

A State-by-State Analysis of Laws Dealing With Driving Under the Influence of Drugs

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Table of Contents

| | |
|--|----------|
| Executive Summary | 1 |
| Driving Under the Influence of Drugs Laws in the United States..... | 3 |
| Introduction..... | 3 |
| General Comparisons and Contrasts Among the States..... | 3 |
| Conclusions | 6 |
| References | 7 |
| Appendix A: State Data Pages | 9 |
| Alabama | 11 |
| Alaska | 13 |
| Arizona | 15 |
| Arkansas..... | 17 |
| California..... | 19 |
| Colorado..... | 21 |
| Connecticut..... | 23 |
| Delaware..... | 25 |
| District Of Columbia..... | 27 |
| Florida | 29 |
| Georgia | 31 |
| Hawaii..... | 33 |
| Idaho | 35 |
| Illinois..... | 37 |
| Indiana | 39 |
| Iowa | 41 |
| Kansas..... | 43 |
| Kentucky | 45 |
| Louisiana..... | 47 |
| Maine..... | 49 |
| Maryland..... | 51 |
| Massachusetts..... | 53 |
| Michigan | 55 |
| Minnesota..... | 57 |
| Mississippi..... | 59 |
| Missouri | 61 |
| Montana..... | 63 |

| | |
|--|------------|
| Nebraska..... | 65 |
| Nevada | 67 |
| New Hampshire | 69 |
| New Jersey | 71 |
| New Mexico | 73 |
| New York..... | 75 |
| North Carolina | 77 |
| North Dakota..... | 79 |
| Ohio | 81 |
| Oklahoma | 83 |
| Oregon..... | 85 |
| Pennsylvania | 87 |
| Puerto Rico..... | 89 |
| Rhode Island..... | 91 |
| South Carolina | 93 |
| South Dakota | 95 |
| Tennessee..... | 97 |
| Texas..... | 99 |
| Utah..... | 101 |
| Vermont..... | 103 |
| Virginia | 105 |
| Washington | 107 |
| West Virginia..... | 109 |
| Wisconsin | 111 |
| Wyoming..... | 113 |
| Appendix B: State-by-State Comparison Summary | 115 |

Executive Summary

There is a growing body of scientific evidence concerning the use of illegal drugs and driving (Drummer et al., 2003; European Monitoring Centre for Drugs and Drug Addiction [EMCDDA], 2007; Jones, Shinar, & Walsh, 2003; Mørland, 2000; Walsh, de Gier, Christopherson, & Verstraete, 2004). An analysis of the U.S. National Survey on Drug Use and Health (2007) estimates that nearly 5% (more than 10 million) of licensed drivers in the United States drove under the influence of an illicit drug during the previous year. The highest drugged-driving rates reported were among the young, least-experienced drivers. Despite the mounting research evidence that driving under the influence of drugs (other than alcohol) is common, there is minimal public awareness of this fact, and drugged drivers are less frequently detected, prosecuted, or referred to treatment when compared with drunk drivers.

To address the problem of impaired driving due to drugs other than alcohol, State legislatures have added statutory language proscribing operation of motor vehicles “under the influence” or “while impaired” (or a variety of similar terms) by “illegal drugs,” or impairing substances, often referencing the Federal controlled substances list, or specific drug classes (e.g., amphetamines, central nervous system depressants).

Many States have supported the establishment of Drug Recognition and Classification (DEC) programs within their State and local police, and the training of special Drug Recognition Experts (DREs). In addition, as a result of the overall prevalence of drug use in the United States, and the growing concern regarding the traffic safety implications of illegal drug use by drivers, 17 States have taken the initiative to enact driving under the influence of drugs (DUID) per se laws (Arizona, Delaware, Georgia, Iowa, Illinois, Indiana, Michigan, Minnesota, North Carolina, Nevada, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, and Wisconsin). Neither of these two strategic approaches to the problem of drugged driving (i.e., DEC and per se statutes) have been widely evaluated for their relative effectiveness.

In an effort to examine current public policy on drugged driving across the United States, NHTSA has commissioned a review of each State statute regarding drugged driving, and contacted State officials to discuss these laws. This document provides a comprehensive current analysis of State statutes regarding DUID as of December 2008.

The good news contained in this document is that the majority of State DUID statutes contain provisions for a substance abuse clinical evaluation, and education/treatment services for those convicted of drugged driving. The bad news is that the current laws in many States include provisions that make it difficult to identify, prosecute, or convict drugged drivers.

There are three principal types of drugged-driving laws:

- 1) Statutes that require drugs to render a driver “**incapable**” of driving safely;
- 2) Statutes requiring that the drug impair the driver’s ability to operate safely or require a driver to be “**under the influence**” or affected by an intoxicating drug; and
- 3) “**Per se**” statutes that make it a criminal offense to have a drug or metabolite in one’s body/body fluids while operating a motor vehicle (often referred to as “zero tolerance” laws).

In the first two types of statutes, which are the most prevalent in the United States, the State must prove that “the drug” caused the impaired driving, which is a technically complicated and difficult task. There was some evidence that stakeholders (e.g., law enforcement agencies, judges, and prosecutors) feel that the “per se” type statutes facilitate the prosecution, conviction, and potential treatment of drugged-driver offenders (Lacey, Brainard, & Snitow, under review). The 17 States with per se type statutes cover roughly 40% of all licensed drivers in the United States.

Overall, the State-by-State analysis indicates there is a lack of uniformity or consistency in the way the States approach drugged drivers. The current DUID statutes in many States do not support or encourage enforcement and prosecution of driving under the influence of drugs other than alcohol. There is a need for national leadership to develop model statutes and to strongly encourage the States to modify their laws to be more effective.

Driving Under the Influence of Drugs Laws in the United States

Introduction

Under the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), Public Law 109-59, Section 2013, the U.S. Department of Transportation is required to submit a report to Congress covering varying aspects of driving under the influence of drugs. Among the requirements of the report is a description and assessment of current State and Federal laws relating to drug-impaired driving. The purpose of this document is to convey that information.

The laws in all 50 States, the District of Columbia, and Puerto Rico were reviewed and summary statements of the sections were developed of each State's impaired driving statute pertaining to driving under the influence of drugs other than alcohol. The summary statements were reviewed at the State level, typically by the States' Traffic Safety Resource Prosecutor (TSRP) for accuracy.

The statutory information in this report is current as of December 2008. The main sources consulted in the drafting of this report were the Codified Laws, the Codes and Statutes of the individual States, Puerto Rico, and the District of Columbia, and the State Highway Safety Offices or law enforcement agencies. This report is not intended to be a reference to be relied upon for official legal citation. Please consult the most recent official statutes in each individual State for official citation.

The abbreviation DUI is used for any drunk- or drugged-driving offense although this report targets only statutes related to drugged driving. References to any alcohol-related DUI are limited. DUID refers specifically to drugged driving offenses. DRE refers to both drug recognition evaluations and Drug Recognition Experts (law enforcement officers specially trained to perform drug recognition evaluations).

General Comparisons and Contrasts Among the States

DUID Statutes

DUID statutes are predominantly found in the Transportation or Motor Vehicle Codes or Titles of the respective States' Codes or Statutes. In only 2 States (Idaho and Texas) can one find the State's DUID statutes in the Penal Code or Criminal Title.

All the States with the exception of Texas and New York use the phrase "under the influence" in their DUID statutes. Several States have gone on to define the standard that constitutes "under the influence" within the body of the statute. Fourteen States (Alabama, Arkansas, Illinois, Kansas, Nevada, Maryland, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Dakota, Vermont, Wisconsin, and Wyoming) set the standard at "incapacity" (i.e., the influence of the drug "renders the driver incapable of driving safely"). All these States placed this standard in the language of the DUID statute. Incapacity to drive safely is thus linked to the drug ingested and the prosecutor must show a connection between drug ingestion and the incapacity of the driver.

Other States (Arizona, Florida, Hawaii, Indiana, Kentucky, Montana, South Carolina, and Virginia) use the standard of impairment to define "under the influence" so that the influence is such that the driver's abilities are impaired. This suggests the requirement of a less stringent effect on the driver than one that renders the driver incapable of driving safely; nevertheless, the prosecutor still must prove that the impairment is directly related to the drug ingested.

Texas sets a standard of intoxication, which it defines as "not having the normal use of mental or physical faculties" by reason of ingestion of a drug. Texas also makes it illegal for chemically dependent people who are a danger to themselves or for those who are addicted to a controlled substance or another drug which renders that person incapable of driving, to receive a driver's license. This has the effect of prohibiting these people from driving altogether, because it is illegal for them to drive a vehicle without a license.

There are a total of 17 States that have variations of zero-tolerance type legislation with regard to DUID. In 7 per se States (Arizona, Delaware, Georgia, Indiana, Minnesota, Pennsylvania, and Utah), it is illegal to have any amount of a prohibited drug or its metabolite in the body while operating a motor vehicle (N.B., the Minnesota law specifically exempts marijuana). In 5 States (Illinois, Iowa, Michigan, Rhode Island, and Wisconsin,) it is illegal to have any amount of a prohibited drug in the body while operating a motor vehicle. In 3 States (Nevada, Ohio, and Virginia), it is illegal to have specified amounts of specified prohibited drugs in the body while operating a motor vehicle. Two States (North Carolina and South Dakota) make it illegal for any people under age 21 to drive with any amount of a prohibited drug or substance in their bodies.

Five States (California, Colorado, Idaho, Kansas, and West Virginia) make it illegal for any drug addict or habitual user of drugs to drive a vehicle in their States.

A number of States use the standard of impairment to construct a separate offense so that, in these States, a person can be charged with “driving under the influence,” with “impaired driving,” or both. New York also uses the term “impaired driving,” but that is the only offense with which a person may be charged in New York. It does not have a statute relating to “under the influence.”

In addition to its “under the influence” statute, the State of Washington has a “negligent driving” statute that prohibits the negligent operation of a vehicle if it “endangers or is likely to endanger any person or property, and (the driver) exhibits the effects of having consumed an illegal drug.”

Only 2 States (Hawaii and New York) have DUID statutes separate from their DUI-alcohol statutes. In all the other States, a driver violates a DUI statute if he/she drives under the influence of alcohol, drugs, or a combination of alcohol and drugs. The use of the word “or” in all of these statutes infers that it does not matter what substance is influencing the driver, or that the driver is under the influence of a combination of substances (e.g., alcohol combined with other drugs). Under these States’ laws, the violation is the same, as are the ensuing penalties. The one exception found is the State of Washington, where the DUID language is included in the overall DUI statute, but different penalties attach where there has been only drug use, as opposed to alcohol use or a combination of alcohol and drug use.

Defenses Available

A total of 20 States (Alabama, Arizona, Arkansas, Delaware, Georgia (with one exception), Idaho, Illinois, Kansas, Kentucky, Montana, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Washington, and West Virginia) and Puerto Rico specifically disallow legal entitlement to use the drug as a defense to a DUID charge. Maryland allows for limited use of legal entitlement as a defense in two circumstances: (1) where the defendant was unaware that the drug would render him/her incapable of driving safely, or (2) where the defendant was legally entitled to use a controlled substance. North Dakota will allow legal entitlement to be used as a defense if the drug was used only as directed or cautioned by an attending physician or other practitioner who legally prescribed or dispensed the drug to the defendant.

Use of a drug pursuant to a valid prescription and/or according to directions is a defense to a DUID charge in several States (Arizona, Indiana, Iowa, Minnesota, and North Carolina). In the State of Washington, use of a drug pursuant to a valid prescription is a defense to a charge of “negligent driving.” In North Carolina, it is a defense to a per se charge if the person under 21 lawfully obtained the substance and was using it in “therapeutically appropriate amounts” at the time of the offense. Georgia will allow the defense of legal entitlement to a charge under its per se statute unless the driver is rendered incapable of driving safely by the drug use. In Utah, it is an affirmative defense to a charge under its per se statute that the controlled substance was involuntarily ingested; or was prescribed by a practitioner for use by the defendant; or was otherwise legally ingested.

Wisconsin allows a defense to a charge of DUID if the driver proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

Implied Consent Law

All but 5 States (Alabama, Alaska, Massachusetts, New Jersey, and West Virginia) extend their implied consent (to provide a specimen if requested by law enforcement) laws to instances of DUID. However, both Alabama and Alaska have provisions for compulsory testing in certain circumstances in crashes involving serious injury or death. Of those 45 States (plus the District of Columbia and Puerto Rico) that do extend implied consent laws to drugged driving, 9 States (Arkansas, Indiana, Louisiana, Maryland, Minnesota, Nebraska, New Mexico, Ohio, and Rhode Island) have taken an additional step by providing criminal penalties for a refusal to submit to a test under the implied consent law. Alaska also provides for criminal sanctions under its limited circumstances of compelling a test. New Mexico has a separate statute specifically denoting a refusal to test as a separate crime. Two other States (Kentucky and Maine) do not provide for criminal penalties, but use a refusal to submit to a test as an enhancement of penalties should the driver be convicted of DUID. Nevada does not have any criminal sanctions for refusal to test; however, upon refusal, the requesting officer shall seize the license of the driver and arrest him/her for DUI.

Twenty-eight States (Alaska, California, Delaware, Florida, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Texas, Vermont, Virginia, Washington, Wisconsin and Wyoming) and the District of Columbia and Puerto Rico, permit the forced taking of a specimen for a chemical test over the objection of a driver. In the majority of cases, the taking of a specimen without consent is limited to circumstances where there has been a crash involving serious injury or death and there is probable cause to believe that the driver is driving under the influence of a drug. Of those 28 States, New Mexico, North Carolina, Pennsylvania, and Vermont consider such action a “search,” and therefore, require either a search warrant or the exigent circumstances that would permit a warrantless search. Wisconsin, too, will allow a forced test only through the use of “lawful means.”

Hawaii is the only State extending its implied consent law to cases of drugged driving that does not allow evidence of a refusal to submit to a test to be admitted into evidence in any case against the defendant driver. Maryland will allow such evidence only if it is “material and relevant” to issues related to the DUI offense. Michigan admits such evidence only to show that a test had been requested. Rhode Island will allow evidence that the defendant refused to submit to the test only if the defendant elects to testify. Virginia allows the introduction of such evidence only for purposes of rebuttal. Wisconsin will hold such evidence to be admissible only if its implied consent provisions were followed correctly. All the other States and the District of Columbia extend their implied consent laws to DUID and permit evidence of a refusal is admissible in criminal cases. Several States also allow evidence of “refusal to test” to be admitted in any civil case against the defendant driver.

Under the implied consent provisions, most State statutes stipulate the type of specimen that law enforcement officers are authorized to collect. Thirty-four States permit blood and/or urine. Eight States (Maryland, Montana, New Mexico, Rhode Island, Vermont, Virginia, Texas, and Washington) allow only blood. Six States permit saliva (Colorado, Missouri, New York, North Dakota, Oklahoma, and Utah). Eight States (Alabama, Arizona, Georgia, Indiana, Kansas, Louisiana, North Carolina, and South Dakota) and Puerto Rico permit “other bodily substances.” Because the implied consent does not extend to DUID, there are no provisions for collecting a specimen to test for drugs in three States (Massachusetts, New Jersey, and West Virginia).

Sanctions

It is difficult to compile a complete overview of sanctions among the States for either refusal to submit to a test or upon conviction for DUID. Some States provide for relatively light sentences for first time offenses; others impose severe sanctions/penalties on first-time offenders. A few States have made a second or third offense a felony; others do not reach felony status until a fourth or subsequent offense has been committed. As indicated in the discussion about implied consent laws, a few States attach criminal penalties to a refusal to submit to a test; most of the others provide only for administrative license suspension and/or revocation. Again, the time periods for such suspensions/revocations run the gamut. For both refusals and convictions, some States provide for mandatory sentencing with no exceptions, some provide for mandatory sentencing with exceptions, and some have no mandatory requirements.

Penalties in addition to fines and incarceration also vary widely among States. Many States employ community service, house arrest, electronic monitoring, work release, restitution, and the assessment of costs and fees to supplement the court’s ability to sanction offenders.

Roughly 35 States provide for court-ordered substance abuse treatment and/or education for offenders. A few States allow courts to “sentence” offenders to inpatient or outpatient treatment facilities or programs as part of their sentences (Florida, Kentucky, Massachusetts, Missouri, Montana, New Hampshire, Pennsylvania, Tennessee, and Texas). Several States require defendants to participate in screening processes to establish whether additional participation in educational or treatment programs would be beneficial to the defendant, and then order the defendant to participate in the recommended programs (Arizona and Montana). A growing number of States require participation in a program or treatment as a condition of probation or as a pre-requisite to reinstatement of driving privileges.

Conclusions

Overall, the State-by-State analysis indicates there is a lack of uniformity or consistency in the way the States approach drugged drivers. Having no separate offense for driving under the influence of drugs makes it difficult to distinguish between DUID and DWI-alcohol arrests and dispositions. A recent attempt to investigate the effectiveness of drug per se laws was unable to draw conclusions due to the paucity of objective data and the inability of State data systems to distinguish between DUID and DWI-alcohol arrests and convictions (Lacey, Brainard, & Snitow, under review). In addition, in cases where a driver shows evidence of impairment by multiple substances, the lack of difference in sanctions between drug-impaired and alcohol-impaired driving provides little incentive for criminal justice officials to pursue a drug-impaired driving charge in addition to an alcohol offense. There is a need for national leadership to develop model statutes and to strongly encourage the States to modify their laws to provide separate and distinct sanctions for alcohol- and drug-impaired driving.

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Appendix A: State Data Pages



ALABAMA

Code of Alabama
Chapter 32 – Motor Vehicles and Traffic
Section 32-5A-191

Type of DUI Law: Under the Influence: Incapacity

Section 32-5A-191

- (a) A person shall not drive or be in actual physical control of any vehicle while:
- ...
 - (3) under the influence of a controlled substance to a degree which renders him incapable of safely driving;
 - (4) under the combined influence of alcohol and a controlled substance to a degree which renders him incapable of safely driving; or
 - (5) under the influence of any substance which impairs the mental or physical faculties of such person to a degree which renders him incapable of safely driving.

Type of Drugs Prohibited: A controlled substance or any substance which impairs mental or physical faculties.

Required Proof:

1. The Defendant was driving or in actual physical control of a vehicle.
2. At time of driving, the defendant was under the influence of a prohibited substance.
3. That the influence of the prohibited substance was such that it rendered the defendant incapable of safely driving.

Possible Defenses Allowed by Statute: The fact that any person charged with violating this section is or has been legally entitled to use...a controlled substance *shall not* constitute a defense against any charge of violating this section.

Implied Consent to test for Drugs: No

Special Circumstances: Under a separate provision, if a person is involved in an accident resulting in a “serious physical injury” or death, and where there are reasonable grounds to believe that the individual was driving while under the influence of amphetamines, opiates or cannabis, then that person shall be deemed to have given consent to a test of his/her blood for the purpose of determining the presence of the drugs listed.

Arrest Required Prior to Test: Yes, for special circumstance

Specimens to be Tested: Blood, urine, or other bodily substance (blood only for special circumstance).

Sanctions for Refusal to Test:

Evidentiary: Refusal admitted into evidence

Criminal: None

Administrative: For refusing under the special circumstance, 2 years mandatory suspension

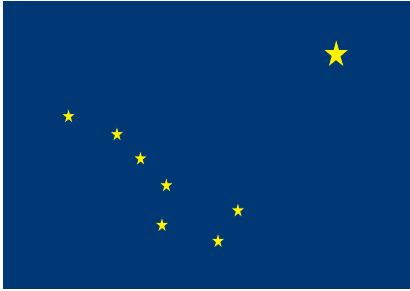
Sanctions Following Conviction:

Criminal: For **1st offense** Not more than 1 year imprisonment, \$600 - \$2100 fine or both a fine and imprisonment; **2nd offense within 5 years** will receive fines of \$1100 - \$5100 and 5 days (mandatory) imprisonment up to 1 year, or 30-days community service; **3rd offense** \$2100 - \$10,100 fines; not less than 60 days imprisonment up to 1 year; **4th or subsequent offense** is consid-

ered a Class C felony and punished with a fine of \$4100 - \$10,100 and a year and a day to 10 years imprisonment. (Punishment doubles when individual over 21 is convicted and there was child under 14 in the vehicle.)

Court-Ordered Other: Defendant may be required to pay restitution; Special fine of \$100 mandatory; Court may forbid defendant to drive for a limited period or perpetually.

Administrative: 90-day suspension (mandatory) for **1st offense**; 1 year revocation for **2nd offense**; 3 years revocation for **3rd offense**; 5 years revocation for **4th or subsequent offense**. Defendants must complete a substance abuse program prior to reinstatement.



ALASKA

Alaska Statutes Section 28.35.030

Type of DUID law: Under the influence

Section 28.35.030:

- (a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle...
1. while under the influence of ...any controlled substance
 2. while the person is under the combined influence of intoxicating liquor and a controlled substance

Types of Drugs Prohibited: Any controlled substance

Required Proof:

1. The Defendant was operating or driving a motor vehicle in Alaska
2. At time of driving, the defendant was under the influence of a controlled substance or the combined influence of intoxicating liquor and a controlled substance

Possible Defenses Allowed by Statute: None

Implied Consent for Drugs: Yes, same as for alcohol, §AS 28.35.031(a)

Special Circumstances: Tests can be administered without consent – a driver shall submit to a test of blood or urine for a controlled substance if there are “reasonable grounds” to believe that the person was driving or operating a motor vehicle in this state that was involved in an accident causing death or serious physical injury to another person, (AS 28.35.031g, AS 28.35.035).

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood and urine

Sanctions for Refusal to Test:

Evidentiary: Refusal admitted into evidence

Criminal: [Sec.28.35.032 g(1)]

- (A) not less than 72 consecutive hours imprisonment and a fine of not less than \$1,500 if the person has not been previously convicted;
- (B) not less than 20 days and a fine of not less than \$3,000 if the person has been previously convicted once;
- (C) not less than 60 days and a fine of not less than \$4,000 if the person has been previously convicted twice and is not subject to punishment under (p) of this section;
- (D) not less than 120 days and a fine of not less than \$5,000 if the person has been previously convicted three times and is not subject to punishment under (p) of this section;
- (E) not less than 240 days and a fine of not less than \$6,000 if the person has been previously convicted four times and is not subject to punishment under (p) of this section;
- (F) not less than 360 days and a fine of not less than \$7,000 if the person has been previously convicted more than four times and is not subject to punishment under (p) of this section;

Administrative:

Mandatory 90 day Revocation for **1st refusal**; not less than one year for **2nd refusal** within 10 years; not less than 3 years for **3rd refusal** within 10 years; not less than 5 years for **4th and subsequent refusals within 10 years**. [AS 28.15.181]

Sanctions Following Conviction:

Criminal: Driving while under the influence of an alcoholic beverage, inhalant, or controlled substance is a class A misdemeanor, upon conviction,

The court shall impose a minimum sentence of imprisonment of:

- (A) not less than 72 consecutive hours and a fine of not less than \$1,500 if the person has not been previously convicted;
- (B) not less than 20 days and a fine of not less than \$3,000 if the person has been previously convicted once;
- (C) not less than 60 days and a fine of not less than \$4,000 if the person has been previously convicted twice and is not subject to punishment under (n) of this section;
- (D) not less than 120 days and a fine of not less than \$5,000 if the person has been previously convicted three times and is not subject to punishment under (n) of this section;
- (E) not less than 240 days and a fine of not less than \$6,000 if the person has been previously convicted four times and is not subject to punishment under (n) of this section;
- (F) not less than 360 days and a fine of not less than \$7,000 if the person has been previously convicted more than four times and is not subject to punishment under (n) of this section;

Court-Ordered Other: Community Service mandatory 24 hours for **1st offense**; mandatory 160 hours for **2nd offense**; discretionary for subsequent offenses; Restitution may be ordered; Incarceration, EMS, Police, Fire Dept. costs may be assessed. If the court determines that the person has successfully completed a court-ordered treatment program, the court may suspend up to 75 percent of the mandatory minimum sentence required and up to 50 percent of the minimum fines required. The reductions in sentence and fines do not apply to a person who has already participated in a court-ordered treatment program two or more times.

Administrative: Not applicable to DUID



ARIZONA

Arizona Revised Statutes Section 28-1381

Type of DUI Law: Under the Influence: Impairment
Zero Tolerance (Per Se)

A.R.S. 28-1381

- A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state under any of the following circumstances:
1. While under the influence of intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances if the person is impaired to the slightest degree.
 2. If the person has an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.
 3. While there is any drug defined in § 13-3401 or its metabolite in the person's body.
 4. If the vehicle is a commercial motor vehicle that requires a person to obtain a commercial driver license as defined in section 28-3001 and the person has an alcohol concentration of 0.04 or more.
- B. It is not a defense to a charge of a violation of subsection A, paragraph 1 of this section that the person is or has been entitled to use the drug under the laws of this state.
- C. A person who is convicted of a violation of this section is guilty of a class 1 misdemeanor.

Type of Drugs Prohibited: Any drug, any substance containing a toxic substance, or any drug (or its metabolite) defined in Section 13-3401 (very extensive listing).

Required Proof:

1. Defendant was driving or in actual physical control of a vehicle in Arizona;
2. At time of driving or control, Defendant was under the influence of any drug or substance containing a toxic substance such that the defendant was impaired to the slightest degree; OR
3. At time of driving, any drug or its metabolite that is listed in Section 13-3401 was present in the Defendant's body.

Possible Defenses Allowed by Statute: It is not a defense to Section 28-1381 A (1) that person is or has been entitled to use the drug under the laws of the state, but a person using a drug prescribed by a medical practitioner...is not guilty of violating subsection A, paragraph 3 of this section.

Implied Consent for Drugs: Yes

Special Circumstance: Arizona has a separate implied consent law where a law enforcement officer can request a driver to submit to a chemical test for drug content if the driver is involved in an accident that caused either a death or a serious physical injury and either (1) there is "probable cause to believe" that the driver caused the accident or (2) the driver was issued a citation for a traffic offense. Section 28-673.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, urine and "other bodily substances"

Sanctions for Refusal to Test:

Evidentiary: Refusal is admitted into evidence

Criminal: None

Administrative: 12-month mandatory suspension for 1st offense, 2-year mandatory suspension for subsequent refusal within 84 months.

