

A PRIMER ON DWI LAW

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- He practices law in New Orleans and has an active mediation and arbitration practice with Mediation Arbitration Professional Systems (MAPS) in Mississippi and Louisiana.
- Since 1990, he has served as a special master, mediator, arbitrator, attorney chair in medical review panels, and as a complaint hearing officer for energy regulatory matters.

A Primer on DWI Law

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- Gaynell Williams has more than 30 years of courtroom experience in both state and federal courts dealing with cases of all levels of difficulty, including capital cases. She served as First Assistant District Attorney for Orleans Parish. During that time, Ms. Williams was selected by the Louisiana Supreme Court and honored to serve as Judge Pro Tempore for the 24th Judicial District Court. Ms. Williams has also authored a number of legal publications and served as an instructor at various legal conferences. Ms. Williams established her current law practice focusing on criminal law and personal injury law with offices in Gretna, Louisiana and in downtown New Orleans.
- She is a graduate of Loyola University New Orleans and Tulane Law School.

For more information ...

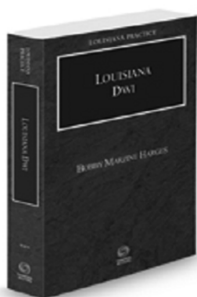
- For a more thorough analysis of the materials discussed today, please refer to Bobby Harges, Louisiana DWI (2021) (Thomson Reuters/Westlaw). ISBN 978-1-539-29495-5.



DWI Statute – In General

- La. R.S. 14:98. Operating a vehicle while intoxicated [DWI – In General]
- A.(1) The crime of operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when any of the following conditions exist:

For more information



Call Cathy Erlie at
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DWI Statute – In General

- La. R.S. 14:98. Operating a vehicle while intoxicated [DWI – In General]
- A.(1) The crime of operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when any of the following conditions exist:

DWI Statute – In General (5)

- (a) The operator is under the influence of alcoholic beverages – factual determination.
- (b) The operator's bac is 0.08 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood.
- (c) The operator is under the influence of any controlled dangerous substance ...

DWI Statute – In General

- La. 14:98 is not limited to operating a vehicle on public roads
- Thus a person can be convicted of DWI even if the operation of the motor vehicle was not on a public street, highway, or road. State v. Gates, 128 So.3d 417 (La. App. 5 Cir. 10/9/13).

DWI Statute – In General

- d)(i) The operator is under the influence of a combination of alcohol and one or more drugs that are not controlled dangerous substances and that are legally obtainable with or without a prescription.
- (e)(i) The operator is under the influence of one or more drugs that are not controlled dangerous substances and that are legally obtainable with or without a prescription.

DWI Statute – In General

- Consequently, a person can be convicted of DWI if he is operating a motor vehicle on private property.
- State v. Gates, 128 So.3d 417, 420 (La. App. 5 Cir. 10/9/13)(parking lot of a hotel).
- State v. Landeche, 447 So.2d 1201(La. App. 5 Cir. 1984) (parking lot of barroom).

DWI –Types of Vehicles

- Other means of conveyance has been interpreted to include motorized vehicles or other motorized things that can be driven. Not a bicycle or horse.



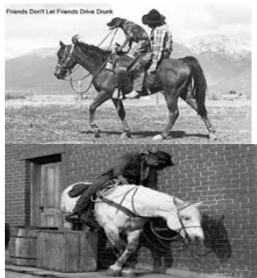
DWI –Types of Vehicles

- State v. Laplante, 148 S.W.3d 347 (Mo.2004).
- Motorized bicycle operators are subject to DWI laws.



DWI –Types of Vehicles

- State v. Williams, 449 So.2d 744 (La.App. 3d Cir. 1984); State v. Carr, 761 So.2d 1271 (La. 2000).



DWI – Child Endangerment Law

- La. R.S. 14:98(B). Operating a vehicle while intoxicated [DWI – Louisiana’s Child Endangerment Law]
- No suspended sentence when a minor child twelve years of age or younger was a passenger in the motor vehicle, aircraft, watercraft, vessel, or other means of motorized conveyance at the time of the commission of the offense:

DWI Statute – In General

- With the enactment of Louisiana’s Child Endangerment Law, La. R.S. 14:98(B), Louisiana is now one of forty-six states that has enacted such laws. These laws are designed to protect children by reducing the number of injuries and deaths to children from motor vehicle crashes, which are the leading cause of death among children after the first year of age until adulthood.

