

# ALR Law Enforcement Presentation

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This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

**Legal Division**

**October 1, 2016**

**Administrative License Revocation  
for  
Law Enforcement Officers**



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**The Basics**

We will discuss:

- the purpose of ALR and revocation periods
- the sworn report and how to complete it properly
- timing filing the sworn report with the DMV
- and the hearing.

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**What is the purpose  
for ALR?**



- "Because persons who drive while under the influence of alcohol present a hazard to the health and safety of all persons using the highways, a procedure is needed for the swift and certain revocation of the operator's license of any person who has shown himself or herself to be a health and safety hazard. . ."

Nebr. Rev. Stat. 60-499 (1)(c)

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- The purpose of ALR is to reduce drunk driving.
- Roughly 12,000 people are arrested in Nebraska for DUI each year.
- The DMV receives Sworn Reports on the majority of those arrests.
- Those motorists lose their license under ALR.

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- ALR stands for "Administrative License Revocation." The Director of DMV issues licenses. If a licensee demonstrates he or she is a danger to public safety, the Director can take the license away.
- It is a separate process from the criminal case.
- It is primarily a *remedy*; not a *penalty*.

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- ALR helps to save lives. Studies consistently show that ALR is the most effective tool we have to combat drunk driving. States that have adopted ALR have seen a significant reduction in alcohol-related crash fatalities.

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**ALR is effective in reducing drunk driving.**

- ALR is a better deterrent than criminal penalties and is estimated to save about 800 lives a year. Studies have found that *immediate* license suspensions (ALR) are more effective in reducing the number of fatal crashes than *delayed* post-conviction suspensions (the criminal action).

• Effects of Drivers' License Suspension Policies on Alcohol-Related Crash Involvement: Long-Term Follow-Up in 46 States. The study analyzed monthly fatal alcohol-related car crashes from 1976 to 2002 across 46 states that changed their laws on driving while intoxicated (DWI)

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**How does it work ?**

At the time of arrest, YOU, as AGENT for the director, take the license away from the person you arrest and give him/her a temporary license valid for 15 days. You complete a sworn report, sign it before a notary, and send it to the DMV immediately following the arrest. The DMV reviews the report. If it has everything on it that the statutes requires, the DMV revokes the license beginning 15 days after the arrest.

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**REVOCATION PERIODS**

- 1<sup>st</sup> Offense ALR – 180 DAYS
- 2<sup>nd</sup> or MORE ALR's – ONE YEAR
- REFUSAL – ONE YEAR
- Breath test/refusal - revocation goes into effect on the 15<sup>th</sup> day after the arrest date
- Blood test- revocation goes into effect on the 15<sup>th</sup> day after the date the DMV mails the notice of revocation/temporary license

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## Ignition Interlock Permit

- The law strongly encourages the motorist to apply for an ignition interlock permit and not request an ALR hearing. An arrested motorist can apply for an interlock permit to drive during the revocation period. The information about the ALR hearing process is on the back side of the Sworn Report. If the motorist requests a hearing and loses, the law does not allow them to apply for an IIP.

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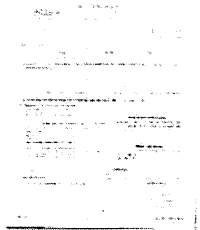
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## Sworn Report

- Complete this document after each arrest for refusal and a chemical test over .08
- If the motorist refuses or tests over .08 on a breath test, complete the form, give the motorist the yellow copy, sign the original white copy in the presence of a notary, and send it to the DMV



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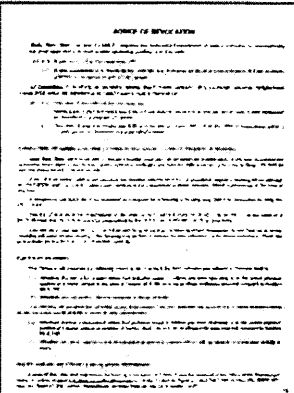
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## Notice of Revocation

- This appears on the back of the sworn report. You are required to give this to the motorist (for refusal and breath test failure). It explains to the motorist how the ALR works—how long their license will be revoked, how to apply for an IIP, how to get a hearing, what the issues are, etc.