Sanctions Following Conviction:

Criminal: For **1st offense** Not less than 10 days (mandatory 24 consecutive hours) imprisonment, not less than \$250 fine plus additional assessments of \$500 for prison construction/operations, and \$500 to the state general fund; for **2nd offense within 84 months** not less than 90 days imprisonment (mandatory 30 consecutive days), pay fine of \$500; plus additional assessments of \$1250 for prison construction/operations, and \$1250 to the state general fund.

Court-Ordered Other: Court may order community service, restitution, completion of a driver training course, probation, an ignition interlock and additional penalty assessments [sections 12.114.01, 12-116.01, 12-116.02, 41-1651, 41-1723]. Defendants must also participate in a three-tiered process in which he/she is screened to establish whether he/she will be required to participate in an educational program or treatment program, or both, pursuant to court order.

Administrative: Not less than 90 days nor more than 1 year suspension for **1st offense** (if not already suspended pursuant to implied consent law); 1 year revocation for **2nd offense** (if not already revoked pursuant to implied consent law); Forfeiture of defendant-owned vehicle is mandatory under certain circumstances.



ARKANSAS

Arkansas Code Annotated Section 5-65 – Driving While Intoxicated

Type of DUID Law: Intoxication

§ 5-65-103 – *Unlawful Acts* - It is unlawful and punishable as provided in this act for any person who is **intoxicated** to operate or be in actual physical control of a motor vehicle

§5-65-102 - *Definitions*

As used in this act, unless the context otherwise requires:

(2) “**Intoxicated**” means influenced or affected by the ingestion of ... a controlled substance, any intoxicant, or any combination thereof, to such a degree that the driver’s reactions, motor skills, and judgment are substantially altered and the driver, therefore, constitutes a clear and substantial danger of physical injury or death to himself and other motorists or pedestrians.

(1) (A) “**Controlled substance**” means any drug, substance, or immediate precursor in Schedules I through VI (very extensive listing)

(B) The fact that any person charged with a violation of this act is or has been entitled to the use of that drug or controlled substance under the laws of this state does not constitute a defense against any charge of violating this act.

Types of Drugs Prohibited: A drug, substance or immediate precursor listed in Schedules I through VI (Section 5-64-101-215)

Required Proof:

1. The defendant operated or was in actual physical control of a vehicle in Arkansas
2. At time of operating the defendant was influenced or affected by a controlled substance or any intoxicant listed in statute
3. The influence must be of a degree that it substantially alters the defendant’s reaction, motor skills, and judgment so as to constitute a clear and substantial danger of physical injury or death.

Possible Defenses Allowed by Statute: The fact that a person charged with a violation of this act is or has been entitled to use that drug or controlled substance under the laws of this state shall not constitute a defense against any charge of violating this act. Section 5-65-102 (2).

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: No

A law enforcement officer can request a driver to submit to a chemical test if the driver has been arrested for DUI, is involved in an accident, or if, at the time of a DUI arrest, there is reasonable cause to believe the driver is intoxicated. Section 5-65-202 (a).

Specimens to be Tested: Blood and urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admitted into evidence

Criminal: For **1st offense** - \$100 (mandatory) - \$500 fine and possible community service; for **2nd offense** - \$200 (mandatory) - \$1000 fine and 30 days (mandatory) community service; for **3rd and subsequent offenses** - \$500 (mandatory) - \$2000 fine and 60 days (mandatory) community service

Administrative: For **1st refusal** – 6 months suspension; for **2nd offense within 5 years** – 24 months suspension; for **3rd offense within 5 years** – 30 months suspension; for **4th or subsequent offense** within 5 years – 4 year revocation.

Sanctions Following Conviction:

Criminal: For **1st offense** - 24 hours (mandatory) -1 year imprisonment, \$150 (mandatory) fine; for **2nd offense within 5 years** - 7 days (mandatory) - 1 year imprisonment, \$400(mandatory) - \$3000 fine; for **3rd offense within 5 years** - 90 days (mandatory) - 1 year, \$900 (mandatory) - \$5000 fine; for **4th or subsequent offense within 5 years** -1 year (mandatory) - 6 years imprisonment, \$900 (mandatory) - \$5000 fine.

Court-Ordered Other: In lieu of jail the court may order community service for 1st offense; mandatory 30 days community service for 2nd offense within 5 years; mandatory 90 days community service for 3rd within 5 years; 1 year mandatory community service for 4th or subsequent offense within 5 years. Community service may also be ordered as an alternative to a fine. Restitution not to exceed \$10,000, other fees and assessments, or forfeiture may also be ordered. A special court cost of \$250 is assessed.

Administrative: For **1st offense** - 6-month suspension (mandatory), for **2nd or subsequent offense** – 1-year (mandatory) suspension



CALIFORNIA

California Vehicle Code Section 23152

Type of DUI law: Under the influence, Zero tolerance for drug addicts

Section 23152 VC:

- (a) It is unlawful for any person who is under the influence of any...drug or under the combined influence of any alcoholic beverage and drug, to drive a vehicle ...
- (c) It is unlawful for any person who is addicted to the use of any drug to drive a vehicle

Types of Drugs Prohibited: Any drug

Required Proof:

1. The defendant was driving a vehicle in California
2. While driving, the defendant was under the influence of a drug OR
3. While driving, the defendant was a person who is addicted to the use of a drug

Possible Defenses Allowed by Statute:

The provision relating to persons addicted to a drug is not applicable to persons participating in a narcotic treatment program (including methadone maintenance) approved pursuant to... the Health and Safety Code. Section 23152 (c).

Implied Consent for Drugs: Yes

Special Circumstances: A person arrested for DUI may be compelled to submit a blood or urine sample to test for the presence of drugs.

Arrest Required Prior to Test: Yes

Specimens to be tested: Blood or urine

Sanctions for Refusal to test:

Evidentiary: Refusal is admitted into evidence

Criminal: None

Administrative action against driving privilege: 1 year (mandatory) suspension for **1st refusal**; 2 Years (mandatory) revocation for **2nd offense** within 7 years; 3 years (mandatory) revocation for **3rd offense** within 7 years.

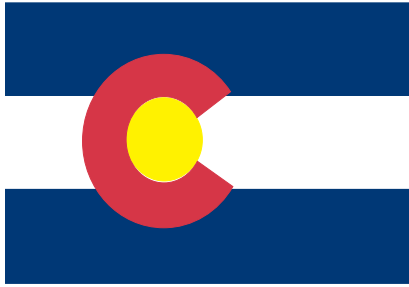
Sanctions Following Conviction (Aggravated offenses enhance penalties):

Criminal: For **1st offense** - For Non-injury DUI (23152 VC): 96 hours - 6 months imprisonment in county jail, \$390 (mandatory) - \$1000 fine; for **2nd offense within 10 years** - 90 days (96 hours mandatory) - 1 year imprisonment in county jail, \$390 (mandatory) - \$1000; for **3rd offense within 10 years** - 120 days (30 days mandatory) - 1 year, \$390 (mandatory) - \$1000; 180 days (mandatory) - 3 years, \$390 (mandatory) - \$1000 for 4th within 7 years. A person convicted of a third or 4th DUI within 10 years will be classified as a “habitual traffic offender” leading to revocation of driving privileges.

Court-Ordered Other: The court may order probation, community service, restitution to Victim's Assistance Fund or directly to the victims, fees, assessments and costs. Home detention, impoundment, forfeiture, a clinical assessment and treatment may also be ordered.

Administrative action against driving privilege: For **1st offense** - For Non-Injury DUI (23152 VC): 6 months (mandatory) suspension; for **2nd offense within 10 years** - 2 years revocation; revoked for **3rd offense within 10 years** -3 years revocation (18 months mandatory); for **4th or subsequent offense within 10 years** - 4 years (24 months mandatory) revocation.

For Injury-Related DUI (23153 VC): For **1st offense** - 1 year (mandatory) suspension; for **2nd offense within 10 years** - 3 years (18 months mandatory) revocation; for **3rd or subsequent offense within 10 years** - 5 years (30 months mandatory) revocation



COLORADO

Colorado Revised Statutes Section 42-4-1301

Type of DUI Law: Under the influence; Impairment; Zero Tolerance for persons who are habitual users of controlled substances

Section 42-4-1301(1)

- (a) It is a misdemeanor for any person who is under the influence of...one
- (b) or more drugs...to drive any vehicle in this state
- (c) It is a misdemeanor for any person who is impaired by...one or more drugs...to drive any vehicle in this state
- (d) It is a misdemeanor for any person who is a habitual user of any controlled substance defined in section 12-22-303(7), C.R.S. to drive any vehicle in this state. (N.B. 12-22-303(7) only defines “controlled substance” and not “habitual user.” Since “habitual user” is not defined, there is really no way to prove this section. TSRP reports he has never known a case to be prosecuted under this section.)
- (e) “Driving under the influence” means driving a vehicle when a person has consumed...one or more drugs...which... one or more drugs alone ... affects the person to a degree that the person is substantially incapable, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.
- (f) “Driving while ability impaired” means driving a vehicle when a person has consumed...one or more drugs...which... one or more drugs alone...affects the person to the slightest degree so that the person is less able than the person ordinarily would have been, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.

Type of Drugs Prohibited: Any Drug

A drug is defined as either (1) A substance that is intended to cure or prevent disease, listed in the U.S. Pharmacopoeia, (2) A controlled substance, as also defined in 18-18-202 C.R.S. or (3) A toxic vapor or vapors including but not limited to glue sniffing and aerosol inhalation. Sections 42-4-1301 (d)

Required Proof for Driving Under the Influence of Drugs:

1. Defendant was driving a vehicle in Colorado,
2. while under the influence of one or more drugs, or a combination of alcohol and one or more drugs,
3. which affected the defendant to the extent that he/she was substantially incapable, either mentally or physically, of exercising clear judgment, sufficient control or due care in the safe operation of the vehicle.

Required Proof for Driving while Ability Impaired from Drugs:

1. Defendant was driving a vehicle in Colorado,
2. while under the influence of one or more drugs, or a combination of alcohol or one or more drugs,
3. which affected the defendant to the extent that he/she was slightly incapable, either mentally or physically, of exercising clear judgment/ sufficient control or due care in safe operation of the vehicle.

Implied Consent for Drugs: Yes. The law provides for express consent. Any person who operates a motor vehicle in this state, is “deemed to have expressed such person’s consent” to submit to a chemical test of their blood, breath, urine or saliva. Section 42-4-1301.1(2)(b)(I)

Arrest Required Prior to Test: No, but probable cause is required

Specimens to be tested: Blood, urine and saliva

Sanctions for Refusal to Test:

Evidentiary: Refusal may be admitted into evidence

Criminal: None

Administrative: For **1st offense** -1 year revocation; **2nd offense** - 2 year revocation; for 3rd – 3 year revocation.

Sanctions Following Conviction:

Criminal:

For Under the Influence/Zero Tolerance Cases: For **1st offense** 5 days (mandatory) - 1 year imprisonment, \$600 - \$1000 fine; for a **1st DUI** after a prior **DWI conviction** 70 days (mandatory) - 1 year, \$600 - \$1500; for a **2nd DUI** - 90 days (mandatory) - 1 year, \$1,000 - \$1500.

For Driving While Impaired Cases: For **1st offense** 2 days (mandatory) - 180 days imprisonment, \$200 - \$500 fine; for **1st DWI** with a prior **DUI/Per Se Conviction** - 60 days (mandatory) - 1 year, \$800 - \$1200 fine; for a **2nd DWA** - 45 days (mandatory) - 1 year, \$600 - \$1000. [In certain circumstances a judge may suspend a portion or the entire sentence on the condition that a defendant completes an alcohol evaluation and either Level I or II education and specified hours of Useful Public Service.

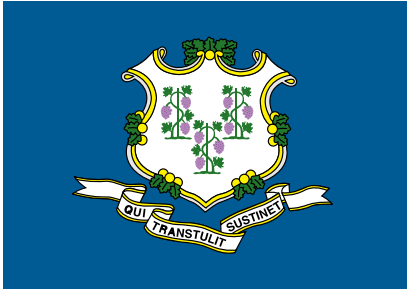
For Fatality & Injury Related Cases:

Vehicular Homicide, 4-12 years imprisonment, \$3,000-\$750,000 (Class 3 Felony)

Vehicular Assault, 2-6 years imprisonment, \$2000- \$500000 fine (Class 4 felony)

Court-Ordered Other: The court may order Community Service (some mandatory periods apply) and Restitution to the Victim's Compensation Fund. Various mandatory fees and costs attach and there is a requirement for mandatory parole in felony cases.

Administrative: For **1st offense** mandatory 9 month revocation*; for **2nd offense 1 year revocation**; for **3rd or subsequent refusal** minimum two year revocation to indefinite.



CONNECTICUT

Connecticut General Statutes Section 14-227 a

Type of DUI Law: Under the Influence

Section 14-227a

No person shall operate a motor vehicle while under the influence of ...any drug.... A person commits the offense of operating a motor vehicle while under the influence of ...any drug...if he operates a motor vehicle on a public highway of this state or on any road of a district organized under the provisions of chapter 105, a purpose of which is the construction and maintenance of roads and sidewalks, or on any private road on which a speed limit has been established in accordance with the provision of section 14-218a, or in any parking area for ten or more cars or on any school property (1) while under the influence of ...any drug....

Type of Drugs Prohibited: Any drug

Required Proof:

1. Defendant was driving a vehicle in Connecticut
2. While driving, the defendant was under the influence of any drug

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood and urine

Sanctions for Refusal to test [§ 14-227b]

Evidentiary: Refusal is admitted into evidence in criminal cases

Criminal: None

Administrative: 6 months (90 Days mandatory) suspension for **1st refusal**; 1 year (mandatory) suspension for **2nd refusal**; 3 years (mandatory) suspension for subsequent refusals.

Sanctions Following Conviction [§14-227g]:

Criminal: Not more than 6 months (48 hours mandatory) imprisonment, \$500-\$1000 fine for **1st offense**; not more than 2 years (120 days mandatory), \$1000-\$4000 for **2nd offense within 10 years**; not more than 3 years (1 year mandatory), \$2000-\$8000 for **3rd or subsequent offense within 10 years** (felony conviction).

Court-Ordered Other: The court may order 100 hours of community service in lieu of mandatory jail time for **1st offense**; must order 100 hours in addition to jail for **2nd or subsequent offenses**. The court may also order restitution and/or costs of incarceration to be paid. A special cost of \$15 is imposed for any DUI conviction. The court may order an alcohol/drug education and treatment program, ignition interlocks, and or a victim impact panel program.

Administrative: 1 year suspension (no mandatory period) for **1st offense**; 3 years suspension (no mandatory) for **2nd offense**; permanent revocation for 3rd and subsequent offenses.



DELAWARE

Delaware Code
21 Del. Code Section 4177

Type of DUID Law: Per Se

21 Del. C. § 4177: Driving a vehicle while under the influence or with a prohibited alcohol or drug content:

- (a) No person shall drive a vehicle ...
- (a) (2) When the person is under the influence of any drug
- (a) (6) When the person's blood contains, within 4 hours of driving, any amount of an illicit or recreational drug that is the result of the unlawful use or consumption of such illicit or recreational drug or any amount of a substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug prior to or during driving.

Type of Drugs Prohibited:

21 Del. C. § 4177 (c)(7): "Drug' shall include any substance or preparation defined as such by Title 11 or Title 16 or which has been placed in the schedules of controlled substance pursuant to Chapter 47 of Title 16. 'Drug' shall also include any substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, exhilaration, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

21 Del. C. § 4177 (c)(8): "Illicit or recreational drug' as that phrase is used in paragraph (a)(6) of this section means any substance or preparation that is:

- a. Any material, compound combination, mixture, synthetic substitute or preparation which is enumerated as a Schedule I controlled substance under § 4714 of Title 16; or
- b. Cocaine or any mixture containing cocaine as described in § 4716(b)(4) of Title 16; or
- c. Amphetamine, including its salts, optical isomers and salt of its optical isomers or any mixture containing any such substance, as described in § 4716(d)(1) of Title 16; or
- d. Methamphetamine, including its salt, isomer or salt of an isomer thereof, or any mixture containing any such substance, as described in § 4716(d)(3) of Title 16; or
- e. Phencyclidine, or any mixture containing any such substance, as described in § 4716(e)(5) of Title 16; or
- f. A designer drug as defined in § 4701 of Title 16 ; or
- g. A substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, stupefaction or lethargy or for the purpose of dulling the brain or nervous system."

21 Del. C. § 4177(c)(10): "Substance or compound that is the result of an unlawful use or consumption of an illicit or recreational drug' as that phrase is used in paragraph (a)(6) of this section shall not include any substance or compound that is solely an inactive ingredient or inactive metabolite of such drug."

Proof Required:

Driving a Vehicle While Under the Influence of Drugs (21 Del. C. § 4177(a)(2))

- 1. The Defendant was driving a vehicle in Delaware
- 2. While driving, the defendant was under the influence of a drug
 - a. 21 Del. C. § 4177(a)(5): "While under the influence' shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle.

Driving a Vehicle With a Prohibited Drug Content (21 Del. C. § 4177(a)(6))

The Defendant was driving a vehicle in Delaware; and

The person's blood contains, within 4 hours of driving, any amount of an illicit or recreational drug that is the result of the unlawful use or consumption of such illicit or recreational drug or any amount of a substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug prior to or during driving.

Possible Defenses Allowed by Statute:

21 Del. C. § 4177(b)(1) “Except as provided in paragraph (b)(3)b. of this section, the fact that any person charged with violating this section is, or has been, legally entitled to use...a drug shall not constitute a defense.” (emphasis added).

21 Del. C. § 4177(b)(3)a. “No person shall be guilty under paragraph (a)(6) of this section when the person has not used or consumed an illicit or recreational drug prior to or during driving but has only used or consumed such drug after the person has ceased driving and only such use or consumption after driving caused the person’s blood to contain an amount of the drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of driving.”

21 Del. C. § 4177(b)(3)b. “No person shall be guilty under paragraph (a)(6) of this section when the person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.”

Implied Consent for Drugs: Yes (21 Del. C. § 2740)

Special Circumstances: A person must submit to a chemical test in cases where there is probable cause to believe that the person committed a DUI offense that was related to an accident where there was a death. 21 Del. C. § 2740(b)

Arrest Required: No, but probable cause probably is. 21 Sections 2740, 2741 (b)

Specimens to be Tested: Blood, and/or urine

Sanctions for Refusal to test:

Evidentiary: Refusal can be admitted into evidence (21 Del. C. § 2749)

Criminal: None

Administrative: 1year (6 months mandatory) revocation for **1st refusal**; 18 months (mandatory) for **2nd refusal** or offense within 5 years; 24 months (mandatory) for 3rd and subsequent refusals/offenses.

Sanctions Following Conviction:

Criminal: 1st offense: (21 Del. C. § 4177(d)(1)) “be fined not less than \$230 nor more than \$1,150 or imprisoned not more than 6 months or both” (minimum fine is mandatory, imprisonment is not mandatory); **2nd offense:** (21 Del. C. § 4177(d)(2)) “be fined not less than \$575 nor more than \$2,300 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended.” To qualify as a second offense, the charge must have occurred within 5 years of a prior offense. 21 Del. C. § 4177(e)(2)a. **3rd offense:** (21 Del. C. § 4177(d)(3)) “be guilty of a class G felony, be fined not less than \$1,000 nor more than \$3,000 and imprisoned not less than 1 year nor more than 2 years . . . the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind.” To qualify as a third offense, the charge must have occurred within 5 years of the first offense. 21 Del. C. § 4177(e)(2)b.; **4th or subsequent offense:** (21 Del. C. § 4177(d)(4)) “occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not less than \$2,000 nor more than \$6,000 and imprisoned not less than 2 years nor more than 5 years . . . the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind.” There are no time limitations between present and prior convictions for sentencing as a fourth or subsequent offender. 21 Del. C. § 4177(e)(2)c..

Court-Ordered Other: Convicted shall be required to complete an alcohol evaluation and a course of instruction and/or rehabilitation program pursuant to § 4177D of title 21, which may include confinement for a period not to exceed 6 months, and pay a fee not to exceed the maximum fine. Any period of imprisonment imposed under this paragraph may be suspended.

The court may, at its discretion, order satisfactory completion of a DUI program, community service, restitution directly to the victim, and house arrest in lieu of imprisonment. A special assessment equal to 15% of any fine must be paid to the Victim Compensation Fund.

Administrative: for **1st offense** 1-year (90 days mandatory) revocation; for **2nd offense** - 2 years revocation (6 months mandatory); for **3rd offense** -revocation 2 years (6 months mandatory), for **4th offense** revocation of 5 years.



DISTRICT OF COLUMBIA

D.C. Code

§ 50-2201.05 [formerly §40-716]

Type of DUI Law: Under the influence

§ 50-2201.05 (b) (1) (A)(i) No individual shall operate or be in physical control of any vehicle in the District:

...

(II) While under the influence of intoxicating liquor or any drug or any combination thereof;

Type of Drugs Prohibited: Any drug

Required Proof:

1. Defendant was operating or was in physical control of a vehicle in the District
2. While so operating a vehicle, the defendant was under the influence of any drug

Possible Defenses: None found

Implied Consent for Drugs: Yes

Special Circumstances: A person is required to submit to a chemical test if he/she has been involved in an accident and that person has been arrested for a DUI offense. D.C. Code § 50-1902(b) [Formerly § 40-502 (b)]

Arrest Required: Yes

Specimens to be Tested: Blood and Urine and Breath

Sanctions for Refusal to test:

Evidentiary: Refusal may be admitted into evidence

Criminal: None

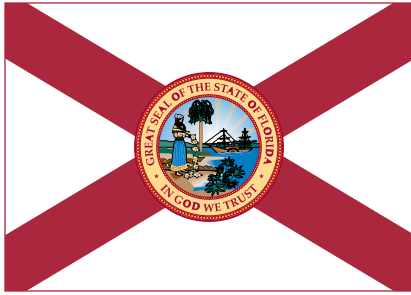
Administrative: 12 months mandatory suspension in all cases of refusal CDCR § 18-301.2

Sanctions Following Conviction:

Criminal: For **1st offense** - Not more than 90 days imprisonment, and a \$300.fine; for **2nd offense within 15 years** not less than \$1000 nor more than \$5000.fine and 5 days {mandatory) to not more than 1 year imprisonment or 30 days community service, for **3rd or subsequent offense within 15 years** – a fine of not less than \$2000. but not more than \$10,000, and 10 days (mandatory) to 1 year imprisonment or 60 days community service. If offense occurs while transporting a person 17 years or younger the penalties are enhanced.

Court-Ordered Other: The court may order a defendant to pay restitution to the Victims' Compensation Fund or to the victim directly. Offenders are also required to pay an assessment to finance the Crime Victim's Compensation Fund. Repeat offenders shall be ordered to receive an assessment and treatment as appropriate.

Administrative: For **1st offense** 6 months (mandatory) revocation; [CDCR § 18-306.4] for **2nd offense** 2 years (mandatory) revocation; [CDCR § 18-306.6] for **3rd and subsequent offenses** 3 years (mandatory) revocation. [CDCR § 18-306.7].



FLORIDA

Florida Statutes Annotated Section 316.193

Type of DUI Law: Under the Influence: Impairment

Section 316.193

- (1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and:
 - (a) The person is under the influence of ... any chemical substance...or any controlled substance..., when affected to the extent that the person's normal faculties are impaired.

Type of Drugs Prohibited: Any chemical substance set forth in section 877.111, or any substance controlled under chapter 893

Required Proof:

1. The defendant was driving or in actual physical control of a vehicle in the state of Florida
2. While driving, the defendant was under the influence of a chemical substance or controlled substance, and
3. That as a result of the influence, the defendant's normal faculties were impaired

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes, for testing of urine and blood.

Special Circumstances: The officer must require the driver to provide a blood sample for chemical/controlled substance testing if he/she has been involved in a crash resulting in death or serious bodily injury. Section 316.1933 (1)

Special Circumstances: The officer can read implied consent for the driver to provide a blood sample for analysis of chemical/controlled substances if the driver has been taken to a medical facility for treatment and urine testing is impossible or impractical. Section 316.1932(1)(c)

Arrest Required: Yes, but not if the driver has been taken to a medical facility for treatment as a result of a crash. Section 316.1932 (1) (c)

Specimens to be Tested: Blood, but only if driver is taken to a medical facility for treatment and a urine test is impracticable. Urine, for purpose of detecting presence of a chemical/controlled substance.

Sanctions for Refusal to Test: As of July 1, 2002, the defendant no longer has the right to refuse a breath/blood/urine test. House bill 1057 creates 316.1939 (327.353 for boating) making the second refusal to take a test a first degree misdemeanor.

Sanctions Following Conviction: It is a third degree felony upon conviction for a third DUI within 10 years after a prior conviction for DUI. DUI offenders with a BAC of .20 or higher and DUI offenders who were accompanied by a minor required to place an ignition interlock device upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person.

Criminal: Not more than 6 months imprisonment, \$500 - \$1000 fine for **1st offense**; not more than 9 months (10 days mandatory if **2nd offense is within 5 years** of a previous DUI), \$1000 - \$2000 for **2nd offense**; not more than 12 months (30 days mandatory if **3rd offense is not within 10 years** of a previous DUI), \$2000 - \$5000 for **3rd offense**; **not more than 5 years** (30

days if subsequent offense is within 10 years of a previous DUI), for **4th or subsequent offense** (felony conviction) punishable as provided in s. 775.082, s. 775.083 or s. 775.084 and not less than \$2000 fine.

Court-Ordered Other: The Court may order a defendant to serve all or part of a jail sentence at a drug residential treatment program. The court may also order community service, specified public service, restitution to the victim, court costs and assessments.

Administrative: 180 days - 1 year revocation for **1st offense**; not less than 2 years (12 months mandatory) revocation for **2nd offense within 5 years**; not less than 10 years (24 months mandatory) revocation for **3rd offense within 10 years**; permanent (5 years mandatory) revocation for **4th offense or subsequent offenses**. All offenders are placed on a monthly reporting probation and shall require completion of a substance abuse course conducted by a licensed DUI program. Forfeiture or impoundment is also possible.