DWI Statute – In General

- 32 hours of Community Service Work (CSW), plus
- Driver Improvement Program and
- Court-approved Substance Abuse Program
- Court may require ignition interlock device during probation

DWI Statute – In General

- La. R.S. 14:98.1. Operating while intoxicated; first offense; penalties – [Misdemeanor]
- Fine \$300 - \$1,000
- License suspended for 1 year [R.S. 32:414(A)]
 - Jail 10 days - 6 months - can be suspended if placed on probation and:
- • serve 48 hours in jail or

DWI Statute – second offense

- La. R.S. 14:98.2. Operating while intoxicated; second offense; penalties[Misdemeanor]
- Fine \$750 - \$1,000
- License suspended for 2 years [R.S.32:414(B)]
- • Jail 30 days - 6 months - (48 hours cannot be suspended); remainder can be suspended if:

DWI Statute – second offense

- 15 days in jail (without benefits and in addition to the 48 hours) or
- 240 hours of CSW, plus
- Court-approved Substance Abuse Program, and
- Driver Improvement Program, and
- Placed on probation with requirement for ignition interlock installed in vehicle

DWI Statute – third offense

- Felony - Jail 1-5 years with or without hard labor (1 year without benefits unless in a drug division probation program)

DWI Statute – third offense

- La. R.S. 14:98.3. Operating while intoxicated; third offense; penalties [Felony]
- Fine \$2,000
- License suspended for 3 years [RS.32:414(D)(I)]
- Ignition interlock required in vehicle

DWI Statute – third offense

- Vehicle confiscation (at discretion of DA by written motion 5 days before sentencing)
- Probation for remainder of sentence, plus
- 240 hours of CSW
- Home Incarceration for not less than 6 months
- Driver Improvement Program

DWI Statute – third offense

- Obtain employment
- Evaluation and Inpatient/Outpatient Substance Abuse Treatment, or
- Participation in a court approved substance abuse program such as Drug or DWI Court pursuant to R.S. 13:5301 et seq. if eligible.

DWI Statute – fourth offense

- Fine \$5,000
- License suspended for 3 years [R.S.32:414(D)(1)(a)]
- Ignition interlock required in vehicle
- Jail 10- 30 years with or without hard labor (2 years without benefits unless in a drug division probation program)

DWI Statute – fourth offense

- La. R.S. 14:98.4. Operating while intoxicated; fourth offense; penalties [Felony]

DWI Statute – fourth offense

- Vehicle confiscation (at discretion of DA by written motion 5 days before sentencing)
- Probation not to exceed five years, plus
- 320 hours of CSW
- Driver Improvement Program
- Home Incarceration for the length of probation

DWI Statute – fourth offense

- Obtain employment
- Evaluation and Inpatient/Outpatient Substance Abuse Treatment, or
- Participation in a court approved substance abuse program such as Drug or DWI Court pursuant to R.S. 13:5301 et seq. if eligible.

DWI Statute – Underage DUI

- 0.02 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood, if the operator is under the age of twenty-one.

DWI Statute – Underage DUI

- La. R.S. 14:98.6. Underage operating while intoxicated [Underage DUI]
- The crime of underage operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when the operator's blood alcohol concentration is

DWI - Refusal to Submit

- La. R.S. 14:98.7. Unlawful refusal to submit to chemical tests; arrests for driving while intoxicated
- A. No person under arrest for a DWI may refuse to submit to a chemical test when requested to do so by a law enforcement officer if he has refused to submit to such test on two previous and separate occasions of any such violation.

DWI Statute – In General

- The penalties for this crime are the same as the penalties for first conviction of driving while intoxicated.

IMPLIED CONSENT STATUTE

- The implied consent statute, La. R.S. 32:661(A), provides that any person, regardless of age, who operates a motor vehicle upon the public highways of Louisiana shall be deemed to have given consent to a chemical test or tests of his blood, breath, urine, or other bodily substance for the purpose of determining the alcoholic content of his blood,

IMPLIED CONSENT STATUTES CIVIL LAWS

- Like all other states, Louisiana has an implied consent statute for operators of motor vehicles.

IMPLIED CONSENT STATUTE

- and the presence of any abused substance or controlled dangerous substance in his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while believed to be under the influence of alcoholic beverages or any abused substance or controlled dangerous substance.

IMPLIED CONSENT STATUTE

- This statute requires a motorist to consent to one or more chemical tests.
- Note, it does not require the motorist to submit to a field sobriety test.
 - Roadside gymnastics.
 - Used to gather evidence.
 - You have the right to refuse FSTs.

