

# PRIOR CONVICTIONS IN IMPAIRED DRIVING PROSECUTIONS



*Targeting Hardcore Impaired Drivers*

*Updated By David Wallace*





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**PRIOR CONVICTIONS**  
**IN IMPAIRED DRIVING**  
**PROSECUTIONS**



*Updated By* DAVID WALLACE

The second edition of *Prior Convictions* was funded by The Foundation for Advancing Alcohol Responsibility (Responsibility.org). Responsibility.org is a national not-for-profit organization and a leader in the fight to eliminate drunk driving and underage drinking. Funded by leading distilled spirits companies including Bacardi U.S.A., Inc.; Beam Suntory; Brown-Forman; Constellation Brands, Inc.; DIAGEO; Edrington; Mast-Jägermeister US, Inc.; and Pernod Ricard USA, Responsibility.org has transformed countless lives through programs that bring individuals, families, and communities together to guide a lifetime of conversation around alcohol responsibility and by offering proven strategies to stop impaired driving.

The original version of this document was produced thanks to a charitable contribution from the Anheuser-Busch Foundation in St. Louis, Missouri. Its support in assisting local prosecutors' fight against impaired driving is greatly acknowledged.

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## INTRODUCTION

ANYWHERE IN THIS COUNTRY, a person can find news stories of repeat DWI (Driving While Impaired)<sup>1</sup> offenders injuring or killing innocent individuals.<sup>2</sup> Repeat DWI offenders are some of the most dangerous drivers on our roads<sup>3</sup> thereby putting everyone at risk of injury or death.

According to the Federal Bureau of Investigation, 1,017,808 drivers were arrested in 2016 for impaired driving.<sup>4</sup> A significant percentage of these arrests involved repeat impaired drivers: people who decided to drink too much, or to use drugs, and then drive, *after already having a conviction for the same offense*. The National Highway Traffic Safety Administration (NHTSA) estimates that of all impaired driving arrests, 25% are comprised of offenders who have at least one prior conviction for an impaired driving offense,<sup>5</sup> and equates to more than 250,000 repeat offenders. Prosecutors must know which offenders have prior impaired driving convictions so there is a suitable response.

With accurate information about prior convictions, a prosecutor can bring appropriate charges and the court can impose appropriate sanctions. Having a prior impaired driving conviction when arrested on a new impaired driving offense may result in:

- A felony charge as opposed to a misdemeanor charge;
- Increased bond while the case is pending;
- Increased monitoring and testing by pretrial services while on bond;

- Increased monitoring and testing by probation after sentencing;
- Increased jail or prison time at sentencing; or,
- Placement into a DWI Court.<sup>6</sup>

Sometimes offenders are not recognized as repeat impaired drivers in the court system. A prosecutor<sup>7</sup> is only able to bring the proper charge(s) and hold an offender accountable when he<sup>8</sup> knows about the existence of any prior impaired driving conviction(s). That requires, at a minimum, an accurate driving record, and it possibly requires a prosecutor to search for those prior convictions.

In a perfect world, a prosecutor would be able to type in the defendant's name and date of birth and access a national database with all the person's prior impaired driving convictions as well as any other driving violations. However, this is not a perfect world. At times a prosecutor must search several locations and databases to determine if there are prior impaired driving convictions, including local jurisdictions, his own state driving records, and with the amount of traveling individuals now do, other states' records as well. Yet even if it is determined that a prior conviction exists, there may be numerous legal issues that bar it from being used in the current case. That can require additional information about the prior charge.

This publication is written for local prosecutors with suggestions on how to locate prior impaired driving convictions as well as some of their uses and

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concerns that may arise in court. The focus is on the following topics:

- Uncovering the Prior Impaired Driving Conviction;
- Eligibility of the Prior Conviction: Look Back Periods;

- Obtaining Records of the Prior Conviction;
- Using the Prior Conviction in the Courtroom; and
- Defenses: Attacking the Prior Conviction.

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## UNCOVERING THE PRIOR IMPAIRED DRIVING CONVICTION

“**ARE THERE ANY PRIOR** impaired driving convictions?” is the most significant question a prosecutor asks when charging an impaired driver. Repeat impaired drivers are some of the most dangerous drivers on the road as they are overrepresented with the risk of a fatal crash increasing when a person has multiple impaired driving convictions.<sup>9</sup> However, at times it can be a challenge to locate prior convictions because many different agencies maintain impaired driving arrest and/or conviction records and some agencies may not even report the arrest, charge or conviction to a central record depository.<sup>10</sup>

The problem is compounded because states have varying “look back” periods.<sup>11</sup> In some states a prosecutor cannot use a prior conviction that is more than five years old while other states permit the use of a conviction that is up to ten years old and, in a few states, any prior impaired driving convictions may be used during a person’s lifetime. A state with a five-year look back period, for example, may drop any prior convictions off its records after five years have

passed, while a neighboring state may have a lifetime look back period allowing the same prior offense to be used in the other state. First, however, it must be located.

For this reason, a prosecutor must understand where and how to locate prior convictions along with some of the limitations he may encounter with particular sources.

### **Possible Sources for Past Impaired Driving Convictions**

What follows is a non-exhaustive list of potential sources for locating prior impaired driving convictions. Each one has its benefits and shortcomings. A thorough search must be completed to ensure a prosecutor has the most current and up-to-date information when charging an impaired driver.

**1. Prosecutor’s Office.** One of the easiest ways to determine if a prior impaired driving offense or conviction exists is the prosecutor’s own internal records.



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With the expansion of electronic records, it can be a quick search to examine office records for any prior offenses. While the original paper files may have been destroyed over time pursuant to an internal office policy, the electronic files could still exist. A prosecutor should examine the current warrant request and determine if the offender lives in the prosecutor's jurisdiction or in a neighboring one. If the suspect lives in a neighboring jurisdiction, contact that prosecutor's office and ask for a search to be done there as well. Even if the suspect lives in the prosecutor's jurisdiction, is his office near other neighboring prosecutors' offices? Today, it is not uncommon for a person to travel out of the local area for any number of reasons.

**2. Law Enforcement Agencies.** Law enforcement agencies have access to records on a variety of past criminal charges and convictions. If the law enforcement agency is not providing a suspect's past criminal history through the Law Enforcement Information Network (LEIN) or the National Crime Information Center (NCIC) and the suspect's driving history from the state's Department of Motor Vehicles (DMV), the prosecutor should request those records.

The LEIN information may include evidence of a prior arrest but not a conviction. Even though such an entry may appear incomplete, that information can be useful by alerting a prosecutor to follow up with the appropriate agency. Also, the offender's driving record may list prior impaired driving information due to a state's licensing requirements for license sanctions when a driver has more than one impaired driving offense on his driving record.

It is also important for the prosecutor to ask the arresting law enforcement officer if he is familiar with the offender. Law enforcement officers in smaller ju-

risdictions may have had several contacts with the same person providing a wealth of background information about the offender.

**3. Local Court Records.** It is possible that prior impaired driving convictions are not abstracted to the state DMV. Thus, an examination of the local court's records to determine the existence of any prior convictions is an important step. Furthermore, a prosecutor should remember that many courts are responsible for multiple jurisdictions, whether a county, city, parish, or township, and the prosecuting attorney may not be the only prosecuting agency in that jurisdiction. It is conceivable that a city attorney and a prosecutor have both prosecuted the same person for impaired driving under the same court jurisdiction. Both convictions would not be displayed in the individual prosecutor's records since they were cases handled by different offices, however, they would both be found in the court records for that jurisdiction. A search should also be done with any nearby jurisdictions. Just as it is important to contact nearby prosecutor offices, nearby courts should also be contacted to determine if they have any records for a prior conviction.

**4. DMV Records.** As of 2016, 42 states have Administrative License Suspensions/Revocations (ALS/ALR) that require a state's DMV to act based on an officer's arrest<sup>12</sup> when a person fails or refuses a breath test. The DMV's action will typically be displayed on the person's driving record, providing another valuable source of information. When looking at the driving record, remember that older DWI offenses may have been deleted due to time limitations. But it is also true that a state's DMV record may have out-of-state arrests and/or convictions because of the *Driver*

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*License Compact*<sup>13</sup> that requires states exchange information on non-resident traffic violations with the person's home state.<sup>14</sup>

**5. Probation and Corrections Offices.** Many states require probation officers to conduct background checks at time of sentencing and provide a report on the findings, especially if the person was sentenced on a felony charge. These reports—pre-sentence investigation reports—can have a tremendous amount of information about the defendant's background including the criminal record. If a prior conviction is

located, it can be extremely beneficial to see if there is a pre-sentence investigation for that conviction. The probation officer may have found other prior impaired driving convictions not listed within the documentation mentioned above. Just as prosecutors share information with each other, so too do probation officers.