GEORGIA

Code of Georgia Annotated Section 40-6-391

Type of DUI Law: Zero Tolerance (Per Se) controlled substances

O.C.G.A. Section 40-6-391 (a)

- (a) A person shall not drive or be in actual physical control of any moving vehicle while:
- (1) Under the influence of alcohol to the extent that it is less safe for the person to drive;
 - (2) Under the influence of any drug to the extent that it is less safe for the person to drive;
 - (3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent that it is less safe for the person to drive;
 - (4) Under the combined influence of any two or more of the substances specified in paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person to drive;
 - (5) The person's alcohol concentration is 0.08 grams or more at any time within three hours after such driving or being in actual physical control from alcohol consumed before such driving or being in actual physical control ended; or
 - (6) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood.
- (b) The fact that any person charged with violating this Code section is or has been legally entitled to use a drug shall not constitute a defense against any charge of violating this Code section; provided, however, that such person shall not be in violation of this Code section unless such person is rendered incapable of driving safely as a result of using a drug other than alcohol which such person is legally entitled to use.

Type of Drugs Prohibited: Any drug, glue, aerosol or other toxic vapor, marijuana, or any controlled substances

Required Proof:

1. The defendant was driving or was in actual physical control of a moving vehicle in Georgia;
2. While driving, there was any amount of marijuana or a controlled substance present in his/her blood or urine; OR
3. While driving, the defendant was under the influence of any drug, or under the intentional influence of glue, aerosol, or toxic vapor;
4. The influence was such that it was "less safe" for the defendant to drive.

Possible Defenses Allowed by Statute: Legal entitlement to use a drug is not a defense; however, "a person shall not be in violation of this Code section unless such person is rendered incapable of driving safely as a result of using a drug other than alcohol which such person is legally entitled to use. Section 40-6-391(b)

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes.

Special Circumstance arrest is not required where there are reasonable grounds to believe that a person is DUI and he/she is involved in an accident that resulted in serious injury or death.

Specimens to be tested: Blood, urine, other bodily substance

Sanctions for Refusal to Test:

Evidentiary: Refusal is admitted into evidence. Also refusal to take PBT, HGN or other field sobriety tests also admitted

Criminal: None

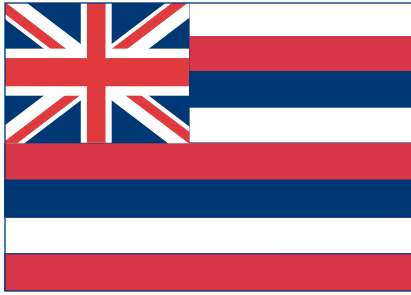
Administrative: 1year (mandatory) suspension

Sanctions Following Conviction:

Criminal: For **1st offense** - 10 days (24 hours mandatory) - 12 months imprisonment, \$300 (mandatory) - \$1000 fine; for **2nd offense within 5 years** - 90 days (48 hours mandatory) - 12 months, \$600 (mandatory) - \$1000; for **3rd within 10 years** - 120 days (10 days mandatory) - 12 months, \$1000 (mandatory or \$500 plus a drug treatment program) - \$5000; for **4th or subsequent offense** - \$1000 - \$5000 fine [\$1000 mandatory] and not less than 1 yr and not more than 5 years imprisonment [90 days mandatory], 7 - 15 years for DUI with a severe injury (felony conviction),

Court-Ordered Other: The court must order community service as follows: not less than 40 hours (40 hours mandatory) for **1st offense**; not less than 90 days and not more than 12 months (72 hours mandatory) for **2nd offense within 10 years**; not less than 120 days and not more than 12 months (15 days mandatory) for **3rd or subsequent offense within 10 years**. Restitution may be ordered. A clinical evaluation may be ordered. Various fees and assessments must be assessed. The name, address and photo of 2nd and subsequent offenders shall be published in the appropriate county. Probation is mandatory if the jail sentence is less than 1 year.

Administrative: For **1st offense** 12 months (no mandatory minimum) suspension; for **2nd offense** - 3 years (120 days mandatory) suspension; for **3rd offense within 5 years** - 5 years (2 years mandatory) revocation; 3 years (mandatory) suspension of a DUI with a serious injury. Forfeiture is mandatory for habitual offenders.



HAWAII

Hawaii Revised Statutes
Section 291E-61
(Section effective until June 30, 2010)

Type of DUI Law: Under the influence: Impairment

§291E-61 (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

...

- (2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner

Type of Drugs Prohibited: Controlled Substances enumerated in Section 329-11, Hawaii Revised statutes (HRS) Schedules I-IV.

Required Proof:

1. Defendant was operating or had physical control of a vehicle in Hawaii
2. While so operating the vehicle, defendant was under the influence of a controlled substance
3. The influence of the controlled substance was such that the defendant's ability to operate the vehicle in a careful and prudent manner was impaired.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: Blood or urine can be taken without consent if defendant is involved in a collision resulting in either injury or death to any person. Section 291E-21

Arrest Required Prior to Test: Yes

Specimens to be tested: Blood or urine

Sanctions for Refusal to Test:

Evidentiary: None - statute specifically prohibits introduction of such evidence.

Criminal: None

Administrative: 1 year (mandatory) revocation for **1st refusal**; 2 years (mandatory) revocation for **2nd refusal** within 5 years; 4 years (mandatory) revocation for 3rd refusal within 7 years; revocation for life (mandatory) for 4th and subsequent offense within 10 years.

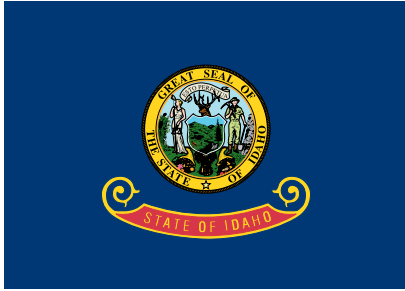
Sanctions Following Conviction [Aggravated offenses enhance penalties]:

Criminal: For **1st offense** - 48 hours (mandatory) to 5 days imprisonment, \$150 - \$1000 fine; for **2nd offense within 5 years** - 5 days (mandatory) to 14 days imprisonment, \$500 (mandatory) - \$1500 fine; for **3rd offense within 5 years** - 10 days (mandatory) - 30 days imprisonment, \$500 (mandatory) - \$2500 fine; not more than 5 years, not more than \$10,000 for **4th and subsequent offenses** within 10 years (felony conviction).

Court-Ordered Other: The court may order the following community service in lieu of or in addition to jail time and fines: 72 hours for **1st offense**; 240 hours for **2nd offense within 5 years**. Restitution to the victim, home detention, special assessment of

\$100, curfew using monitoring, or supervised release may also be ordered. \$25 surcharges to Neurotrauma fund may be assessed. Vehicle forfeiture may be ordered on **3rd offense**.

Administrative: 90 days (30 days with a restricted license for 60 days mandatory) suspension and a mandatory 14 hour drug abuse education or counseling program for **1st offense**; 1 year (mandatory) suspension for **2nd offense**; 1 year (mandatory) - 5 years revocation for **3rd offense**.



IDAHO

Idaho Code Section 18-8004

Type of DUI Law: Under the Influence

Section 18-8004

- (1)(a) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any combination of alcohol, drugs and/or any other intoxicating substances,... to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

Type of Drugs Prohibited: Any drug or other intoxicating substance

Required Proof:

1. Defendant was driving or in actual physical control (defined as “being in the driver’s position with the motor running or the motor vehicle moving”) of a motor vehicle in Idaho.
2. While driving or in control of the vehicle. Defendant was under the influence of a drug or any other intoxicating substance
OR
3. While driving or in control of the vehicle, Defendant was under the influence of a drug to a degree which impairs the driver’s ability to safely operate a motor vehicle.

Possible Defenses Allowed by Statute: The fact that any person charged with a violation of the provisions of this subsection is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of a violation of the provision of this subsection. Section 18-8004(7)

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: No. A peace officer only requires reasonable grounds to believe a DUI has been committed

Specimens to be Tested: Blood, urine

Sanctions for Refusal to Test: (N.B. Any person who does not take a test to determine alcohol concentration or whose test result is determined by the court to be unreliable or inadmissible against him, may be prosecuted for driving or being in actual physical control of a motor vehicle while under the influence of alcohol, drugs, or any other intoxicating substances, on other competent evidence.)

Evidentiary: Refusal is admissible in evidence in criminal cases

Criminal: None

Administrative: For **1st refusal** - 1 year (mandatory) suspension and a \$250 civil penalty; for **2nd or subsequent refusal within 10 years** 2 years (mandatory) suspension and a \$250 civil penalty.

Sanctions Following Conviction:

Criminal: For **1st offense** - Not more than 6 months imprisonment, not more than \$1000 fine; for **2nd offense within 10 years** -10 days imprisonment (mandatory) - 1 year, not more than \$2000 fine; for **3rd within 10 years or subsequent felony offense**

within 15 years - not more than 10 years imprisonment (if incarceration not imposed, 30 days mandatory in jail), not more than \$5000 fine, 1-5 year license suspension upon release from confinement; for **Aggravated DUI offense (involving serious bodily injury or death)** – Not more than 15 Years Prison.

Court- Ordered Other: The court may also order, work detail programs, community service, restitution, and electronic monitoring during probation. Defendants shall undergo alcohol/drug evaluation at their own expense.

Administrative: For **1st offense** - 30 days (mandatory) suspension and subsequently 60 - 150 days restricted driving; for **2nd offense** 1 year (mandatory) suspension after release from confinement; for **3rd or subsequent offenses** 1 year (mandatory) - 5 years suspension after release from confinement. [N.B. If a person is found to have failed the evidentiary test for drugs or other intoxicating substance the following Administrative Action may be taken: **First Failure** – Mandatory 90-day suspension (can request restricted permit after 30 days). **Second Failure within 5 Years** – Mandatory 1 year suspension.]



ILLINOIS

Illinois Compiled Statutes Section 625 ILCS 5/11-501

Type of DUI Law: Under the Influence: Incapacity / Zero Tolerance as to certain substances

Sec. 11 501

Driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof.

(a) A person shall not drive or be in actual physical control of any vehicle within this State while:

...

(3) under the influence of any intoxicating compound or combination of intoxicating compounds to a degree that renders the person incapable of driving safely; under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving;

(4) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving;

...

(6) there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, or a controlled substance listed in the Illinois Controlled Substances Act or intoxicating compound listed in the Use of Intoxicating Compounds Act or methamphetamine as listed in the Methamphetamine Control and Community Protection Act.

Type of Drugs Prohibited: Intoxicating compounds, other drugs, cannabis, controlled substances

Required Proof:

1. Defendant was driving or in actual physical control of a vehicle in Illinois;
2. While driving, Defendant was under the influence of an intoxicating compound or other drug, or a combination;
3. That influence rendered the defendant incapable of safely driving; OR
4. While driving, the defendant had any amount of cannabis, a controlled substance as defined in the controlled substance act, methamphetamine as defined in the methamphetamine control and community protection act or intoxicating compound as defined in the use of intoxicating compound act in his/her blood or urine.

Possible Defenses Allowed by Statute: Legal entitlement to use the drug or compound is not a defense to a violation of the statute.

Implied Consent for Drugs: Yes

Special Circumstance: Where there is probable cause of a DUI related to a death or injury, the driver must submit to a chemical test.

Arrest Required: Yes

Specimens to be Tested: Blood and urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible into evidence in civil and criminal cases

Criminal: None

Administrative: 6 month suspension for **1st refusal**; 3 years (2 years mandatory) suspension for subsequent refusals within 5 years. (N.B. As of January 1, 2009 a refusal for a first offender shall result in a 12 month suspension.)

Sanctions Following Conviction [Under 21 and aggravated offenses enhance penalties]:

Criminal: For **1st offense** - up to 1 year imprisonment (no mandatory), not more than \$2,500 fine; for **2nd offense** - up to 1 year imprisonment (5 days mandatory) or 240 hours community service, not more than \$2,500; ; for **3rd offense** (class 2 felony, probationable) -3 to 7 years imprisonment. If defendant receives probation, then there is a mandatory sentence of 10 days jail or 480 hours of public service work, not more than \$25,000 fine; for **4th offense** (class 2 felony, non-probationable) -3 to 7 years imprisonment, up to \$25,000 fine; for **5th offense** (Class 1 felony, non-probationable) - 4-15 years imprisonment; fines of up to \$25,000; for **6th offense** - or subsequent offense (Class X felony, non-probationable) - 6-30 years imprisonment; fines of up to \$25,000;

Court-Ordered Other: All offenders are required to obtain an alcohol/drug evaluation and undergo treatment as determined. All offenders may be ordered to attend a victim impact panel. If an emergency response is required due to the incident of impaired driving, the court may order the defendant to pay restitution for the cost of the emergency response. The court may also order restitution directly to the victim. Additional fees, surcharges, costs and fees are also assessed. Forfeiture may also be ordered in felony cases.

Administrative: For **1st offense** with court supervision, 6 month suspension for positive test or 12 month suspension for refusal. For 1st conviction for DUI, minimum 1 year revocation, eligible for Restricted Driving Permit (RDP); for **2nd offense within 20 years** - 5 years revocation; for **3rd offense** - 10 years revocation; and Lifetime revocation for **subsequent offenses**.



INDIANA

Indiana Code Annotated
Section 9-30-5-1
Section 9-30-5-2

Type of DUI Law: Zero Tolerance
Under the Influence: Impairment

Section 9-30-5-1-Per Se

...

- (c) a person who operates a vehicle with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body commits a Class C misdemeanor.

Section 9-30-5-2-Intoxicated

...

- (b) a person who operates a vehicle while intoxicated commits a Class C misdemeanor; if the person a vehicle in a manner that endangers a person, Class A misdemeanor.

Aggravated Crimes include: Section 9-30-5-3—Previous Conviction(s); Passenger less than 18 years of age, Section 9-50-5-4—Serious Bodily Injury, Section 9-30-5-5—Causing Death

Section 9-13-2-86

"Intoxicated" means under the influence of:

...

- (2) a controlled substance;
- (3) a drug other than alcohol or a controlled substance;
- (4) a substance described in IC 35-46-6-2 or IC 35-46-6-3; or
- (5) a combination of substances described in subdivisions (1) through (4);

so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties.

Type of Drugs Prohibited: Controlled substances listed in schedules I and II of Section 35-48-2

Required Proof:

1. Defendant was operating a vehicle in Indiana;
2. While operating the vehicle, defendant had any amount of a schedule I or II controlled substance in his/her blood; OR
3. While operating the vehicle, defendant was "intoxicated" by a controlled substance, alcohol or other drug;
4. The intoxication was such that Defendant was in an impaired condition with loss of normal control of his/her faculties to the extent that endangers him/her.

Possible Defenses Allowed by Statute: It is a defense to the zero tolerance provision if the driver consumed the substance pursuant to a valid prescription or while under a doctor's care.

Implied Consent for Drugs: Yes

Arrest Required: No, probable cause is sufficient to offer chemical test. Implied consent offer of PBT or chemical test required upon reasonable belief that driver of vehicle involved in a crash has been involved in a crash resulting in serious bodily injury or death to another person.

Specimens to be Tested: Blood, urine, or any other bodily substance

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal and civil cases

Criminal: Not more than \$500 fine, minimum 1 year suspension in all cases with 2 year minimum in cases of previous convictions.

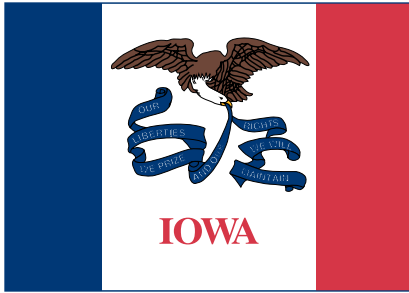
Administrative: Minimum 1 year suspension for any refusal.

Sanctions Following Conviction [Aggravated offenses enhance penalties]:

Criminal: For **1st per se offense** - Up to 60 days imprisonment, up to \$500 fine; for **1st DUI offense** - up to 1 year imprisonment and up to \$5000 fine; for any **2nd offense within 5 years** (felony) up to 3 years imprisonment (5 days mandatory), not more than \$10,000 fine; for **3rd offense within 5 years** (felony) - up to 3 years (10 days mandatory), not more than \$10,000; Serious bodily injury offense, D felony, up to 3 years, not more than \$10,000 fine. Causing death offense, C felony, up to 8 years, not more than \$10,000 fine. Causing death offense, B felony, up to 20 years, not more than \$10,000 fine.

Court-Ordered Other: The court may order community service, a substance abuse education program, may require drug and alcohol testing, restitution of not more than \$1000 to the victim, various fees and assessments, participation in a victim impact program, and home detention.

Administrative: For **1st offense** - 90 days (30 days mandatory) - 2 years suspension; for **2nd or subsequent offense within 5 years** 180 days (mandatory) - 2 years suspension; 2 years (mandatory) - 5 years suspension for an injury related per se or DUI offense.



IOWA

Code of Iowa
Section 321J.2

Type of DUI Law: Under the Influence / Zero tolerance

Section 321J.2

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:
 - (a) While under the influence of an alcoholic beverage or other drug or a combination of such substances.
 - ...
 - (b) While any amount of a controlled substance is present in the person, as measured in the person's blood or urine

Type of Drugs Prohibited: Any drug or controlled substance

Required Proof:

1. Defendant was operating a motor vehicle in Iowa;
2. While operating the motor vehicle, Defendant was under the influence of any drug; OR
3. While operating the motor vehicle, Defendant had any amount of a controlled substance present in his/her body as measured in his/her blood or urine.

Possible Defenses Allowed by Statute: It is an affirmative defense to the per se provision that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of the doctor or pharmacy. It is an affirmative defense to either a per se or a OWID violation if the substance was prescribed and taken according to the prescription or was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy examiners if there is no evidence of consumption of alcohol and the doctor or pharmacist had not directed the person to refrain from operating a motor vehicle.

Implied Consent for Drugs: Yes

Special Circumstances: A driver must submit to a chemical test if there are reasonable grounds to believe he/she is in violation of section 321J.2, and he/she is involved in an accident that includes death or serious injury; if the person is under arrest, the test can be compelled without a warrant; if no arrest has occurred, a warrant is required to overcome the driver's refusal

Arrest Required: No. Peace officer needs reasonable grounds to believe the person is in violation of any alternative of 321J.2, followed by either arrest, death or serious injury, a refusal to take a preliminary breath test, or a preliminary breath test lower than .08 but the officer has reasonable grounds to believe that the person is under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

Specimens to be Tested: Blood or Urine

Sanctions for Refusal

Evidentiary: Refusal is admissible in civil and criminal cases

Criminal: None

Administrative: 1 year (90 days mandatory) revocation for **1st refusal**; 2 years (1 year mandatory) revocation for 2nd or subsequent refusals

Sanctions Following Conviction (Aggravated offenses enhance penalties):

Criminal: For **1st offense** - Not less than 48 hours (mandatory) imprisonment with a possibility of up to one year in jail, \$625 (mandatory) - \$1250 fine; for **2nd offense** (aggravated misdemeanor) - not less than 7 days (mandatory) imprisonment with a possibility of up to one year in jail or no more than two years in prison, \$1875 (mandatory) - \$6250; for **3rd and subsequent offenses** (felony) - not more than 5 years imprisonment (30 days mandatory), and fines of \$3125 (mandatory) - \$9375.

Court- Ordered Other: The court sentence to a substance abuse evaluation and treatment, substance abuse education/prevention programs. The court may also order community service in lieu of the fine, restitution directly to the victim, deferred judgment (for first offenders only with a lifetime limit of one deferred judgment) with license revocation, surcharges, civil penalties, and costs of emergency response up to \$500.

Administrative: For **1st per se offense test failure with a deferred judgment** - Minimum 30 days (mandatory) revocation up to 1 year; for **2nd or subsequent offense** - 1 year (mandatory) revocation.



KANSAS

Kansas Statutes Annotated Section 8-1567

Type of DUI Law: Under the Influence: Incapacity/Zero tolerance for habitual users

Section 8-1567

(a) No person shall operate or attempt to operate any vehicle within this state while:

...

- (4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle or
- (5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

Type of Drugs Prohibited: Any drug

Required Proof:

1. Defendant was operating or attempting to operate a motor vehicle in Kansas
2. While operating or attempting to operate the vehicle, Defendant was under the influence of a drug
3. That influence rendered Defendant incapable of safely driving a vehicle OR
4. While so operating the vehicle, Defendant was a habitual user of a narcotic, hypnotic, somnifacient or stimulating drug

Possible Defenses Allowed by Statute: Legal entitlement to use the drug is not a defense against a DUI charge

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Not necessarily. Law enforcement officer must have reasonable grounds to believe that a DUI is occurring and either 1) an arrest or 2) the defendant is involved in an accident with property damage, injury or death.

Specimens to be Tested: Blood, urine, other bodily substances

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible into evidence in criminal cases

Criminal: None

Administrative: 1 year mandatory suspension for **1st refusal**; 2 year mandatory suspension for **2nd test refusal**; 3 year mandatory suspension for **3rd test refusal**; 10 year mandatory suspension for **4th test refusal**; lifetime suspension for **5th or subsequent test refusal**.

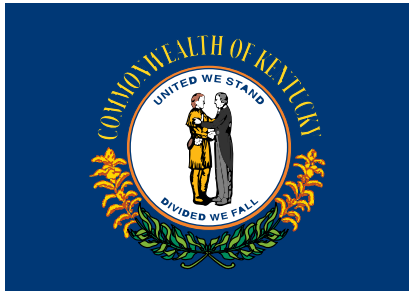
Sanctions Following Conviction:

Criminal: For **1st offense** 48 hours (mandatory) - 6 months imprisonment, \$500 - \$1000 fine; for **2nd offense within lifetime** - 90 days imprisonment (5 days mandatory - 48 hours must be served consecutively before the offender is eligible for work release or house arrest) - 1 year, \$1000 (mandatory) - \$1500; for **3rd within lifetime (felony)** - 90 days imprisonment (mandatory - 48 hours must be served consecutively before the offender is eligible for work release or house arrest) - 1 year, \$1500 (mandatory)

- \$2500; for **4th or subsequent offense within lifetime** - 90 days imprisonment (mandatory – 72 hours must be served consecutively before the offender is eligible for work release or house arrest) – 1 year, \$2500

Court- Ordered Other: The court may order work release or house arrest in lieu of incarceration, although the minimum mandatory amounts of time in jail are required. Also, the court may approve of a 1st time offender's entry into a diversion program, the successful completion of which will result in a dismissal of the DUI charges. The court may also order community service in lieu of incarceration or fine, restitution directly to the victim, and various assessed fees.

Administrative: 30 days (mandatory) suspension and 330 days restriction for **1st offense**; 1- year (mandatory) suspension for 2nd, 3rd, or **4th offense**. Lifetime suspension for 5th or **subsequent offenses**.



KENTUCKY

Kentucky Revised Statutes Section 189A.010

Type of DUI Law: Under the influence: Impairment

Section 189A.010

(1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:

...

- (c) While under the influence of any other substance [than alcohol] or combination of substances which impair one's driving ability;
- (d) While under the combined influence of alcohol and any other substance which impairs one's driving ability;

Type of Drugs Prohibited: Any substance that impairs driving ability

Required Proof:

1. Defendant was operating or was in physical control of a motor vehicle in Kentucky
2. While operating the vehicle, Defendant was under the influence of a substance which impaired the defendant's driving ability

Possible Defenses Allowed by Statute: Legal entitlement to use any substance shall not constitute a defense. Section 189A.010(4)

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, urine

Sanctions for Refusal:

Evidentiary: Refusal is admissible into evidence in criminal cases

Criminal: None, but a refusal to test is considered an aggravating circumstance that can be used to enhance a penalty on conviction

Administrative: **KRS 189A.107(2)** states that a refusal of evidentiary test(s) can result in suspension of the arrestee's operator's license equal to the suspension called for dependent upon the numbered DUI offense he/she is charged under – if the refusal is for a **1st offense** DUI charge, the license would be suspended, regardless of conviction, for the amount of time it can be suspended if the subject was actually convicted, which is 30-120 days. In addition, **KRS 189A.107(1)** mandates that a person who refuses the evidentiary test will have his/her driving privileges suspended during the pendency of the action – in other words, your license is immediately suspended by law until such time your case is heard, regardless if the judge later declines to suspend your license

Sanctions Following Conviction:

Criminal: For **1st offense** - 48 hours (no mandatory) - 30 days imprisonment, and/or \$200 - \$500 fine; for **2nd offense within 5 years** - 7 days (mandatory) - 6 months imprisonment, \$350 - \$500 fine; for **3rd offense within 5 years** - 30 days (mandatory) - 12 months, and fine of \$500 - \$1000; for **4th or subsequent offense within 5 years – guilty of class D felony** - 1 year (120 days mandatory) - 5 years, \$1000 - \$10,000 (felony). If aggravating circumstances exist, penalties are enhanced.

Court-Ordered Other: The court may order the jail time for a 1st or 2nd offense served as weekend confinement §189A.030. The court can sentence persons convicted to an alcohol or substance abuse education or treatment program. The court may also order that any misdemeanor conviction be served in “home incarceration. The court may also order community service, restitution directly to the victim or to a Victim’s Compensation Board, and may require a defendant to reimburse the state or local government for any incarceration costs. Defendants are required to pay various other fees and assessments. Subsequent offenders must be sentenced to a substance abuse treatment program for 1 year.

Administrative §189A.070: For the **1st offense** within a five (5) year period, license revocation for a period of not less than thirty (30) days nor more than one hundred twenty (120) days; For the **2nd offense within a five (5) year period**, license revocation for a period of not less than twelve (12) months nor more than eighteen (18) months; For a **3rd offense within a five (5) year period**, for a period of not less than twenty-four (24) months nor more than thirty-six (36) months; and For a **4th or subsequent offense within a five (5) year period**, sixty (60) months.



LOUISIANA

Louisiana Revised Statutes Title 14: Section 98

Type of DUI Law: Under the influence

Section 14:98

- A. (1) The crime of operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when:
- ...
- (c) The operator is under the influence of any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in La. R.S. 40:964
 - (d)(i) The operator is under the influence of a combination of alcohol and one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription.
 - (e)(i) The operator is under the influence of one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription.

Type of Drugs Prohibited: Virtually all controlled substances in Schedules I, II, III, IV and V, prescription and OTC medications

Required Proof:

1. Defendant was operating a motor vehicle in Louisiana
2. While defendant was operating the vehicle, he/she was under the influence of a controlled dangerous substance

Possible Defenses Allowed by Statute:

- ...
- (d)(ii) It shall be an affirmative defense to any charge under this Subparagraph pursuant to this Section that the label on the container of the prescription drug or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol.
 - (e)(ii) It shall be an affirmative defense to any charge under this Subparagraph pursuant to this Section that the operator did not knowingly consume quantities of the drug or drugs which substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.