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**Sworn report – if driver refuses to submit to a chemical test**

- Fill in top of form and reasons for DUI arrest
- Mark the box for **REFUSAL**
- Read the verbal notice of revocation
- Confiscate the driver license including out of state licenses Do not confiscate out of country licenses such as Canada or Mexico
- Give the motorist the yellow copy/temporary license
- Optional -Give the motorist an application for an ignition interlock permit
- Sign the white copy before a notary public
- Send notarized white copy and license to DMV immediately.

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**Refusal**

If the motorist refuses to submit to a chemical test, you complete the top portion and the reasons for arrest

Then check the box for refusal

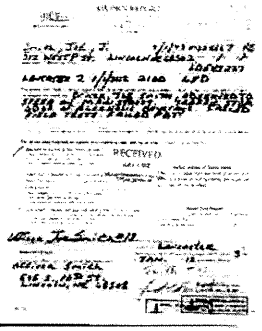
Read the Verbal Notice of Revocation

Give the motorist the yellow copy

Optional -give the motorist an application for an ignition interlock permit

Sign the Sworn Report in presence of notary

Send it to DMV



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**Sworn Report – if driver fails a breath test .08 BAC or more**

- Fill in top of form and reasons for DUI arrest
- Mark the box for **BREATH TEST**
- Record test result and the name of the operator on the line provided.
- Read verbal notice of revocation to the motorist.
- Confiscate the drivers license.
- Give the motorist the yellow copy of the Notice/Temporary License/Sworn Report.
- Optional-give the motorist an application for an IIP
- Sign the white copy before a Notary Public
- Send notarized copy to DMV and license immediately.

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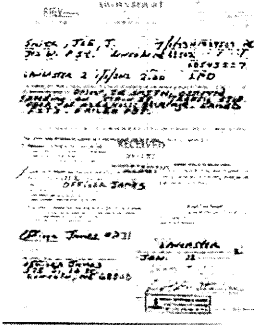
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**Breath Test**  
 Again, complete the top portion, including reasons for arrest.  
 Check box for breath test, write in amount, and include name of person who tested the breath  
 Give motorist the yellow copy




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**Sworn Report – if driver submits to blood test for alcohol**

- **Do not** confiscate the driver license.
- **Do not** read the verbal notice of revocation.
- **Do not** give motorist the yellow copy.
- **Wait** for the blood test result to arrive.

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**Sworn Report – blood test results over .08**

- **Complete** the top portions of the sworn report form, including reasons for DUI arrest.
- **Mark** the box for **BLOOD TEST**
- **Record** the blood alcohol test result, the name of the person who tested the blood, and the date the law enforcement agency received the result.
- **Sign** the sworn report before a notary public.
- **Send** the notarized white copy and yellow copy to DMV. DMV will serve the motorist
- **10 DAYS** to get the sworn report to DMV or case must be dismissed N.R.S 60-498.01(5)

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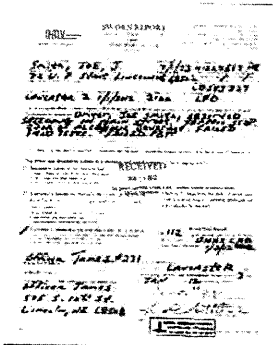
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**Blood Test**  
 If the motorist submits to a blood test, you obviously won't know the results for a few days. Do not fill out the sworn report until you get the blood results. When you get them, fill out the sworn report, include the results and name or laboratory that tested the blood, sign it in the presence of a notary, and send it to DMV. DMV will send the motorist a copy of the sworn report.