**Newspaper / On-line Archives:** With the number of search engines available, and the on-line services to locate criminal histories, it is also possible to quickly check on-line for any prior convictions for a person.



## ELIGIBILITY OF THE PRIOR CONVICTION: LOOK BACK PERIODS

**ONCE IT IS DETERMINED** that a prior conviction exists, the next question is, “Can it be used to enhance the current charge?” The answer depends on the law for each state. Every state has a “look back” period that defines when a prior conviction can be used to enhance a charge. In some cases, the length of time one can go back depends on the number of convictions. The length of time, however, varies from state to state as do the legal requirements for when a prior can be used. For example, at the time of this writing, Maryland and Arkansas have a five-year limitation whereas Oregon and Kansas have ten-year limitations; Nebraska and Florida have a lifetime look back period so any prior impaired driving conviction could be used to enhance a new offense. For some states, such as Michigan and Montana, the look

back period is shorter for a second offense, but it is lifetime for a third offense. These variations can impact the ability of a prosecutor to locate and use a prior conviction. A prior conviction from Florida from ten years ago is of no use in Maryland with a five-year limitation. Knowing the look back period for a state is vital to determining whether it can be used to enhance the current charge.<sup>15</sup>

For information on the look back period for each state, contact the National Traffic Law Center (NTLC) at NDAA.<sup>16</sup>

### Using the Out-of-State Conviction

Article IV, Section 1 of the United States Constitution provides that: “Full faith and credit shall be given in each state to the public acts, records and ju-

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dicial proceedings of every other state.” An impaired driving conviction from one state, therefore, must be recognized in another state. Like any in-state conviction, the four corners of the judgment from an out-of-state conviction should reflect that all the defendant’s due process rights as enumerated were provided. (For a discussion on collateral attacks, see Section V: *Defenses: Attacking the Prior Conviction.*)

Most states require the out-of-state statute have “substantial similarity and substantial conformity” with the in-state law before it may be used. This does not require the out-of-state law be identical but, rather, that the law must have common characteristics and be largely alike in substance to the in-state law. The query is: Does the out-of-state law prohibit certain conduct that is not prohibited by the in-state law?<sup>18</sup>

For example, is being parked along the road with the keys in the ignition and the car running enough for “operation” in both states? Or does the in-state law require actual movement for operation? In past years, many states had different BAC levels (.10 vs. .08). All states are set at .08 BAC except for Utah. In 2018, Utah’s BAC level was lowered from .08 BAC to .05 BAC. This may affect the substantial conformity requirement in other states that wish to use a Utah conviction as a prior conviction if it occurred after the .05 BAC went into effect.

Prior convictions are used to enhance a current charge, increasing the potential consequences of a new conviction. Because of that, defense attorneys may try to find any differences in the foreign state’s law to exclude it from consideration. A prosecutor must know his own state’s impaired driving laws and understand the similarities and differences between the two states to support the use of the out-of-state conviction. The bottom line is that any new charge

that uses an out-of-state impaired driving conviction to enhance the new charge will require a case-by-case and state-by-state analysis to determine if it may be used.

To obtain the latest information of a state’s law, contact the NTLC or the appropriate Traffic Safety Resource Prosecutor.<sup>18</sup>

### Practice Tip

One way to initially determine if an out-of-state law is in substantial compliance with the in-state law is to contact the in-state’s DMV. Almost all states are part of the Driver License Compact that requires states to exchange information of non-resident traffic violations. But in doing so, each state’s DMV would only use impaired driving convictions that are in substantial compliance with the resident’s state.



## OBTAINING THE PRIOR RECORDS

**LOCATING THE PRIOR CONVICTION** is only the first step; the next step is obtaining the proper documentation or record. The requirements for each state vary with the state's laws. In some states, a prior impaired driving conviction is not used to enhance a new conviction until the time of sentencing; in other states it is an element of the new charged offense for a trier of fact to decide in a trial.

■ **Abstracts:** Some states recognize that a driver license abstract may be used as evidence of a prior conviction. For example, Michigan law provides that a “certified computer-generated” driving record from Michigan’s DMV central driving records is admissible in court proceedings. To be certified, it must be signed by the authorized person who obtained the record and declare that the record has not been altered in any fashion.<sup>20</sup> An abstract may therefore be appropriately used in Michigan as evidence of the prior impaired driving conviction when used as an enhancement at sentencing. Other jurisdictions, however, may still require additional documentation or records.

■ **Certified Record of Conviction:** When the prior is an element of the charge, more than an abstract will be required. It is critical to know what procedures are required for proving the prior conviction. Some states require a certified record of conviction from the court where the prior conviction occurred. Other states require certified records from the state’s DMV. When the conviction is obtained from an-

other state, does the prosecutor’s court require a “triple certification?”<sup>20</sup> If so, are the appropriate actions being taken to ensure proper documentation?

For certified court records, it will be necessary for the prosecutor to contact the out-of-jurisdiction court directly. Fortunately, in a modern world, most courts have forms that can be used to provide the required information regarding the prior conviction. The form will typically provide the defendant’s:

- Name;
- Home address at that time of the arrest or conviction;
- Date of birth;
- Driver’s license number;
- Charge convicted; and
- Date of conviction.

The question then becomes: Will that information be enough to connect the defendant in the current case to the person convicted in the prior case?<sup>21</sup>

When a prosecutor contacts the court of the prior conviction, he should also take the time to determine what other information is available in the court’s file. Are there fingerprint records? Are there any images of the defendant, such as a mug shot? Is there other personal information of the defendant contained in the records? Do the court records indicate who arrested the defendant? That person may be useful as a witness in the current case. What about the defen-

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dant's attorney in the prior case? Is that person available as a witness? Since the information sought is public, there is no issue as to attorney/client privilege. The more information obtained from the prior charge, the stronger the evidence for identification of the defendant to the current charge. There may be additional information in the prior file that may prove useful if the defendant decides to testify in the current case. Such information, for example, may include a defendant's reason for refusing to submit to chemical testing, if applicable, or the defendant's knowledge of Standard Field Sobriety Tests.

### **Driver License Compacts**

Two tools that support a prosecutor's effort to obtain prior convictions from other states are the *Driver License Compact* (DLC) and the *Nonresident Violator Compact* (NRVC). These interstate compacts provide for the exchange of driver's licensing information between the member states.

The DLC focuses on impaired driving and other serious traffic offenses. The goal of this compact is to provide uniformity among the member states when exchanging information on traffic convictions and driving records. This Compact is used by states to exchange information concerning license suspensions and traffic violations of non-residents and forward that information to the state where the

non-resident is licensed, otherwise known as the home state. The home state would treat the offense as if it had been committed at the offender's home, applying home state laws to the out-of-state offense. The action taken would include, but not be limited to, points assessed on a minor offense such as speeding and suspension of license on a major violation such as DWI/DUI. It is not supposed to include non-moving violations like parking tickets, tinted windows, loud exhaust, etc.

The NRVC standardizes methods to process non-residents receiving traffic citations and failing to appear or comply with the outstanding violation. When a person does not comply with the citation, such as failing to appear in court, that information is shared with the person's home state.

It is important to know that not every state is a member of these two compacts.<sup>22</sup>

### **An Additional Resource**

The *Commercial Driver's License Information System* CDLIS is a national database to ensure a commercial driver has only one license and one complete commercial driving record. All states and the District of Columbia participate in CDLIS.<sup>23</sup> The CDLIS may be another source of information for prior convictions since they have significant impact on a commercial driver's license.

## IV IN THE COURTROOM

### Bail/Bond on the Current Charge

The purpose of bail is twofold:

- Assuring the defendant will appear for court when required, and
- Protection of the community.

A repeat impaired driver is one of the most dangerous individuals on our roads.<sup>24</sup> With a prior impaired driving conviction, and a new, pending impaired driving charge, this individual has demonstrated that he is not going to follow the law, putting everyone at risk of serious injury or death. At arraignment, identifying the prior conviction as a risk factor can encourage the court to take appropriate steps to protect the community.

Increased measures to help protect public safety may include, but are not limited to:

- Increased bond for the defendant;
- Holding the defendant with no bond;
- Prohibiting the use of alcohol and/or state-legalized marijuana (or other drugs without a prescription) by the defendant as a condition of bond;
- Prohibiting the defendant from driving a vehicle without the installation of an ignition interlock device on the vehicle pending trial;
- Requiring the defendant to submit to breath tests at random times using a portable breath-testing device as a condition of bond;
- Prohibiting the defendant from driving, en-

forced by seizing the defendant's driving license, or by placing a club or tire wheel clamp on the vehicle;

- Prohibiting the defendant from transporting children 16 years and younger;
- Restricting the defendant's driver's license for driving only to and from school, work, medical appointments, the grocery store and court hearings during set hours;
- Requiring the defendant to wear an ankle bracelet that tests for alcohol consumption;
- Requiring the defendant to submit to random testing for alcohol and/or drugs through a court program, a private testing company, or by law enforcement officers;
- Alcohol/other drug treatment assessment with an order to follow any recommendations;
- Pre-trial supervision; and
- House arrest.