Implied Consent for Drugs: Yes

Special Circumstances: A driver under arrest for DUI may not refuse a chemical test if he/she has refused to submit to such test on two previous and separate occasions of any previous such violation [Sec. 14-98.2]. A driver under arrest for DUI may not refuse a chemical test if he/she has been involved in an accident with a fatality or serious injury

Specimens to be Tested: Blood, urine or other bodily substances [RS-32:661]

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible into evidence in criminal cases and DUI administrative hearings

Criminal: Violators of the provisions of RS 14:98.2 can be fined not less than \$300 nor more than \$1000 and shall be imprisoned for not less than 10 days nor more than six months.

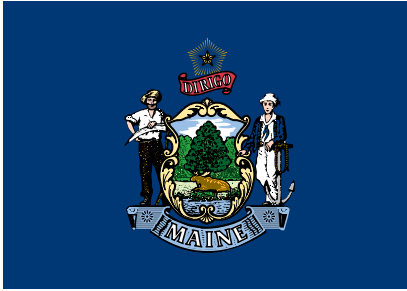
Administrative: 180 days (90 days mandatory) suspension for **1st refusal**; 545 days (mandatory) suspension for 2nd or subsequent refusal or for any refusal in a fatality or serious injury-related DUI.

Sanctions Following Conviction:

Criminal: 10 days (mandatory) - 6 months imprisonment, \$300 - \$1000 fine for **1st offense**; 30 days (mandatory) - 6 months, \$750 - \$1000 for **2nd offense within 10 years**; 1 year (30 days mandatory) - 5 years with or without hard labor, \$2000 for **3rd offense within 10 years** (felony); 10 years (60 days mandatory) - 30 years with hard labor, \$5000 for **4th offense within 10 years** (felony).

Court-Ordered Other: The court may order a combination of probation, community service and participation in a substance abuse and driver improvement programs in lieu of the mandatory sentences. Home incarceration may also be ordered. The defendant must pay restitution to the victim where there has been an “actual pecuniary loss” and must also pay fees covering the costs of chemical tests and fees to help defray the costs of probation or incarceration.

Administrative: 90 days suspension for **1st offense**; 12 months (mandatory) suspension for **2nd offense within 5 years**; 24 months (mandatory) suspension for **3rd or subsequent offense within 5 years**.



MAINE

Maine Revised Statutes Title 29-A Section 2401 Title 29-A Section 2411

Type of DUI Law: Operating Under the influence. (“Operating” is defined in §29-A 2401 6.—**Operating-** Operating in any form, means operating or attempting to operate a motor vehicle.)

Title 29-A Section 2401

...

3. Drugs means Scheduled drugs as defined under Title 17-A Section 1101. The term “drugs” includes any natural or artificial chemical substance that, when taken into the human body, can impair the ability of the person to safely operate a motor vehicle.

...

8. “OUI” means operating under the influence of intoxicants.

...

13. Under the influence of intoxicants means being under the influence of ...a drug other than alcohol, a combination of drugs.

Title 29-A Section 2411

A person commits OUI, which is a Class D crime unless otherwise provided, if that person operates a motor vehicle:

A. While under the influence of intoxicants...

Type of Drugs Prohibited: Scheduled drugs listed extensively under Title 17-A Section 1101. It includes any natural or artificial chemical substance, prescription drugs, etc.

Required Proof:

1. Defendant was operating or attempting to operate a motor vehicle in Maine;
2. While operating/attempting to operate the vehicle, defendant was under the influence of a drug that, when taken into the body, impairs the ability to safely operate a motor vehicle.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: A driver is required to submit to a test in accident cases where a police officer has probable cause to believe a death has or will occur as a result of the accident. The statute providing for implied consent uses the word “shall” but allows for refusal in other cases.

Arrest Required Prior to Test: No. Probable cause is sufficient.

Specimens to be Tested: Blood, breath, or urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible into evidence in criminal cases

Criminal: None, but a refusal will subject a defendant to enhanced penalties upon conviction

Administrative: For **1st refusal** - 275 days suspension (a restricted license may be substituted if Defendant participates in a treatment program); for **2nd refusal** - 18 months (mandatory) suspension; for **3rd refusal** - 4 years (mandatory) suspension; for 4th

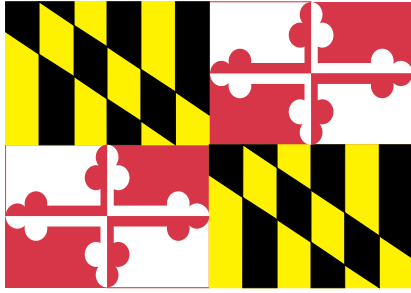
refusal - 6 years (mandatory) suspension. In repeat refusal situations, a temporary restricted license may be issued for purposes of attendance at an education or treatment program.

Sanctions Following Conviction:

Criminal: For **1st offense** - Less than 1 year imprisonment (48 hours mandatory under certain circumstances or 96 hours mandatory if test refused), not more than \$2000 fine (\$500 mandatory or \$600 if test refused); for **2nd offense within 10 years** - less than 1 year imprisonment (7 days mandatory or 12 days if test refused), not more than \$2000 fine (\$700 mandatory or \$900 if test refused); for **3rd offense within 10 years** – not less than 30 days imprisonment (mandatory) or 40 days if test refused, not less than \$1100 (mandatory) or \$1300 if test refused)for **4th or subsequent offense within 10 years** (felony) - not less than 6 months imprisonment (mandatory) or 6 months, 20 days if test refused, not less than \$2100 fine mandatory or \$2400 if test refused.

Court-Ordered Other: The court may order community service as a condition of probation, and restitution either directly to the victim or to a victims' compensation fund. Certain surcharges must be assessed against the defendant.

Administrative: 90 days (60 days mandatory) suspension for **1st offense**; 18 month (mandatory) suspension for **2nd offense within 10 years**; 4 years (mandatory) suspension for **3rd offense within 10 years**; 6 years (mandatory) suspension for **4th or subsequent offense within 10 years**. A temporary restricted license for the purpose of attending a treatment program may be ordered. All offenders must participate in and complete a drug program before their driving privileges can be restored.



MARYLAND

Annotated Code of Maryland Transportation Section 21-902

Type of DUI Law: Under the Influence: Incapacity

Transportation Code Section 21-902

...

(c) Driving while under influence of drugs and alcohol...

1. A person may not drive or attempt to drive any vehicle while he is so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that he cannot drive a vehicle safely.

...

(d) Driving while under the influence of controlled dangerous substance. A person may not drive or attempt to drive any vehicle while the person is impaired by any controlled dangerous substance, as that term is defined in § 5-101 of the Criminal Law Article, if the person is not entitled to use the controlled dangerous substance under the laws of this State.

Type of Drugs Prohibited: Any drug or controlled dangerous substance as defined in § 5-101 of the Criminal Law Article (extensive list which includes all scheduled drugs in Schedules I thru V).

Required Proof:

1. Defendant was driving or attempting to drive a vehicle in Maryland;
2. While driving that vehicle, Defendant was so far under the influence of any drug that he/she cannot drive the vehicle safely;
or
3. While driving the vehicle, Defendant was impaired by a controlled dangerous substance.

Possible Defenses Allowed by Statute: Legal entitlement to use any drug is not a defense to (c)(1) unless the person was unaware that the drug would make him incapable of safely driving. Legal entitlement to use a controlled dangerous substance is a defense to a charge under subsection (d) Section 21-902.

Implied Consent for Drugs: Yes. However, requesting a blood sample for drug or controlled dangerous substance testing is restricted to certified Drug Recognition Experts and trainees in programs designed to train DRE's in accordance with NHTSA protocols §16-205.1(i)

Special Circumstances: If a driver is involved in an accident resulting in death or a life threatening injury, a test is required by statute.

Arrest Required Prior to Test: No. The statute uses the phrase "detained on suspicion" of DUI, and allow the police officer to request that a driver submit to a test if the officer "stops or detains" the driver on reasonable grounds to believe a DUI has been committed.

Specimens to be Tested: Blood

Sanctions for Refusal to Test: § 10-320 thru 309 inclusive. Aggravated offenses enhanced penalties

Evidentiary: The fact of refusal to submit is admissible. Evidence of a refusal can only be admitted if it is "material and relevant" to issues related to a DUI offense

Criminal: A fine of not more than \$500 or imprisonment for not more than 2 months or both

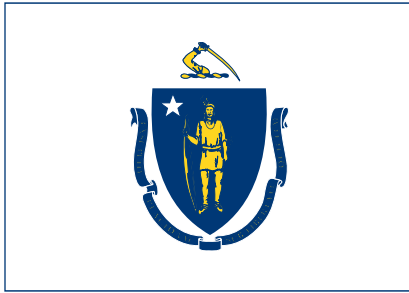
Administrative: 120 days suspension for **1st refusal**; 1 year suspension for a **2nd or subsequent refusal**. Special Circumstance - §27-101 (x) – provides for additional criminal penalties when the violation occurs and the driver is accompanied by a minor.

Sanctions Following Conviction:

Criminal: For **1st offense** - Not more than 2 months (no mandatory) imprisonment, not more than \$500 fine; for **2nd conviction of § 21-902(d) within 5 years** is subject to a mandatory minimum penalty of imprisonment for not less than 5 days; **for a third or subsequent offense under § 21-902(d) within 5 years** is subject to a mandatory minimum penalty of imprisonment for not less than 10 days, and a \$500 fine.

Court-Ordered Other: The court may order restitution in addition to incarceration and fines.

Administrative: For Driving under the influence of drugs offenses: not more than 60 days (no mandatory) suspension for **1st offense**; 120 days suspension for **2nd offense** within 3 years; revocation of **3rd or subsequent offense** and for all driving under the influence of controlled dangerous substances. The period of revocation is based on whether there have been any previous revocations; i.e. 6 months for 1st revocation; 1 year for a 2nd revocation; 18 months for 3rd revocation; 2 years for **4th or subsequent** revocations.



MASSACHUSETTS

Massachusetts General Laws Chapter 90 Section 24

Type of DUID Law: Under the influence

Chapter 90, Section 24

(1)(a)(1) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle... while under the influence of...marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue shall be punished...

Type of Drugs Prohibited: Marijuana, narcotic drugs, depressants, stimulant substances, vapors of glue

Required Proof:

1. Defendant was operating a motor vehicle in Massachusetts on a public way
2. While operating the vehicle, Defendant was under the influence of one of the above-listed substances

Possible Defense Allowed by Statute: None found

Implied Consent for Drugs: No

Arrest Required Prior to Test: Not applicable

Specimens to be Tested: Not applicable

Sanctions for Refusal to Test:

Evidentiary: Evidence of refusal is not admissible

Criminal: None

Administrative: Administrative license suspensions for refusals: **1st offense** = 180 days (3 years if under 21 years of age), **2nd offense** = 3 years, **3rd offense** = 5 years, **4th offense** = Lifetime

Sanctions Following Conviction:

Criminal: For **1st offense** - Not more than 2 1/2 years (no mandatory) imprisonment, \$500 - \$5000 fine; for **2nd offense** 60 days (30 days mandatory) - 2 1/2 years, \$600 - \$10,000 fine; for **3rd offense** (felony); 180 days (150 days mandatory) - 2 1/2 years, \$1000 - \$15,000 fine; for **4th offense** (felony) - 2 years (12 months mandatory) - 2 1/2 years, \$15,000 - \$25,000 fine; for **5th or subsequent offense** (felony) - 2 1/2 years (24 months mandatory), \$2000 - \$50,000. Penalties are enhanced in cases of serious bodily injury- related DUI, when a child 14 years old or younger is a passenger in the vehicle, or when a defendant between the ages of 17 and 21 years has a BAL of 0.20%or higher.

Court-Ordered Other: The court may order community service as a condition of probation, and restitution. The court must order all DUID offenders to a driver education program, a drug treatment program, a drug rehabilitation program, or any combination the programs and the offender is responsible for the cost. The offender must also pay a \$100 surcharge, and various assessments ranging from \$50-\$250.

Administrative: 1 year (45-90 days mandatory) revocation for **1st offense**; 2 years (6 months mandatory) revocation for **2nd offense**; 8 years (2 years mandatory) revocation for **3rd offense**; 10 years (5 years mandatory) revocation for **4th offense**; life (mandatory) revocation for **5th or subsequent offense**.



MICHIGAN

Michigan Vehicle Code Act 300 of 1949

Type of DUI Law: Operating while intoxicated, Operating while impaired, Per Se

257.625 Operating motor vehicle while intoxicated; operating motor vehicle when visibly impaired; operation of motor vehicle by person less than 21 years of age; requirements; controlled substances;

- (1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, "operating while intoxicated" means either of the following applies:
 - (a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
 - (b) The person's ability to operate the motor vehicle is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
- (2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state by a person if any of the following apply:
 - (a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
 - (c) The person's ability to operate the motor vehicle is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
- (3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state when, due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.
- ...
- (8) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

Type of Drugs Prohibited: Controlled substances

Required Proof:

1. Defendant was operating a vehicle in Michigan;
2. While operating the vehicle, Defendant was under the influence of a controlled substance; OR
3. While operating the vehicle, Defendant had consumed a controlled substance that visibly impaired his/her ability to operate the vehicle OR;
4. Defendant was the owner of a vehicle and knowingly permitted someone to operate his/her vehicle while that person was under the influence of a controlled substance or who had consumed a controlled substance that impaired that person's ability to operate the vehicle; OR
5. Defendant had any amount of a controlled substance in his/her body.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: A test shall be required by court order following a refusal

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, urine

Sanctions for Refusal to Test:

Evidentiary: A refusal is admissible in criminal cases, but only to show a test was requested

Criminal: None

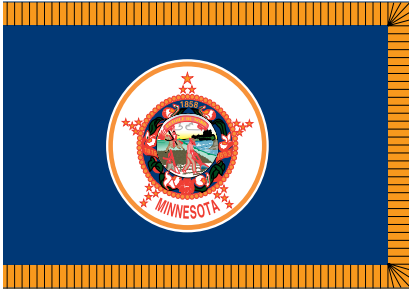
Administrative: For **1st refusal** – 1 year suspension (restricted license may be issued); for 2nd or subsequent refusals within 7 years 2 year (mandatory) suspension.

Sanctions Following Conviction [Enhanced penalties apply for aggravated offenses]:

Criminal: for **1st offense** Not more than 93 days (no mandatory) imprisonment, not less than \$100 fine or more than \$500; for **2nd offense within 7 years** - 5 days (mandatory) - 1 years, \$200 (mandatory) - \$1000; for **3rd or subsequent offenses** (felony) - 1 year (mandatory) - 5 years, \$500 (mandatory) - \$5000 only if prison is ordered. The court can order the defendant up to 5 years probation and not less than 30 days or more than 1 year incarceration in jail instead of prison; 5 years (no mandatory), \$1000 - \$5000 for any DUI offense with a “serious impairment of a body function” (felony). Sanctions are the same for both the OWI offense **§257.625.1** and the per se offense **§257.625.8**.

Court-Ordered Other: The court may order community service in addition to or in lieu of jail time with some minimum mandatory periods if done in lieu of imprisonment. The court may also order restitution directly to the victim, and may order the Defendant to pay assessments, costs of prosecution and costs of any emergency response required in the case.

Administrative: For **1st offense** – 30/150 days suspension with restrictions for Under Influence and 180 day for per se violation; for **2nd DUI offense or any serious impairment-related DUI** not less than 1 year (mandatory) revocation; for **any subsequent offense within 7 years** not less than 5 years (mandatory).



MINNESOTA

Minnesota Statutes Annotated Section 169A - Driving While Impaired Section 169A.20

Type of DUI Law: Under the Influence/ Impairment / Zero Tolerance for Scheduled Controlled Substances other than marijuana or tetrahydrocannabinols

Section 169A.20

It is a crime for any person to drive, operate, or be in physical control of any motor vehicle within this state or upon the ice of any boundary water of this state

...

- (2) when the person is under the influence of a controlled substance
- (3) when the person is knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to drive or operate the motor vehicle;

...

- (7) when the person's body contains any amount of a controlled substance listed in schedule I or II other than marijuana or tetrahydrocannabinols

Type of Drugs Prohibited: Controlled substance, hazardous substances that affect the nervous system, brain or muscles, Scheduled I or II controlled substances

Required Proof:

1. Defendant was driving, operating or in physical control of a motor vehicle in Minnesota;
2. While driving, defendant was under the influence of a controlled substance; OR
3. While driving, defendant was knowingly under the influence of a hazardous substance that affects his/her nervous system, brain, or muscles such that the defendant's ability to drive was substantially impaired; OR
4. While driving, defendant's body contained any amount of a scheduled controlled substance other than marijuana or tetrahydrocannabinols.

Possible Defenses Allowed by Statute: There is an affirmative defense to the zero tolerance provision [§169A.20(7)] if the defendant can show that the controlled substance(s) was being used pursuant to a valid prescription.

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: No, either arrest, refusal to take a preliminary screening test, or the person was involved in an accident resulting in property damage, personal injury, or death act as bases to request a test.

Specimens to be Tested: Blood and urine

Sanctions for Refusal to Test:

Evidentiary: Refusal can be admitted into evidence

Criminal: All refusals: 1 year in jail and/or \$3000 fine

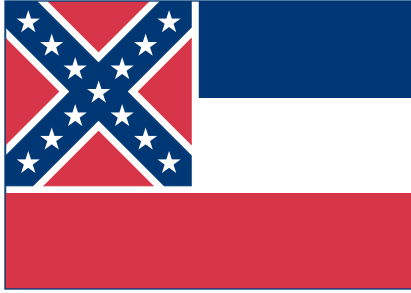
Administrative: 1 year (15 days mandatory) revocation for **1st refusal**; 1 year (180 days mandatory) for subsequent refusals.

Sanctions Following Conviction [There are enhanced sanctions for aggravated cases]:

Criminal: A person who violates §169A.20 may be sentenced as provided in section §169A.24 (first-degree driving while impaired), §169A.25 (second-degree driving while impaired), §169A.26 (third-degree driving while impaired), or §169A.27 (fourth-degree driving while impaired). for **1st offense** - Up to 90 days (no mandatory) imprisonment, not more than \$1000 (\$210 mandatory) fine for misdemeanor (driving under the influence of a controlled substance); for **2nd offense within 10 years** not more than 1 year (30 days mandatory) and/or \$3000 fine; for **3rd offense within 10 years** – 1 year imprisonment (90 days mandatory) and/or \$3000 fine, for **4th offense within 10 years or prior felony conviction** - 7 years imprisonment (180 days mandatory), and/or \$14,000 fine.

Court-Ordered Other: The court may order community service in lieu of jail time, restitution to the victim directly or to the Victim's Fund, assessments and surcharges, and participation in a chemical use dependency treatment program. The court may also require a clinical assessment.

Administrative: For **1st offense** - For zero tolerance offenses, 90 days (15 days mandatory) suspension, for **2nd or subsequent offense within 5 years** 180 days (90 days mandatory) suspension. For all other offenses, not less than 30 days (15 days mandatory) revocation for **1st offense**; not less than 180 days (90 days mandatory if defendant submits to a test or 180 days mandatory if defendant refused a test) revocation for 2nd offense within 5 years; not less than 1 year (90 days or 180 days mandatory depending on whether defendant submitted to a test) revocation for **3rd offense within 5 years**; not less than 2 years (90 days or 180 days mandatory) revocation for **4th or subsequent offense**.



MISSISSIPPI

Mississippi Code
Title 63—Motor Vehicles and Traffic
Section 11 Implied Consent Law

Type of DUI Law: Under the Influence - Impairment

Section 63-11-30

(1) It is unlawful for any person to drive or otherwise operate a vehicle in this state who:

...

(b) is under the influence of any other [than alcohol] substance which has impaired such person's ability to operate a motor vehicle;

...

(d) is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law...

Type of Drugs Prohibited: Any substance other than intoxicating liquor that causes impairment, any illegal drug or controlled substance

Required Proof:

1. Defendant was driving a motor vehicle in Mississippi;
2. While driving the vehicle, Defendant was under the influence of any substance which impaired the defendant's ability to operate the vehicle; OR
3. That while driving, Defendant was under the influence of an illegal drug or controlled substance.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs [Sec. 63-11-5]: Yes.

The statute uses mandatory language ("shall give consent") but allows for refusals.

Special Circumstances: Drivers involved in fatal accidents cannot refuse a test if there is probable cause that a DUI has occurred.

Arrest Required Prior to Test: No, but police officers must have reasonable grounds to request a test and probable cause that a DUI has occurred.

Specimens to be Tested: Blood, urine, breath

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases only

Criminal: None

Administrative: 90 days (mandatory) suspension if there has been no previous DUI conviction; 1 year (mandatory) suspension if there has been a previous DUI conviction.

Sanctions Following Conviction:

Criminal: For **1st offense:** Not more than 48 hours imprisonment, \$250 (mandatory) - \$1000 fine. For **2nd offense within 5 years;** 5 days - 1 year imprisonment, \$600 (mandatory) - \$1500 fine. For **3rd offense within 5 years** or subsequent offense

(felony): 1 - 5 years in prison, \$2000 (mandatory) - \$5000 fines. For conviction where there has been negligence resulting in death, disfigurement or disability (felony) not less than 5 years and not to exceed 25 years imprisonment.

For those convicted under age 21 the following apply:

DUI 1st u/21 - Driver's license suspended for 90 days and a fine of \$250.00; court shall order person to attend & complete an alcohol & safety education program. Court may also require attendance at victim impact panel. Non-adjudication possible (eligible only once) & hardship may be allowed.

DUI 2nd u/21 - if committed w/i 5 yrs., fine of no more than \$500 and driver's license suspended for 1 year (hardship not allowed). Suspension of DL may be reduced after period of 6 months after license has been suspended if person receives in-depth diagnostic assessment and if determined in need of treatment, completion of successful treatment

DUI 3rd u/21 - if committed w/i 5 yrs., fine of no more than \$1,000 and driver's license suspended until reaches 21 or 2 yrs, whichever is longer (hardship not allowed). Shall complete alcohol and/or drug abuse program. Hardship not allowed.

Also, any person u/legal age to obtain driver's license convicted under this section not eligible to receive license until 18 years old.

Court-Ordered Other: For first offense Court may substitute attendance at a "victim impact panel" instead of 48 hour jail sentence. The court may order community service in addition to imprisonment, restitution to be paid directly to a victim, and attendance at a drug education or treatment programs or to counseling. Assessments are assessed against the defendant. Second offenders are required to undergo an in-depth diagnostic assessment and complete a treatment program if indicated.

DUI 1st - Attendance & completion of an alcohol safety education program is required---DL suspended for not less than 90 days and until alcohol safety education program completed. Hardship possibly allowed for a DUI 1st only (not allowed if a refusal).

DUI 2nd - Community service work for no less than 10 days nor more than 1 year.

DUI 3rd - In-depth diagnostic assessment required, and enter an alcohol and/or drug abuse program. If successful completion, license may be reinstated after 3 years (instead of 5 years)—additionally, possible forfeiture of vehicle. Also, use of interlock ignition device (for DUI 2nd or subsequent).

Administrative: 90 days (30 days mandatory) - 1 year suspension for **1st offense**; 2 years (1 year mandatory) suspension for **2nd offense within 5 years**; 5 years (3 years mandatory) suspension for **3rd or subsequent offense within 5 years**. These suspensions run consecutively to any suspension given for a refusal to submit to a chemical test. The court may shorten a suspension period under certain circumstances.



MISSOURI

Missouri Revised Statutes
Chapter 577 Public Safety Offenses
Section 577.010, Section 577.001

Type of DUI Law: Under the Influence

Section 577.010

1. A person commits the crime of “driving while intoxicated: if he operates a motor vehicle while in an intoxicated or drugged condition

Section 577.001

...

3. ...a person is in an “intoxicated condition” when he is under the influence of ... a controlled substance, or drug, or any combination thereof.

Type of Drugs Prohibited: Controlled substances and drugs

Required Proof:

1. Defendant was operating a motor vehicle in Missouri
2. While operating the vehicle, Defendant was under the influence of a controlled substance and/or a drug.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: No

Specimens to be Tested: Blood, urine, saliva

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal and civil cases

Criminal: None

Administrative: 1 year (90 days mandatory) revocation for **1st refusal**; 1 year (mandatory) revocation for 2nd or subsequent refusal. Completion of a substance abuse program is required for reinstatement.

Sanctions Following Conviction- [If defendant has other prior felony offenses enhanced penalties may be sought under repeat offender provisions in §558.016]:

Criminal: For **1st offense** - Not more than 6 months (no mandatory) imprisonment, not more than \$500 (no mandatory) fine; for **2nd offense within 5 years** [prior offender]- not more than 1 year (5 days mandatory)/ 30 days community service, not more than \$1000 fine; for **3rd or subsequent offense** (Persistent Offender –Class D felony) not more than 5 years (10 days mandatory)/60 days community service, not more than \$5000, for **4th offense** [Aggravated offender – Class C felony] not more than 7 years imprisonment (60 days mandatory), not more than \$5000 fine; for **5th and subsequent offense** [Chronic Offender-Class B felony] – up to 15 years imprisonment (2 year mandatory minimum)

Court-Ordered Other: §577.049. Upon a plea of guilty or a finding of guilty for an offense of violating the provisions of section 577.010 or 577.012 or violations of county or municipal ordinances involving alcohol- or drug-related traffic offenses, the court shall order the person to participate in and successfully complete a substance abuse traffic offender program defined in section 577.001. The fees for the substance abuse traffic offender program, or a portion thereof, to be determined by the division of alcohol and drug abuse of the department of mental health, shall be paid by the person enrolling in the program. Any person who is enrolled in the program shall pay, in addition to any fee charged for the program, a supplemental fee to be determined by the department of mental health for the purposes of funding the substance abuse traffic offender program defined in section 302.010, RSMo, and section 577.001. The court may order at least 10 days community service in lieu of imprisonment for repeat offenders, restitution directly to a victim or to a victim's compensation fund, and for 1st offenders, the court may suspend a sentence provided the defendant is placed on probation for at least 2 years. The court may also require a defendant to reimburse the state or local governments for the costs associated with the person's arrest.

Administrative: 30 days (mandatory) suspension for **1st offenders**; 5 years (2 years mandatory) revocation for **2nd offense within 5 years**; 10 years (3 years mandatory) - permanent revocation for **3rd or subsequent offenses**. After 3 years, hardship driving privileges may be granted.



