

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 553**

Introduced by Flood, 19

Read first time January 17, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to driving under the influence; to amend  
2 sections 29-901.01, 60-498.01, 60-498.02, 60-6,197,  
3 60-6,197.05, and 60-6,211.04, Reissue Revised Statutes  
4 of Nebraska, and sections 29-901, 60-6,197.09, and  
5 60-6,211.05, Revised Statutes Cumulative Supplement,  
6 2006; to change provisions relating to bail; to eliminate  
7 certain administrative license revocation provisions;  
8 to harmonize provisions; and to repeal the original  
9 sections.  
10 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 29-901, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           29-901 Any bailable defendant shall be ordered released  
4 from custody pending judgment on his or her personal recognizance  
5 unless the judge determines in the exercise of his or her  
6 discretion that such a release will not reasonably assure the  
7 appearance of the defendant as required or that such a release  
8 constitutes an immediate threat to public safety. When such  
9 determination is made, the judge shall either in lieu of or  
10 in addition to such a release impose the first of the following  
11 conditions of release which will reasonably assure the appearance  
12 of the person for trial or, if no single condition gives that  
13 assurance, any combination of the following conditions:

14           (1) Place the defendant in the custody of a designated  
15 person or organization agreeing to supervise the defendant;

16           (2) Place restrictions on the travel, association, or  
17 place of abode of the defendant during the period of such release;

18           (3) Require, at the option of any bailable defendant,  
19 either of the following:

20           (a) The execution of an appearance bond in a specified  
21 amount and the deposit with the clerk of the court in cash of a  
22 sum not to exceed ten percent of the amount of the bond, ninety  
23 percent of such deposit to be returned to the defendant upon the  
24 performance of the appearance or appearances and ten percent to be  
25 retained by the clerk as appearance bond costs, except that when

1 no charge is subsequently filed against the defendant or if the  
2 charge or charges which are filed are dropped before the appearance  
3 of the defendant which the bond was to assure, the entire deposit  
4 shall be returned to the defendant. If the bond is subsequently  
5 reduced by the court after the original bond has been posted, no  
6 additional appearance bond costs shall be retained by the clerk.  
7 The difference in the appearance bond costs between the original  
8 bond and the reduced bond shall be returned to the defendant.  
9 In no event shall the deposit be less than twenty-five dollars.  
10 Whenever jurisdiction is transferred from a court requiring an  
11 appearance bond under this subdivision to another state court, the  
12 transferring court shall transfer the ninety percent of the deposit  
13 remaining after the appearance bond costs have been retained. No  
14 further costs shall be levied or collected by the court acquiring  
15 jurisdiction; or

16 (b) The execution of a bail bond with such surety or  
17 sureties as shall seem proper to the judge or, in lieu of such  
18 surety or sureties, at the option of such person, a cash deposit  
19 of such sum so fixed, conditioned for his or her appearance before  
20 the proper court, to answer the offense with which he or she may be  
21 charged and to appear at such times thereafter as may be ordered  
22 by the proper court. The cash deposit shall be returned to the  
23 defendant upon the performance of all appearances.

24 If the amount of bail is deemed insufficient by the  
25 court before which the offense is pending, the court may order

1 an increase of such bail and the defendant shall provide the  
2 additional undertaking, written or cash, to secure his or her  
3 release. All recognizances in criminal cases shall be in writing  
4 and be continuous from term to term until final judgment of the  
5 court in such cases and shall also extend, when the court has  
6 suspended execution of sentence for a limited time, as provided  
7 in section 29-2202, or, when the court has suspended execution of  
8 sentence to enable the defendant to apply for a writ of error  
9 to the Supreme Court or Court of Appeals, as provided in section  
10 29-2301, until the period of suspension has expired. When two or  
11 more indictments or informations are returned against the same  
12 person at the same term of court, the recognizance given may be  
13 made to include all offenses charged therein. Each surety on such  
14 recognizance shall be required to justify under oath in a sum  
15 twice the amount of such recognizance and give the description  
16 of real estate owned by him or her of a value above encumbrance  
17 equal to the amount of such justification and shall name all other  
18 cases pending in which he or she is a surety. No one shall be  
19 accepted as surety on recognizance aggregating a sum in excess of  
20 his or her equity in the real estate, but such recognizance shall  
21 not constitute a lien on the real estate described therein until  
22 judgment is entered thereon against such surety; or

23 (4) Impose any other condition deemed reasonably  
24 necessary to assure appearances as required, including a condition  
25 requiring that the defendant return to custody after specified

1 hours.