In some states, after arraignment, a defendant is required to provide a breath sample for testing twice

#### Practice Tip

If the court orders random testing for alcohol, be sure to request that the order includes testing for other drugs. At times a person who wishes to become intoxicated will switch substances if one substance, such as alcohol, is not an option.

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a day at a law enforcement agency's department to demonstrate that he is not drinking. The defendant must pay for the test (typically a few dollars for the breath tube), and, if the person fails the breath test, the defendant is immediately arrested and brought to court for further proceedings. Other courts may require a defendant to use a portable breath testing device and test several times a day or wear an ankle bracelet that tests for alcohol on a continuous basis. All these efforts are designed to separate a defendant from using alcohol while the case is pending, thus keeping the public safe.

### Practice Tip

The prior conviction is not usually the contested issue, it usually is: Did the defendant commit the current charge? It is possible that the defense attorney will stipulate to the prior conviction if his client is found guilty of the underlying charge. Take the time to inquire and be prepared to have the proper documents and/or stipulation filed with the court if an agreement is reached.

### Proving the Prior Conviction

Enhancing a current impaired driving charge with a prior conviction is usually done using one of two methods:

- 1) As an element of the charge during the trial, or during a bifurcated trial; or
- 2) As a sentence enhancement to increase the po-

tential penalty. This is done after the defendant has been found guilty of the underlying offense and occurs with the judge making the final decision.

Whether the prior conviction is proven via sentencing enhancement or as an element of the new charge depends on whether the new offense is a felony or a misdemeanor. If it is a felony charge, many states require that the prosecutor prove the prior conviction(s) during the trial, or during a bifurcated trial after the defendant is found guilty of the underlying charge. A bifurcated trial usually involves the same jury.

To prove the prior conviction, the prosecutor must prove:

- 1) There is a prior conviction; or
- 2) That the person on trial for the new impaired driving offense is the same person convicted for the prior offense.

When it is part of a trial, or during a bifurcated trial, the prosecutor must prove the prior conviction beyond a reasonable doubt. This takes preparation before the trial; just presenting the records will likely be insufficient. It will be necessary for the prosecutor to know what witnesses are needed to prove the prior conviction and to identify the defendant: Court officials, custodian of records, officer from the prior case, fingerprint expert, probation officer, etc. A prosecutor needs to determine what, or who, he needs to connect the person with the prior conviction to the defendant on trial.

### Admitting the Records

Using certified court records to prove the prior

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conviction is the easiest and most effective way to prove the conviction for any trial. Fortunately, by doing the preliminary work to obtain the records, admitting them into evidence should be routine.

Whether a witness is needed to lay the foundation for the records should depend on the format of the records possessed and the state evidence code. Court records that are not certified will likely require a witness from the court clerk's office to identify the records and declare that they are accurate copies of the original records.<sup>25</sup> Certified records may be admissible on their own, depending on the local statute.<sup>26</sup> Documents under a court seal, in addition to the certification, are admissible without needing to call a witness.<sup>27</sup>

**Remember:**

■ FRE 803(6) and 803(8) may be used to admit court records depending on the judge. But these two rules only get past the hearsay exception. The records will still need to be authenticated pursuant to FRE 901 or 902 or relevant state statutes.

■ Also, FRE 803(22) presents a possibility of getting certified copies of prior convictions into evidence. However, under the Federal statute, the prior conviction must be a felony. Again, a prosecutor needs to know the rules in the local jurisdiction as well.

■ Remember FRE 801(d)(2)(A) for using prior transcripts or other statements made by the defendant in a plea proceeding. Since delays often occur, request copies of transcripts as soon as possible.

## Identifying the Defendant

Once the records are in evidence, then it comes down to matching the person in the records and the person currently in the courtroom and proving the

two are the same individual. Depending on the age and location of the prior conviction, proving that the defendant is the same person who was convicted previously can be very challenging. The first step is to examine all the information from the old records and compare it to the information in the current case. Determine what is consistent and what is not. It would be expected that the names are consistent,<sup>28</sup> but what about the person's home address? Is there a date of birth on the prior record? If yes, that most likely would be consistent. But that is only the beginning of the search. Examine the prior conviction records and determine whether fingerprints were taken. What about booking photos? Who was the officer who made the arrest at that time? Did it involve the same law enforcement agency as the current case?

### Practice Tip

Remember to speak with the arresting officer in the current case. Find out if the defendant admitted to the officer to having a prior DWI by making statements supporting the conclusion that he has a prior conviction, such as "Not again," or "My breath test was higher last time." Those admissions would be another way to prove the prior conviction as well as identification.

Is it the same defense attorney? If the police report from the prior case is available, were there passengers present or other witnesses? If supervised probation was ordered with the prior conviction, who was the



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probation officer? All these individuals are potential witnesses in the current case to prove that the defendant here is the same person from the prior conviction. The bottom line is to let creativity take flight. What evidence exists from the previous case that connects the defendant to this case?

When comparing a current case to an out-of-state prior conviction, the issue of identification can become even more challenging. Getting the most information available from the out-of-state jurisdiction is a critical step in being successful in the current case. As mentioned, fingerprints and booking photos are potential sources, but what about the person's signature for bond or on the arrest card? Possibly an expert could testify that the signature from the prior conviction is consistent with the defendant's signature in the current case. Tie that together with the name, date of birth, height and hair, and it may be enough to obtain a conviction.

### **Sentencing**

In some states, the issue of a prior conviction is not a matter for the trier of fact, but a decision for the sentencing court as an enhanced sentence. In this type of situation, the level of proof is usually lower—

only a preponderance of the evidence is required instead of beyond a reasonable doubt. In a minority of states, the burden shifts to the defendant to prove he is not the same person.

Thus, because of the lower burden of proof, if the prosecutor has a certificate of conviction from the prior case with the same name and date of birth, it is likely the court will find that sufficient to prove the prior. However, more evidence is never a bad thing to ensure the court agrees that the person in the prior conviction is the same person currently before the court.

There are three basic ways to prove the defendant is the same person as before:

- Abstract of the prior conviction;
- Current copy of the defendant's driving record;<sup>29</sup> and
- Admission(s) by the defendant.

Presenting one or more of these three types of proof to the court will most likely result in a successful outcome to convict the person as a repeat offender.

# V

## COMMON DEFENSES: ATTACKING THE PRIOR CONVICTION

WITH SIGNIFICANT CONSEQUENCES occurring from an impaired driving conviction, it is likely an impaired driving offender will hire a defense attorney familiar with these kinds of cases. The defense attorney may challenge several factors in the case, including an attack on any prior impaired driving convictions used to enhance the current charge. That challenge will either be a direct attack or a collateral attack.

As a bottom line, when responding to either a direct or collateral attack, remember that all courts start with a common perspective: they want finality in a case. While this perspective will not override a constitutional violation, it does play a role when the challenge is, for example, three years after the conviction has been entered and the attack is a procedural one as opposed to a constitutional one.

### Direct Attacks

When an attorney goes back to the original court that handled the prior conviction and challenges it in that court, it is a direct attack. Typically, the attorney argues to the judge that the conviction was based on a violation of a court rule, statute, or constitutional right. If the judge agrees, the case may be dismissed, or the conviction set aside, and the case set for a new trial. Once that happens, the attorney will move that the judge strike the prior in the current case, thus reducing the possible consequences.

When responding to this type of challenge, it is important to know the local court rules—in both the jurisdiction of the prior as well as the current case.

What are the time limits (if any) for challenging the prior charge? Do the court rules require that an appeal be taken? What are the time limits for an appeal? Do the rules require that the prosecutor's office be given notice of the motion? What about the court rules in the local jurisdiction with the current charge—do they require notice that a motion was filed in the prior court?

### Practice Tip

Understand the state's requirements where the current charge has been brought. Know what court rules apply and the provisions regarding a motion to withdraw a plea, or to appeal a conviction.

Has the attorney filed a motion to withdraw a guilty plea? What are the requirements for that type of motion? After a sentence has been imposed, many courts require a finding of "miscarriage of justice" before a plea can be withdrawn. Did that happen in that case? What is the basis for the motion? Is there a claim of innocence? Why was there a delay in that declaration? There are multiple questions to consider.

It is not uncommon for the time limit for an appeal to have passed for the prior conviction. Does that then change the standard of review for the court? Does it shift the burden of proof to demonstrate a violation or the lack thereof? What do the court rules

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state?