MONTANA

Montana Code Annotated Section 61-8-401

Type of DUI Law: Under the influence: Impairment

Section 61-8-401

- (1) It is unlawful and punishable as provided in 61-8-442 and 61-8-731 through 61-8-734 for any person who is under the influence of :
- ...
 - (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;
 - (c) any other drug to drive or be in actual physical control of a vehicle within this state; or
 - (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.
- ...
- (3)(a) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

Type of Drugs Prohibited: Any drug or any dangerous drug

Required Proof:

1. Defendant was driving or was in actual physical control of a vehicle in Montana
2. Defendant had taken into his/her body a drug or a dangerous drug
3. As a result of taking the drug into the body, Defendant's ability to safely operate the vehicle was diminished

Possible Defenses Allowed by Statute: Legal entitlement to use the drug is not a defense. Section 61-8-401(2)

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes §61-8-402

Special Circumstances: If the Driver is in an accident resulting in property damage, bodily injury or death, and the police officer has probable cause to believe driver was DUI, no arrest is required.

Specimens to be Tested: Blood

Sanction for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: None

Administrative: For **1st refusal** 6 month (mandatory) suspension; for 2nd or subsequent refusal within 5 years 1 year (mandatory) revocation

Sanctions Following Conviction: (Aggravated offenses enhance penalties):

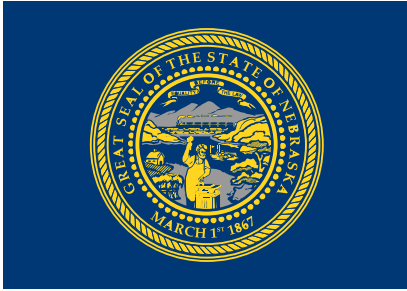
Criminal: For **1st offense** - 24 hours (mandatory) - 6 months imprisonment, \$300 (no mandatory) - \$1000 fine [Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.]; for **2nd offense** - 7 days (48 hours mandatory; the remainder may be served under house arrest) - 6 months

imprisonment, \$600 - \$1000 fine [Except for the initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.]; for **3rd offense** – not less than 30 days imprisonment - 1 year, \$1000 - \$5000 fine [The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.]; for **4th or subsequent offense** (felony) [Section 61-8-731] - 13 months (mandatory) to 5 year imprisonment, \$1000 - \$10,000 fine (The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.)

** Minimum jail time penalties and fines are doubled if anyone under the age of 16 is in the vehicle at the time of the offense.

Court-Ordered Other: The court may order jail time other than the first 1-2 days to be performed as home detention. The court may also order community service and order that restitution be paid directly to any person who suffered pecuniary loss as a result of Defendant's actions. Probation and certain surcharges must be imposed in certain circumstances, and may be imposed otherwise. All violators shall complete: (a) a chemical dependency assessment; (b) a chemical dependency education course; and (c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under 61-8-731(2), or as required by subsection (8) of this section, chemical dependency treatment. If an assessment indicates need, a Defendant must be ordered to participate in a chemical dependency treatment program. The court may also order an interlock device or forfeiture.

Administrative: 6 months (no mandatory) suspension for **1st offense**; 1 year (no mandatory) revocation for a **2nd offense within 5 years**; 1 year revocation for a **3rd offense within 5 years**; and for any injury-related DUI offense or any serious injury-related DUI offense. Ten points are added to the individual's driver's license for each DUI conviction.



NEBRASKA

Revised Statutes of Nebraska Section 60-6, 196

Type of DUI Law: Under the Influence

60-6,196 Driving under influence of alcoholic liquor or drug; penalties.

- (1) It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:
 - (a) While under the influence of alcoholic liquor or of any drug;
 - (b) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; or
 - (c) When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.
- ...
- (2) Any person who operates or is in the actual physical control of any motor vehicle while in a condition described in subsection (1) of this section shall be guilty of a crime and upon conviction punished as provided in sections 60-6,197.02 to 60-6,197.08.

Type of Drugs Prohibited: Any drug

Required Proof:

1. Defendant was operating or was in actual physical control of a motor vehicle in Nebraska;
2. While operating the vehicle. Defendant was impaired; and
3. Under the influence of any drug.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes—60-6, 197

Special Circumstances:

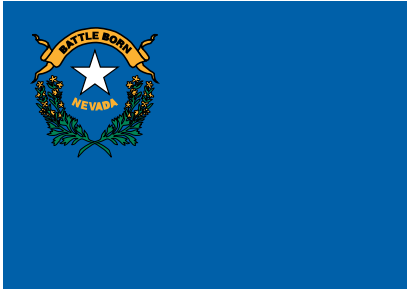
1. A person who arrested for any offence while operating a motor vehicle while under the influence may have blood withdrawn if unable to perform a breath test – 60-6,204
2. Unconscious person is deemed not to have withdrawn implied consent – 60-6,200
3. Any person involved in a motor vehicle accident may be required to submit to a test for alcohol or drugs if officer has reasonable ground to believe person was operating or in physical control of a motor vehicle while under the influence– 60-6,197(4)

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood and urine

Sanctions: Nebraska DUI /refusal penalties – (refusal penalties are highlighted). All enhanced penalties must occur within 12 years of the date of violation.

| Sanction/Offense/ reprieve order | Statute | Required Terms |
|---|-----------------|--|
| ALR 1st failure of alcohol test | 60-498.02(3)(a) | 90 day revocation- 30 days no driving before issuance of interlock permit for balance of 90 day period |
| ALR 2nd & Subsequent failure of alcohol test | 60-498.02(3)(b) | 1 year revocation – 60 days no driving before issuance interlock permit of one year period |
| of ALR refusal test | 60-498.02(4) | 1 year revocation – no interlock permit or work permit allowed |
| DUI 1st | 60-6,197.03(1) | 6 month impoundment with no driving or, Revoked for 6 months - 30 days no driving with interlock permit allowed for remainder of the period (<i>Class W misdemeanor – 7 to 60 days, imprisonment and fine of \$400 to \$500</i>) |
| DUI 1st probation | 60-6,197.03(1) | Revoked 60 days; may order interlock permit; \$400 fine |
| DUI 1st high BAC | 60-6,197.03(2) | Revoked 1 year with interlock permit allowed for remainder of the year after 60 days of no driving (<i>Class W misdemeanor – 7 to 60 days, imprisonment and fine of \$400 to \$500</i>) |
| DUI 1st high BAC probation | 60-6,197.03(2) | Revoked 1 year; may order interlock permit; \$500 fine; 2 days jail or 120 hours community service |
| DUI 2nd | 60-6,197.03(3) | One year revocation (<i>Class W misdemeanor – 30 days to 6 months imprisonment and fine of \$500</i>) |
| DUI 2nd probation | 60-6,197.03(3) | Revoked one year; may order interlock permit; \$500 fine; ten days jail or 240 hours community service |
| DUI 2nd high BAC or refusal | 60-6,197.03(5) | Revoked 1 to 15 years; 90 days jail (<i>Class I misdemeanor - Max one year imprisonment and/or \$1000 fine, no minimum</i>) |
| DUI 2nd high BAC probation or refusal | 60-6,197.03(5) | Revoked 1 to 15 years; may order interlock permit; \$1000 fine; 30 days jail |
| DUI 3rd | 60-6,197.03(4) | Revoked 15 years; (<i>Class W misdemeanor – 90 days to one year imprisonment and fine of \$600</i>) |
| DUI 3rd probation | 60-6,197.03(4) | Revoked 2 to 15 years; may order interlock permit; 30 days jail; \$600 fine |
| DUI 3rd high BAC or refusal | 60-6,197.03(6) | Revoked 15 years; 180 days in jail (<i>Class IIIA felony – Max: 5 years imprisonment and/or \$10,000 fine- no minimum</i>) |
| DUI 3rd high BAC probation or refusal | 60-6,197.03(6) | Revoked 5 to 15 years; may order interlock permit; \$1000 fine; 60 days jail |
| DUI 4th | 60-6,197.03(7) | Revoked 15 years; 180 days jail; (<i>Class IIIA felony – Max: 5 years imprisonment and/or \$10,000 fine- no minimum</i>) |
| DUI 4th probation | 60-6,197.03(7) | Revoked 15 years; may order interlock permit; \$1000 fine; 90 days jail |
| DUI 4th high BAC or refusal | 60-6,197.03(8) | Revoked 15 years; (<i>Class III felony-Max- 20 years imprisonment and/or \$25,000 fineMin – 1 year imprisonment</i>) |
| DUI 4th high BAC or refusal probation | 60-6,197.03(8) | Revoked 15 years; may order interlock permit; \$1000 fine; 120 days jail |
| DUI 5th | 60-6,197.03(9) | Revoked 15 years; (<i>Class III felony-Max- 20 years imprisonment and/or \$25,000 fine, Min – 1 year imprisonment</i>) |
| DUI 5th probation | 60-6,197.03(9) | Revoked 15 years; may order interlock permit; \$1000 fine; 180 days jail |
| DUI 5th high BAC or refusal | 60-6,197.03(10) | Revoked 15 years (<i>Class II felony-Max – 50 years imprisonment Min – 1 year imprisonment</i>) |
| DUI 5th high BAC or refusal probation | 60-6,197.03(10) | Revoked 15 years; may order interlock permit; \$1000 fine; 180 days jail |
| Repeat offender provision | 60-6,197.01 | Immobilization of vehicles 5 days to 8 months or no driving one year as order by court |



NEVADA

Nevada Revised Statutes
 Title 43 Public Safety; vehicles
 Chapter 484 – Traffic Laws
 Section 484.379

Type of DUI Law: Under the Influence: Incapacity Zero Tolerance for specified amounts of Prohibited Substances

Section 484.379

2. It is unlawful for any person who:
 - (a) Is under the influence of any controlled substance, or
 - (b) Is under the combined influence of intoxicating liquor and a controlled substance; or
 - (c) Inhales, ingests, applies or otherwise uses any chemical, poison, or organic solvent, or any compound; combination of any of these, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access.
3. It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his blood or urine that is equal to or greater than:

| Prohibited substance | Urine Nanograms per milliliter | Blood Nanograms per milliliter |
|--------------------------------|-----------------------------------|-----------------------------------|
| (a) Amphetamine | 500 | 100 |
| (b) Cocaine | 150 | 50 |
| (c) Cocaine metabolite | 150 | 50 |
| (d) Heroin | 2,000 | 50 |
| (e) Heroin metabolite: | | |
| (1) Morphine | 2,000 | 50 |
| (2) 6-monoacetyl morphine | 10 | 10 |
| (f) Lysergic acid diethylamide | 25 | 10 |
| (g) Marijuana | 10 | 2 |
| (h) Marijuana metabolite | 15 | 5 |
| (i) Methamphetamine | 500 | 100 |
| (j) Phencyclidine | 25 | 10 |

Type of Drugs Prohibited: Controlled substances, certain chemicals, poisons, organic solvents and compounds

Required Proof:

1. Defendant was driving or was in actual physical control of a vehicle in Nevada.
2. At the time, defendant was under the influence of a controlled substance or used any chemical, poison, organic solvent or compound.
3. That influence rendered the defendant incapable of safely driving or exercising actual physical control of a vehicle ; or
4. At time of driving, the defendant had a certain amount of a prohibited controlled substance present in his blood or urine.

Possible Defenses Allowed by Statute: The fact that any person charged with a violation of the incapacity subsection is or has been entitled to use that drug under the laws of this state **is not** a defense.

Implied Consent for Drugs: Yes.

Special Circumstance: A blood sample may be obtained without consent if the police officer has reasonable grounds to believe a DUI has been committed or where there is a death or serious injury or if the Defendant has been stopped for a subsequent offense within 7 years.

Arrest Required: No. A police officer needs only reasonable grounds to believe that a DUI crime was committed before requesting that the defendant submit to a chemical test.

Specimens to be Tested: Blood, and urine (under limited circumstances)

Sanctions for Refusal to Test:

Evidentiary: Refusal is admitted into evidence in criminal cases.

Criminal: None. Upon refusal, however, the requesting officer shall seize the license of the driver and arrest him/her for DUI.

Administrative: Immediate seizure of license by police officer

Sanctions Following Conviction [Aggravated offenses enhance penalties]:

Criminal: For **1st offense** - 2 days (mandatory) – 6 months imprisonment, \$400 (mandatory) - \$1000 fine; for **2nd offense within 7 years** 10 days (mandatory) – 6 months, \$750 (mandatory) - \$1000 fine; for **3rd and subsequent offense within 7 years** (felony). 1 year (mandatory) – 6 years, \$2000 (mandatory) - \$5000 fine.

Court-Ordered Other: The court may order participation in a drug treatment program (6 months mandatory for **1st offense**, 1 year mandatory for **2nd offense**) in exchange for a suspended sentence. The court may order community service (of varying mandatory lengths) in lieu of or in addition to jail time. The court may also order restitution either directly to a victim or to the Victim's Compensation Fund, and residential confinement with or without electronic monitoring. The defendant must be ordered to pay various fines, fees and assessments and to attend a meeting with DUI victims to discuss the impact of DUI on victims.

Administrative: Unspecified revocation authorized for zero tolerance violations; for **1st DUI offense** 90 days (45 days mandatory) revocation; for **2nd DUI offense within 7 years** 1 year (mandatory) revocation; for **3rd DUI and subsequent DUI offenses within 7 years** - 3 years (18 months mandatory) revocation.



NEW HAMPSHIRE

Revised Statutes Annotated Title XXI
Motor Vehicles
265-A:2

Type of DUI Law: Under the influence

265-A:2: Driving or Operating Under Influence of Drugs or Liquor;

No person shall drive or attempt to drive a vehicle upon any way or operate or attempt to operate an OHRV (off highway recreational vehicle):

- (a) While such person is under the influence of intoxicating liquor or any controlled drug or any combination of intoxicating liquor and controlled drugs

Type of Drugs Prohibited: Any controlled drug (as defined in 318-B:1 – extensive listing)

Required Proof:

1. Defendant was driving or attempting to drive a vehicle in New Hampshire
2. While driving the vehicle, Defendant was under the influence of any controlled drug

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs §265-A:4: Yes

Special Circumstances: A driver involved in an accident involving death or serious injury must be tested if there is probable cause to believe a DUI occurred.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, urine. Additional Tests are permitted under §265-A:7 – Any person shall have the right, at his or her own expense, to have similar tests made by a person of his or her own choosing who is competent to conduct the tests, as determined by the commissioner of the department of safety. For the purpose of this section:

- I. The sample of blood taken pursuant to §265-A:4 shall be of sufficient quantity to allow 2 tests; and the testing laboratory shall retain for a period of 30 days subsequent to the test conducted, pursuant to §265-A:4, a quantity of said sample sufficient for another test, which quantity shall be made available to the respondent or his or her counsel upon request.

Special Circumstance: When accident results in death or serious bodily injury to any person, all drivers or operators involved, whether living or deceased, and all deceased vehicle, boat, or OHRV occupants and pedestrians involved shall be tested for evidence of alcohol or controlled drugs

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in both criminal and civil cases

Criminal: None

Administrative: 180 days (mandatory) suspension for **1st refusal** with no prior DUI; 2 year (mandatory) suspension for **2nd refusal or 1st refusal with a prior DUI**. These revocations must run consecutively with any other suspensions or revocations.

Sanctions Following Convictions 265-A:18 [Aggravated offenses enhance penalties]:

Criminal: For **1st offense** not less than \$500 fine, no imprisonment, for **1st aggravated offense** - not less than \$750 fine and sen-

tenced to a mandatory sentence of not less than 10 consecutive days of which 3 consecutive 24-hour periods shall be served in the county correctional facility and 7 consecutive days shall be served at the state-operated 7-day multiple DWI offender intervention detention center which sentence shall begin no later than 21 days after conviction; for **any 2nd offense** within 2 years The person shall be fined not less than \$750, and a mandatory sentence of not less than 37 consecutive days, **if the 2nd offense occurs** within 2-10 years of the prior offense not less than \$750 fine and 10 days mandatory imprisonment; for **3rd offense** not less than \$750 fine, and a mandatory prison sentence of 180 days; for **4th or subsequent offense** - not less than \$750 fine, guilty of felony

Court-Ordered Other: The court may order community service pursuant to a conditional discharge in a felony or an aggravated DUI case, restitution to the victims compensation fund, and may also order the Defendant to reimburse a public agency for the costs incurred to respond to an accident involving DUI. Defendants will be assessed certain penalty assessments and repeat offenders must be ordered to complete a substance abuse treatment program. The sentencing court may sentence the person to additional alcohol and/or drug treatment and counseling, or to a treatment program approved by the commissioner of health and human services, or both. In addition, the court may require the person to submit to random urinalysis or such other tests as the court may deem appropriate

Administrative: For **1st offense** 90 days (mandatory) – 2 year revocation; for **1st aggravated DUI offense** 1 year (mandatory) – 2 year revocation; for **2nd offense** not less than 3 years (mandatory) revocation; for **3rd offense within 7 years** at least 5 years (mandatory) revocation; for **4th or subsequent offense** indefinite (7 years mandatory) revocation.



NEW JERSEY

New Jersey Statutes Annotated Section 39:4-50

Type of DUID Law: Under the Influence

Section 39:4-50

- (a) A person who operates a motor vehicle while under the influence of...[a] narcotic, hallucinogenic or habit-producing drug...or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control...shall be subject...

Type of Drug Prohibited: Any narcotic, hallucinogenic or habit-producing drug

Required Proof:

1. Defendant was operating a motor vehicle in New Jersey;
2. While operating the motor vehicle, Defendant was under the influence of one of the above-listed drugs; or
3. Defendant was an owner of a motor vehicle who permitted someone under the influence of one of the above-listed drugs to operate his/her motor vehicle.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: No

Arrest Required Prior to Test: Not applicable

Specimens to be Tested: Not applicable

Sanctions for Refusal to Test:

Evidentiary: Not applicable

Criminal: Not applicable. Under a separate statute, a commercial driver who refuses a chemical test for DUID is subject to a fine of \$250 - \$500.

Administrative: Not applicable

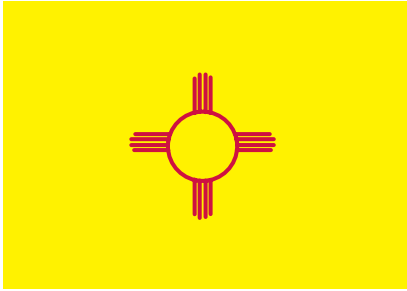
Sanctions Following Conviction:

Criminal: For **1st offense** a fine of not less than \$300 nor more than \$500 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers [Section 39:4-50 (f)] and, in the discretion of the court, a term of imprisonment of not more than 30 days; for a **2nd violation**, a person shall be subject to a fine of not less than \$500 nor more than \$1,000, and shall be sentenced to imprisonment for a term of not less than 48 consecutive hours, which shall not be suspended or served on probation, nor more than 90 days. for a **3rd or subsequent violation**, a person shall be subject to a fine of \$1,000.00, and shall be sentenced to imprisonment for a term of not less than 180 days in a county jail or workhouse, except that the court may lower such term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center.

Court-Ordered Other: The court may order Defendant to participate in a work release program and/or community service in lieu of or in addition to incarceration. The court may also order restitution to be paid to the victim, and may sentence Defendant to a supervised visitation program for purpose of observing victims of DUI Drivers. For a second violation, a person also shall be required to install an ignition interlock device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.) or shall have his registration certificate and registration plates revoked for two years under the provisions of section 2 of P.L.1995, c.286 (C.39:3-40.1). Mandatory fees and surcharges are also assessed against the defendant.

Administrative: For **1st offense** 7 months (mandatory) to 1year license revocation; for **2nd offense** 2 years (mandatory) revocation; for **3rd and subsequent offenses**. 10 years (mandatory) revocation

Comments: New Jersey is one of the few states that does not extend its implied consent law beyond alcohol to allow for chemical testing for drugs.



NEW MEXICO

New Mexico Statutes Annotated Chapter 66 – Motor Vehicles Article 8 – Crimes, Penalties, and Procedure Sections 102 -112

Type of DUI Law: Under the Influence: Incapacity

Section 66-8-102B

It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive a vehicle within this state.

D. Aggravated driving while under the influence of...drugs consists of a person who:

- (1) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of...drugs; or
- (2) refused to submit to chemical testing, as provided for in the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], and in the judgment of the court, based upon evidence of intoxication presented to the court, the person was under the influence of...drugs.

Type of Drugs Prohibited: Any drug

Required Proof:

1. Defendant was driving or in actual physical control of a vehicle in New Mexico;
2. While driving the vehicle, defendant was under the influence of a drug;
3. The drug's influence rendered defendant incapable of safely driving the vehicle; and
4. While driving under the influence, defendant caused bodily injury to a human being; or
5. Defendant refused to submit to a chemical test and was under the influence of a drug.

Possible Defenses Allowed by Statute: None found. New Mexico courts have declared DWI to be a strict liability crime.

Implied Consent for Drugs: Yes but New Mexico has no per se drug standards.

Special Circumstances: A search warrant may be issued to require the defendant to submit to a chemical test when there is probable cause to believe that the person has driven a motor vehicle and caused the death or great bodily injury of another person while under the influence of a drug, or that a felony has been committed while the driver is under the influence of any drug and the test will produce material evidence in a felony prosecution. (66-8-111A).

Arrest Required: Yes, only to trigger the Implied Consent Act. A voluntary search is permitted.

Specimens to be Tested: Blood and breath (inhalants)

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal and civil cases

Criminal: None but a refusal to submit to a chemical test is grounds for a separate criminal charge under Section 66-8-102D (Aggravated DWI)

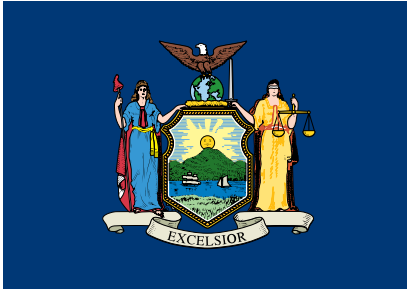
Administrative: Any refusal results in a one-year license revocation in the administrative system. (66-8-111B)

Sanctions Following Conviction: Same as for DWI alcohol.

Criminal: **1st offense** - Not more than 90 days (no mandatory) imprisonment, not more than \$500 (no mandatory) fine or both; **2nd offense** - Not more than 364 days (72-96 hour mandatory (66-8-1-2F(1)), not more than \$1000 (\$500 mandatory); **3rd offense** - Not more than 364 days (30 days mandatory), not more than \$1000 (\$750 mandatory); **4th or subsequent offense (felony)** - not more than 18 months (6 months mandatory), not more than \$5000 (no mandatory fine for any felony); **5th offense (felony)** - not more than 2 years (1 year mandatory); **6th offense (felony)** - not more than 30 months (18 months mandatory); **7th or subsequent (felony)** - not more than 3 years (2 years mandatory)[66-8-102G, H, I, and J]. For **any great bodily injury-related DUI offense (felony)** - 3 years, with mandatory 4 years added for each prior DWI conviction within the last 10 years (66-8-101D), and a fine of not more than \$5000 (no mandatory). For DWI vehicular homicide (felony) - 6 years, with mandatory 4 years added for each prior DWI conviction within the last 10 years (66-8-101D), and a fine of not more than \$5000 (no mandatory).

Court-Ordered Other: Mandatory for any DWI offense: Ignition interlock and screening. Mandatory for any subsequent offense: treatment. Mandatory for any misdemeanor DWI offense (1st through 3rd): community service. The court may order restitution, and must assess fees to defray the costs of the chemical test and to fund DUI community programs. The court may also order Defendant to participate in rehabilitative services and shall require completion of DWI school on a first offense. Failure to complete any condition of probation or to comply with any portion of a sentence will result in a mandatory 48 hour jail sentence on a first offense, 7 days on a second, 60 days on a third offense.

Administrative: License Revocation after a Conviction: **1st offense:** 1 year. **2nd offense:** 2 years. **3rd offense:** 3 years. **4th and subsequent offenses:** for the rest of the offender's life, with the option of a review every 5 years in the district court. All offenders convicted of DWI in New Mexico must obtain an interlock device on all cars they drive, and an interlock license which allows them to drive while under revocation.



NEW YORK

Consolidated Laws of New York Vehicle & Traffic Section 1192

Type of DUI Law: Impairment

Section 1192

4. Driving while ability impaired by drugs. No person shall operate a motor vehicle while the person's ability to operate such a motor vehicle is impaired by the use of a drug as defined in this chapter.

Type of Drugs Prohibited: Drugs and controlled substances listed in Section 3306 of the Public Health Law (very extensive listing)

Required Proof:

1. Defendant was operating a motor vehicle in New York;
2. While operating the motor vehicle, Defendant was using a drug; and
3. The use of the drug impaired the Defendant's ability to operate the vehicle.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: If a driver is involved in an accident involving a fatality or serious injury, he/she may be compelled to submit to a chemical test.

Arrest Required Prior to Test: Yes, but not in all situations. Arrest is one of several bases for requesting a test

Specimens to be Tested: Blood, urine, saliva

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in civil and criminal cases

Criminal: None

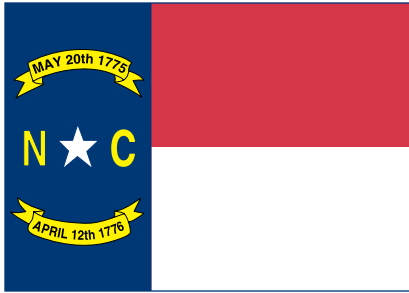
Administrative: At least 6 months revocation and \$300 civil penalty for **1st refusal**; at least 1 year and \$750 civil penalty for 2nd or subsequent refusal or for a **1st refusal** with a prior DUI within 5 years.

Sanctions Following Conviction:

Criminal: For **1st offense** Not more than 1 year (no mandatory) imprisonment, and \$500 (mandatory) - \$1000 fine; for **2nd offense within 10 years** (class E felony) not more than 4 years imprisonment (no mandatory), and a fine of \$1000 (mandatory) - \$5000; for **3rd offense within 10 years** (class D felony) not more than 7 years imprisonment, and a fine of \$2000 (mandatory) - \$10,000.

Court-Ordered Other: The court may order community service as a condition of probation, restitution to a victim, and may require the defendant to attend a victim impact program. The court must assess certain mandatory surcharges. Forfeiture may also be ordered in certain felony cases.

Administrative: At least 6 months license revocation for **1st offense**; at least 1 year revocation for **2nd or subsequent offenses** within 10 years; permanent revocation for a **2nd or subsequent offense in which a personal injury occurred in each offense**.