2 The Legislature finds that persons who drive while under  
3 the influence of alcoholic liquor or any drug present a threat to  
4 the public safety of other persons. The Legislature further finds  
5 that this threat can be alleviated by impounding the operator's  
6 license of such persons. Therefor, in cases involving a violation  
7 of section 60-6,196, 60-6,197, or 60-6,211.02, the judge shall  
8 impound the operator's license of a bailable defendant during the  
9 period of his or her release. The Department of Motor Vehicles  
10 shall be notified of the impoundment.

11 Sec. 2. Section 29-901.01, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 29-901.01 In determining which condition or conditions of  
14 release shall reasonably assure appearance, the judge shall, on the  
15 basis of available information, take into account the nature and  
16 circumstances of the offense charged, the defendant's family ties,  
17 employment, financial resources, character and mental condition,  
18 the length of his or her residence in the community, his or her  
19 record of convictions, and his or her record of appearances at  
20 court proceedings or of flight to avoid prosecution or of failure  
21 to appear at court proceedings. The judge shall also take into  
22 account the potential threat to public safety posed by the release  
23 of the defendant.

24 Sec. 3. Section 60-498.01, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   60-498.01 ~~(1)~~ Because persons who drive while under the  
2 influence of alcohol present a hazard to the health and safety of  
3 all persons using the highways, a procedure is needed for the swift  
4 and certain revocation of the operator's license of any person who  
5 has shown himself or herself to be a health and safety hazard ~~(a)~~  
6 by driving with an excessive concentration of alcohol in his or her  
7 body or ~~(b)~~ by driving while under the influence of alcohol.

8                   ~~(2)~~ (1) If a person arrested as described in subsection  
9 (2) of section 60-6,197 refuses to submit to the chemical test  
10 of blood, breath, or urine required by section 60-6,197, the test  
11 shall not be given except as provided in section 60-6,210 for the  
12 purpose of medical treatment and the arresting peace officer, as  
13 agent for the Director of Motor Vehicles, shall verbally serve  
14 notice to the arrested person of the intention to immediately  
15 confiscate and revoke the operator's license of such person and  
16 that the revocation will be automatic thirty days after the date of  
17 arrest unless a petition for hearing is filed within ten days after  
18 the date of arrest as provided in subsection (6) of this section.  
19 The arresting peace officer shall within ten days forward to the  
20 director a sworn report stating (a) that the person was arrested  
21 as described in subsection (2) of section 60-6,197 and the reasons  
22 for such arrest, (b) that the person was requested to submit to the  
23 required test, and (c) that the person refused to submit to the  
24 required test.

25                   ~~(3)~~ If a person arrested as described in subsection ~~(2)~~

1 of section ~~60-6,197~~ submits to the chemical test of blood or breath  
2 required by section ~~60-6,197~~, the test discloses the presence of  
3 alcohol in any of the concentrations specified in section ~~60-6,196~~,  
4 and the test results are available to the arresting peace officer  
5 while the arrested person is still in custody, the arresting peace  
6 officer, as agent for the director, shall verbally serve notice  
7 to the arrested person of the intention to immediately confiscate  
8 and revoke the operator's license of such person and that the  
9 revocation will be automatic thirty days after the date of arrest  
10 unless a petition for hearing is filed within ten days after the  
11 date of arrest as provided in subsection ~~(6)~~ of this section.  
12 The arresting peace officer shall within ten days forward to the  
13 director a sworn report stating ~~(a)~~ that the person was arrested  
14 as described in subsection ~~(2)~~ of section ~~60-6,197~~ and the reasons  
15 for such arrest, ~~(b)~~ that the person was requested to submit to  
16 the required test, and ~~(c)~~ that the person submitted to a test,  
17 the type of test to which he or she submitted, and that such test  
18 revealed the presence of alcohol in a concentration specified in  
19 section ~~60-6,196~~.