If the prosecutor is present to respond to the motion or the appeal, he should remember to look at the motivation and, when appropriate, raise it as an issue with the court. As noted, courts prefer finality of a case.

## Collateral Attacks

A collateral attack happens when the defense attorney attacks the prior convictions in the current case. In this situation, the defense attorney attacks the prior conviction because it did not comply with the court rules, the statute, or the constitution, and is challenging the prior in the same court where the current charge is filed.

### **Right to Attorney**

A frequently raised issue is the right to an attorney: Did the defendant have an attorney in the prior case? In the case of *Burgett v. Texas*,<sup>30</sup> the U.S. Supreme Court noted that when a prior criminal conviction did not comply with *Gideon v. Wainwright*'s<sup>31</sup> requirement of the right to counsel, it was "inherently prejudicial"<sup>32</sup> and cannot be used in a later case.

For this issue, the first thing a prosecutor should do is to review the records from the prior conviction and determine whether an attorney was appointed or retained. If there was no attorney, then the prosecutor should determine if the defendant waived his or her right to an attorney? *Burgett v. Texas* specifically stated: "Presuming waiver of counsel from a silent record is impermissible."<sup>33</sup> If the court records are silent, the prosecutor should determine if there is a transcript of the arraignment, plea or sentencing. What information do the transcripts provide about an attorney on the case or a waiver by the defendant?

The inquiry, however, should not stop there. It is important to understand that *Gideon v. Wainwright* and *Burgett v. Texas*, specifically addressed felony convictions.

In the case of *Scott v. Illinois*,<sup>34</sup> the U.S. Supreme Court noted that for a misdemeanor conviction where the sentence imposed did not include incarceration, the defendant did not have a constitutional right to an attorney.<sup>35</sup> In *Nichols v. United States*,<sup>36</sup> the court took it one more step and stated: "Accordingly we hold, consistent with the Sixth and Fourteenth Amendments of the Constitution, that an uncounseled misdemeanor conviction, valid under *Scott* because no prison term was imposed, is also valid when used to enhance punishment at a subsequent conviction."<sup>37</sup>

### Practice Tip

If the record indicates a waiver of the right to counsel, then the burden is on the defendant to prove the waiver was not valid or that it was not a knowing waiver. *Moore v. Michigan* 355 U.S. 155 (1957), *Camley v. Cochran*, 369 U.S. 506 (1962), and *Tovar v. Illinois*, 541 U.S. 77 (2004).

It is, therefore, important for the prosecutor to determine if any incarceration was ordered as part of the sentence for the prior conviction. Overriding all these cases is this question: "What is required by the state where the current case is located?" The U.S. Supreme Court has stated that for misdemeanors, if no incarceration is ordered, then there is no Federal right to an attorney. However, many states have im-

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plemented a higher standard, as is the states' right.<sup>38</sup> Know what is required.

### **Boykin Rights**

A second topic of concern is sometimes called the defendant's Boykin rights. In *Boykin v Alabama*,<sup>39</sup> the U.S. Supreme Court required that for a plea to be valid, the record must show a knowing waiver of the defendant's right against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers.

What must be remembered is that for a collateral attack, the U.S. Supreme Court does not require the *Boykin* rights appear on the prior conviction's record. However, a state in which the charge is located may require it. Some states limit a collateral attack to the right to counsel, while others include the defendant's *Boykin* rights being waived on the record. This demonstrates a prosecutor's obligation to understand what is required in a state and to look to the records for an answer.

### **A Knowing Waiver**

If there is a waiver of the defendant's right to counsel, that waiver must be a knowing waiver. Any waiver must be "knowing, voluntary and intelligent to be a

valid waiver." The meaning of that phrase was determined in the case of *Iowa v Tovar*.<sup>40</sup> In that case, the U.S. Supreme Court was asked if a prior impaired driving conviction could be used to enhance the current charge. There was no question that in the prior conviction, the trial court advised the defendant of his right to an attorney. The issue raised, however, was if it was a knowing waiver. The defendant argued that in the prior plea, the trial court did not elaborate on the benefits of having counsel and the dangers of self-representation. Thus, he argued that the waiver was not a knowing one.

The U.S. Supreme Court disagreed finding that:

The constitutional requirement is satisfied when the trial court informs the accused of the nature of the charges against him, of his right to be counseled regarding his plea, and of the range of allowable punishments attendant upon the entry of a guilty plea.<sup>41</sup>

Again, the court noted that a state under its own constitution or rules, can have greater requirements, but the 6th Amendment to the U.S. Constitution does not require any detailed elaboration for the knowing waiver.

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<sup>1</sup> DWI is used throughout this article to maintain consistency. It should be noted that many states use other terms such as OUI (operating under the influence), DUI (driving under the influence) and OWI (operating while intoxicated). For purposes of this article, these terms are considered to have the same meaning. A state-by-state list of felony DWI statutes may be obtained from the National Traffic Law Center (NTLC) at the National District Attorneys Association (NDAA) at [www.ndaa.org/programs/ntlc/](http://www.ndaa.org/programs/ntlc/) or from the Foundation for Advancing Alcohol Responsibility (Responsibility.org) at: [www.responsibility.org/get-the-facts/state-map/](http://www.responsibility.org/get-the-facts/state-map/).

<sup>2</sup> See for example Sfgate.com, San Francisco, CA. Published August 12, 2018. Obtained from: <https://www.sfgate.com/crime/article/Repeat-DUI-offender-faces-murder-charge-after-13150518.php>;

13WMAZ, Macon, Georgia. Published April 22, 2018. Obtained from: <https://www.13wmaz.com/article/news/repeat-dui-offender-hits-kills-young-couple-on-motorcycle-according-to-police/93-5444-60707>; Fox26, Fresno, CA. Aired August 27, 2018. Obtained from: <https://kmph.com/news/local/repeat-dui-offender-crashes-into-couple-forces-early-baby-delivery>; Dateline NBC, Aired Sunday, July 9, 2018. Obtained from: [http://www.nbcnews.com/id/13320570/ns/dateline\\_nbc/t/worst-kind-drunk-drivers/#.XA1FOC2ZPIE](http://www.nbcnews.com/id/13320570/ns/dateline_nbc/t/worst-kind-drunk-drivers/#.XA1FOC2ZPIE).

<sup>3</sup> Repeat impaired drivers are "overrepresented in fatal crashes and have a greater risk of involvement in a fatal crash." *Traffic Safety Facts—Laws: Repeat Intoxicated Driver Laws*. National Highway Traffic Safety Administration, Washington, DC; January 2008. DOT HS 810 879. Drivers with a BAC of 0.08% or higher involved in fatal crashes were

4.5 times more likely to have a prior conviction for DWI than were drivers with no alcohol in their system (9% and 2%, respectively). *Traffic Safety Facts 2016 Data: Alcohol-Impaired Driving*. National Highway Traffic Safety Administration, Washington, DC; October 2017. DOT HS 812 450. Available at: <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812450> Accessed January 28, 2019.

<sup>4</sup> Federal Bureau of Investigation. Uniform crime report data for 2016: Table 18. Washington, DC. Retrieved <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/table-18>

<sup>5</sup> *DWI Recidivism in the United States: An Examination of State-Level Driver Data and the Effect of Look-Back Periods on Recidivism Prevalence*. National Highway Traffic Safety Administration, Washington, DC; March 2014. DOT HS 811 991. NOTE: This is a national estimate. An individual state's recidivism rate may be different depending on several factors, including the "look-back" period allowed for prior convictions. The longer the look-back period, the greater likelihood of higher DWI recidivism rates occurring. For a greater discussion on states and their look back periods, see Section II, *Eligibility of the Prior Conviction: Look Back Periods*.

<sup>6</sup> DWI Court: A specialty court that focuses on high-risk, high-need DWI offenders with increased supervision and intensive treatment.

<sup>7</sup> The term prosecutor is used to include District Attorneys, City Attorneys, Attorneys General, and Prosecutors. While there may be different titles for the position, the work is the same—to enforce the laws of the jurisdiction and protect the community at large.

<sup>8</sup> The use of the term "he," "him," or "his," is used throughout this document for economy and includes all genders.

<sup>9</sup> *DWI Recidivism in the United States: An Examination of State-Level Driver Data and the Effect of Look-Back Periods on Recidivism Prevalence*. National Highway Traffic Safety Administration, Washington, DC; March 2014. DOT HS 811 991.

<sup>10</sup> Remember that there are multiple agencies involved in the process: law enforcement, prosecutors, courts, probation/supervision services, and Department of Motor Vehicles. Each agency will have its own reporting requirements.

<sup>11</sup> For a greater discussion on states and their look back periods, see Section II, *Eligibility of the Prior Conviction: Look Back Periods*.