NORTH CAROLINA

N.C. General Statutes

Section 20-138.1

Section 20- 138.3

Type of DUID Law: Per se for Schedule 1 controlled substances §20-138.1(3), Under the influence for other scheduled drugs and other impairing substances §20-138.1(1), and Per se for all controlled substance for Persons under age 21 §20-138.3.

§ 20-138.1

(a) Offense. - A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

- (1) While under the influence of an impairing substance; or
- (3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

§ 20-138.3 (per se for persons under 21)

(a) It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

Type of Drugs Prohibited: Controlled substances as defined by N.C.G.S. Chapter 90, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.

Required Proof:

1. Defendant was driving a vehicle in North Carolina on a highway, street, or public vehicular area; and
2. Defendant had any amount of a Schedule I controlled substance, as listed in F.F 90-89 or its metabolite in his/her blood or urine; or
3. Defendant was under the influence of an impairing substance; or
4. Defendant was under 21 years of age and had any controlled substance in his/her body.

Possible Defenses Allowed by Statute: Legal entitlement is not a defense to Section 20 -138.1. It is a defense to the per se section if the person less than 21 drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

Implied Consent for Drugs: Yes.

Special Circumstance: A driver may be compelled to submit to a test via other lawful procedures (i.e. search warrant or court order or without a warrant when exigent circumstances exist)

Arrest Required Prior to Test: Yes, unless criminal process for the offense has been issued or before arrest only upon request of driver. Also, pre-arrest testing of unconscious people is permissible.

Specimens to be Tested: Blood, urine or other bodily substance.

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal case

Criminal: None

Administrative: 12 month license revocation for any refusal. Limited driving privileges may be granted after 6 months of revocation and certain conditions are met.

Sanctions Following Conviction:

Criminal: Punishments for misdemeanor DWI are divided into Levels 1-5; imprisonment and fine are determined by weighing the grossly aggravating factors, aggravating factors, and mitigating factors in each case.

Level One Punishment: Fine up to \$4,000 and imprisonment (no less than 30 days and up to no more than 24 months). Imprisonment suspended only if a condition of special probation is imposed to require the defendant's imprisonment of at least 30 days.

Level Two Punishment: Fine up to (\$2,000) and imprisonment (no less than 7 days and up to no more than 12 months). Imprisonment suspended only if a condition of special probation is imposed to require the defendant's imprisonment of at least 7 days.

Level Three Punishment: Fine up to \$1,000 and imprisonment (no less than 72 hours and up to no more than 6 months).

Level Four Punishment: Fine up to \$500.00 and imprisonment (no less than 48 hours and up to no more than 120 days).

Level Five Punishment: Fine up to \$200.00 and imprisonment no less than 24 hours and up to no more than 60 days).

Applicable for Levels 1-5: If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by N.C.G.S. § 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

Applicable for Levels 3, 4, or 5: The specified term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant: (1) Be imprisoned for a term of 72 hours (for Level 3); 48 hours (for Level 4); and 24 hours (for Level 5) as a condition of special probation; or (2) Perform community service for a term of 72 hours (for Level 3); 48 hours (for Level 4); and 24 hours (for Level 5); or (3) Any combination of these conditions.

Administrative: A defendant will have his license revoked by the North Carolina Division of Motor Vehicles (DMV). Revocation of License: For **1st conviction** -1 year revocation; for **2nd conviction within 3 years** - 4 years revocation (may be reduced or conditionally restored after revocation for mandatory 2 years); and for **3rd or subsequent convictions** (where 3rd conviction was within 5 years of second) permanent license revocation (may be conditionally restored after revocation for mandatory 3 years). Once a defendant is convicted of DWI, there are restrictions placed on his license once it is finally restored including lower alcohol concentrations. Also, under some circumstances, restoration of a person's license is conditional on the use of ignition interlock devices (Alcohol concentration of 0.15 or more, prior conviction within 7 years or license is conditionally restored). A judge may grant a limited driving privilege for first offenders (no impaired driving conviction within 7 years) under limited circumstances.



NORTH DAKOTA

North Dakota Century Code Section 39-08-01

Type of DUI Law: Under the influence: Incapacity

Section 39-08-01.

(1) A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:

...

- (c) That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.

The fact that any person charged with violating this section is or has been legally entitled to use...drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

Type of Drugs Prohibited: Any drug or substance

Required Proof:

1. Defendant was driving or in actual physical control of a motor vehicle in North Dakota
2. While driving, defendant was under the influence of a drug or substance
3. The influence of the drug rendered Defendant incapable of safely driving

Possible Defenses: Legal entitlement to use the drug or substance is not a defense unless the drug was used only as directed or cautioned by an attending physician or other practitioner who legally prescribed or dispensed the drug to the Defendant.

Implied Consent for Drugs: Yes

Special Circumstance: Driver may be compelled to submit to a test if involved in an accident resulting in death or serious injury and there is probable cause to believe that a DUI has occurred.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, urine, and saliva

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal and civil cases

Criminal: None

Administrative: For **1st refusal** 1 year (mandatory) revocation; for **2nd refusal within 5 years** 3 years (mandatory); for **3rd or subsequent refusals within 5 years** 4 years (mandatory) revocation. These sanctions will not attach if a Defendant pleads guilty to a DUI offense and files an affidavit according to NDCC 39-20-04.

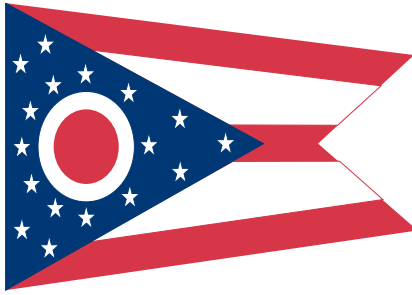
Sanctions Following Conviction [Aggravated offenses carry additional penalties e.g. NDCC 12.1-16 (homicide) and NDCC 39-08-01.2 (serious bodily injury), and 39-08-01.4 (with a minor present)]:

Criminal: For a **1st offense**, the sentence must include both a fine of at least \$250, and an order for addiction evaluation by an appropriate licensed addiction treatment program; for a **2nd offense within five years**, the sentence must include at least five days'

imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; a fine of at least \$500; and an order for addiction evaluation by an appropriate licensed addiction treatment program; for a **3rd offense within five years**, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of \$1000.; and an order for addiction evaluation by an appropriate licensed addiction treatment program; for a **4th or subsequent offense within seven years**, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of \$1000; and an order for addiction evaluation by an appropriate licensed treatment program.

Court-Ordered Other: The court may order a Defendant into an addiction treatment program with time spent there credited as a portion of the defendant's prison sentence. The court may also order the defendant to provide community service as an alternative to jail, and/or to pay restitution to the victim.

Administrative: §39-20-04.1 specifies administrative sanctions for those convicted of having certain alcohol concentration. Administrative sanctions when complying with testing—NONE.



OHIO

Ohio Revised Code Section 4511.19

Type of DUI Law: Under the influence/Per se

Section 4511.19 (A)(1): No person shall operate any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply:

(a) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

...

(j) Except as provided in division (k) of this section, the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following (subsections i-x specify thresholds for specific drugs/drug and alcohol combinations):

- (i) The person has a concentration of amphetamine in the person's urine of at least five hundred nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.
- (ii) The person has a concentration of cocaine in the person's urine of at least one hundred fifty nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.
- (iii) The person has a concentration of cocaine metabolite in the person's urine of at least one hundred fifty nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.
- (iv) The person has a concentration of heroin in the person's urine of at least two thousand nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least fifty nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.
- (v) The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.
- (vi) The person has a concentration of L.S.D. in the person's urine of at least twenty-five nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least ten nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.
- (vii) The person has a concentration of marihuana in the person's urine of at least ten nanograms of marihuana per milliliter of the person's urine or has a concentration of marihuana in the person's whole blood or blood serum or plasma of at least two nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma.
- (viii) Either of the following applies:
 - (I) The person is under the influence of alcohol, a drug of abuse, or a combination of them, and, as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least fifteen nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least five nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.
 - (II) As measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least thirty-five nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

- (ix) The person has a concentration of methamphetamine in the person's urine of at least five hundred nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.
- (x) The person has a concentration of phencyclidine in the person's urine of at least twenty-five nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least ten nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

Type of Drugs Prohibited: Drugs of abuse, controlled substances, or metabolites of a controlled substance

Required Proof:

1. Defendant was operating a vehicle in Ohio;
2. While operating the vehicle, Defendant was under the influence of a drug of abuse; or
3. Have concentrations of prohibited substance in their blood, urine / other bodily substance.

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine, other bodily substance

§4911.191 A(a)(b) - At the time of the arrest, if the person refuses to take a chemical test the officer may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma.

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: NONE

Administrative: For **1st refusal** -30 days mandatory suspension; for **2nd refusal within 6 years** - 2 years (90 days mandatory) suspension; for **3rd refusal within 6 years** - 3 years (1 year mandatory) suspension; for **subsequent refusals within 6 years** - 5 years (3 years mandatory) suspension. Occupational driving permits may be issued after mandatory periods have passed.

Sanctions Following Conviction [Aggravated offenses enhance penalties]:

Criminal: For **1st offense** - Not more than 6 months (3 days mandatory) imprisonment, \$375 (mandatory) - \$1075 fine; or **2nd offense within 6 years** - not more than 6 months (10 days mandatory), \$525 (mandatory) - \$1625 fine; for **3rd offense within 6 years** - 30 days (mandatory) - 1 year, \$850 (mandatory) - \$2750 fine; for **4th or 5th offenses within 20 years (felony)** - 1 to 5 years imprisonment (60 days mandatory), \$1350 (mandatory) - \$10,500 fine.

Court-Ordered Other: The court may order house arrest, a clinical assessment, participation in a drug education/treatment program, work release, community service, and probation plus participation in a driver intervention program, either in combination with or in lieu of imprisonment. The court may also order restitution for property damage to a victim, and forfeiture or fines in lieu of forfeiture. The court may also order the vehicle immobilized /impoundment of the license plates up to 90 days

Administrative: For **1st offense**- 30 days; for **2nd offense within 6 years** - 1 year (45 days mandatory) - 5 years suspension; for **3rd offense within 6 years** -1 year (180 days mandatory) -10 years suspension; for **subsequent offenses within 6 years** - 3 years (mandatory) - permanent revocation.



OKLAHOMA

Oklahoma Statutes
Title 47 O.S. Motor Vehicles
§§ 11-902; 761, 751 A(2) [Implied Consent],
752 [Admin. Tests]

Type of DUI Law: Under the influence: Incapacity, Impairment

47 Section 11-902

- A. It is unlawful and punishable as provided in this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this state who:
- ...
3. Is under the influence of any intoxicating substance other than alcohol which may render such person incapable of safely driving or operating a motor vehicle...

47 Section 761

- A. Any person who operates a motor vehicle while his ability to operate such motor vehicle is impaired by the consumption of ... any other substance, other than alcohol, which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions shall be subject to a fine, imprisonment, or by both.

Type of Drugs Prohibited: “Other intoxicating substance” means any controlled dangerous substance, as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. Of Title 63 of the Oklahoma Statutes, or any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.”

Required Proof:

1. Defendant was driving, operating, or was in actual physical control of a motor vehicle in Oklahoma (on a highway, turnpike, public parking lot).
2. While driving, etc., the motor vehicle, defendant was under the influence of an intoxicating substance other than alcohol or combined influence of alcohol and any other intoxicating substance which may render a person incapable of safely driving a motor vehicle.

Possible Defenses: Legal entitlement to use the intoxicating substance is **not** a defense to a violation of the “under the influence” provision.

Implied Consent for Drugs: Yes

Special Circumstance: A chemical test may be mandated where there is probable cause that the driver was DUI and was in an accident that caused death or serious injury, or where the driver was cited for a traffic offense (47 O.S. § 753).

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, urine, saliva

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in civil and criminal cases

Criminal: None

Administrative: 180 days revocation for **1st refusal**; 1 year revocation for **2nd refusal within 5 years**; 3 years revocation for **subsequent refusal within 5 years**. 47 O.S. § 6-205.

Sanctions Following Conviction:

Criminal: For **1st offense** 10 days (48 hours mandatory) - 1 year imprisonment, not more than \$1000 fine; For **2nd offense within 10 years** (felony) 1 year (mandatory) - 5 years imprisonment, not more than \$2500; For **3rd or subsequent offense** (felony); 1 year (mandatory) - 10 years, not more than \$5000 fine. Fines carry no mandatory minimums. Penalties are enhanced where personal injury or great personal injury is involved.

Court-Ordered Other: The court may require defendant to perform community service in lieu of imprisonment, to complete a treatment program or substance abuse program, and order restitution to a victim. The court may also defer or suspend a sentence, order electronic home monitoring, participation in a victim impact program and impose investigation, prosecution, defense and other costs. By statute the court will require the defendant to undergo an assessment and or evaluation prior to sentencing and any recommendations in the evaluation must be ordered as part of the sentence.

Administrative: 180 days revocation for **1st offense**; 1 year revocation for **2nd offense within 5 years**; 3 years revocation for **subsequent offenses within 5 years**. These revocation periods have no mandatory minimum.



OREGON

Oregon Revised Statutes Section 813.010

Type of DUI Law: Under the influence

§ 813.010

- (1) A person commits the offense of driving under the influence of intoxicants if the person drives a vehicle while the person:
- ...
 - (b) Is under the influence of intoxicating liquor, a controlled substance or an inhalant; or
 - (c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled substance.

DUII is a class C Felony if the current offense was committed in a motor vehicle and the defendant has been convicted at least three times in the 10 years prior to the date of the current offense.

Type of Drugs Prohibited: Controlled substances, inhalants

Required Proof:

1. Defendant was driving a vehicle in Oregon; and
2. While driving the vehicle, Defendant was under the influence of a controlled substance and/or an inhalant.

Possible Defenses Allowed by Statute: §813.010(2) A person may not be convicted of driving while under the influence of intoxicants on the basis of being under the influence of a controlled substance or an inhalant unless the fact that the person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory instrument and is either proved at trial or is admitted by the person through a guilty plea.

Implied Consent for Drugs: Yes, if the officer has received and successfully completed the 8 hours of “Drugs that Impair Driving” training

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in civil and criminal cases. Violation to refuse the breath test only O.R.S. 813.095. Fine of not less than \$500 nor more than \$1000

Administrative: 1 year (90 days mandatory) suspension for **1st refusal**; 3 years (1 year mandatory) for **2nd refusal within 5 years**. Restricted driving privileges may be issued after the mandatory periods are served.

Sanctions Following Conviction:

Criminal: For **1st offense** Not more than 1 year (48 hours mandatory imprisonment or serve community service as directed by the court), not more than \$6250 (\$1000 mandatory) fine; for **2nd offense** not more than 1 year (48 hours mandatory imprisonment or serve community service as directed by the court), not more than \$6250 (\$1500 mandatory); for **3rd offense or subsequent offense** not more than 1 year (48 hours mandatory), not more than \$6250 (\$2000 mandatory), For **4th offense (FELONY DUII)** 5 years and up to \$125,000 in fines.

Court-Ordered Other: The court may order mandatory sentences to be served in either a jail, a minimum-security facility or inpatient rehabilitation or treatment center. The court may also order home detention, community service in lieu of incarceration, restitution directly to the victim, and must impose various fees and assessments and must require defendants to complete a treatment program for drug dependency. When a person is convicted of driving while under the influence of intoxicants in violation of ORS 813.010, a court shall comply with the following in addition to any fine or other penalty imposed upon the person under ORS 813.010:

- (1) The court shall require the person to:
 - (a) Pay to the court the fee described under ORS 813.030 in addition to any fine imposed under ORS 813.010; and
 - (b) Complete a screening interview and a treatment program as provided in ORS 813.021.
- (2) The court must impose and not suspend execution of a sentence requiring the person either to serve at least 48 hours' imprisonment, which shall be served consecutively unless justice requires otherwise, or to perform community service for times specified by the court under ORS 137.129.
- (3) In a county that has a victim impact program a court may require the person to attend a victim impact treatment session.

Administrative: 1 year (30 days mandatory) suspension for **1st offense**; 3 years (90 days mandatory) suspension for **2nd offense**; 3 years (1 year mandatory) suspension for a **3rd or subsequent offense**.



PENNSYLVANIA

Pennsylvania Consolidated Statutes Section 75-3802

Type of DUI Law: Per Se

§ 3802. Driving under influence of alcohol or controlled substance

- (d) Controlled Substances- An individual may not drive, operate or be in actual physical control of the movement of a vehicle under any of the following circumstances:
- (1) There is in the individual's blood any amount of a:
 - (i) Schedule I controlled substance, as defined in the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act;
 - (ii) Schedule II or Schedule III controlled substance, as defined in The Controlled Substance, Drug, Device and Cosmetic Act, which has not been medically prescribed for the individual; or
 - (iii) Metabolite of a substance under subparagraph (i) or (ii).
 - (2) The individual is under the influence of a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.
 - (3) The individual is under the combined influence of alcohol and a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.
 - (4) The individual is under the influence of a solvent or noxious substance in violation of 18 Pa.C.S. § 7303 (relating to sale or illegal use of certain solvents and noxious substances).

Type of Drugs Prohibited: Schedule I, II, and III controlled substances or their metabolites, and solvents or noxious substances.

Required Proof:

1. Defendant was driving, operating, or in actual physical control of a vehicle in Pennsylvania;
2. While driving the Defendant had detectable levels of prohibited drugs in his/her blood; or
3. While driving the vehicle, Defendant was under the influence of other drugs or a combination of alcohol and other drugs which rendered the Defendant incapable of safe driving.

Possible Defenses Allowed by Statute: Legal entitlement to use the controlled substance is not a defense.

Implied Consent for Drugs: Yes

Special Circumstance: Chemical tests are considered "searches" and cannot be administered without consent unless probable cause and exigent circumstances are present to validate a warrantless search.

Arrest Required Prior to Test: No, there need only be reasonable grounds to believe a DUI has occurred, or where an accident resulting in serious injury or death has occurred.

Specimens to be Tested: Blood, urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: None

Administrative: 12 months (mandatory) suspension for **any refusal**.

Sanctions Following Conviction:

Criminal: For **1st offense** Not more than 6 months (72 hours mandatory) imprisonment, not more than \$5000 (\$1000 mandatory); fine; for **2nd offense** not more than 5 years (90 days mandatory), not more than \$10,000 (\$1500 mandatory); for **3rd or subsequent offense** not more than 5 years (1 yr mandatory), not more than \$10,000 (\$2500 mandatory)

Court-Ordered Other: The **1st time offender** may be placed in the Accelerated Rehabilitation Disposition Program, the successful completion of which may lead to dismissal of charges. A **1st or 2nd time offender** may also be sentenced to a residential inpatient rehabilitation program, or house arrest with electronic surveillance coupled with a drug treatment program as an alternative to mandatory imprisonment. The court may also order community service, restitution to a victim, day-time work release, or order the defendant to pay laboratory costs associated with the chemical testing. Repeat offenders will be required to install ignition interlock devices.

Administrative: For **1st offense** 12 months (mandatory) license suspension for all offenders; for **2nd offense** 18 month suspension (mandatory); for **3rd or subsequent offense** –18 month suspension (mandatory)



PUERTO RICO

Section 5203

Type of DUID Law: Under the Influence

Section 5203

It shall be unlawful for any person under the influence of any narcotic drug, marihuana, stimulant or depressant substance, or of any chemical or controlled substance, to the degree whereby it makes said person unable to drive a vehicle safely, or drive or have physical and real control of a motor vehicle on the public roads.

Type of Drug Prohibited: Any narcotic drug, marihuana, stimulant or depressant substance, or of any chemical or controlled substance.

Required Proof:

1. Defendant was operating a motor vehicle in Puerto Rico; and
2. While operating the motor vehicle, defendant was under the influence of one of the prohibited substances.

Possible Defenses Allowed by Statute: The fact that a person accused of violating the provisions of this section is or has been authorized to use said narcotic drug, marihuana, stimulant or depressant substance or chemical or controlled substance pursuant to the laws of Puerto Rico, **shall not** constitute a defense against being charged for having violated this section.

Implied Consent for Drugs: Yes - It shall be deemed that every person who drives a vehicle, motor vehicle or heavy motor vehicle on the public highways of Puerto Rico, has consented to submit to a chemical or physical analysis of his/her blood, breath or any bodily fluid, for the purposes stated in this section, as well as to an initial breath test to be performed at the site of the arrest by the policeman or any other official authorized by law §5209.

Arrest Required Prior to Test: No

Specimens to be Tested: Blood, breath or any bodily fluid

Sanctions for Refusal to Test: If the person refuses, objects, resists or evades submitting to the alcohol, drug or controlled substance testing procedure, he/she shall be arrested in order to be transferred to a medical-hospital facility for the personnel certified by the Department of Health to proceed to extract the pertinent samples.

Special Circumstance: It is presumed that any person who is dead or unconscious has not withdrawn his/her consent, as provided above, and the analysis or analyses shall be performed, subject to the provisions of this section.

Evidentiary: Refusal is admissible

Criminal: None

Administrative: Not applicable

Special provisions for the collection of samples: Any sample obtained from a person, except that from the breath analysis, shall be divided into three (3) parts: one (1) shall be given to the person arrested so that he/she may proceed to its analysis, and the other two (2) shall be reserved for the use of the Department of Health and/or the Institute of Forensic Sciences; one of which is to be

used in the chemical or physical analysis required by this section, and the other shall be preserved to be analyzed solely by instruction of the court in the event there is a discrepancy between the official analysis and the analysis performed privately by instruction of the accused. If the results of the chemical urine analysis shows or determines that the person was not under the effect of drugs or controlled substances, he/she shall be set free immediately.

Sanctions Following Conviction:

Criminal: For **1st offense** a fine of not less than \$300 nor more than \$500 and 5-15 days imprisonment, for **2nd offense** - a fine of not less than five hundred dollars (\$500) nor more than seven hundred fifty dollars (\$750) and imprisonment for a term of fifteen (15) to thirty (30) days; for the **3rd and subsequent offenses**, a fine of not less than seven hundred dollars (\$700) nor more than one thousand dollars (\$1,000) and imprisonment of not less than sixty (60) days or more than six (6) months

Court-Ordered Other: Compulsory attendance to a duly-certified orientation program duly established for such cases by the Department, in conjunction with. The court may also order restitution, and upon the advice of the Mental Health and Addiction Services Administration the court may order hospitalization and treatment.

Administrative: For **1st offense** - license revocation not to exceed 30 days; for **2nd offense** 6 months (mandatory) revocation; for **3rd and subsequent offenses**. 2 years (mandatory) revocation

Penalties – All sanctions are enhanced in the following instances:

- for committing the violation while in the company of a minor 15 years or less [§5240C]
- when there is “bodily harm to another person” [§5205]; or
- when there is “serious bodily injury to a human being” [§5206].



RHODE ISLAND

General Laws of Rhode Island

§ 31-27-2, Driving under influence of liquor or drugs

Type of DUI Law: Under the influence/Zero Tolerance

Section 31-27-2

- (a) Whoever drives or otherwise operates any vehicle in the state while under the influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in chapter 28 of title 21, or any combination of these, shall be guilty of a misdemeanor except as provided in subdivision (d)
- (b) (2) Whoever operates or otherwise drives any vehicle in the state with a blood presence of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as provided in subsection (d) of this section.

Type of Drugs Prohibited: Any drug, toluene, or any scheduled controlled substance

Required Proof:

1. Defendant was operating or driving a vehicle in Rhode Island;
2. While driving, Defendant was under the influence of any drug, toluene, or any scheduled controlled substance, or a combination thereof; or
3. While driving, Defendant had a blood presence of a scheduled controlled substance in his body.

Possible Defenses Allowed by Statute: Legal entitlement to use of a drug shall not constitute a defense.

Implied Consent for Drugs: Yes, § 31-27-2.1 (a) Any person who operates a motor vehicle within this state shall be deemed to have given his or her consent to chemical tests of his or her breath, blood, and/or urine for the purpose of determining the chemical content of his or her body fluids or breath.

Special Circumstances: The request to submit to a chemical test must be based on “reasonable grounds” to believe defendant was driving while under the influence.

Arrest Required Prior to Test: No

Specimens to be Tested: Blood (exception allowed on religious grounds)

Sanctions for Refusal to Test § 31-27-2.1:

Evidentiary: Under §31-27-2(c)1 Evidence that the defendant had refused to submit to the test shall not be admissible unless the defendant elects to testify.

Criminal: For **1st refusal** \$200 - \$500 fine and 10 hours - 60 hours of public (community) Service; for **2nd refusal** within 5 years \$600 - \$1000 fine, and 60 hours - 100 hours of public (community) Service; for 3rd and subsequent refusal within 5 years \$800 - \$1000 fine, sentenced to up to 1 yr imprisonment and perform not less than one hundred (100) hours of public community restitution. In addition to these fines, Defendant must also pay a \$500 assessment fee

Administrative: For **1st refusal** 6 months (mandatory) - 1 yr suspension plus attendance at a drug treatment program (mandatory); for **2nd refusal within 5 years** 2 years mandatory suspension plus attendance at a drug treatment program (mandatory);

for **3rd and subsequent refusals within 5 years**. 2 years (mandatory) - 5 years suspension plus attendance at a drug treatment program (mandatory)

Sanctions Following Conviction (Aggravated offenses receive enhance penalties):

Criminal: For **1st offense** - shall be required to perform ten (10) to sixty (60) hours of public community restitution, and/or shall be imprisoned for up to one year and pay fine of \$100 (mandatory) - \$300; for **2nd offense within 5 years** 10 days (mandatory) - 1 year and \$400 (mandatory) fine; for **3rd or subsequent offense within 5 years** 1 yr (mandatory) - 3 years imprisonment and \$400 (mandatory)

Court-Ordered Other: The court must order restitution payable to the Victim's Compensation Fund. Forfeiture may also be ordered. In addition, attendance at a drug education or treatment program is required.

Administrative: For **1st offense** 3 months (mandatory) - 6 months suspension; for **2nd offense** 1 year (mandatory) - 2 years suspension; for **3rd offense** 2 year (mandatory) - 3 years suspension.



SOUTH CAROLINA

Code of South Carolina
Section 56-5-2930

Type of DUI Law: Under the Influence: Impairment

Section 56-5-2930 - It is unlawful for a person to drive a motor vehicle within this State while:

...

- (2) under the influence of any other [than alcohol] drug or combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired; or
- (3) under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired.