R-E-S-P-E-C-T



Field Sobriety Text Warnings -NOT

1. You are not required to submit to the HGN test.
2. You are not required to submit to the OLS.
3. You are not required to submit to the WAT.
4. You are not required to submit to the ABC/XYZ test.
5. What you reveal will be used against you.

YOU HAVE THE RIGHT TO REFUSE FIELD SOBRIETY TESTS



You are not required to participate in roadside gymnastics. FSTs are used to gather evidence.

IMPLIED CONSENT STATUTE

- The implied consent law was initially enacted in 1968. The purpose of the statute is to promote safety on Louisiana highways by decreasing the number of intoxicated drivers upon Louisiana highways and streets and imposing sanctions on drivers, such as withdrawal of driving privileges for motorists arrested for driving while intoxicated.

La. R.S. 32:666

- The article states that when a law enforcement officer has probable cause to believe that a motorist is operating a vehicle while intoxicated, the motorist may not refuse to submit to a chemical test or tests if one of three conditions exist:

La. R.S. 32:667 -1st Refusal

- (a) Seizure of license (but temporary license).
- (b) Suspension for one year after the date of the alleged violation.
- (c) Evidence of his refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving upon La. public highways.

La. R.S. 32:666

- If the motorist under any one of the three conditions listed in La. R.S. 32:666(A)(1)(a) refuses any test requested by the law enforcement officer, the motorist's driving privileges shall be suspended and his driver's license seized by the law enforcement officer as provided by La. R.S. 32:667.

BAC of 0.08 - 1st Time

- Suspension for 90 days from the date of suspension on first offense violation, without eligibility for a hardship license for the first 30 days, and
- for 1 year from the date of suspension, without eligibility for a hardship license, on second and subsequent violations occurring within 5 years of the first offense.

BAC of 0.08 - 1st Time

- But if the motorist submits to a breathalyzer test, blood test, or urine test, he will likely be convicted of DWI.
- If the motorist refuses to submit to a breathalyzer, blood, or urine test, there is a good chance that he will not be convicted of DWI.

Constitutionality of Implied Consent Laws

- Argument 1 - statutes are unconstitutional per se because the motorist is not given a hearing before his license is suspended.
- Argument -2 - double jeopardy – because there is also a criminal penalty.
- Argument 3 – ICLs violate *Miranda v. Arizona*.

Should a Motorist Submit to a Breathalyzer?

- It depends on where she is?
- Jefferson Parish? Current Practice – warrant obtained
- Orleans Parish? Current practice – no warrant obtained

Metabolizing of Alcohol

- Alcohol is a depressant that has a short life span in the body. Once alcohol has entered your bloodstream, your body will begin to metabolize it at a rate of 20 milligrams per deciliter (mg/dL) per hour. That means that if your blood alcohol level were 40 mg/dL, it would take about two hours to metabolize the alcohol.

Metabolizing of Alcohol

- One drink (12 oz beer, 1.25 oz 80 proof, or 4 oz wine) will raise your BAC approx 0.02. The human body will metabolize approx 0.015 per hour. These numbers are approximate, as everyone metabolizes alcohol at slightly different rates

Metabolizing of Alcohol – 1 Person

- One drink (12 oz beer) raised my BAC approximately 0.02 after 20 minutes.
- Two drinks (2 – 12 oz beers) raised my BAC 0.04 after 20 minutes.
- Three drinks?
- Four drinks?

What is BAC?

- Blood alcohol concentration (BAC) refers to the amount of alcohol in your blood in relation to the amount of water in your blood.

Metabolizing of Alcohol

- 0.08 BAC is the limit for presumed intoxication in most states.



Metabolizing of Alcohol

- Numerous factors can affect BAC and how you react to alcohol, including:
- age
- weight
- drinking alcohol on an empty stomach
- medications
- liver disease
- drinking many drinks in a short period of time, which is also known as binge drinking

How Long to Metabolize Alcohol?

- Type of alcoholic beverage
- Average time to metabolize
- small shot of liquor 1 hour
- pint of beer 2 hours
- large glass of wine 3 hours
- a few drinks several hours
- This all depends on the amount of alcohol in the drink.

Metabolizing of Alcohol

- It is also important to know how much alcohol is in your drink, because that will determine how long it takes to metabolize your drink. For example, some beers have a higher alcohol content, which affects how much alcohol you're consuming from one drink.
- Other beers have a low alcohol content.

