

# THE OKOROCHA FIRM

Okorie Okorochoa, M.S., M.S., Esq.\* | Forensic Toxicology Expert Witness

State	Statutory Equivalent	Structure / Key Notes
Alabama	Ala. Code § 32-5A-194	Three-tier: $\leq 0.05\%$ = not under influence (except school bus drivers/under-21); $0.05\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = presumed under influence. Applies in civil, criminal, and quasi-criminal proceedings.
Alaska	AS 28.35.033(a)	Three-tier: $\leq 0.04\%$ = presumed not under influence; $0.04\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = presumed under influence. Lower "not impaired" threshold ( $0.04\%$ ) distinguishes Alaska from most states.
Arizona	A.R.S. § 28-1381(G)	Three-tier: $\leq 0.05\%$ = presumed not under influence; $0.05\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = <i>may</i> be presumed under influence (permissive inference). Subsection H preserves right to introduce other competent evidence.
Arkansas	Ark. Code Ann. § 5-65-206	Three-tier: $\leq 0.04\%$ = presumed not under influence; $0.04\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = presumed under influence. Arkansas's "not impaired" threshold ( $0.04\%$ ) mirrors Alaska.
California	Cal. Veh. Code § 23610	Three-tier: $< 0.05\%$ = presumed not under influence; $0.05\text{--}0.07\%$ = no presumption; $\geq 0.08\%$ = presumed under influence. Applies in criminal and preliminary proceedings only. Companion per se presumption at § 23152(b).
Colorado	C.R.S. § 42-4-1301(6)	Three-tier: $\leq 0.05\%$ = presumed not under influence; $0.05\text{--}0.08\%$ = no presumption (but BAC $0.05\text{--}0.079\%$ supports DWAI charge); $\geq 0.08\%$ = presumed DUI. Colorado has a distinct DWAI offense at BAC $0.05\text{--}0.079\%$ .
Connecticut	Conn. Gen. Stat. § 14-227a(b)	

State	Statutory Equivalent	Structure / Key Notes
		Three-tier: $\leq 0.05\%$ = presumed not under influence; $0.05\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = presumed under influence. Applies to civil and criminal matters.
<b>Delaware</b>	Del. Code Ann. tit. 21, § 4177(a) & § 4177B	Per se offense at $\geq 0.08\%$ ; traditional three-tier presumptions codified in § 4177B: $\leq 0.05\%$ = presumed not impaired; $0.05\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = presumed impaired.
<b>Florida</b>	Fla. Stat. § 316.1934	Three-tier: $\leq 0.05\%$ = presumed not impaired; $0.05\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = presumed impaired. Note: <i>Haas v. State</i> , 597 So. 2d 770 (Fla. 1992) held presumptions inapplicable to the per se DUBAL offense under § 316.193. Presumptions apply only to the impairment-theory charge.
<b>Georgia</b>	O.C.G.A. § 40-6-392	Three-tier: $\leq 0.05\%$ = presumed not under influence; $0.05\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = presumed under influence. Applies to chemical analysis of blood, breath, or urine.
<b>Hawaii</b>	Haw. Rev. Stat. § 291E-61(b) & § 291E-3	Three-tier presumptions codified in § 291E-3: $\leq 0.05\%$ = presumed not impaired; $0.05\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = presumed impaired. Per se offense at $\geq 0.08\%$ under § 291E-61(a)(2).
<b>Idaho</b>	Idaho Code § 18-8004(4)	Three-tier: $\leq 0.05\%$ = presumed not under influence; $0.05\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = presumed under influence.
<b>Illinois</b>	625 ILCS 5/11-501.2	Three-tier: $\leq 0.05\%$ = presumed not under influence; $0.05\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = presumed under influence. Chemical test evidence is admissible in civil and criminal proceedings under this section.
<b>Indiana</b>	Ind. Code § 9-30-6-15	Three-tier: $\leq 0.05\%$ = presumed not under influence; $0.05\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = presumed under influence. Indiana enacted the first BAC presumption statute in the U.S. in 1939.
<b>Iowa</b>	Iowa Code § 321J.2 & § 321J.17	Presumptions in § 321J.17: $\leq 0.05\%$ = presumed not under influence; $0.05\text{--}0.08\%$ = no presumption; $\geq 0.08\%$ = presumed under influence.

<b>State</b>	<b>Statutory Equivalent</b>	<b>Structure / Key Notes</b>
<b>Kansas</b>	K.S.A. § 8-1005	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.
<b>Kentucky</b>	KRS § 189A.010 & § 189A.200	Presumptions in § 189A.200: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.
<b>Louisiana</b>	La. R.S. § 32:662	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Applies to blood, breath, and urine tests.
<b>Maine</b>	29-A M.R.S. § 2431	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Maine uses "OUI" (operating under the influence).
<b>Maryland</b>	Md. Code, Transp. § 21-902 & Cts. & Jud. Proc. § 10-307	Presumptions in § 10-307: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Maryland also has a per se DWI offense at 0.07–0.079%.
<b>Massachusetts</b>	G.L. c. 90, § 24(1)(e)	Historically three-tier. However, after <i>Commonwealth v. Barbeau</i> and legislative changes, the permissible inference at ≥ 0.08% is a limited-use instruction. The lower-tier "not impaired" presumption (≤ 0.05%) was removed from jury instructions. BAC ≥ 0.08% may be used by the jury as evidence of impairment, but not as a mandatory presumption shifting the burden of proof. Massachusetts uses "OUI."
<b>Michigan</b>	MCL § 257.625a(6)	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Michigan distinguishes OWI (≥ 0.08%) from OWVI (impaired, any BAC).
<b>Minnesota</b>	Minn. Stat. § 169A.46	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Minnesota uses "DWI."
<b>Mississippi</b>	Miss. Code Ann. § 63-11-30	Three-tier presumptions: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.