Type of Drug Prohibited: Any drug or substance that can cause impairment

Required Proof:

1. Defendant was driving a motor vehicle in South Carolina.
2. While driving the vehicle, Defendant was under the influence of any drug other than alcohol, or any drug in combination with alcohol.
3. That the use of the drug caused the Defendant's faculties to be materially (materially goes to what caused the impairment) and appreciably (able to be measured or seen) impaired.

Possible Defenses Allowed by Statute: Section 56-5-2950(a). It is required that a breath test first be given to anyone arrested for driving under the influence of alcohol, drugs or a combination of both. If the breath test reveals a BAC level of .08 or greater, no further tests may be required by the officer. Thus, no urine or blood test to detect the presence of drugs may be required.

Implied Consent for Drugs: Yes

Special Circumstances: A person must submit if arrested for a serious injury or death related to DUI or if there is probable cause to suspect that a serious injury or death related to DUI has occurred.

Arrest Required Prior to Test: Arrest is required for testing under 56-5-2950, but a test may be required on the basis of 'probable cause' alone under 56-5-2945 (felony DUI) and under 56-1-286 (under 21, may 'detain and test' if PC to believe the person has consumed alcohol and driven a motor vehicle.) Section 56-1-286 is not a criminal offense and no arrest can be made; the subject may be detained for a breath test and if found to have an alcohol concentration of 0.02% or greater, can have their license suspended. There is no provision for drugs under this statute, only alcohol. This is the "zero tolerance" law for alcohol in under age drivers. However, if the officer decides to test for this statute instead of DUI, the person can not be charged with DUI even if the breath test gives a result greater than 0.08% BrAC.

Specimens to be Tested: Blood, Urine (it should be noted that blood tests in any case other than Felony DUI (56-5-2945) can only be requested in a very narrow and limited set of circumstances):

1. The subject is unable to take the test due to an injury of the mouth that prohibits a breath test from being administered,
2. The subject is unconscious,
3. The subject is dead,
4. Any other reason deemed acceptable by licensed medical personnel (i.e., the subject is being treated and is not allowed to leave the medical facility in time to conduct a legal breath test).

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases.

Criminal: None

Administrative: 90 day suspension for **1st refusal**; 180 days suspension for **subsequent refusals within 10 years**. Restricted licenses may be issued for employment or educational purposes.

Sanctions Following Conviction:

Criminal: 48 hours (mandatory) - 30 days imprisonment, \$300 (mandatory) fine for **1st offense**; 48 hours (mandatory) - 1 year, \$2000 (\$1000 mandatory) - \$5000 for **2nd offense within 10 years**; 60 days (mandatory) - 3 years, \$3500 (mandatory) - \$6000 for **3rd offense within 10 years**; 1 year (mandatory) - 5 years, no fine for **4th or subsequent offense** within 10 years (felony); 30 days (mandatory) - 10 years, \$5000 (mandatory) - \$10,000 for a serious injury DUI; 1 year (mandatory) – 25 years, \$10000 (mandatory) - \$25000, and license suspension of “any term of imprisonment plus three years” if convicted of Felony DUI resulting in death.

Court-Ordered Other: The court may order out-of-jail public service work during the period of incarceration, or home detention with or without electronic monitoring or community service in lieu of incarceration. The court must also require Defendant to pay mandatory assessments in addition to the sentenced fines. The court may also order installation of an ignition interlock device following conviction of DUI, DUC, or Felony DUI.

Administrative: 6 months suspension or restricted license (with participation in a drug education or treatment program) for **1st offense**; 1 year (mandatory) suspension for **2nd offense within 10 years**; 2 years (mandatory) suspension for **3rd offense within 5 years**; permanent (7 years mandatory) revocation for **4th or subsequent offenses**. Defendant must complete a drug safety action program prior to license reinstatement.



SOUTH DAKOTA

South Dakota Codified Laws Section 32-23-1

Type of DUI Law: Under the Influence: Incapacity/Zero Tolerance for Persons under 21

§32-23-1: Driving or control of vehicle prohibited with alcohol in blood or while under influence of alcohol or drug. No person may drive or be in actual physical control of any vehicle while:

...

- (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or substance not obtained pursuant to a valid prescription, or any combination of an alcoholic beverage, marijuana, or such controlled drug or substance;
- (3) Under the influence of any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving;
- (4) Under the combined influence of an alcoholic beverage and or any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving; or
- (5) Under the influence of any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15.

§32-23-21

It is a Class 2 misdemeanor for any person under the age of 21 years to drive, operate, or be in actual physical control of any motor vehicle:

...

- (2) After having consumed marijuana or any controlled substance for as long as physical evidence of the consumption remains present in the person's body.

Type of Drugs Prohibited: Marijuana, any controlled drug or substance whether obtained pursuant to a valid prescription or not, or any substance used for the purpose of becoming intoxicated.

Required Proof:

1. Defendant was driving or in actual physical control of a vehicle in South Dakota
2. While driving, Defendant was under the influence of a controlled drug or substance
3. The influence was to the extent that it rendered the Defendant incapable of safely driving OR
4. If the Defendant is under the age of 21 years, he/she was driving after having consumed marijuana or a controlled substance AND
5. There was any physical evidence of the consumption present in the Defendant's body

Possible Defenses Allowed by Statute: *Lawful use of drugs no defense.* The fact that any person charged with a violation of § 32-23-1 is or has been prescribed a drug under the laws of this state is not a defense against any charge of violating § 32-23-1.

Implied Consent for Drugs: No. In 2006, South Dakota repealed its implied consent law. No person arrested for a DUI offense in South Dakota may refuse to submit to the withdrawal of blood or other bodily substances as evidence. Force may be used to obtain a blood sample.

Arrest Required: Yes

Specimens to be Tested: Blood, other bodily substances

Sanctions for Refusal to Test:

Evidentiary: Refusals can be admitted as evidence in criminal cases.

Criminal: None

Administrative: 1 year revocation possible, but not mandatory in all circumstances

Sanctions Following Conviction:

Criminal: For **1st offense** - Not more than 1 year (no mandatory) imprisonment, not more than \$2000 (no mandatory) fine; for **2nd offense within 10 years** - not more than 1 year (3 days mandatory for Defendant operating a vehicle without a license at time of offense), not more than \$2000; for **3rd offense within 10 years** (class 6 felony)- not more than 2 years not more than \$4000 (no mandatory); for **4th offense within 10 years** (class 5 felony) -not more than 5 years, not more than \$10000, for **5th or subsequent offense** – (class 4 felony) not more than 10 years, not more than \$20000. For persons under 21: Not more than 30 days jail and/or not more than \$200 fine plus 6 months suspension for 1st offense and 1 year suspension for 2nd and subsequent offense.

Court-Ordered Other: Community service, restitution and cost of confinement may be ordered. For persons under 21, the court may also order participation in a counseling program. Any person convicted of a first offense pursuant to § 32-23-1 with a 0.17 percent or more by weight of alcohol in the person's blood shall, in addition to the penalties provided in § 32-23-2, be required to undergo a court-ordered evaluation by a chemical dependency counselor as defined in § 34-20A-2 or a licensed or certified health care professional with specialized training in chemical dependency evaluation to determine if the defendant is chemically dependent. The cost of such evaluation shall be paid for by the defendant. (N.B. Any driving permit issued by the court to any person, who has been convicted of a violation of § 32-23-1 within the last ten years or any driving permit issued pursuant to § 32-23-2, if that person had 0.17 percent or more by weight of alcohol in that person's blood, shall be conditioned on the person's total abstinence from the use of alcohol, the person's participation in the 24/7 sobriety program created by this §§ 1-11-17 to 1-11-25, inclusive, in those areas where 24/7 sobriety testing is available, and payment of associated costs and expenses. The court shall immediately revoke the permit upon a showing of proof by a preponderance of the evidence that the person has violated this condition.)

Administrative: For **1st offense** 30 days - 1 year revocation; for **2nd offense** not less than 1 year (mandatory except in special situations) revocation; for **3rd offense** not less than 1 year (mandatory) revocation; for **4th offenses** not less than 2 years (mandatory) revocation, for **5th and subsequent offenses** not less than 3 yrs revocation.



TENNESSEE

Tennessee Code Annotated
Section 55-10-401 (DUI Offense Defined)
Section 55-10-403 (DUI Penalties)
Section 55-10-406 (Implied Consent)

Type of DUI Law: Under the influence: Impairment

§ 55-10-401

- (a) It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state of Tennessee, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises which is generally frequented by the public at large, while:
- (1) Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects in the central nervous system;
- (b) For the purpose of this section, “drug producing stimulating effects on the central nervous system” includes the salts of barbituric acid, also known as malonyl urea, or any compound, derivative, or mixture thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenylethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.

Type of Drugs Prohibited: Intoxicants, marijuana, narcotic drugs, drugs producing stimulating effects on the central nervous system

Required Proof:

1. Defendant was driving or was in actual physical control of a motor vehicle in Tennessee
2. While driving the vehicle, or in actual physical control of the vehicle, Defendant was under the influence of one of the above-listed prohibited drugs OR
3. While driving the vehicle, Defendant’s ability to safely operate the motor vehicle was impaired due to the consumption of drugs or any other intoxicant.

Possible Defenses Allowed by Statute: Legal entitlement to use the prohibited drug (or prescribed medication) is not a defense to a charge under one of these statutes [§55-10- 402].

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: None, however, 55-10-406(a)(5) If defendant was driving with license revoked for prior DUI related offense, it is a Class A misdemeanor with minimum 5 days incarceration.

Administrative: 12 months suspension for **any refusal**; 2 years for any refusal in a case where there has been an injury-related accident, or when the defendant has a prior DUI related offense; 5 years suspension for any refusal where there has been a death-related accident. Restricted licenses may be issued.

Sanctions Following Conviction:

Criminal: For **1st** driving while impaired offense not less than \$350 nor more than \$1500 fine, 24 hours public service removing litter from public roadway and 48 hours (mandatory) – up to 11 months 29 days imprisonment with remainder of sentence on probation; for **any 2nd offense** within 20 years a fine of not less than \$600 (mandatory) – nor more than \$3500- and imprisonment of 45 days (mandatory) - 11 months 29 days, for **3rd offense** within 20 years a fine of \$1100 (mandatory) - \$10,000 and 120 days (mandatory) - 11 months 29 days, for **4th or subsequent offense** within 20 years (class E felony) a fine of \$3000 - \$15,000, and 1 year (150 days mandatory) - 6 years imprisonment

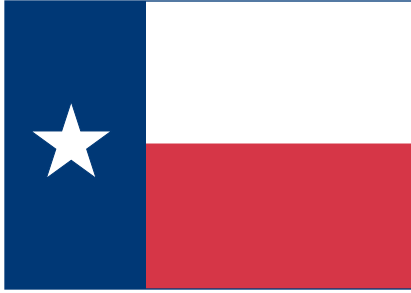
Court-Ordered Other: The court may order a 2nd offender to serve not more than 28 days of his/her jail sentence in an inpatient drug treatment program and the balance of the sentence in jail. The court may also order work release, community service, restitution directly to a victim, and must order defendant to pay a BAC test fee. Participation in a treatment program may be ordered as a condition of probation. Judge may order convicted individual to remove litter from state highways, public parks, etc.

Administrative: 1 year (mandatory) revocation (hardship license may be issued) for **1st offense**; 2 years (mandatory) revocation for **2nd offense within 10 years**; 3 years (mandatory) - 10 years revocation for **3rd offense within 10 years**; 5 years (mandatory) revocation for **4th or subsequent offenses within 10 years**.

Other – Effective 1 January 2009

At the time of offense if the person was accompanied by a child under 18 years of age the person shall be punished by mandatory incarceration of 30 days and a mandatory minimum fine of \$1000.

If at the time of offense the person was accompanied by a child under 18 years of age and the child suffered serious bodily injury as the proximate result of the violation of §55-10-401 the person commits a class D felony and shall be punished as provided in §39-13-106 for vehicular assault.



TEXAS

Texas Penal Code
Section 49.01
Section 49.04

Type of DUID Law: Intoxication

Section 49.01 Definitions.

...

(2) “Intoxicated”

- (A) means not having the normal use of mental or physical faculties by reason of the introduction of reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body...

Section 49.04 Driving While Intoxicated.

(a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place

Type of Drugs Prohibited: Drugs, controlled substances (extensive listing under Section 481.002 of the Health and Safety Code), and any other substance (e.g., inhalants, designer drugs, etc.) that could impair normal mental or physical faculties.

Required Proof:

1. Defendant was operating a motor vehicle in a public place in Texas.
2. While operating the vehicle, defendant did not have the normal use of his/her mental or physical faculties because controlled substances, drugs, dangerous drugs, a combination of two or more of those substances or any substance had been introduced into his/her body.

Mental State: Proof of a culpable mental state is not required.

Possible Defenses Allowed by Statute: The fact that the defendant is or has been entitled to use the alcohol, drug, dangerous drug, or other substance is not a defense

Implied Consent for Drugs: Yes

Special Circumstances: A driver arrested for DUI must submit to a test where he/she was involved in an accident resulting in death or likely to result in death if:

1. The person is arrested for an offense involving the operation of a motor vehicle or watercraft while intoxicated;
2. The officer reasonably believes the accident occurred as a result of the offense;
3. The officer reasonably believes that a person has died or will die a direct result of the accident; and
4. The person refuses to give a specimen voluntarily.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood or breath

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: None

Administrative: 180 days suspension for **1st refusal**; two years suspension for **2nd refusal within 10 years**. Suspensions are rescinded if the defendant is acquitted of the DWI offense involved. Restricted licenses may be issued in cases of hardship.

Sanctions Following Conviction [Sec.49.09]:

Criminal: For **1st offense** - 72 hours minimum confinement (6 days minimum if open container and offense involved a motor vehicle) – up to 180 days imprisonment, not more than \$2000 fine; for **2nd offense** within 10 years 30 days (minimum) - 1 year, not more than \$4000 fine; for **3rd or subsequent offenses** within 10 years or if prior conviction for the offense of Intoxication Manslaughter (fatality-related DUI) (felony). 2 years (minimum) - 10 years, not more than \$10,000

Court-Ordered Other: The court may order participation in community supervision (which includes participation in a drug treatment program) in lieu of all or part of the sentence of incarceration, community service in addition to other sanctions, and restitution, and must impose certain fees and costs. The court may also order work release, intermittent sentencing, or electronically monitored house arrest. In certain counties, a drug treatment program must be established as an alternative to incarceration, and each Defendant must at least be screened and assessed for participation. Felony offenders may be confined in a substance abuse treatment facility in lieu of imprisonment for 6 months - 1 year.

Administrative: 90 days to one year as determined by the court. One year if the person has a prior conviction for Intoxication Assault. From 180 days to two years depending on whether the person qualifies for criminal enhancement based on prior convictions for offenses under Chapter 49, Penal Code. If a license suspension is imposed as a result of criminal prosecution for the offense involved, the person receives credit for an administrative suspension imposed as a result of the person's refusal to give a specimen unless the person has been previously convicted of DWI, Intoxication Assault, or Intoxication Manslaughter or the person is under 21 years of age at the time of the offense. The court may restrict the person to the operation of a vehicle equipped with an ignition interlock device. Restriction is mandatory if the person has a prior conviction within the previous 10 years. Mandatory if the person has two or more convictions. Restricted licenses may be issued under certain circumstances; does not apply to the operation of a commercial motor vehicle.

Other Issues: Texas makes it illegal for chemically dependent persons who are a danger to themselves or others, or those who are addicted to a controlled substance or other drug, to drive (Transportation Code Sections 521.021 and 521.312), effectively providing zero tolerance for addicts.



UTAH

Utah Code: Title 41 – Traffic Code

Type of DUI Law: Under the influence: Incapacity/Zero Tolerance

§41-6a-502 Driving under the influence of alcohol, drugs, or a combination of both...

(1) A person may not operate or be in actual physical control of a vehicle within this state if the person:

...

(b) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle

§41-6a-517. Definitions—Driving with any measurable controlled substance in the body—Penalties—Arrest without warrant.

...

(2) In cases not amounting to a violation of Section 41-6a-502, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance or metabolite of a controlled substance in the person's body.

Type of Drugs Prohibited: Any drug or controlled substance

Required Proof:

1. Defendant was operating or was in actual physical control of a motor vehicle in Utah
2. While operating the vehicle, Defendant was under the influence of any drug
3. That influence rendered the defendant incapable of safely operating the vehicle OR
4. While so operating the vehicle, the defendant had a measurable amount of a controlled substance in his/her body

Possible Defenses Allowed by Statute: §41-6a-517 It is an affirmative defense to prosecution under this section that the controlled substance was:

- (a) involuntarily ingested by the accused;
- (b) prescribed by a practitioner for use by the accused; or
- (c) otherwise legally ingested.

Implied Consent: Yes

Arrest Required Prior to Test: Not necessarily, if a peace officer has "grounds to believe: that a DUI has been committed, he may request a test prior to arrest. However, sanctions for refusal to test only apply if the person has been arrested, warned about the consequences of refusal, a test requested and then refuses.

Specimens to be Tested: Blood, urine, or oral fluid

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in both civil and criminal cases

Criminal: None

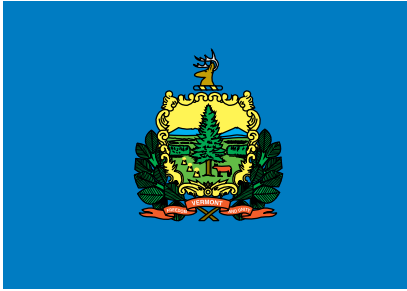
Administrative: For **1st refusal** 18 months (mandatory) revocation; for **subsequent refusals** 24 Months (mandatory) revocation

Sanctions Following Conviction:

Criminal: For **1st offense** - Not less than 48 hours mandatory imprisonment, not less than \$700 (mandatory) fine; for **2nd or subsequent offense** within 10 years not less than 240 hours mandatory imprisonment, not less than \$800 mandatory fine;

Court-Ordered Other: In per se convictions under §41-6a-517 the court shall order supervised supervision. The court may also order screening and assessment, a treatment program if appropriate, community service, restitution either to a victim directly or to a Victims' Compensation Fund, electronic home monitoring as an alternative to imprisonment or community service, and participation in a drug education program. The defendant shall pay all fines and fees, including fees for restitution, screening, assessment and treatment costs.

Administrative: For **1st per se offense** 90 days suspension; for **2nd or subsequent per se offense** 1 year revocation; for 1st DUI offense 180 days (mandatory) suspension; for **subsequent DUI offenses within 10 years** 2 years (mandatory) revocation. All drivers must complete a drug education or treatment program prior to reinstatement.



VERMONT

Vermont Statutes Annotated Title 23: Motor Vehicles, Chapter 13 (Operation of Vehicles) Section 1201

Type of DUI Law: Under the influence: Incapacity

23 Section 1201

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

...

- (3) when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely

Type of Drugs Prohibited: a regulated drug as defined in section 4201 of Title 18; or any substance or combination of substances, other than alcohol, which affects the nervous system, brain, or muscles of a person so as to impair, noticeably and appreciably, a person's ability to drive a vehicle safely.

Required Proof:

1. Defendant was operating, attempting to operate or was in actual physical control of a vehicle on a highway in Vermont
2. While operating, etc. the vehicle, Defendant was under the influence of one or more of the above-listed drugs
3. The influence of the drug rendered the Defendant incapable of driving safely

Possible Defenses Allowed by Statute: Legal entitlement to use a drug **shall not** constitute a defense against any charge of violating section 1201. While not unique to the charge of driving under the influence of a drug other than alcohol, 23 VSA § 1201(f) provides that "the defendant may assert as an affirmative defense that the person was not operating...the vehicle because the person: (1) had no intention of placing the vehicle in motion; and (2) had not placed the vehicle in motion while under the influence."

Implied Consent for Drugs § 1202: Yes

Special Circumstances: A driver who refuses a test and who is involved in an accident resulting in bodily injury or death may be compelled to submit via a search warrant.

Arrest Required Prior to Test: No, reasonable grounds to believe a DUI occurred is sufficient.

Specimens to be Tested: Blood. (Under §1203a. a person tested has the right at the person's own expense to have someone of the person's own choosing administer a chemical test or tests in addition to any administered at the direction of the law enforcement officer under section 1203 of this title.)

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: 23 VSA §1201(b) provides that a person who has previously been convicted of DUI shall not operate...a vehicle and refuse an officer's reasonable request for an evidentiary test. 23 VSA §1201(c) provides that a person shall not operate...a vehicle and be involved in a collision resulting in serious bodily injury or death to another and refuse an officer's reasonable request for an evidentiary test. A violation of either provision constitutes a violation of section 1201 and results in the imposition of criminal sanctions, as provided in 23 VSA.

Administrative: For **1st refusal** 6 months (mandatory) suspension; 18 months (mandatory) suspension for **2nd refusal**; life (3 years mandatory) suspension for **3rd or subsequent refusal**. Penalties are enhanced if defendant has a prior DUI or is involved in an accident resulting in bodily injury or death.

Sanctions Following Conviction:

Criminal: For **1st offense** Not more than 2 years imprisonment, not more than \$750 fine; for **2nd offense** not more than 2 years imprisonment [at least 200 hours of community service shall be performed, or 60 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred]; for **3rd or subsequent offenses** (felony) shall be fined not more than \$2,500.00 or imprisoned not more than five years, or both. At least 400 hours of community service shall be performed, or 100 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence. (N.B. credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed.)

Court-Ordered Other: The court may order community service, alcohol or drug education/treatment program, restitution to a victim, and must assess various surcharges and special assessments.

Administrative: For **1st offense** 90 days (mandatory) suspension; for **2nd offense** 18 months (mandatory) suspension; for **3rd or subsequent offense** life (3 years mandatory) suspension. Completion of an educational and/or a therapy program must be shown prior to license reinstatement.



VIRGINIA

Code of Virginia Section 18.2-266

Type of DUI Law: Per Se for specified drugs, Under the Influence: Impairment for other drugs

Section 18.2-266

It shall be unlawful for any person to drive or operate any motor vehicle, engine or train

...

(iii) while such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely...

...or

(v) while such person has a blood concentration of any of the following substances at a level that is equal to or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood.

Type of Drugs Prohibited: Any narcotic drug, self-administered intoxicants, any other drugs of whatever nature

Required Proof:

1. Defendant was driving or operating a motor vehicle in Virginia.
2. While driving or operating the vehicle, defendant was under the influence of one or more of the above-listed prohibited drugs; and
3. That influence impaired defendant's ability to drive safely.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes § 18.2-268.2 A person, after having been arrested for a violation of clause (iii), (iv), or (v) of § 18.2-266 or § 18.2-266.1 or subsection B of § 18.2-272 or of a similar ordinance, may be required to submit to a blood test to determine the drug or both drug and alcohol content of his blood. When a person, after having been arrested for a violation of § 18.2-266 (i) or (ii) or both, submits to a breath test in accordance with subsection B or refuses to take or is incapable of taking such a breath test, he may be required to submit to tests to determine the drug or both drug and alcohol content of his blood if the law-enforcement officer has reasonable cause to believe the person was driving under the influence of any drug or combination of drugs, or the combined influence of alcohol and drugs.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood

Sanctions for Refusal to Test:

Evidentiary: The failure of an accused to permit a blood or breath sample to be taken to determine the alcohol or drug content of his blood is not evidence and shall not be subject to comment by the Commonwealth at the trial of the case, except in rebuttal or pursuant to subsection C; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment by the Commonwealth, except in rebuttal or pursuant to subsection C.

Criminal: None

Administrative: 1 year (mandatory) suspension for **any refusal**. If the defendant pleads guilty, this suspension may be dismissed.

Sanctions Following Conviction:

Criminal §18.2-270: For **1st offense** Mandatory minimum 5 days imprisonment, mandatory minimum fine of \$250; for **2nd offense within 5 years** not less than 1 month nor more than 1 year imprisonment, and mandatory minimum fine of \$500; for **2nd offense** within 5-10 years not less than 1 month (mandatory minimum of 10 days in jail), and \$500 fine. **3rd offense within 10 years** (class 6 felony) mandatory minimum fine of \$1000, and 90 days minimum imprisonment; for **4th or subsequent offense** within 10 years 1 year (mandatory) - 5 years, not more than \$2500 (mandatory minimum of \$1000 fine);

Court-Ordered Other: The court may order any part or all of the jail sentence to be served via house arrest with electronic monitoring or may place a Defendant on probation in lieu thereof. The court may also order restitution to be paid directly to a victim and must impose a \$100 laboratory fee. First time offenders shall be required by court order, as a condition of probation or otherwise, to enter into and successfully complete an alcohol safety action program and pay a fee of \$250-\$300.

Administrative §18.2-271: 1 year revocation for **1st offense**; 3 years (4 months mandatory) for **2nd offense within 10 years**; indefinite (3 years mandatory) revocation for **3rd offense within 10 years**; 5 years (mandatory) revocation for **4th or subsequent offense**.



WASHINGTON

Revised Code of Washington

Section 46.61.502

Section 46.61.504

Section 46.61.5249

Type of DUI Law: Under the Influence, Negligent Driving

§46.61.502 (1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:

...

- (b) While the person is under the influence of or affected by intoxicating liquor or any drug; or
- (c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

§46.61.504 (1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

...

- (b) While the person is under the influence of or affected by intoxicating liquor or any drug; or
- (c) While the person is under the combined influence of or affected by intoxicating liquor and any drug

§46.61.5249 (1)(a) A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or an illegal drug.

Type of Drugs Prohibited: Any drug, including controlled substances or prescription drugs

Required Proof:

1. Defendant was driving or was in actual physical control of a vehicle in Washington.
2. While driving, or was in actual physical control of a vehicle, defendant was under the influence of, or was affected by any drug; or
3. Defendant was operating a vehicle in a negligent manner likely to endanger persons or property.
4. While so operating the vehicle, defendant exhibited the effects of having consumed a controlled substance or a prescription drug.

Possible Defenses Allowed by Statute: Legal entitlement to use a drug under the laws of this state **shall not** constitute a defense against a charge of violating section §46.61.502. If the Defendant has moved the vehicle safely off the roadway prior to being pursued by a law enforcement officer, then he/she cannot be convicted under the provision regarding “actual physical control” [§46.61.504]. However, legal entitlement to use the drug **is a defense** to the charge of “negligent driving” [§46.61.5249 (1)(a)] if the defendant had a valid prescription for the drug consumed and had been consuming the drug according to the prescription directions and warnings.