- <https://www.healthline.com/health/how-long-does-alcohol-stay-in-your-system#alcohol-metabolism>

Upon Arrest, What Happens to the Motorist's Vehicle?

When a motorist is arrested for DWI, he has a right to allow a passenger in the vehicle who is not under the influence of alcohol who has a driver's license to take control of the vehicle, and the officer shall not order or procure towing services for the vehicle.

Reasonable Grounds to Stop

"[t]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." ... even relatively minor traffic violations provide an objective basis for lawfully detaining the vehicle and its occupants. State v. Waters, 709 So.2d 1053 (La. 2001) citing Whren v. United States, 517 U.S. 806, 810, (1996).

Upon Arrest, What Happens to the Motorist's Vehicle?

If the vehicle does not create a hazard or obstruction to traffic or the motoring public, and if there is no passenger in the vehicle with a valid driver's license and who is not under the influence of alcohol, the officer, before ordering or procuring a towing service, shall allow the arrested motorist a reasonable time and opportunity to contact another person to take possession or control of his vehicle.

Reas. Grounds to Arrest for DWI

"[t]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." ... even relatively minor traffic violations provide an objective basis for lawfully detaining the vehicle and its occupants. State v. Waters, 709 So.2d 1053 (La. 2001) citing Whren v. United States, 517 U.S. 806, 810, (1996).

Sobriety Checkpoints

► Are constitutional.

Mich. Dept. of State Police v. Sitz, 496 U.S. 444 (1990).

► State's interest in eradicating DWI outweighs slight degree of intrusion upon the individual motorist.



Sobriety Checkpoints in La. Guidelines for Constitutionality

(2) advance warning to the approaching motorist with signs, flares, and other indications to warn of the impending stop in a safe manner and to provide notice of its official nature as a police checkpoint;



Sobriety Checkpoints in La. Guidelines for Constitutionality

(1) the location, time, and duration of a checkpoint, and other regulations for operation for the checkpoint, preferably in written form, established by supervisory or other administrative personnel rather than the field officers implementing the checkpoint;



Sobriety Checkpoints in La. Guidelines for Constitutionality

(3) detention of the motorist for a minimal length of time; and

(4) use of a systematic nonrandom criteria for stopping motorists.

State v. Jackson, 764 So. 2d 64 (La. 2000).



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(4) use of a systematic nonrandom criteria



When the Motorist Holds a Commercial Driver's License (CDL)

» BAC greater than 0.8% or under influence of CDS while driving any vehicle- DQ for 1 year – LRS 32:414.2(A)(4)(a)(i)

» BAC b/t 0.4% & 0.8% while driving a commercial vehicle - DQ – for 1 year 32:414.2(A)(4)(a)(ii)

When the Motorist Who is Under Age of 21 and BAC of 0.02

the officer must seize the person's driver's license and issue a temporary receipt of license to the person.

his license shall be suspended for one hundred eighty days from the date of suspension.

When the Motorist Holds a Commercial Driver's License (CDL)

» 1st conviction of CDL holder – DQ - 1 year– LRS 32:414.2(A)(4)(b)

» 1st offense for leaving the scene of an accident while operating any vehicle – DQ - 1 year– LRS 32:414.2(A)(4)(c)

» 1st refusal to submit to BAC or drug test while operating any vehicle – DQ - 1 year– LRS 32:414.2(A)(4)(d)

La. R.S. 32:668 Adm. Hearing

Article 32:668 discusses the procedure following: (1) the suspension of a person's license or permit to drive; or
(2) the suspension of a person's nonresident operating privilege; and
(3) a determination by DPSC that the issuance of a license or permit shall be denied to any person.

La. R.S. 32:668 Adm. Hearing

The administrative hearings are conducted by the Louisiana Division of Administrative Law. When the administrative hearing occurs, no law enforcement officer can be compelled by the person requesting the hearing to appear or testify at the administrative hearing

La. R.S. 32:668 Adm. Hearing

DPSC must provide for an administrative hearing.

La. R.S. 32:668 Adm. Hearing

The scope of the administrative hearing in which the motorist seeks to challenge the action taken by the DPSC relative to his license is limited. The only issues that will be determined at the hearing are:

La. R.S. 32:668 Adm. Hearing

- (1) Did the officer have p/c to believe the person was DWI;
- (2) Was the person placed under arrest.
- (3) Was driver advised of his rights - R.S. 32:661?
- (4) Was BAC of 0.08 % (or 0.02 % < 21 y.o.)?
- (5) Did driver refuse chemical test?
- (6) Other relevant matters?