20 ~~(4)~~ (2) On behalf of the director, the arresting peace  
21 officer submitting a sworn report under subsection (1) ~~(2)~~ or  
22 ~~(3)~~ of this section shall serve notice of the revocation on the  
23 arrested person, and the revocation shall be effective thirty days  
24 after the date of arrest. The notice of revocation shall contain a  
25 statement explaining the operation of the administrative revocation

1 procedure. The peace officer shall also provide to the arrested  
2 person an addressed envelope and a petition form which the arrested  
3 person may use to request a hearing before the director to contest  
4 the revocation. The petition form shall clearly state on its face  
5 that the petition must be completed and delivered to the Department  
6 of Motor Vehicles or postmarked within ten days after receipt or  
7 the person's right to a hearing to contest the revocation will be  
8 foreclosed. The director shall prepare and approve the form for the  
9 petition, the addressed envelope, and the notice of revocation and  
10 shall provide them to law enforcement agencies.

11 (3) If the person has an operator's license, the  
12 arresting peace officer shall take possession of the license  
13 and issue a temporary operator's license valid for thirty days. The  
14 arresting peace officer shall forward the operator's license to the  
15 department along with the sworn report made under subsection (1)  
16 ~~(2) or (3)~~ of this section.

17 ~~(5)(a)~~ If the results of a chemical test indicate the  
18 presence of alcohol in a concentration specified in section  
19 ~~60-6,196,~~ the results are not available to the arresting peace  
20 officer while the arrested person is in custody, and the notice  
21 of revocation has not been served as required by subsection ~~(4)~~  
22 of this section, the peace officer shall forward to the director  
23 a sworn report containing the information prescribed by subsection  
24 ~~(3)~~ of this section within ten days after receipt of the results of  
25 the chemical test. If the sworn report is not received within ten

1 ~~days, the revocation shall not take effect.~~

2           ~~(b)~~ (4) Upon receipt of the report, the director shall  
3 serve the notice of revocation on the arrested person by certified  
4 or registered mail to the address appearing on the records of the  
5 director. If the address on the director's records differs from the  
6 address on the arresting peace officer's report, the notice shall  
7 be sent to both addresses. The notice of revocation shall contain a  
8 statement explaining the operation of the administrative revocation  
9 procedure. The director shall also provide to the arrested person  
10 an addressed envelope and a petition form which the arrested person  
11 may use to request a hearing before the director to contest the  
12 revocation. The petition form shall clearly state on its face that  
13 the petition must be completed and delivered to the department or  
14 postmarked within ten days after receipt or the person's right to a  
15 hearing to contest the revocation will be foreclosed. The director  
16 shall prepare and approve the form for the petition, the addressed  
17 envelope, and the notice of revocation. The revocation shall be  
18 effective thirty days after the date of mailing.

19           (c) If the records of the director indicate that the  
20 arrested person possesses an operator's license, the director  
21 shall include with the notice of revocation a temporary operator's  
22 license which expires thirty days after the date of mailing. Any  
23 arrested person who desires a hearing and has been served a notice  
24 of revocation pursuant to this subsection shall return his or her  
25 operator's license with the petition requesting the hearing. If the

1 operator's license is not included with the petition requesting the  
2 hearing, the director shall deny the petition.

3 (5) (a) ~~(6) (a)~~ An arrested person's operator's license  
4 confiscated pursuant to subsection ~~(4)~~ (2) of this section shall be  
5 automatically revoked upon the expiration of thirty days after the  
6 date of arrest. ~~An arrested person's operator's license confiscated~~  
7 ~~pursuant to subsection (5) of this section shall be automatically~~  
8 ~~revoked upon the expiration of thirty days after the date of~~  
9 ~~mailing of the notice of revocation by the director.~~ The arrested  
10 person shall postmark or return to the director a petition within  
11 ten days after the receipt of the notice of revocation if the  
12 arrested person desires a hearing. The petition shall be in writing  
13 and shall state the grounds on which the person is relying to  
14 prevent the revocation from becoming effective. The hearing and any  
15 prehearing conference may be conducted in person or by telephone,  
16 television, or other electronic means at the discretion of the  
17 director, and all parties may participate by such means at the  
18 discretion of the director.