<sup>12</sup> Foundation for Advancing Alcohol Responsibility ([Responsibility.org](http://www.responsibility.org)), obtained from: <https://www.responsibility.org/get-the-facts/state-map/issue/administrative-license-suspensionrevocation/>

<sup>13</sup> The Driver License Compact is an interstate compact to exchange information concerning license suspensions and traffic violations on non-residents that are then forwarded to the state of residence. To learn if your state is part of the Compact, go to: <http://apps.csg.org/ncic/>. For a greater discussion on compacts, go to Section III, *Obtaining the Prior Records*. See also Nonresident Violator Compact at: <http://apps.csg.org/ncic/Compact.aspx?id=142>

<sup>14</sup> For DMV contact information in other states, see Appendix Three.

<sup>15</sup> Remember that look back periods may also impact whether a state maintains records of a prior conviction. States with a shorter look back period may drop prior convictions from their records once the time period has passed.

<sup>16</sup> The Foundation for Advancing Alcohol Responsibility ([Responsibility.org](http://www.responsibility.org)) also has a chart displaying the look back periods for each state. It can be found at: <https://www.responsibility.org/get-the-facts/state-map/issue/dui-look-back-periods/>

<sup>17</sup> It is likely that the in-state DMV has developed a chart indicating which states are in substantial compliance. While not a final determination for a court of law, it may provide support for any legal argument. Also, be sure to contact the National Traffic Law Center or a state's Traffic Safety Resource Prosecutor for more information on any foreign laws and substantial compliance.

<sup>18</sup> A state-by-state list of felony impaired driving statutes may also be found of [Responsibility.org's](http://www.responsibility.org) website at: [https://www.responsibility.org/get-](https://www.responsibility.org/get-the-facts/state-map/)

[the-facts/state-map/](https://www.responsibility.org/get-the-facts/state-map/). To contact the National Traffic Law Center, go to <https://ndaa.org/programs/ntlc/>

<sup>19</sup> See MCL 257.204a.

<sup>20</sup> This is typically done with out-of-state records where an individual who, within his official capacity, issues certified documents that must also certify his official position. A magistrate or judge certifies a document; the judge of the court then certifies the clerk of the court. A clerk then certifies the official position of the judge who certified the clerk. See 28 U.S.C. 1738. It is frequently required on interstate extraditions.

<sup>21</sup> See Section V, *In the Courtroom* for a greater discussion on this issue.

<sup>22</sup> For more information on these two compacts, visit the American Association of Motor Vehicle Administrators' (AAMVA) website at [www.aamva.org](http://www.aamva.org) or write to them at 4301 Wilson Blvd., Suite 400, Arlington, VA 22203 (Phone (703) 522-4200). To determine if your state is a member of either compact, you can also go to the National Center for Interstate Compacts at: <http://apps.csg.org/ncic/>

<sup>23</sup> For more information on the CDLIS go to [www.aamva.org](http://www.aamva.org)

<sup>24</sup> Repeat impaired drivers are "overrepresented in fatal crashes and have a greater risk of involvement in a fatal crash." *Traffic Safety Facts—Laws: Repeat Intoxicated Driver Laws*. National Highway Traffic Safety Administration, Washington, DC; January 2008. DOT HS 810 879.

<sup>25</sup> FRE 803(6)

<sup>26</sup> FRE 803(6), 902(11) Note: When using FRE 902(11) or its state equivalent, remember to show the potential exhibit to defense counsel beforehand as required by the court rule.

<sup>27</sup> FRE 902(1)

<sup>28</sup> Although keep in mind that a woman may have changed her name due to getting married or through a divorce.

<sup>29</sup> Remember that 1) out-of-state convictions will usually also be displayed on the driving record because of the two interstate compacts, and 2) that if the conviction is beyond the foreign state's look back period, it may have been dropped from the driving record.

<sup>30</sup> *Burgett v. Texas*, 389 US 109 (1967).

<sup>31</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963), held that it was unconstitutional to try a person for a felony in a state court unless he or she had an attorney or a valid waiver existed.

<sup>32</sup> *Burgett v. Texas*, 389 US 109, 115 (1967).

<sup>33</sup> *Id.*, at pp. 114-115.

<sup>34</sup> *Scott v. Illinois*, 440 U.S. 367 (1979).

<sup>35</sup> Even if the prior was a misdemeanor, the U.S. Supreme Court in *Scott v. Illinois, supra*, held that if imprisonment was ordered, the defendant has the absolute right to counsel, or the person must have provided a waiver of that right.

<sup>36</sup> *Nichols v. United States*, 511 U.S. 738 (1994).

<sup>37</sup> *Id.*, at 748-749.

<sup>38</sup> "Of course States may decide, based on their own constitutions or public policy, that counsel should be available for all indigent defendants charged with misdemeanors. Indeed, many if not a majority of States guarantee the right to counsel whenever imprisonment is authorized by statute, rather than actually imposed." *Nicols, supra* at p 748-749.

<sup>39</sup> *Boykin v. Alabama*, 395 U.S. 238 (1969).

<sup>40</sup> *Iowa v. Tovar*, 541 U.S. 77 (2004).

<sup>41</sup> *Id.*, at 81.

# Appendix 1

## GLOSSARY OF TERMS

### **Administrative License Suspension (ALS) / Administrative License Revocation (ALR)**

State laws that allow a law enforcement officer to confiscate a driver's license if the driver fails or refuses a breath test prior to a conviction. It is a civil administrative action unrelated to a criminal court action, carried out on behalf of the Department of Motor Vehicles. The driver is usually given a notice of suspension that acts as a temporary driving permit for a short time to allow the driver to appeal the suspension. If there is no appeal or the suspension is upheld, then the license is suspended.

### **American Association of Motor Vehicle Administrators (AAMVA)**

AAMVA is a tax-exempt, nonprofit organization developing model programs in motor vehicle administration, law enforcement and highway safety. The association also serves as an information clearinghouse in these areas, and acts as the international spokesman for these interests. Go to: [www.aamva.org](http://www.aamva.org) for more information.

### **Commercial Driver's License Information System (CDLIS)**

A national database to ensure a commercial driver has only one license and one complete driving record. All states and the District of Columbia participate with CDLIS. For more information, go to: [www.aamva.org](http://www.aamva.org).

### **Department of Motor Vehicles**

A state governmental agency that is responsible for vehicle registrations and driver licenses. The agency has different names in different states.

### **Driver License Compact (DLC)**

The goal of this compact is to provide uniformity among the member state jurisdictions when exchanging information on traffic convictions and driving records focusing on impaired driving and other serious traffic offenses. The concept is that when a person is in another state and commits a traffic violation, the resident's state would treat the offense as if it had occurred within the person's home state, including imposing points on a driving record or suspending the person's license. This compact does not include non-moving violations such as parking tickets. Go to: [www.aamva.org](http://www.aamva.org) for more information.

### **Law Enforcement Information Network (LEIN)**

A statewide computerized information system to assist criminal justice agencies by providing and maintaining criminal justice documentation, including records for individual arrests and convictions occurring in the state.

### **"Look back" periods**

How far back in time prosecutors can go to use a prior conviction to enhance a current charge. The length of time varies from state to state as well as some of the legal requirements for when a prior can be used. See Section II: Eligibility of the Prior Conviction: Look Back Periods.

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### **National Center for Interstate Compacts**

Its mission is to serve as an information clearinghouse, a provider of training and technical assistance, and a primary facilitator in assisting states in the review, revision, and creation of new interstate compacts as solutions to multi-state problems or alternatives to federal preemption and the National Center for Interstate Compacts Database serves as a vital component toward achieving these objectives. Go to: [apps.csg.org/ncic/](http://apps.csg.org/ncic/) for more information.

### **National Center for State Courts (NCSC)**

The NCSC is a nonprofit court improvement organization originally designed to be a clearinghouse for research and data for state courts. Now providing research, information, services, education and consulting that supports and improves the administration of justice, and fair and impartial decision-making. Go to: [www.ncsc.org](http://www.ncsc.org) for more information.

### **National Crime Information Center (NCIC)**

Created in the 1960s, the NCIC is a nationwide electronic clearinghouse of crime data that law enforcement officers can access, providing information on fugitives, missing persons, and stolen property. The Interstate Identification Index contains automated criminal history record information that is accessible through the same network as NCIC. Go to: [www.fbi.gov/services/cjis/ncic](http://www.fbi.gov/services/cjis/ncic) for more information.

### **National Highway Traffic Safety Administration (NHTSA)**

Its mission: Save lives, prevent injuries and reduce economic costs due to road traffic crashes, through education, research, safety standards and enforcement activity. Go to: [www.nhtsa.gov](http://www.nhtsa.gov) for more information.