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**Probable cause work sheet**

- The arresting officer can also attach a probable cause worksheet or probable cause affidavit to the sworn report as the reasons for the arrest in the matter. You must list the name of the probable cause document such as "see attached probable cause affidavit" under the reasons for arrest and then attach the document to the sworn report.

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**ALR- finishing all sworn reports**

- Print clearly the name/s and badge number/s of the arresting officer/s.
- Requires the signature of the primary arresting officer or the secondary arresting officer at the scene who assisted in the arrest.
- Provide the mailing address of the law enforcement agency or the arresting officer where you want the notice of hearing to go.

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## ALR – Sworn Report and Facts to Establish Jurisdiction

- The Nebraska Supreme Court has held that an ALR must be dismissed if the officer's sworn report does not convey the information required by statute.

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STATE OF NEBRASKA  
DEPARTMENT OF TRANSPORTATION  
SWORN REPORT

STATE OF NEBRASKA  
DEPARTMENT OF TRANSPORTATION  
SWORN REPORT

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## Addendum

### Why and where you contacted the driver?

- Examples—“traffic stop on Main Street” -or- “observed driver behind the wheel of a running vehicle located in the McDonalds drive thru.”

### Why the driver was operating or in physical control of a motor vehicle?

- Examples—“stopped as the driver of a vehicle that was speeding on Main Street” -or- “observed driver behind the wheel of a running motor vehicle in the Walmart parking lot” -or- “admitted to driving a vehicle involved in an accident on South Street.”

### Why you decided that the driver was under the influence of alcohol and/or drugs and list the observations you made to form that belief?

- Examples—“strong odor of alcohol, slurred speech, bloodshot eyes, failed field sobriety tests, failed preliminary breath test.”

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### Notarization

- You must sign in front of the notary.
- The notary must correctly complete all the blanks:
- County of \_\_\_\_\_ (at top)
- Date (at bottom)
- Arresting officer's (your) name as peace officer and your badge number (at bottom)
- Notary's signature and seal (at bottom)
- Review any of the sworn reports in this presentation for examples.

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### What the statute requires

- The Statute (60-498.01(3)) requires:  
The arresting peace officer shall within ten days forward to the director a sworn report stating (a) that the person was arrested as described in subsection (2) of section 60-6,197 and *the reasons for such arrest*, (b) that the person was requested to submit to the required test, and (c) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196.

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### The officer's part

- (a) that the person was arrested as described in subsection (2) of section 60-6,197 and *the reasons for such arrest*, (b) that the person was requested to submit to the required test, and (c) *that the person submitted to a test, the type of test to which he or she submitted*, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196.

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### Reasons for the Arrest

- Recent appellate court decisions have given us guidance on what the phrase “reasons for arrest” requires.
- You must include some statement explaining how you know the person was *driving* and how you determined the person was *drunk*.

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### What is *not* good enough

- “passed out in front of BP station, near front doors. Signs of alcohol intoxication”
- “The reasons recited for the arrest merely state that he was passed out near the front doors of the gas station, which could mean that Yenney was passed out on the sidewalk or driveway rather than in a motor vehicle, and the stated reasons include no facts showing how he got there or allowing an inference that he drove there in a drunken condition.”

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### What is *not* good enough

- “speeding (20 over) DUI”
- “Here, the arresting officer’s notation that Snyder was speeding explains the initial traffic stop but does not constitute a reason for the arrest. Instead, the officer wrote only ‘D.U.I.’ the common abbreviation for driving under the influence. While this tells us what the officer suspected when he made the arrest, it provides no factual reasons upon which his suspicion was based. It is a conclusion, not a reason.”

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**What is *not* good enough**

“Involved in an accident” is not good enough to establish that the person you arrested was driving. The Court of Appeals has held that “involved in an accident” could refer to a passenger or a pedestrian. Make sure to list the arrested person as the driver.

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**What is *not* good enough**

- “Stopped on REDDI report”. The Court of Appeals in a memorandum decision held that it did not know what “REDDI” meant and reversed the revocation. (REDDI stands for “report every drunk driver immediately.”)