19 (b) The director shall conduct the hearing within twenty  
20 days after a petition is filed. Upon receipt of a petition, the  
21 director shall notify the petitioner of the date and location for  
22 the hearing by certified or registered mail postmarked at least  
23 seven days prior to the hearing date. The filing of the petition  
24 shall not prevent the automatic revocation of the petitioner's  
25 operator's license at the expiration of the thirty-day period. A

1 continuance of the hearing to a date beyond the expiration of  
2 the temporary operator's license shall stay the expiration of the  
3 temporary license when the request for continuance is made by the  
4 director.

5 (c) At hearing the issues under dispute shall be limited  
6 to:

7 ~~(i) In the case of a refusal to submit to a chemical test  
8 of blood, breath, or urine:~~

9 ~~(A) (i) Did the peace officer have probable cause to  
10 believe the person was operating or in the actual physical control  
11 of a motor vehicle in violation of section 60-6,196 or a city or  
12 village ordinance enacted in conformance with such section; and~~

13 ~~(B) (ii) Did the person refuse to submit to or fail to  
14 complete a chemical test after being requested to do so by the  
15 peace officer. or~~

16 ~~(ii) If the chemical test discloses the presence of  
17 alcohol in a concentration specified in section 60-6,196:~~

18 ~~(A) Did the peace officer have probable cause to believe  
19 the person was operating or in the actual physical control of a  
20 motor vehicle in violation of section 60-6,196 or a city or village  
21 ordinance enacted in conformance with such section; and~~

22 ~~(B) Was the person operating or in the actual physical  
23 control of a motor vehicle while having an alcohol concentration in  
24 violation of subsection (1) of section 60-6,196.~~

25 (6) ~~(7)~~ The director shall adopt and promulgate rules and

1 regulations to govern the conduct of the hearing and insure that  
2 the hearing will proceed in an orderly manner. The director may  
3 appoint a hearing officer to preside at the hearing, administer  
4 oaths, examine witnesses, take testimony, and report to the  
5 director. All proceedings before the hearing officer shall be  
6 recorded. Upon receipt of the arresting peace officer's sworn  
7 report, the director's order of revocation has prima facie  
8 validity and it becomes the petitioner's burden to establish by  
9 a preponderance of the evidence grounds upon which the operator's  
10 license revocation should not take effect. The director shall make  
11 a determination of the issue within seven days after the conclusion  
12 of the hearing. A person whose operator's license is revoked  
13 following a hearing requested pursuant to this section may appeal  
14 the order of revocation as provided in section 60-498.04.

15           Sec. 4. Section 60-498.02, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           60-498.02 (1) At the expiration of thirty days after the  
18 date of arrest as described in subsection (2) of section 60-6,197  
19 or if after a hearing pursuant to section 60-498.01 the Director  
20 of Motor Vehicles finds that the operator's license should be  
21 revoked, the director shall ~~(a)~~ revoke the operator's license of a  
22 person arrested for refusal to submit to a chemical test of blood,  
23 breath, or urine as required by section 60-6,197 for a period of  
24 one year and ~~(b)~~ revoke the operator's license of a person who  
25 submits to a chemical test pursuant to such section which discloses

1 the presence of a concentration of alcohol specified in section  
2 60-6,196 for a period of ninety days unless the person's driving  
3 record abstract maintained in the department's computerized records  
4 shows one or more prior administrative license revocations on which  
5 final orders have been issued during the immediately preceding  
6 twelve-year period at the time the order of revocation is issued,  
7 in which case the period of revocation shall be one year. Except  
8 as otherwise provided in section 60-6,211.05, a new operator's  
9 license shall not be issued to such person until the period of  
10 revocation has elapsed. If the person subject to the revocation is  
11 a nonresident of this state, the director shall revoke only the  
12 nonresident's operating privilege as defined in section 60-474 of  
13 such person and shall immediately forward the operator's license  
14 and a statement of the order of revocation to the person's state  
15 of residence.