### **National Traffic Law Center (NTLC)**

A program at the National District Attorneys Association designed to benefit prosecutors, judges, law enforcement officers and others in the justice system. The mission of the NTLC is to improve the quality of justice in traffic safety adjudications. Go to: [www.ndaa.org/programs/ntlc/](http://www.ndaa.org/programs/ntlc/) for more information.

### **Nonresident Violator Compact (NRVC)**

Standardizes methods to process non-residents receiving traffic citations and failing to appear or comply with the outstanding violation. When a person does not comply with the citation, such as failing to appear in court, that information is shared with the person's home state. It is designed to ensure that a nonresident does not escape from the consequences of the violation. Go to: [www.aamva.org](http://www.aamva.org) for more information.

### **Traffic Safety Resource Prosecutor**

An individual or individuals in a state who work with the state's prosecutors and law enforcement officers to improve their ability to enforce and prosecute traffic violations, with a focus on impaired driving and vehicular homicides.

## Appendix 2

## STATE COURT CONTACTS

### **ALABAMA**

Administrative Director of the Courts  
300 Dexter Avenue  
Montgomery, Alabama 36104-3741  
TEL: (334) 954-5000

### **ALASKA**

Administrative Director of the Courts  
Alaska Court System  
303 K Street  
Anchorage, Alaska 99501  
TEL: (907) 264-0547

### **ARIZONA**

Administrative Director  
Arizona Supreme Court  
1501 W. Washington St.,  
Suite 411  
Phoenix, Arizona 85007  
TEL: (602) 452-3300

### **ARKANSAS**

Director, Administrative Office of the Courts  
Supreme Court of Arkansas  
625 Marshall Street  
1100 Justice Building  
Little Rock, Arkansas 72201  
TEL: (501) 682-9400

### **CALIFORNIA**

Administrative Director of the California Courts  
455 Golden Gate Avenue  
San Francisco, California 94102  
TEL: (415) 865-4235

### **COLORADO**

State Court Administrator  
Colorado Judicial Department  
1301 Pennsylvania, Suite 300  
Denver, Colorado 80203-5012  
TEL: (720) 625-5000

### **CONNECTICUT**

Chief Court Administrator  
Supreme Court of Connecticut  
231 Capitol Avenue  
Hartford, Connecticut 06106  
TEL: (860) 757-2200

### **DELAWARE**

State Court Administrator Administrative Office  
of the Courts  
820 North French Street  
Wilmington, Delaware 19801  
TEL: (302) 255-0088

### **DISTRICT OF COLUMBIA**

Executive Officer  
Courts of the District of Columbia  
500 Indiana Avenue, N.W.  
Room 1500  
Washington, D.C. 20001  
TEL: (202) 879-1010

### **FLORIDA**

State Courts Administrator  
Supreme Court Building  
500 South Duval Street  
Tallahassee, Florida 32399-1900  
TEL: (850) 922-5081



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**GEORGIA**

Administrative Office of the Georgia Courts  
244 Washington Street, S.W. Suite 300  
Atlanta, Georgia 30334-5900  
TEL: (404) 656-5171

**HAWAII**

Administrative Director of the Courts  
The Judiciary, State of Hawaii  
417 South King Street, Room 206  
Honolulu, Hawaii 96813  
TEL: (808) 539-4900

**IDAHO**

Administrative Director of the Courts  
Supreme Court Building  
451 West State Street  
P.O. Box 83720  
Boise, Idaho 83720-0101  
TEL: (208) 334-2210

**ILLINOIS**

Administrative Office of the Illinois Courts  
3101 Old Jacksonville Road  
Springfield, Illinois 62704  
TEL: (217) 782-7770

**INDIANA**

Division of State Court Administration  
Indiana Supreme Court  
115 W. Washington, Suite 1080  
Indianapolis, Indiana 46204-3417  
TEL: (317) 232-2542

**IOWA**

State Court Administrator  
Judicial Branch Building  
1111 East Court Avenue  
Des Moines, Iowa 50319  
TEL: (515) 348-4880

**KANSAS**

Judicial Administrator  
Kansas Judicial Center  
301 West 10th Street  
Topeka, Kansas 66612  
TEL: (785) 296-2256

**KENTUCKY**

Administrative Office of the Courts  
100 Millcreek Park  
Frankfort, Kentucky 40601-9230  
TEL: (502) 573-2350

**LOUISIANA**

Judicial Administrator  
Supreme Court of Louisiana  
400 Royal Street, Suite 1190  
New Orleans, Louisiana 70130  
TEL: (504) 310-2550

**MAINE**

State Court Administrator  
Administrative Office of the Courts  
62 Elm Street  
Portland, Maine 04112-4820  
TEL: (207) 822-4200

**MARYLAND**

State Court Administrator  
Administrative Office of the Courts  
Maryland Judicial Center  
580 Taylor Avenue  
Annapolis, Maryland 21401  
TEL: (410) 260-1295

**MASSACHUSETTS**

Administrative Office of the Trial Courts  
1 Pemberton Square  
Boston, Massachusetts 02108  
TEL: (617) 742-8575

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**MICHIGAN**

State Court Administrator  
Office of the State Court Administrator  
309 N. Washington Square  
P.O. Box 30048  
Lansing, Michigan 48909  
TEL: (517) 373-9831

**MINNESOTA**

State Court Administrator  
Supreme Court of Minnesota  
25 Constitution Avenue  
St. Paul, Minnesota 55155  
TEL: (651) 296-2474

**MISSISSIPPI**

State Court Administrator  
450 High Street, 4th Floor Gartin Building  
P.O. Box 117  
Jackson, Mississippi 39205  
TEL: (601) 576-4636

**MISSOURI**

State Court Administrator  
Supreme Court of Missouri  
2112 Industrial Drive  
Jefferson City, Missouri 65110  
TEL: (573) 751-4377

**MONTANA**

State Court Administrator  
Supreme Court of Montana  
Justice Building, Room 315  
215 North Sanders  
P.O. Box 203002  
Helena, Montana 59620  
TEL: (406) 444-2621

**NEBRASKA**

State Court Administrator  
Administrative Office of the Courts/Probation State  
Capitol Building,  
Room 1220  
P.O. Box 98910  
Lincoln, Nebraska 68509-8910  
TEL: (402) 471-3730

**NEVADA**

State Court Administrator  
Administrative Office of the Courts  
201 S. Carson Street, Ste. 250  
Carson City, Nevada 89710-4702  
TEL: (775) 684-1700

**NEW HAMPSHIRE**

Administrative Office of the Courts  
1 Granite Place, Suite N400  
Concord, New Hampshire 03301  
TEL: (603) 271-2521

**NEW JERSEY**

Administrative Director of the Courts  
P.O. Box 037, RJH Justice Complex  
25 Market Street  
Trenton, New Jersey 08625  
TEL: (609) 815-2900

**NEW MEXICO**

Administrative Office of the Courts  
325 Don Gaspar, Room 25  
Santa Fe, New Mexico 87501- 2178  
TEL: (505) 827-4800

**NEW YORK**

Office of Court Administration  
25 Beaver Street, 11th Floor  
New York, New York 10004  
TEL: (212) 428-2700

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**NORTH CAROLINA**

North Carolina Administrative Office of the Courts  
P.O. Box 2448  
901 Corporate Center Drive  
Raleigh, North Carolina 27607  
TEL: (919) 890-1000

**NORTH DAKOTA**

State Court Administrator North Dakota Judicial  
System  
600 East Blvd, Dept. 180  
1st Floor Judicial Wing  
Bismarck, North Dakota 58505  
TEL: (701) 328-4216

**OHIO**

Administrative Office Supreme Court of Ohio  
Rhodes Office Tower 3rd Floor  
30 East Broad Street  
Columbus, Ohio 43215-3431  
TEL: (614) 387-9500

**OKLAHOMA**

Administrative Director of the Courts  
2100 N. Lincoln Blvd  
Oklahoma City, Oklahoma 73105  
TEL: (405) 556-9300

**OREGON**

State Court Administrator  
Office of the State Court Administrator  
Supreme Court Building  
1163 State Street  
Salem, Oregon 97310  
TEL: (503) 986-5722

**PENNSYLVANIA**

Administrative Office of Pennsylvania Courts  
Supreme Court of Pennsylvania  
601 Commonwealth Avenue  
Harrisburg, Pennsylvania 17120  
TEL: (717) 231-3300

**PUERTO RICO**

Administrative Director of the Courts  
Office of Courts Administration  
268 Munoz Rivera Avenue  
San Juan, Puerto Rico 00919-0917  
TEL: (787) 641-6600

**RHODE ISLAND**

State Court Administrator  
Supreme Court of Rhode Island  
250 Benefit Street  
Providence, Rhode Island 02903  
TEL: (401) 222-3266