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**What is *not* good enough**

- “Vehicle observed WB on I-80 weaving out of its lane. Off duty ofc. Venticheer followed until R/O Bowes caught up to veh. at W. Dodge Rd. WB at 156 St. Driver identified by Ne. D.L. as GORANS. Showed impairment.” The Court of Appeals in a memorandum decision held that showed impairment does not necessarily denote alcohol intoxication.

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### What *is* good enough

- "Reckless driving. Driver displayed signs of alcohol intoxication. Refused all SFST and later breath test."
- "Reckless driving" was a valid reason for a police officer to stop the Appellant's vehicle and because the Appellant 'displayed signs of alcohol intoxication,' the officer had cause to allege that the Appellant was 'driving... a motor vehicle while under the influence of alcoholic liquor.'"

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### What *is* good enough

- The word "speeding" is good enough to explain the traffic stop. If in the "speeding. DUI" example, the officer had added "odor of alcohol, showed signs of intoxication, showed impairment on field sobriety tests", the sworn report would have been okay.

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### ALR Hearing Procedures

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### Can the motorist contest the revocation?

- Yes. If the motorist files a petition, the DMV schedules a hearing.
- A drivers license is a privilege. Once a license has been issued, keeping it may be necessary to making a living. The license cannot be taken without procedural due process and allowing the motorist a hearing. Bell v. Burson, 402 U.S. 535 (1971)

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### If the person asks for a hearing

- In order to get a hearing, the motorist must send in a petition for a hearing within ten days of the arrest.
- DMV will set a hearing date within twenty days.
- The DMV regulation does not require officers to appear unless subpoenaed.
- Statute requires a minimum of seven days notice from the date of mailing.

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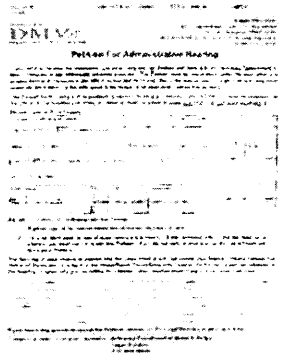
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The image shows a form titled "DMV Petition for Administrative Hearing". The form contains several sections for the motorist to fill out, including a section for the motorist's name and address, a section for the date of the hearing, and a section for the motorist's signature. The form is numbered "9" in the bottom right corner.

#### Petition

- The motorist has a right to a hearing. The motorist uses this form to request the hearing.
- Motorist must file the petition with 10 days of the arrest.
- DMV schedules hearings within 20 days.

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## DMV Subpoena

- DMV issued subpoenas are formal legal documents and require service upon the officer, similar to a court subpoena.
- Most subpoenas will be requested and served by defense attorneys.
- If officers are unable to attend the hearing, they should notify the defense attorney who requested their appearance and provide a copy to the DMV.

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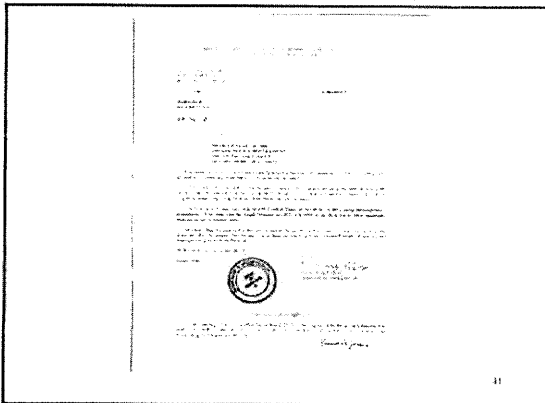
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## ALR – Formal Hearing

- Statute provides that an appellant may ask for a formal hearing using the "rules of evidence" if they agree to be responsible for the additional costs.
- The rules of evidence are court rules which provide how evidence may be introduced and made part of a hearing record.
- The Department appoints an attorney to represent the DMV and present the case at a formal hearing.
- The Department's attorney, in some cases, will contact the arresting officer prior to the hearing to discuss the case.
- A court reporter will record the proceedings.