La. R.S. 32:668 Adm. Hearing

- (1) the DPSC Certification of Arrest Report,
- (2) the Arrestee's Rights Form,
- (3) the Intoxilyzer Check List,
- (4) the Office of State Police Certificate of Inspection Instrument Recertification Form,

La. R.S. 32:668 Adm. Hearing

Reasonable grounds to believe that the motorist was driving under the influence of either alcoholic beverages or any abused substance or controlled dangerous substance as set forth in La. R.S. 40:964. This is something totally different from whether the arresting officer had reasonable grounds to believe that the motorist was "legally intoxicated."

La. R.S. 32:668 Adm. Hearing

- (5) the results of the Intoxilyzer Breath Test,
- (6) the Uniform DWI Arrest Citation with results of field sobriety tests given,
- (7) the Arrest Report and Probable Cause Affidavit, and
- (8) the Charge Disposition Report.

La. R.S. 32:668 Adm. Hearing

- » Held pursuant to La. APA, DAL, and La. Tests for Suspected Drunken Driver's Law.
- » No one from DPSC is present.
- » General objections (almost always overruled) to documents as being inadmissible hearsay, incompetent, unauthenticated, & violation of motorist's due process rights.

La. R.S. 32:668 Adm. Hearing Motorist usually loses

- » 38.5% - amount of hearings won by motorists - 2011
- » 24.5% - amount of hearings won by motorists – 2012
- 2012 – law changed, re police officers
- 6.4% - won by motorists in 2013
- 5.9% - won by motorists in 2014

La. R.S. 32:668 Adm. Hearing Motorist usually loses

- » There is a rebuttable presumption that any inconsistencies in evidence submitted by DPSC and admitted at the hearing shall be strictly construed in favor of the person regarding the revocation, suspension, or denial of license.

La. R.S. 9:2800.1, entitled "Limitation of Liability for loss connected with sale, serving, or furnishing of alcoholic beverages" [Social Liability Nonliability]

A. The legislature finds and declares that the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person.

La. R.S. 9:2800.1, "Limitation of Liability for loss connected with sale, serving, or furnishing of alcoholic beverages"

B. No person holding a permit to sell alcohol to a person over the age for the lawful purchase thereof, shall be liable to such person or to any other person or to the estate, successors, or survivors of either for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were sold or served.

Alcohol and Minors

Today, La. R.S. 14:93.11 makes the sale or delivery of alcohol to a person under the age of 21 illegal. Likewise, La. R.S. 14:93.12 makes the purchase or possession of alcohol by anyone under the age of 21 illegal.

La. R.S. 9:2800.1, "Limitation of Liability for loss connected with sale, serving, or furnishing of alcoholic beverages"

D. The insurer of the intoxicated person shall be primarily liable with respect to injuries suffered by third persons.

Alcohol and Minors

§14:93.11. Unlawful sales to persons under twenty-one

A. Unlawful sales to persons under twenty-one is the selling or otherwise delivering for value of any alcoholic beverage to any person under twenty-one years of age

Alcohol and Minors

unless such person is the lawful owner or lawful employee of an establishment to which the sale is being made and is accepting such delivery pursuant to such ownership or employment. Lack of knowledge of the person's age shall not be a defense.

B. Penalty – B/t \$500 & \$1,000 and/or imprisoned 30 days - 6 months, or both.

Alcohol and Minors [Tailgaiting Exception]

LRS 14:93.10 (2) "Public possession" does not include the following:

(a) The possession or consumption of any alcoholic beverage:

(ii) When a person under twenty-one years of age is accompanied by a parent, spouse, or legal guardian twenty-one years of age or older.

Alcohol and Minors

§14:93.13. Unlawful purchase of alcoholic beverages by persons on behalf of persons under twenty-one

A. It is unlawful for any person, other than a parent, spouse, or legal guardian, as specified in R.S. 14:93.10(2)(a)(ii), to purchase on behalf of a person under twenty-one years of age any alcoholic beverage.

Art. 2315.4. Additional damages; intoxicated defendant

... exemplary damages may be awarded upon proof that the injuries on which the action is based were caused by a wanton or reckless disregard for the rights and safety of others by a defendant whose intoxication while operating a motor vehicle was a cause in fact of the resulting injuries.

**Art. 2315.4. Additional damages;
intoxicated defendant**

By “exemplary damages,” the law means an award which “makes an example” of the defendant, hoping to keep other people from behaving in the same fashion.