**SOUTH CAROLINA**

South Carolina Court Administration  
1015 Sumter St., Suite 200  
Columbia, South Carolina 29201  
TEL: (803) 734-1800

**SOUTH DAKOTA**

State Court Administrator  
South Dakota Unified Judicial System  
500 East Capitol Avenue  
Pierre, South Dakota 57501  
TEL: (605) 773-3474

**TENNESSEE**

Administrative Office of the Courts  
511 Union Street, Suite 600  
Nashville, Tennessee 37243-0607  
TEL: (615) 741-2687

**TEXAS**

Office of Court Administration  
Tom C. Clark State Courts Building  
P.O. Box 12066, Zip 78711-2066  
205 West 14th Street, Suite 600  
Austin, Texas 78701  
TEL: (512) 463-1625

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**UTAH**

State Court Administrator  
450 South State Street  
P.O. Box 140241  
Salt Lake City, Utah 84114-0241  
TEL: (801) 578-3800

**VERMONT**

Court Administrator  
Supreme Court of Vermont  
109 State Street  
Montpelier, Vermont 05609-0701  
TEL: (802) 828-3278

**VIRGINIA**

State Court Administrator  
Supreme Court of Virginia  
100 North Ninth Street, Third Floor  
Richmond, Virginia 23219  
TEL: (804) 786-6455

**VIRGIN ISLANDS**

Court Administrator  
Territorial Court of the Virgin Islands  
5400 Veteran's Drive  
St. Thomas, Virgin Islands 00802  
TEL: (340) 774-6680

**WASHINGTON**

State Court Administrator  
Supreme Court of Washington Temple of Justice  
1112 Quince Street  
Olympia, Washington 98501  
TEL: (360) 753-3365

**WEST VIRGINIA**

West Virginia Supreme Court of Appeals  
E-100, State Capitol Building  
1900 Kanawha Boulevard  
East Charleston, WV 25305-0833  
TEL: (304) 558-2601

**WISCONSIN**

Director of State Courts  
16 East State Capitol  
P.O. Box 1688  
Madison, Wisconsin 53701-1688  
TEL: (608) 266-6828

**WYOMING**

State Court Administrator  
Supreme Court of Wyoming Supreme Court Building  
2301 Capital Avenue  
Cheyenne, Wyoming 82002  
TEL: (307) 777-7316

**For More Information**

To locate a state court's website, visit the National Center for State Courts website at: <https://www.ncsc.org/Information-and-Resources/Browse-by-State/State-Court-Websites.aspx>

## Appendix 3

## STATE DRIVING RECORD CONTACTS

### ALABAMA

Department of Public Safety  
Driver License Division  
P.O. Box 1471  
Montgomery, Alabama 36102-1471  
TEL: (334) 242-4241  
[www.dps.alabama.gov](http://www.dps.alabama.gov)

### ALASKA

Division of Motor Vehicles  
Records & Licensing Supervisor  
1300 W. Benson Boulevard  
Anchorage, AK 99503-3696  
TEL: (907) 465-4361  
<http://doa.alaska.gov/dmv/akol/record.htm>

### ARIZONA

Arizona Department of Transportation  
Motor Vehicle Division  
Custodian of Records  
1801 West Jefferson  
Mail Drop #504M  
Records Unit  
Phoenix, Arizona 85001  
TEL: (602) 255-0072  
<https://www.azdot.gov/home>

### ARKANSAS

Arkansas Department of Driver Services  
Driver Records  
P.O. Box 1272  
Room 1130  
Little Rock, Arkansas 72203  
TEL: (501) 682-7207  
[www.dfa.arkansas.gov/driver-services/driver-records/](http://www.dfa.arkansas.gov/driver-services/driver-records/)

### CALIFORNIA

California Department of Motor Vehicles  
P.O. Box 944231  
Mail Station G201 Sacramento, CA 94244-2310  
TEL: (916) 657-8098  
[www.dmv.ca.gov/](http://www.dmv.ca.gov/)

### COLORADO

Division of Motor Vehicles  
1881 Pierce Street  
Lakewood, Colorado 80214  
TEL: (303) 205-5600  
[www.colorado.gov/dmv](http://www.colorado.gov/dmv)

### CONNECTICUT

Copy Records Unit  
60 State Street, Room 256  
Wethersfield, Connecticut 06161  
TEL: (860) 263-5700  
[www.ct.gov/dmv/](http://www.ct.gov/dmv/)

### DELAWARE

Division of Motor Vehicles Drivers Licenses  
Administration  
P.O. Box 698  
Dover, Delaware 19903  
TEL: (302) 744-2506  
[https://www.dmv.de.gov/services/driver\\_services/driver\\_svcs.shtml](https://www.dmv.de.gov/services/driver_services/driver_svcs.shtml)

### DISTRICT OF COLUMBIA

District of Columbia Motor Vehicle Services  
Atten: Driver Records  
P.O. Box 90120  
Washington, DC 20090  
TEL: (202) 737-6761  
<https://dmv.dc.gov/service/driver-records>

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## FLORIDA

Florida Department of Highway Safety and Motor  
Vehicles Division of Driver Licenses  
2900 Apalachee Parkway  
Room B235  
Tallahassee, Florida 32399-0575  
TEL: (850) 488-0250  
<https://www.flhsmv.gov>

## GEORGIA

Georgia Department of Motor Vehicle  
Safety Driver Services Division  
P.O. Box 80447  
Conyers, GA 30013  
TEL: (678) 413-8441  
<https://dds.georgia.gov>

## HAWAII

Honolulu District Courts Traffic Violations Bureau  
1111 Alakea Street  
Honolulu, Hawaii 96813  
Attn: Abstract Department  
TEL: (808) 538-5560  
[www.co.honolulu.hi.us/csd/dlicense.html](http://www.co.honolulu.hi.us/csd/dlicense.html)

## IDAHO

Driver Services Manager  
Idaho Transportation Department Driver Services  
Section  
P.O. Box 7129  
Boise, Idaho 83707-1129  
TEL: (208) 334-8736  
<https://itd.idaho.gov/itddmv/>

## ILLINOIS

Illinois Secretary of State's Office  
Motor Vehicle Services  
2701 South Dirksen Parkway  
Springfield, Illinois 62723  
TEL: (217) 782-2720  
[www.cyberdriveillinois.com/departments/drivers/home.html](http://www.cyberdriveillinois.com/departments/drivers/home.html)

### Request Form:

[www.cyberdriveillinois.com/publications/pdf\\_publications/dsd\\_dc164.pdf](http://www.cyberdriveillinois.com/publications/pdf_publications/dsd_dc164.pdf)

## INDIANA

Indiana Bureau of Motor Vehicles  
IGC North, Room N-405  
100 N. Senate Avenue  
Indianapolis, Indiana 46204  
TEL: (317) 233-6836  
[www.state.in.us/bmv/](http://www.state.in.us/bmv/)

## IOWA

Iowa Department of Transportation  
Office of Driver Services  
P.O. Box 9204  
Des Moines, Iowa 50306-9204  
TEL: (515) 244-9124  
[www.iowadot.gov/mvd](http://www.iowadot.gov/mvd)

## KANSAS

Kansas Driver Control Bureau  
P.O. Box 12021  
Topeka, Kansas 66612-2021  
TEL: (785) 296-3671  
[www.ksrevenue.org/dovindex.html](http://www.ksrevenue.org/dovindex.html)

## KENTUCKY

Kentucky Department of Motor Vehicles  
Division of Driver Licensing  
State Office Building  
Frankfort, Kentucky 40622  
TEL: (502) 564-6800 x2250  
[drive.ky.gov/Driver-Licensing/Pages/default.aspx](http://drive.ky.gov/Driver-Licensing/Pages/default.aspx)

## LOUISIANA

Louisiana Office of Motor Vehicles  
Online Driving Records  
P.O. Box 64886  
Baton Rouge, Louisiana 70896  
TEL: (877) 368-5463  
<https://expresslane.dps.louisiana.gov/reinstatementinquiry/reinstatementinquiry.aspx>

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**MAINE**

Maine Bureau of Motor Vehicles  
State House Station #29  
Augusta, Maine 04333  
Attn: Driving Records  
TEL: (207) 624-9000 ext. 52116  
<https://www.maine.gov/sos/bmv/>

**MARYLAND**

Maryland Department of Motor Vehicles  
Driving Record Certified Copy Unit  
Driving Records Department, Room 145  
6601 Ritchie Highway  
Glen Burnie, Maryland 21062  
TEL: (410) 787-7758  
[www.mva.maryland.gov](http://www.mva.maryland.gov)

**MASSACHUSETTS**

Registry of Motor Vehicles  
Driver Control Unit  
Attn: Court Records  
P.O. Box 199150  
Boston, MA 02119-9150  
TEL: (617) 351-9213  
<https://www.mass.gov/#record>