16 ~~(2)~~ At the expiration of thirty days after an order  
17 of revocation is entered under subsection ~~(1)~~ of this section,  
18 ~~(a)~~ any person whose operator's license has been administratively  
19 revoked for a period of ninety days for submitting to a chemical  
20 test pursuant to section 60-6,197 which disclosed the presence of  
21 a concentration of alcohol in violation of section 60-6,196 may  
22 make application to the director for issuance of an employment  
23 driving permit pursuant to section 60-4,130 and ~~(b)~~ any person  
24 who submitted to a chemical test pursuant to section 60-6,197  
25 and has his or her operator's license revoked for ninety days

1 pursuant to subsection ~~(1)~~ of this section is eligible for an order  
2 pursuant to section ~~60-6,211.05~~ to operate a motor vehicle equipped  
3 with an ignition interlock device upon presentation of sufficient  
4 evidence to the Department of Motor Vehicles that such a device is  
5 installed.

6 This subsection shall not apply to nor shall any person  
7 be eligible for the benefit of this subsection during any period of  
8 time during which his or her operator's license is subject to an  
9 administrative revocation order for refusal to submit to a chemical  
10 test of blood, breath, or urine as required by section ~~60-6,197~~  
11 or is subject to a one-year revocation under subdivision ~~(1)(b)~~ of  
12 this section.

13 ~~(3)~~ (2) A person may have his or her eligibility for a  
14 license reinstated upon payment of a reinstatement fee as required  
15 by section 60-694.01.

16 ~~(4)(a)~~ A person whose operator's license is subject to  
17 revocation pursuant to subsection ~~(3)~~ of section ~~60-498.01~~ shall  
18 have all proceedings dismissed or his or her operator's license  
19 immediately reinstated without payment of the reinstatement fee  
20 upon receipt of suitable evidence by the director that:

21 ~~(i)~~ Within the thirty-day period following the date  
22 of arrest, the prosecuting attorney responsible for the matter  
23 declined to file a complaint alleging a violation of section  
24 ~~60-6,196~~ and notified the director by first-class mail or facsimile  
25 transmission of such decision and the director received such notice

1 within such period or the notice was postmarked within such period,  
2 or

3 (ii) The defendant, after trial, was found not guilty  
4 of violating section 60-6,196 or such charge was dismissed on the  
5 merits by the court.

6 (b) The director shall adopt and promulgate rules and  
7 regulations establishing standards for the presentation of suitable  
8 evidence of compliance with subdivision (a) of this subsection.

9 (c) If a charge is filed for a violation of section  
10 60-6,196 pursuant to an arrest for which all proceedings were  
11 dismissed under this subsection, the prosecuting attorney shall  
12 notify the director by first-class mail or facsimile transmission  
13 of the filing of such charge and the director may reinstate an  
14 administrative license revocation under this section as of the  
15 date that the director receives notification of the filing of the  
16 charge, except that a revocation shall not be reinstated if it was  
17 dismissed pursuant to section 60-498.01.

18 Sec. 5. Section 60-6,197, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 60-6,197 (1) Any person who operates or has in his or  
21 her actual physical control a motor vehicle in this state shall be  
22 deemed to have given his or her consent to submit to a chemical  
23 test or tests of his or her blood, breath, or urine for the purpose  
24 of determining the concentration of alcohol or the presence of  
25 drugs in such blood, breath, or urine.

1           (2) Any peace officer who has been duly authorized to  
2 make arrests for violations of traffic laws of this state or of  
3 ordinances of any city or village may require any person arrested  
4 for any offense arising out of acts alleged to have been committed  
5 while the person was driving or was in actual physical control of  
6 a motor vehicle while under the influence of alcoholic liquor or  
7 drugs to submit to a chemical test or tests of his or her blood,  
8 breath, or urine for the purpose of determining the concentration  
9 of alcohol or the presence of drugs in such blood, breath, or  
10 urine when the officer has reasonable grounds to believe that such  
11 person was driving or was in the actual physical control of a motor  
12 vehicle in this state while under the influence of alcoholic liquor  
13 or drugs in violation of section 60-6,196.