<b>State</b>	<b>Statutory Equivalent</b>	<b>Structure / Key Notes</b>
<b>Missouri</b>	Mo. Rev. Stat. § 577.037	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Applies to blood and breath chemical analysis.
<b>Montana</b>	Mont. Code Ann. § 61-8-401 & § 61-8-404	Presumptions in § 61-8-404: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.
<b>Nebraska</b>	Neb. Rev. Stat. § 60-6,196	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.
<b>Nevada</b>	NRS § 484C.220	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Nevada's BAC threshold is defined as grams of alcohol per 100 mL of blood or grams per 210 liters of breath.
<b>New Hampshire</b>	N.H. Rev. Stat. § 265-A:9	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.
<b>New Jersey</b>	N.J. Stat. Ann. § 39:4-50.2	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.10% = no presumption; ≥ 0.08% (per se). <i>Note:</i> Historically the mid-range was 0.05–0.15%. The per se offense and traditional presumptions now operate together. DWI in NJ is a traffic offense, not a criminal charge.
<b>New Mexico</b>	N.M. Stat. Ann. § 66-8-110	Three-tier: < 0.04% = presumed not under influence; 0.04–0.08% = no presumption; ≥ 0.08% = presumed under influence. New Mexico's "not impaired" threshold (0.04%) is lower than the majority of states.

State	Statutory Equivalent	Structure / Key Notes
<b>New York</b>	V.T.L. § 1195(2)	Three-tier: < 0.05% = presumed not intoxicated; 0.05–0.07% = no presumption; ≥ 0.08% = presumed intoxicated. Also note V.T.L. § 1192(2-a): DWAI at 0.07–0.079%. The presumptions specifically relate to the "under the influence" charge (§ 1192(3)); they do not apply to the per se per se "driving while intoxicated" charge (§ 1192(2)) where the BAC itself is the offense.
<b>North Carolina</b>	N.C. Gen. Stat. § 20-139.1(b)	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Applies to chemical analysis results in civil and criminal proceedings.
<b>North Dakota</b>	N.D. Cent. Code § 39-20-07	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.
<b>Ohio</b>	Ohio Rev. Code § 4511.19(B)	Ohio is primarily a per se state. Presumptions are embedded within § 4511.19(B): BAC ≥ 0.08% is the per se threshold. Ohio uses "OVI" (operating a vehicle impaired). Traditional three-tier presumptions are found in § 4511.19(D)(1).
<b>Oklahoma</b>	47 O.S. § 756	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.
<b>Oregon</b>	ORS § 813.320	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Oregon adopted 0.08% as a per se limit as early as 1983.

State	Statutory Equivalent	Structure / Key Notes
<b>Pennsylvania</b>	75 Pa. C.S. § 3802 & § 1547	Presumptions embedded within § 3802. PA uses a tiered penalty system by BAC tier: General impairment (0.08+), High BAC (0.10+), Highest BAC (0.16+). Traditional three-tier presumptions in § 1547(d): ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.
<b>Rhode Island</b>	R.I. Gen. Laws § 31-27-2(b)	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Rhode Island uses "OUI."
<b>South Carolina</b>	S.C. Code Ann. § 56-5-2950	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.
<b>South Dakota</b>	SDCL § 32-23-7	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.
<b>Tennessee</b>	Tenn. Code Ann. § 55-10-408	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Applies in civil and criminal proceedings.
<b>Texas</b>	Tex. Transp. Code § 724.064 & § 49.01	Texas does not have a traditional three-tier presumption statute equivalent. Instead, BAC evidence is admissible under § 724.064, and BAC ≥ 0.08% is defined as a per se intoxication threshold under Penal Code § 49.01(2)(B). Texas courts have held the BAC is relevant evidence of intoxication—not a formal presumption shifting the burden of proof.

State	Statutory Equivalent	Structure / Key Notes
<b>Utah</b>	Utah Code Ann. § 41-6a-502	<b>Outlier:</b> Utah's per se threshold is <b>0.05%</b> (the lowest in the nation, effective 2019). A person with BAC ≥ 0.05% is per se impaired. The traditional three-tier presumption structure (≤ 0.05% not impaired, etc.) is subsumed into the per se threshold. No traditional three-tier presumption statute exists; the per se statute is the functional analog.
<b>Vermont</b>	23 V.S.A. § 1204	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.
<b>Virginia</b>	Va. Code Ann. § 18.2-269	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Applies in civil and criminal proceedings.
<b>Washington</b>	RCW § 46.61.502 & § 46.61.517	Presumptions in § 46.61.517: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Washington uses "DUI."
<b>West Virginia</b>	W. Va. Code § 17C-5-8	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.
<b>Wisconsin</b>	Wis. Stat. § 885.235	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence. Applies to chemical analysis in civil and criminal proceedings. Wisconsin uses "OWI."
<b>Wyoming</b>	Wyo. Stat. Ann. § 31-6-105	Three-tier: ≤ 0.05% = presumed not under influence; 0.05–0.08% = no presumption; ≥ 0.08% = presumed under influence.