**MICHIGAN**

Michigan Secretary of State  
Record Lookup Unit  
7064 Crown Drive  
Lansing, Michigan 48918-1540  
TEL: (517) 322-1624  
[https://www.michigan.gov/sos/0,4670,7-127-1627\\_8996-31868--,00.html](https://www.michigan.gov/sos/0,4670,7-127-1627_8996-31868--,00.html)

**MINNESOTA**

Driver and Vehicle Services  
445 Minnesota Street,  
Suite 180  
St. Paul, Minnesota 55101-5180  
TEL: (612) 296-6911  
<https://dps.mn.gov/divisions/dvs/>

**MISSISSIPPI**

Mississippi Department of Public Safety  
Driver Improvement Branch  
P.O. Box 958  
Jackson, Mississippi 39205  
TEL: (601) 987-1274  
[www.dps.state.ms.us](http://www.dps.state.ms.us)

**MISSOURI**

Missouri Department of Revenue  
Division of Motor Vehicle and Drivers Licensing  
Driver and Vehicle Services Bureau  
P.O. Box 200  
Jefferson City, Missouri 65105-0200  
TEL: (573) 751-4600  
<https://dor.mo.gov/drivers/>

**MONTANA**

Department of Justice  
Driver Services  
P.O. Box 201430  
Helena, Montana 59620-1430  
TEL: (406) 444-4590  
<https://dojmt.gov/driving/>

**NEBRASKA**

Nebraska Department of Motor Vehicles  
Driver & Vehicle Records Division  
P.O. Box 94789  
301 Centennial Mall South  
Lincoln, Nebraska 68509-4789  
TEL: (402) 471-4343  
<https://dmv.nebraska.gov/dvr/index>

**NEVADA**

Department of Motor Vehicles  
Records Section  
555 Wright Way  
Carson City, Nevada 89711-0250  
TEL: (775) 684-4590  
<http://www.dmvnv.com/dlhistory.htm>

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## **NEW HAMPSHIRE**

Janet Harriman  
Supervisor, Driving Records  
New Hampshire Department of Safety  
10 Hazen Drive, Room 208  
Concord, New Hampshire 03305  
TEL: (603) 271-2322  
<https://www.nh.gov/safety/divisions/dmv/>

## **NEW JERSEY**

New Jersey Motor Vehicle Commission  
Motor Vehicle Services CN 142  
Trenton, New Jersey 08666  
TEL: (609) 984-7771  
<https://www.state.nj.us/mvc/>

## **NEW MEXICO**

Driver Services Bureau  
P.O. Box 1028  
Santa Fe, New Mexico 87504  
TEL: (505) 827-2234  
<http://www.mvd.newmexico.gov>

## **NEW YORK**

Records Manager Department of Motor Vehicles  
6 Empire State Plaza,  
Room 232  
Albany, New York 12228  
TEL: (518) 473-5595  
[dmv.ny.gov](http://dmv.ny.gov)

## **NORTH CAROLINA**

Driver Records  
3113 Mail Service Center  
Raleigh, North Carolina 27699-3113  
TEL: (919) 715-7000  
[www.ncdot.gov/dmv/offices-services/online/Pages/driving-record-help.aspx](http://www.ncdot.gov/dmv/offices-services/online/Pages/driving-record-help.aspx)

## **NORTH DAKOTA**

Drivers License Division  
Driver Improvement Services  
608 East Boulevard  
Bismarck, North Dakota 58505  
TEL: (701) 328-2603  
[www.dot.nd.gov/divisions/driverslicense/recordservices-suspensions.htm](http://www.dot.nd.gov/divisions/driverslicense/recordservices-suspensions.htm)

## **OHIO**

Bureau of Motor Vehicles  
Attn: Abstracts  
P.O. Box 16520  
Columbus, Ohio 43216-6520  
TEL: (614) 752-7600  
[www.bmv.ohio.gov/](http://www.bmv.ohio.gov/)

## **OKLAHOMA**

Oklahoma Department of Public Safety  
Driving Records  
P.O. Box 11415  
Oklahoma City, Oklahoma 73136  
TEL: (405) 425-2262  
[www.ok.gov/dps/](http://www.ok.gov/dps/)

## **OREGON**

Oregon Department of Motor Vehicles  
Attn: Record Services  
1905 Lana Avenue, N.E.  
Salem, Oregon 97314  
TEL: (503) 945-5000  
[www.oregon.gov/ODOT/DMV/Pages/index.aspx](http://www.oregon.gov/ODOT/DMV/Pages/index.aspx)

## **PENNSYLVANIA**

Driving Records  
Department of Transportation  
Bureau of Driver Licensing Driver Record Services  
P.O. Box 68695  
Harrisburg, Pennsylvania 17106-8695  
TEL: (717) 391-6190  
[www.dmv.pa.gov/Pages/default.aspx/](http://www.dmv.pa.gov/Pages/default.aspx/)



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**RHODE ISLAND**

Division of Motor Vehicles Operator Control Section  
286 Main Street  
Pawtucket, RI 02860  
TEL: (401) 721-2650  
[www.dmv.ri.gov/licenses/](http://www.dmv.ri.gov/licenses/)

**SOUTH CAROLINA**

South Carolina Department of Public Safety  
Driver Records Office  
P.O. Box 1498  
Columbia, South Carolina 29216-0028  
TEL: (803) 737-4000  
[www.scdmvonline.com](http://www.scdmvonline.com)

**SOUTH DAKOTA**

South Dakota Department of Commerce & Regulation  
Office of Driver Licensing  
118 West Capital  
Pierre, South Dakota 57501-2036  
TEL: (605) 773-6883  
[dps.sd.gov/driver-licensing](http://dps.sd.gov/driver-licensing)

**TENNESSEE**

Tennessee Department of Safety  
Customer Service  
1150 Foster Avenue  
Nashville, Tennessee 37210  
TEL: (615) 251-5300  
[www.tn.gov/safety/driver-services/division-administration.html](http://www.tn.gov/safety/driver-services/division-administration.html)

**TEXAS**

Driver Record Bureau  
Texas Department of Public Safety  
P.O. Box 149246  
Austin, Texas 78714-9246  
TEL: (512) 424-2032  
[www.dps.texas.gov/DriverLicense/driverrecords.htm](http://www.dps.texas.gov/DriverLicense/driverrecords.htm)

**UTAH**

Utah Department of Public Safety  
Drivers License Division  
P.O. Box 30560  
Salt Lake City, Utah 84130-0560  
TEL: (801) 965-4437  
[dld.utah.gov](http://dld.utah.gov)

**VERMONT**

Vermont Department of Motor Vehicles  
Records & Motor Carrier Services  
120 State Street  
Montpelier, Vermont 05603  
TEL: (802) 828-2050  
[dmv.vermont.gov/enforcement-and-safety/dmv-records-requests](http://dmv.vermont.gov/enforcement-and-safety/dmv-records-requests)

**VIRGINIA**

Virginia Department of Motor Vehicles  
P.O. Box 27412  
Richmond, Virginia 23269  
TEL: (804) 367-0538  
<https://www.dmv.virginia.gov/#/>

**VIRGIN ISLANDS**

Virgin Islands Police Department  
Justice Center 2nd Floor Veterans Driver  
St. Thomas, US VI 00802  
TEL: (340) 715-5523  
[www.vipd.gov.vi/Home.aspx](http://www.vipd.gov.vi/Home.aspx)

**WASHINGTON**

Department of Licensing  
Driver Record Section  
P.O. Box 9030  
Olympia, Washington 98507-9030  
TEL: (360) 902-3839  
[www.dol.wa.gov/driverslicense/drivingrecord.html](http://www.dol.wa.gov/driverslicense/drivingrecord.html)

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## **WEST VIRGINIA**

Division of Motor Vehicles

Building 3

State Capitol Complex Room 124

Charleston, West Virginia 25317

TEL: (304) 558-0238

[transportation.wv.gov/dmv/Pages/default.aspx](http://transportation.wv.gov/dmv/Pages/default.aspx)

## **WISCONSIN**

Wisconsin Department of Transportation

Records and Licensing Information Section

P.O. Box 7995

Madison, Wisconsin 53707-7995

TEL: (608) 266-2353

<https://wisconsin.gov/Pages/dmv/license-drvs/rcd-crsh-rpt/records.aspx>

## **WYOMING**

Wyoming Department of Transportation

Driver Services

5300 Bishop Blvd.

Cheyenne, WY 82009-3340

TEL: (307) 777-4800

<http://www.dot.state.wy.us/driverservices>





**National District Attorneys Association**  
**1400 Crystal Drive, Suite 330**  
**Arlington, VA 22202**