14           (3) Any person arrested as described in subsection (2)  
15 of this section may, upon the direction of a peace officer, be  
16 required to submit to a chemical test or tests of his or her  
17 blood, breath, or urine for a determination of the concentration  
18 of alcohol or the presence of drugs. If the chemical test  
19 discloses the presence of a concentration of alcohol in violation  
20 of subsection (1) of section 60-6,196, the person shall be subject  
21 to the administrative revocation procedures provided in sections  
22 60-498.01 to 60-498.04 and upon conviction, shall be punished as  
23 provided in sections 60-6,197.02 to 60-6,197.08. Any person who  
24 refuses to submit to such test or tests required pursuant to  
25 this section shall be subject to the administrative revocation

1 procedures provided in sections 60-498.01 to 60-498.04 and shall  
2 be guilty of a crime and upon conviction punished as provided in  
3 sections 60-6,197.02 to 60-6,197.08.

4 (4) Any person involved in a motor vehicle accident in  
5 this state may be required to submit to a chemical test of his or  
6 her blood, breath, or urine by any peace officer if the officer has  
7 reasonable grounds to believe that the person was driving or was in  
8 actual physical control of a motor vehicle on a public highway in  
9 this state while under the influence of alcoholic liquor or drugs  
10 at the time of the accident. A person involved in a motor vehicle  
11 accident subject to the implied consent law of this state shall  
12 not be deemed to have withdrawn consent to submit to a chemical  
13 test of his or her blood, breath, or urine by reason of leaving  
14 this state. If the person refuses a test under this section and  
15 leaves the state for any reason following an accident, he or she  
16 shall remain subject to subsection (3) of this section and section  
17 60-498.02 upon return.

18 (5) Any person who is required to submit to a chemical  
19 blood, breath, or urine test or tests pursuant to this section  
20 shall be advised that refusal to submit to such test or tests is a  
21 separate crime for which the person may be charged.

22 (6) Refusal to submit to a chemical blood, breath, or  
23 urine test or tests pursuant to this section shall be admissible  
24 evidence in any action for a violation of section 60-6,196 or a  
25 city or village ordinance enacted in conformance with such section.

1           Sec. 6. Section 60-6,197.05, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           60-6,197.05 Any period of revocation imposed for a  
4 violation of section 60-6,196 shall be reduced by any period  
5 imposed under section 60-498.02. Any period of revocation imposed  
6 under subdivision (1) of section 60-6,197.03 for a violation of  
7 section 60-6,196 or under subdivision (2)(a) of section 60-6,196,  
8 as such section existed prior to July 16, 2004, shall not prohibit  
9 the operation of a motor vehicle under the terms and conditions of  
10 an employment driving permit. ~~issued pursuant to subsection (2) of~~  
11 ~~section 60-498.02.~~

12           Sec. 7. Section 60-6,197.09, Revised Statutes Cumulative  
13 Supplement, 2006, is amended to read:

14           60-6,197.09 Notwithstanding the provisions of section  
15 60-498.02 or 60-6,197.03, a person who commits a violation  
16 punishable under subdivision (3)(b) or (c) of section 28-306  
17 or a violation of section 60-6,196, 60-6,197, or 60-6,198 while  
18 participating in criminal proceedings for a violation of section  
19 60-6,196, 60-6,197, or 60-6,198, or a city or village ordinance  
20 enacted in accordance with section 60-6,196 or 60-6,197, or a  
21 law of another state if, at the time of the violation under  
22 the law of such other state, the offense for which the person  
23 was charged would have been a violation of section 60-6,197,  
24 shall not be eligible to receive a sentence of probation, or  
25 a suspended sentence, ~~or an employment driving permit authorized~~

1 ~~under subsection (2) of section 60-498.02~~ for either violation  
2 committed in this state.

3           Sec. 8. Section 60-6,211.04, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           60-6,211.04 Sections 60-6,211.01 to 60-6,211.03 shall not  
6 operate to prevent any person, regardless of age, from being  
7 prosecuted or having any action taken for a violation of section  
8 60-6,196 or 60-6,197 or having his or her operator's license  
9 revoked pursuant to sections 60-498.01 to 60-498.04 for a violation  
10 of section ~~60-6,196 or~~ 60-6,197 or from being prosecuted or  
11 having any action taken under any other provision of law. If such  
12 person is believed to be under the influence of alcoholic liquor  
13 pursuant to section 60-6,196 or 60-6,197, sections 60-6,211.01 to  
14 60-6,211.03 shall not operate to prevent prosecution of such person  
15 for a violation of section 60-6,196 or 60-6,197 even if sections  
16 60-6,211.01 to 60-6,211.03 apply.