**Art. 2315.4. Additional damages;
intoxicated defendant**

Berg v. Zummo, 786 So. 2d 708 (La. 2001), the court declined to extend Civil Code Article 2315.4 to the bar owner whose employee had furnished intoxicating beverages to a patron who subsequently drove while intoxicated.

**Art. 2315.4. Additional damages;
intoxicated defendant**

P has the burden of proof on the issue of exemplary damages.

**Art. 2315.4. Additional damages;
intoxicated defendant**

Berg v. Zummo, “We find that the legislative history reflects the legislature's intent to penalize only the intoxicated driver of motor vehicle and is in line with the narrow construction that this Court gives to penal statutes.

**Art. 2315.4. Additional damages;
intoxicated defendant**

Berg v. Zummo, Thus, we affirm the court of appeal's holding that La. C.C. art. 2315.4 does not allow the imposition of punitive damages against persons who have allegedly contributed to the driver's intoxication."

**Art. 2315.4. Additional damages;
intoxicated defendant**

H. Alston Johnston, 18 La. Civ. L. Treatise, Civil Jury Instructions § 18:2 (3d ed.)

**Art. 2315.4. Additional damages;
intoxicated defendant**

There is a conflict among the circuits as to whether vicarious liability for punitive damages is the law. Romero v. Clarendon America Ins. Co., 54 So. 3d 789 (La. Ct. App. 3d Cir. 2010) (no vicarious liability for employer under Civil Code Art. 2315.4) and Curtis v. Rome, 735 So. 2d 822 (La. Ct. App. 4th Cir. 1999) (vicarious liability of employer possible under Civil Code Art. 2315.4).

**LRS 9:2798.4 - Immunity from
liability;**

- injuries sustained by persons driving under the influence of alcoholic beverages or drugs
A. Neither the state, a state agency, or a political subdivision of the state nor any person shall be liable for damages, including those available under CC Article 2315.1 or 2315.2, for injury, death, or loss of the operator of a motor vehicle, aircraft, watercraft, or vessel who:

LRS 9:2798.4 - Immunity from liability;

- (1) Was operating a motor vehicle, aircraft, watercraft, or vessel while his blood alcohol concentration of 0.08 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood; or
- (2) Was operating a motor vehicle, aircraft, watercraft, or vessel while he was under the influence of any controlled dangerous substance described in R.S. 14:98(A)(1)(c) or R.S. 40:964.

LRS 9:2798.4 - Immunity from liability;

- (2) This negligence was a contributing factor causing the damage.

LRS 9:2798.4 - Immunity from liability;

B. The provisions of this Section shall not apply unless:

- (1) The operator is found to be in excess of 25% negligent as a result of a BAC in excess of the limits provided in R.S. 14:98(A)(1)(b), or the operator is found to be in excess of 25% negligent as a result of being under the influence of a controlled dangerous substance described in R.S. 14:98(A)(1)(c); and

LIABILITY OF PARENTS FOR TORTS OF CHILDREN

–Parents are strictly liable for damages caused by their un-emancipated, minor children residing with them, or who have been placed by them under the care of others. La. Civ. Code art. 2318.

–LSA-C.C. Art. 29. Age of majority

–Majority is attained upon reaching the age of eighteen years.

IGNITION INTERLOCK DEVICE AFTER SUSPENSION

–In *Cathy v. DPSC*, the court held that once a motorist has completed his suspension period under La. R.S. 32:414, there is no additional requirement that he have an ignition interlock device installed in his automobile once he is eligible to drive, as that provision only applies to hardship licenses issued during the suspensive period.^{fn.} [fn. *Cathy v. Dep't of Pub. Safety & Corr., Office of Motor Vehicles*, 303 So.3d 325 (La. Ct. App. 1 Cir. 2020).]

Illegal Sentence

State v. Magrini, 301 So. 3d 525 (La. App. 4 Cir. 2020) (declaring the offence a crime of violence because the defendant's BAC was .23).

La. R.S. 14:32.1(C) - C. Whoever commits the crime of vehicular homicide shall be sentenced as an offender convicted of a crime of violence if the offender's blood alcohol concentration, at the time of the offense, exceeds 0.20 percent by weight based on grams of alcohol per one hundred cubic centimeters of blood.

Illegal Sentence

–*State v. Vidrine*, 298 So.3d 781 (La. Ct. App. 4 Cir. 2020) (finding that the trial court committed error by failing to impose a mandatory fine when sentencing the defendant)