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### ALR – Informal Hearing

- The rules of evidence don't apply and almost anything can come into the record as long as it is not cumulative or irrelevant to the issues. Your hearing officer will decide if questions are redundant or irrelevant.
- The vast majority of ALR hearings are informal hearings lasting less than a half hour.

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### Your Testimony

- You are required to attend the hearing with a reasonable knowledge of the arrest. We strongly recommend you bring your police reports with you for the hearing.
- You may be asked about anything that you found significant in making the arrest of the motorist for driving under the influence and the result or refusal of the chemical test.
- If you feel a question is not relevant to the hearing, ask the Hearing Officer for instruction.

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### ALR – How the hearing begins

- The hearing officer will convene the hearing by calling you at the number you provided.
- Normally, the hearing officer will take care of preliminary matters, and then testimony begins.
- You may be asked questions about the basis for the DUI arrest and the result or refusal of the chemical test.

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ALR – Examination

- Counsel for the appellant may ask you any questions that relate to the issues for the hearing.
- The hearing officer has the power to decide if the questions are fair and related to the issues.

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ALR – Issues at Hearing

- A fair question is any question that goes to:
- If you had probable cause to believe the person was operating or in actual physical control of a motor vehicle while in violation of 60-6,196 (DUI statute), **and**
- If the person was operating or in the actual physical control of a motor vehicle while having an alcohol concentration of .08 or more; or, If the person refused or failed to complete a test for alcohol or drugs when directed to do so by an officer.

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Driving is evidence of impairment,  
or lack of impairment

- What you observe about the driving is part of your probable cause evaluation, and as such, is as much a subject for the hearing as your observations of a person's condition and her performance on field sobriety tests.
- E.g., erratic driving is likely intoxicated driving; but a brake light violation is just a brake light violation.

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### Observations

After the stop, you begin paying attention to all sorts of clues that lead you toward or away from concluding the person is not safe to drive.

The appellant can ask about these observations.

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### Field Sobriety Tests

- Your observations of a person's condition may lead you to administer field sobriety tests. These tests are part of your probable cause determination.
- The appellant can ask about how you administered the tests and how the appellant performed them.

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### PBT

You might administer a preliminary breath test to confirm your suspicions. In some circumstances, if FSTs are practical, your observations and the PBT might be all you have.

The appellant can ask about the PBT.

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### Refusal or Failure

- The second issue is whether the appellant refused the test or failed the test.

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### Refusal

“A refusal to submit to a chemical test occurs . . . when the licensee, after being asked to submit to a test, so conducts himself as to justify a reasonable person in the requesting officer’s position in believing the licensee understood he was asked to submit to a test and that such driver manifested an unwillingness to take it.” Winter v. Peterson, 208 Neb 785 (1981)

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### Refusal

- An appellant can ask whether you reasonably should have believed the person understood he had been asked to take a test.
- Was he conscious? Was the person able to follow other directions?

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### Manifest unwillingness

- The appellant can ask why you thought he was manifesting an unwillingness. Did he say no? Ask an unreasonable number of questions and continue to proclaim he didn't understand? If it is an insufficient sample, why did you believe the person was trying to avoid giving a good sample?

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### Failing the test

- If you administered a breath test, the appellant can ask about how you administered the test. Commonly questions concern the observation period, and what maintenance records you reviewed.

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### If you did not administer the test

- Whether a blood or a breath test, if you did not give the test, the appellant should not have many questions you can answer.
- It is not your responsibility to fill in for the testing operator. The Appellant needs to subpoena the testing operator and bring him to the hearing if he wants to question him.