17           Sec. 9. Section 60-6,211.05, Revised Statutes Cumulative  
18 Supplement, 2006, is amended to read:

19           60-6,211.05 (1) If an order of probation is granted  
20 under section 60-6,196 or 60-6,197, as such sections existed prior  
21 to July 16, 2004, or section 60-6,196 ~~or 60-6,197~~ and sections  
22 60-6,197.02 and 60-6,197.03, as such sections existed on or after  
23 July 16, 2004, the court may order the defendant to install an  
24 ignition interlock device of a type approved by the Director of  
25 Motor Vehicles on each motor vehicle operated by the defendant.

1 The device shall, without tampering or the intervention of another  
2 person, prevent the defendant from operating the motor vehicle when  
3 the defendant has an alcohol concentration greater than the levels  
4 prescribed in section 60-6,196.

5 (2) If the court orders installation of an ignition  
6 interlock device pursuant to subsection (1) of this section, the  
7 court may also order the use of a continuous alcohol monitoring  
8 device and abstention from alcohol use at all times. The device  
9 shall, without tampering or the intervention of another person,  
10 test and record the alcohol consumption level of the defendant  
11 on a periodic basis and transmit such information to probation  
12 authorities.

13 ~~(3) Any order issued by the court pursuant to this~~  
14 ~~section shall not take effect until the defendant is eligible~~  
15 ~~to operate a motor vehicle pursuant to subsection (2) of section~~  
16 ~~60-498.02.~~

17 ~~(4)~~ (3) If the court orders an ignition interlock device  
18 or the Board of Pardons orders an ignition interlock device under  
19 section 83-1,127.02, the court or the Board of Pardons shall order  
20 the Department of Motor Vehicles to issue to the defendant a  
21 restricted Class O license as provided in section 60-4,118.06 which  
22 indicates that the defendant is only allowed to operate a motor  
23 vehicle equipped with an ignition interlock device. Such court  
24 order shall remain in effect for a period of time as determined by  
25 the court not to exceed the maximum term of revocation which the

1 court could have imposed according to the nature of the violation.  
2 Such Board of Pardons order shall remain in effect for a period  
3 of time not to exceed any period of revocation the applicant is  
4 subject to at the time the application for a license reinstatement  
5 is made.

6 (5) A person who tampers with or circumvents an ignition  
7 interlock device installed under a court order while the order is  
8 in effect or who operates a motor vehicle which is not equipped  
9 with an ignition interlock device in violation of a court order  
10 made pursuant to this section shall be guilty of a Class II  
11 misdemeanor.

12 (6) Any person restricted to operating a motor vehicle  
13 equipped with an ignition interlock device, pursuant to a Board of  
14 Pardons order, who operates upon the highways of this state a motor  
15 vehicle without such device or if the device has been disabled,  
16 bypassed, or altered in any way, shall be punished as provided in  
17 subsection (3) of section 83-1,127.02.

18 (7) If a person ordered to use a continuous alcohol  
19 monitoring device and abstain from alcohol use pursuant to a court  
20 order as provided in subsection (2) of this section violates the  
21 provisions of such court order by removing, tampering with, or  
22 otherwise bypassing the continuous alcohol monitoring device or by  
23 consuming alcohol while required to use such device, he or she  
24 shall have his or her Class O license revoked and be unable to  
25 apply for license reinstatement for the duration of the revocation

1 period imposed by the court.

2 (8) The director shall adopt and promulgate rules and  
3 regulations to approve ignition interlock devices and the means of  
4 installation of the devices.

5 Sec. 10. Original sections 29-901.01, 60-498.01,  
6 60-498.02, 60-6,197, 60-6,197.05, and 60-6,211.04, Reissue Revised  
7 Statutes of Nebraska, and sections 29-901, 60-6,197.09, and  
8 60-6,211.05, Revised Statutes Cumulative Supplement, 2006, are  
9 repealed.