions:

1. That the bill be limited to a two year trial period, and
2. That the Council make a study of the operation of the statute during the two year period. The actual operation of the law can and should be observed; if the benefits which are claimed by its proponents are not outweighed by the evils which I feel it will produce, the measure can be made permanent.

The people of Virginia are entitled to at least this much protection since the measure represents a radical departure from the established tradition that a person is presumed innocent until he is proved guilty. A permit to operate a motor vehicle has become so essential to our way of life that its possession should be safeguarded to the same extent as are other rights.

Mosby G. Perrow, Jr.

### STATEMENT OF A. H. RICHARDSON

In view of the mandatory provisions of the proposed bill, I believe that there should have been a reexamination of the standards set by the present law.

A BILL to amend and reenact §§ 18.1-55 and 18.1-59 of the Code of Virginia, and to amend the Code of Virginia by adding a new section numbered 46.1-430.1, the new and amended sections relating to consent for the taking of blood samples and how such consent shall be implied; testing same for alcoholic content; consequence of refusal of consent; appeal to county or municipal court from suspension of driving privilege and licenses by Commissioner of the Division of Motor Vehicles; appeal to circuit or corporation court; administration of test; cost; evidentiary effect of test; and term of suspension of such privilege and license under certain circumstances.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.1-55 and 18.1-59 of the Code of Virginia be amended and reenacted and that the Code of Virginia be amended by adding a new section numbered 46.1-430.1, the amended and new sections being as follows:

§ 18.1-55. \* (a) As used in this section "license" means any operator's, chauffeur's or learner's permit authorizing the operation of a motor vehicle upon the highways.

(b) Any person, whether licensed by Virginia or not, who operates a motor vehicle upon a public highway in this State on and after July one, nineteen hundred sixty-two, shall be deemed thereby to have agreed as a condition of such operation to consent to have a sample of his blood taken for a chemical test to determine the alcoholic content thereof if he is arrested for a violation of § 18.1-54 or of a similar ordinance of any county, city or town; provided the sample is taken within two hours of the alleged offense.

(c) Only a physician, registered professional nurse or laboratory technician, shall withdraw blood for the purpose of determining the alcoholic content therein. The blood sample shall be placed in a sealed container provided by the Chief Medical Examiner. Upon completion of taking of the sample, the container \* shall be resealed in the presence of the accused after calling the fact to his attention. The container shall be especially equipped with a sealing device, sealed so as not to allow tampering, labelled and identified showing the person making the test, the name of the accused, the date and time of taking. The sample shall be delivered to the police officer for transporting or mailing to the Chief Medical Examiner. Upon receipt of the blood sample, the Chief Medical Examiner \* shall \* cause it to be examined for alcoholic content and he or the Assistant Chief Medical Examiner shall execute a certificate which certificate shall indicate the name of the accused, the date, time and by whom the same was received and examined, a statement that the container seal had not been broken or otherwise tampered with, that the container was one provided by the Chief Medical Examiner and a statement of the alcoholic content of the sample. The certificate attached to the container shall be returned to either the police officer making the arrest, the department from which it came, or to the clerk of the court in which the matter will be heard.

(d) Upon the request of the person who was given a chemical test of blood, the results of such test shall be made available to him.

(e) An amount not to exceed five dollars to cover the costs of taking blood and making an analysis thereof shall be taxed as part of the costs of the criminal case.

(f) Other than as expressly provided herein, the provisions of this section shall not otherwise limit the introduction of any competent evidence bearing upon any question at issue before the court. *The failure of the accused to permit such a determination is not evidence and shall not be subject to comment in the trial of the case.*

(g) *If a person, after being arrested and after having been advised by the arresting officer that the law of Virginia requires a person accused of the violation of § 18.1-54 or of a similar ordinance of any county, city or town to permit a sample of his blood to be taken so that a test may be made of his blood to determine the alcoholic content thereof and that refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this State, then refuses to permit the taking of blood for such a test and does further so refuse upon being taken before a committing justice, all within two hours of the alleged offense, and so declares in writing upon a form provided by the committing justice, then no blood sample shall be taken.*

(h) *The form provided for in paragraph (g) above shall contain a brief statement of the law requiring the taking of a blood sample and the effect of refusal, a declaration of refusal, and spaces for the signature of the person from whom the blood sample is sought, the date and the signature of a witness to the signing. If the physical or mental condition of the person from whom the blood sample is sought prevents executing the foregoing statement in writing or if such person refuses to execute such declaration, the committing justice shall certify such fact upon the form and sign same.*

(i) *The executed declaration of refusal or certificate of the committing justice shall be attached to a copy of the summons or warrant, as the case may be, and shall be forwarded by the committing justice to the Commissioner of the Division of Motor Vehicles within fifteen days of the date of the warrant of arrest.*

§ 18.1-59. The judgment of conviction, or finding of not innocent in the case of a juvenile, if for a first offense under § 18.1-54, or for a similar offense under any county, city or town ordinance, shall of itself operate to deprive the person so convicted or found of the right to drive or operate any such vehicle, conveyance, engine or train in this State for a period of one year from the date of such judgment, and if for a second or other subsequent offense within ten years thereof for a period of three years from the date of the judgment of conviction or finding of not innocent thereof, *any such period in either case to run consecutively with any period of suspension for failure to permit a blood sample to be taken as required by § 18.1-55.* If any person has heretofore been convicted or found not innocent of violating any similar act of this State and thereafter is convicted or found not innocent of violating the provisions of § 18.1-54, such conviction or finding shall for the purpose of this section and § 18.1-58 be a subsequent offense and shall be punished accordingly; and the court may, in its discretion, suspend the sentence during the good behavior of the person convicted or found not innocent.

§ 46.1-430.1. *When the Commissioner receives notice of refusal to allow the taking of a blood sample under § 18.1-55 he shall forthwith suspend the license or operating privileges of the person so refusing and notify such person by mail of the suspension of his license or driving privilege for a period of ninety days for the first refusal and for six months for a second or subsequent refusal within one year of the first or other such refusal, and the effective dates thereof; the notice shall*

*state why the revocation is made. The license so revoked shall be delivered to the Commissioner forthwith unless an appeal is taken as hereinafter provided. The suspension shall become final if no appeal from such action is made to the county or municipal court of the county or city wherein the violation occurred within thirty days of the date the notice was mailed. Notice of any such appeal shall be given the Commissioner by registered or certified mail. The judge of the court, if an appeal is made, shall take evidence relating to the reasonableness of the refusal of the appellant to allow a sample of his blood to be taken. If the appellant does not prove that the refusal was reasonable the suspension shall remain in effect. The Commonwealth need only offer evidence that a person arrested upon a charge of a violation of § 18.1-54 or of a similar county, city or town ordinance, was requested to allow a sample of blood to be taken for a blood test and refused to do so. The court shall forthwith notify the Commissioner of its decision in the proceedings. The result of such hearing shall not be a bar to a prosecution under § 18.1-54 or a similar ordinance of any county, city or town; if a conviction upon such criminal charge is had the suspension of license or of the privilege of operating a motor vehicle upon the highways as a result of such conviction shall be in addition to the suspension for refusal to permit a blood sample to be taken under § 18.1-55 and such suspensions shall run consecutively. Acquittal under a prosecution for violation of § 18.1-54 or a similar ordinance of any county, city or town, shall not affect suspension for refusal to allow a blood sample to be taken as required by § 18.1-55.*

*An appeal shall lie to the circuit or corporation court of the county or city from the judgment of the county or municipal court.*