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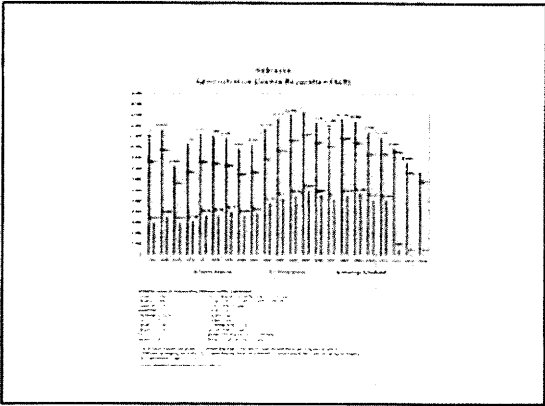
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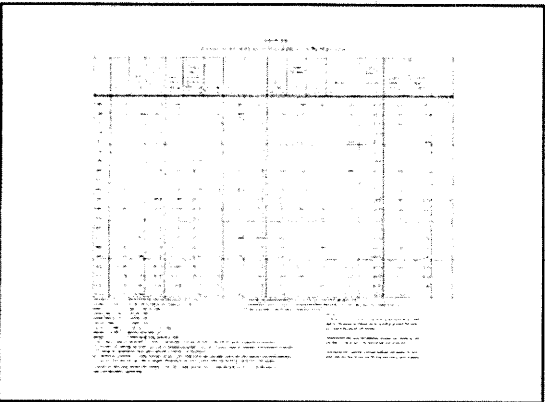
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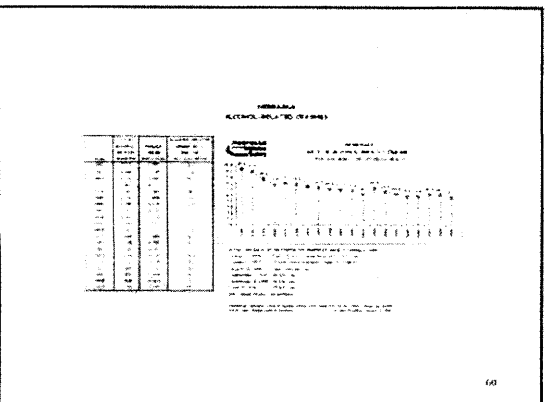
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§ 60-6,211.11. Prohibited acts relating to ignition interlock device; violation; penalty.

**Nebraska Revised Statutes**

**Chapter 60. Motor Vehicles**

**Article 6. Nebraska Rules of the Road**

**(o). Alcohol and Drug Violations**

*Current through 2014*

**§ 60-6,211.11. Prohibited acts relating to ignition interlock device; violation; penalty**

- (1) Except as provided in subsection (2) of this section, any person ordered by a court or the Department of Motor Vehicles to operate only motor vehicles equipped with an ignition interlock device is guilty of a Class I misdemeanor if he or she (a) tampers with or circumvents and then operates a motor vehicle equipped with an ignition interlock device installed under the court order or Department of Motor Vehicles order while the order is in effect or (b) operates a motor vehicle which is not equipped with an ignition interlock device in violation of the court order or Department of Motor Vehicles order.
- (2) Any person ordered by a court or the Department of Motor Vehicles to operate only motor vehicles equipped with an ignition interlock device is guilty of a Class IV felony if he or she (a) (i) tampers with or circumvents and then operates a motor vehicle equipped with an ignition interlock device installed under the court order or Department of Motor Vehicles order while the order is in effect or (ii) operates a motor vehicle which is not equipped with an ignition interlock device in violation of the court order or Department of Motor Vehicles order and (b) operates the motor vehicle as described in subdivision (a)(i) or (ii) of this subsection when he or she has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.
- (3) Any person who otherwise operates a motor vehicle equipped with an ignition interlock device in violation of the requirements of the court order or Department of Motor Vehicles order under which the device was installed shall be guilty of a Class III misdemeanor.

**Cite as Neb. Rev. Stat. § 60-6,211.11**

**Source:** Laws 2011, LB 667, §41.

**History.** Amended by Laws 2014, LB 998, §13, eff. 4/10/2014.