Implied Consent for Drugs: Yes

Special Circumstances: A person arrested for DUI may be compelled to submit to a test when an accident resulting in serious bodily injury is involved.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: None

Administrative: For **1st refusal** -1 year (mandatory) revocation; for **2nd or subsequent refusal or for a 1st refusal with a prior DUI** - 2 years (mandatory) revocation. Revocation for 2nd or subsequent refusals run consecutive to any revocation imposed following conviction of the DUI out of which the refusal arose.

Sanctions Following Conviction: Aggravated Offenses enhance penalties: It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if: (a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or (b) the person has ever previously been convicted of (i) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), (ii) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection.

Criminal: Not more than 1 year imprisonment and/or not more than \$5000 fine for **any DUID offense** (gross misdemeanor); not more than 90 days in jail and/or not more than \$1000 fine for any negligent driving offense. The Motor Vehicle Title in the Code does not enumerate penalties for DUID, but only for alcohol-related DUI. The above sanctions are found in the Penal Code of the state as the penalty for a gross misdemeanor where specific penalties are not otherwise set forth in other statutes.

Court-Ordered Other: The court may order community service, restitution directly to a victim, and must require Defendant to pay an assessment used to support the victim's compensation fund and fees to fund the State's toxicology lab, to pay for costs of incarceration, and any emergency response involved in the DUI. The court may order house arrest in lieu of jail.

Administrative: It appears that administrative suspensions or revocations are limited to alcohol-related offenses only.



WEST VIRGINIA

West Virginia Code Section 17C-5-2

Type of DUI Law: Under the Influence
Zero tolerance for habitual users

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

- (a) Any person who:
- (1) Drives a vehicle in this State while he or she:
 - (B) Is under the influence of any controlled substance; or
 - (C) Is under the influence of any other drug; or
 - (D) Is under the combined influence of alcohol and any controlled substance/any other drug;
 - (2) ...is guilty of a misdemeanor...
- ...
- (f) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this State, is guilty of a misdemeanor
- (g) Any person who:
- (1) Knowingly permits his or her vehicle to be driven in this State by any other person who:
 - (B) Is under the influence of any controlled substance; or
 - (C) Is under the influence of any other drug; or
 - (D) Is under the combined influence of alcohol and any controlled substance or any other
 - (2) Is guilty of a misdemeanor...
- (h) Any person who knowingly permits his or her vehicle to be driven in this state by any other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof, is guilty of a misdemeanor...

Type of Drugs Prohibited: Any drug or controlled substance (extensive listing)

Required Proof:

1. Defendant was driving a vehicle in West Virginia.
2. While driving the vehicle, defendant was under the influence of a controlled substance or any other drug; or
3. While driving the vehicle, the defendant was a habitual user of a narcotic drug, amphetamine or any derivative; or
4. Defendant knowingly permitted another person who was under the influence of a controlled substance or any other drug or who was a habitual user of narcotics, amphetamine or derivatives to drive his/her vehicle.

Possible Defenses Allowed by Statute: Legal entitlement to use a controlled substance or any other drug is not a defense

Implied Consent for Drugs: No

Arrest Required Prior to Test: Not applicable

Specimens to be Tested:

Evidentiary: Not applicable

Criminal: Not applicable

Administrative: Not applicable

Sanctions for Refusal to Test: Not applicable

Sanctions Following Conviction:

Criminal: For **1st offense** -Up to 6 months imprisonment (no mandatory), \$100 (mandatory) - \$500 fine; for **1st death-related DUI without reckless disregard offense** 90 days (mandatory) - 1 year, \$500 (mandatory) - \$1000 fine; for any **2nd offense** 6 month (mandatory) - 1 year, \$1000 (mandatory) - \$3000; for any **3rd or subsequent offense (felony)** - 1 year (mandatory) - 3 years, \$3000 (mandatory) - \$5000; for any **death-related DUI with reckless disregard offense (felony)** - 1 year (mandatory) - 10 years, \$1000 (mandatory) - \$3000; for any **habitual user offense** 1 day (mandatory) - 6 months, \$100 (mandatory) - \$500.

Court-Ordered Other: The court may order electronically-monitored home incarceration, or participation in a weekend jail program, a work assignment program, or a community service program in lieu of either a fine or incarceration. The court may also order defendant's temporary release from mandatory confinement for employment, educational, medical or family needs or reasons, and may require restitution to be paid directly to a victim. Certain fees and costs that fund the Crime Victims Compensation Fund are assessed against defendants.

Administrative: 6 months (90 days mandatory) revocation for **1st offense**; 10 years (5 years mandatory) revocation for **2nd offense within 10 years**; life (10 years mandatory) revocation for **3rd or subsequent offense within 10 years**. Revocation periods are enhanced in cases resulting in death or bodily injury. The minimum mandatory periods apply only if the defendant is participating in a drug treatment program. Revocations continue until the defendant completes the mandatory drug treatment program.



WISCONSIN

Wisconsin Statutes Annotated Section 346.63

Type of DUI Law: Under the Influence, Incapable of Safely Driving, Per Se

Section 346.63 - No person may drive or operate a motor vehicle while:

- (a) Under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or (am). The person has a detectable amount of a restricted controlled substance in his/her blood.

Type of Drugs Prohibited:

“**Restricted Controlled Substance**” under (1)(am) is defined by §340.01(50m) to mean any of the following:

- (a) A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.
- (b) A controlled substance analog, as defined in s. 961.01(4m), of a controlled substance described in par. (a).
- (c) Cocaine or any of its metabolites.
- (d) Methamphetamine.
- (e) Delta-9-tetrahydrocannabinol.

“**Controlled substance**” under (1)(a) is defined in §961.01(4) to mean any drug, substance or immediate precursor included in schedules I to V.

“**Drug**” under (1)(a) is defined in § 450.01(1) to mean:

Any substance recognized as a drug in the official U.S. pharmacopoeia and national formulary or official homeopathic pharmacopoeia of the United States or a supplement to either of them; any substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or other conditions in persons or other animals; any substance other than a device or food intended to affect the structure or any function of the body of persons or other animals; or any substance intended for use as a component of any article specified in pars. (a) to (c) but does not include gases or devices or articles intended for use or consumption in or for mechanical, industrial, manufacturing or scientific applications or purposes.

Required Proof:

Violation of §346.63(1)(a):

1. Defendant was driving or operating a motor vehicle on a highway; and
2. Defendant was under the influence of a controlled substance or controlled substance analog. “Under the influence” means that the defendant’s ability to operate a vehicle was impaired because of the consumption of a controlled substance; or
3. Defendant was under the influence of a drug to a degree which rendered him or her incapable of safely driving.

Violation of §346.63(1)(am):

1. Defendant was driving or operating a motor vehicle on a highway
2. Defendant had a detectable amount of a restricted controlled substance in his/her blood at the time of driving or operating a motor vehicle.

Possible Defenses Allowed by Statute: In an action under §343.63.1(am) that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he

or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

Implied Consent for Drugs: Yes

Special Circumstances: Warrantless blood draws are permissible under State v. Bohling, 494 N.W.2d 399 (1993) and Schmerber v. California, 384 U.S. 757 (1966). The dissipation of alcohol from a person's bloodstream constitutes a sufficient exigency to justify a warrantless blood draw so long as the blood draw is taken at the direction of a law enforcement officer from a person lawfully arrested for a drunk-driving related violation or crime, and there is a clear indication that the blood draw will produce evidence of intoxication.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood (required for per se statute), urine

Sanctions for Refusal to Test:

Evidentiary: Refusal evidence is admissible to show consciousness of guilt; unless the defendant is properly advised under the implied consent law.

Criminal: None

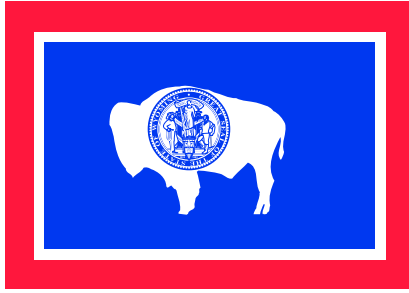
Administrative: 1 year revocation (after 30 days, driver is eligible for a restricted license) for **1st refusal**; 2 years revocation (after 90 days, a restricted license is possible) for **2nd refusal within 10 years**; 3 years (after 120 days, a restricted license is possible) revocation and possible vehicle forfeiture for **3rd or subsequent refusals**.

Sanctions Following Conviction [Aggravated offenses enhance penalties]:

Criminal: For **1st offense** - No imprisonment, \$150 (mandatory) - \$300 fine; for **2nd offense within 10 years** - 5 days imprisonment (mandatory) - 6 months, \$350 (mandatory) - \$1100 fine; for **3rd offense** - 30 days imprisonment (mandatory) - 1 year, \$600 (mandatory) - \$2000 fines; for **4th offense** - 60 days imprisonment (mandatory) - 1 year, \$600 (mandatory) - \$2000 fine; for **5th and subsequent offenses** - 6 months imprisonment (mandatory) - 5 years, \$600 (mandatory) - \$2000. A \$365 surcharge is added on all OWI offenses.

Court-Ordered Other: The court may order intermittent periods of confinement or electronically monitored home detention in lieu of imprisonment, and/or community service in lieu of or in addition to jail and fines. The court may also order a Defendant to pay restitution directly to a victim or to participate in a visitation program, and must assess certain surcharges against the defendants.

Administrative: For **1st offense** - 6 months - 9 months revocation (0 days mandatory); for **2nd offense within 10 years** - 12 - 18 months revocation (60 days mandatory); for **subsequent offenses within 10 years** - 2 years - 3 years revocation (90 days mandatory).



WYOMING

Wyoming Statutes Annotated Section 31-5-233

Type of DUI Law: Under the influence: Incapacity

§ 31-5-233 Driving or having control of vehicle while under influence of intoxicating liquor or controlled substances

(a) No person shall drive or have actual physical control of any vehicle within this state if the person:

...

(ii) to a degree which renders him incapable of safely driving;

(B) is under the influence of a controlled substance...

Type of Drugs Prohibited: "Controlled substance" includes a drug, substance, or immediate precursor in schedules I through V; or any glue, aerosol or other toxic vapor

Required Proof:

1. Defendant was driving or had actual physical control of a vehicle in Wyoming;
2. While driving, the vehicle, defendant was under the influence of a controlled substance; and
3. That influence rendered the defendant incapable of safely driving

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: A test may be required in cases where there has been death or serious bodily injury

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal and in civil cases.

Criminal: None

Administrative: 6 months (mandatory) suspension for **1st refusal**; 18 months (mandatory) suspension for **2nd or subsequent refusal**. If a person refuses a test, then pleads guilty to a DUI within 10 days of arraignment, these suspensions will not take effect.

Sanctions Following Conviction [Aggravated offenses enhance penalties]:

Criminal: For **1st offense** - Not more than 6 months (no mandatory) imprisonment, not more than \$750 fine; for **2nd offense within 5 years** - 7 days (mandatory) - 6 months imprisonment, and fine of \$200 - \$750; for **3rd offense within 5 years** - 30 days (mandatory or 15 days if Defendant completes an inpatient treatment program) - 6 months, fine of \$750 - \$3000; for **4th or subsequent conviction within 5 yrs [felony]** - punished by imprisonment for not more than 2 years, and a fine of not more than \$10,000 or both.

Court-Ordered Other: The court may order Defendant to a work/school release program during the incarceration period, community service as a condition of probation, a substance abuse assessment, restitution to a victim, and/or assess the costs of incarceration against a defendant.

Administrative: 90 days suspension for **1st offense**; 1 year (mandatory) suspension for **2nd offense within 5 years**; 3 years (mandatory) revocation for a **3rd or subsequent offense** within 5 years. These suspensions or revocations may be reduced by 90 days if defendant has had his/her license suspended due to a refusal to take a test. Restricted licenses may be available based on “undue hardship”.

Appendix B: State-by-State Comparison Summary

| State | Implied Consent Law for drugs | Per Se law exist for drugs | Types of drugs that are basis of law | Arrest required prior to testing | Specimens that may be tested | | | Other circumstances that may require testing | Mandatory Licensing sanctions for refusal to test | | Admin Lic Sanctions for Pre conviction | Mand. Lic Sanctions Following Conviction | |
|-------|-------------------------------|----------------------------|--------------------------------------|----------------------------------|------------------------------|------|-------|---|---|---------|--|--|---------|
| | | | | | B | U | Other | | 1st | 2nd | | 1st | 2nd |
| AL | NO | NO | Any controlled substance | YES | X *1 | X | X | “shall” Acc Inv Serious phys injury | S-90dys | S-1yr | YES | S-90dys | R-1yr |
| AK | NO | NO | Any controlled substance | YES | X *2 | X | | “may” acc inv death or serious phys inj | R-90dys | >1yr | | | |
| AZ | YES | YES | Any Drug or Metabolite | YES | X | X | X | “can request” acc inv death or serious phys injury | S-12mos | S-2yrs | YES | S-90dys | R-1yr |
| AR | YES | NO | Any controlled substance | NO | X | X | | “can request” acc inv death or serious phys injury | S-80dys | S-2yrs | YES | S-6mos | S-1yr |
| CA | YES | NO *3 | Any Drug | YES | X | X | | “may” if arrested for DUI | 1yr | 2yr | YES | R-6mos | R-2yrs |
| CO | YES | NO *4 | Any Drug | NO *11 | X | X | X | | R-1ry | R-2yrs | YES | R-9mos | R-1yr |
| CT | YES | NO | Any Drug | YES | X | X | | | S-6mo | S-1yr | | S-1yr | S-3yrs |
| DE | YES | YES | Any Drug | NO *11 | X | X | | “must” be a death related DUI offense | R-1yr | R-18mos | YES | R-1yr | R-2yrs |
| DC | YES | NO | Any Drug | YES | X | X | | “required to submit” if inv in any acc or if arrested for any DUI offense | S-12mos | YES | R-6mos | R-1yr | |
| FL | YES | NO | *5 | YES *6 | X *7 | X *8 | | “may accidents that result in death or serious bodily injury | *9 | *9 | YES | R-180dys to 1yr | R->2yrs |
| GA | YES | YES | Any Controlled Substance | NO *10 | X | X | X | “Not mandatory” acc that result in death or serious | S-1yr | YES | S-12mos | S-3yrs | |

| State | Implied Consent Law for drugs | Per Se law exist for drugs | Types of drugs that are basis of law | Arrest required prior to testing | Specimens that may be tested | | | Other circumstances that may require testing | Mandatory Licensing sanctions for refusal to test | | Admin Lic Sanctions for Pre conviction | Mand. Lic Sanctions Following Conviction | |
|-------|-------------------------------|----------------------------|--------------------------------------|----------------------------------|------------------------------|---|-------|---|---|----------|--|--|------------|
| | | | | | B | U | Other | | 1st | 2nd | | 1st | 2nd |
| HI | YES | NO | Any Controlled Substance | YES | X | X | | "May" a collision resulting in eith. Injury or death to any person. | R-1yr | R-2yrs | YES | S-90dys | S-1yr |
| ID | YES | NO | Any Drug | NO | X | X | | "may" DUI if aggravated or homicide offense | S-1yr | S-2yrs | YES | S-30dys | S-1yr |
| IL | YES | YES | Any Drug | YES | X | X | | "must" DUI related death or injury to person | S-1yr | S-2-3yrs | YES | R-1 yr | R-5yr |
| IN | YES | YES | Any Drug | NO *11 | X | X | X | "may" fatality or serious injury | S-Min 1 yr for any refusal | YES | S-90dys – 2yrs | S-180dys-2yrs | |
| IA | YES | YES | Any Drug | NO | X | X | | *12 | R-90dys | R-2yrs | YES | R-30dys-1yr | R-1yrs |
| KS | YES | NO *13 | Any Drug | YES *14 | X | X | X | "may" serious injury or death | S-1yr | S-2yrs | YES | S-30dys | 1yr |
| KY | YES | NO | Any Substance | YES | X | X | | "allows" death or phys. injury | S-1-4mos | | | R-30-120dys | R-12-18mos |
| LA | YES | NO | Any Controlled Dangerous Substance | YES | X | X | X | "may" traffic fatality or accident resulting in serious bodily injury | S-180dys | S-545dys | YES | S-90dys | S-12mos |
| ME | YES | NO | *15 | NO *16 | X | X | | "shall" traffic accident that results in death to other person | S-275dys | S-18mos | YES | S- 90 dys | S- 18mos |
| MD | YES *17 | NO | Any Drug | NO | X | X | | "must" accident that results in death or life threatening injury | S-120dys | S-1 yr | YES | S- <60 dys | S- 120 dys |
| MA | NO | NO | *19 | N/A | *20 | | | | S-180dys | S-3yrs | YES | R-1yr | R-2yrs |

| State | Implied Consent Law for drugs | Per Se law exist for drugs | Types of drugs that are basis of law | Arrest required prior to testing | Specimens that may be tested | | | Other circumstances that may require testing | Mandatory Licensing sanctions for refusal to test | | Admin Lic Sanctions for Pre conviction | Mand. Lic Sanctions Following Conviction | |
|-------|-------------------------------|----------------------------|--------------------------------------|----------------------------------|------------------------------|---|---|--|---|---------|--|--|----------|
| | | | | | B | U | Other | | 1st | 2nd | | 1st | 2nd |
| MI | YES | YES *21 | Any Controlled Substance | YES | X | X | | | S-1yr | S-2yrs | YES | S-1-5mos | R->1yr |
| MN | YES | YES *22 | A Controlled Substance | NO | X | X | *23 | R-15dys | R-1yr | YES | S-90dys | S-90dys | S-180dys |
| MS | YES | NO | Any Substance | NO | X | X | | S-90dys | S-1yr | YES | S-90dys | S-90dys | S-2 yrs |
| MO | YES | NO | A Controlled Substance | NO | X | X | “may” exigent circumstances” “probable cause” | R-90dys | R-1yr | YES | S-30dys | S-30dys | S-5 yrs |
| MT | YES | NO | Any Drug | YES | X | | | S-6 mos | R-1 yr | NO | S-6mos | S-6mos | R-1yr |
| NE | YES | NO | Any Drug | YES | X | X | “must” accident where a fatality occurs | R-6mos | R-1 yr | YES | R-6mos | R-6mos | R-1yr |
| NV | YES | YES | A Controlled Substance | NO | X | X | *25 | Immed seizure by police officer | YES | R-90dys | | R-1yr | |
| NH | YES | NO | Any Controlled drug | YES | X | X | “must” accident resulting in death or serious injury | S-180dys | S-2yrs | YES | R-90dys-2yrs | R-90dys-2yrs | R-2-3yrs |
| NJ | NO | NO | *27 | N/A | | | | N/A | N/A | NO | R-7mos-1yr | R-7mos-1yr | R-2 yrs |
| NM | YES | NO | Any Drug | YES | X | | “may” A driver has killed or greatly injured another person | R-1yr | R-1yr | YES | R-1yr | R-1yr | R-2yrs |
| NY | YES | NO | A controlled Substance | YES *28 | X | X | “may” an acc. involving a fatality or serious physical injury | R-6mos | R-1yr | YES | R-6mos | R-6mos | R-1yr |
| NC | YES | YES | Any Impairing Substance | YES | X | X | “may” via other lawful procedures | R-1yr | R-1yr | YES | R-1yr | R-1yr | R-4yrs |

| State | Implied Consent Law for drugs | Per Se law exist for drugs | Types of drugs that are basis of law | Arrest required prior to testing | Specimens that may be tested | | | Other circumstances that may require testing | Mandatory Licensing sanctions for refusal to test | | Admin Lic Sanctions for Pre conviction | Mand. Lic Sanctions Following Conviction | |
|-------|-------------------------------|----------------------------|--|----------------------------------|------------------------------|-----|----------|---|---|----------|--|--|--------------|
| | | | | | B | U | Other | | 1st | 2nd | | 1st | 2nd |
| ND | YES | NO | Any drug or substance | YES | X | X | X Saliva | "may" accident where there is death or serious injury | R-1yr | R-3yrs | YES | *29 | |
| OH | YES | YES | Drugs of Abuse, Controlled Substances/ Metabolites | YES | X | X | X OBS | | S-30dys | S-90dys | YES | S-30dys | S-45dys |
| OK | YES | NO | Intoxicating substances *30 | YES | X | X | X Saliva | "may" traffic offense, acc inv serious physical injury or death | R-180 days | R-1 yr | YES | R-180dys | R-1yr |
| OR | YES | NO | Controlled Substances | YES | X | X | | | S-90dys | S-3yrs | YES | S-1yr | S-3yrs |
| PA | YES | YES | A Controlled Substance | NO | X | X | | Acc that results in a death or injury that req. med. Treatment | 12 mos | NO | S-12mos | S-18mos | |
| PR | YES | NO | Any Drug | NO | X | X | X OBS | | N/A | N/A | NO | R-30dys | R-6mos |
| RI | YES | YES | Any Drug | NO | X | *31 | | | S-6mos | S-2yrs | NO | S-3-6mos | S-1-2yrs |
| SC | YES | NO | Any Drug | YES | X | X | | "must" bodily injury or death related to DUI | S-90dys | S-180dys | YES | S-6mos | S-1yr |
| SD | YES | NO | Marijuana and Any Controlled Substance | YES | X | X | X OBS | Required for persons arrested for a 3rd or subsequent DWI offense | R-1yr | | NO | R-30dys-1yr | R->1yr |
| TN | YES | NO | *34 | YES | X | X | | | S-12mos | NO | R-1 yr | R-2yrs | |
| TX | YES | NO | *35 | YES | X | X | | "shall require" inv in acc that either resulted in death or will likely result in one | S-180dy | S-2yrs | YES | S-90dys-1yr | 180 dys-2yrs |

| State | Implied Consent Law for drugs | Per Se law exist for drugs | Types of drugs that are basis of law | Arrest required prior to testing | Specimens that may be tested | | | Other circumstances that may require testing | Mandatory Licensing sanctions for refusal to test | | Admin Lic Sanctions for Pre conviction | Mand. Lic Sanctions Following Conviction | |
|-------|-------------------------------|----------------------------|--------------------------------------|----------------------------------|------------------------------|---|-------|---|---|---------|--|--|--------------|
| | | | | | B | U | Other | | 1st | 2nd | | 1st | 2nd |
| UT | YES | YES | Any Drug | YES | X | X | X | | R-18mos | R-24mos | YES | S-90dys | S-1yr |
| VT | YES | NO | Any related drug | NO | X | | | “may” accident, bodily injury or death | S-6mos | S-18mos | YES | S-90dys | S-18mos |
| VA | YES | YES | Any Drug | YES | X | | | | S-1yr | YES | R-1yr | R- 3yrs | |
| WA | YES | NO | Any Drug | YES | X | | | “may” acc where there is serious bodily injury *37 | R-1yr | R-2yrs | YES | | |
| WV | NO | NO | Any Drug | N/A | | | | | N/A | N/A | YES | R-6mos | R-10yrs |
| WI | YES | YES | Any Drug | YES | X | X | | | R-1yr | R-2yrs | YES | R-6-9 mos | R-1yr-18 mos |
| WY | YES | NO | Controlled Substance | YES | X | X | | “may” serious bodily injury or death | S-6mos | S-18mos | YES | S-90 dys | S-1yr |

- *1 – If a person is involved in an accident resulting in a “serious physical injury” or death where there are reasonable grounds to believe that the individual was driving under the influence of amphetamines, opiates or cannabis, then that person shall be deemed to have given consent to a test of his/her blood for the purpose of determining the presence of the drugs listed.
- *2 – Blood and urine can be submitted for a chemical test of controlled substance if there is “reasonable grounds to believe that the person was operating or driving a motor vehicle in this state that was involved in an accident causing death or serious physical injury to another person.”
- *3 – Zero tolerance for drug addicts.
- *4 – Zero tolerance for persons who are habitual users of controlled substances.
- *5 – Any chemical substance set forth in Section 877.111, or any substance controlled under Chapter 893.
- *6 – An arrest is not a prerequisite to the taking of a blood sample if the driver is taken to a medical facility for treatment as a result of an accident.
- *7 – A blood test, for the purposes of implied consent, may be taken only if the driver appears for treatment at a medical facility and the administration of a breath/urine test is impractical or impossible.
- *8 – There is an implied consent to submit to a urine test for the purpose of detecting the presence of controlled substances.
- *9 – As of July 1, 2002, defendant no longer has right to refuse a breath/blood/urine test.
- *10 – It appears that an arrest is not required if there are “reasonable grounds” to believe that a person was DWI and they were involved in an accident that resulted in either serious injury or death.
- *11 – An actual arrest is not required. Nevertheless, a request for a test must still be based on probable cause.
- *12 – A person may be required to submit to a chemical test via a search warrant issued pursuant to an investigation of involuntary manslaughter where a traffic accident has resulted in a death or personal injury likely to cause death and there is evidence of a DWI offense.
- *13 – Zero tolerance for habitual users.
- *14 – No arrest is required if the person is involved in a motor vehicle accident resulting in property damage, personal injury or death
- *15 – “Under the influence of intoxicants” means being under the influence of alcohol, a drug other than alcohol, a combination of drugs or a combination of alcohol and drugs. The term “drug” refers to either “scheduled drugs” (i.e. controlled substances) or to “any natural or artificial chemical substances that, when taken into the human body, can impair the ability of the person to safely operate a motor vehicle.”
- *16 – An actual “arrest” is not required. However, probable cause is sufficient.
- *17 – Requesting a blood sample is restricted to certified Drug Recognition Expert (DRE) and trainees.
- *18 – A test for alcohol content via blood cannot be administered unless 1) the driver is unconscious and incapable of refusing a test, 2) the driver, because of injuries has been taken to a medical facility or 3) breath test equipment is not available (pg. 3-222).
- *19 – Under the influence of, 1) Marijuana, narcotic drugs, depressants or stimulant substances or 2) vapors or glue
- *20 – Unless the defendant is brought in for treatment.
- *21 – The law makes the distinction between driving while visibly impaired, driving while under the influence/illegal per se, and any DWI offense.
- *22 – Applies to controlled substances listed in schedule I & II except marijuana or tetrahydrocannabinols. It is an affirmative defense to a violation of this provision if the defendant can show that the controlled substance was being used according to the terms of a valid prescription.
- *23 – A test can be requested if one of the following exists: 1) A person has been lawfully placed under arrest, 2) a person has refused to take a preliminary screening test, 3) a person refused to submit to a PBT if they submitted to such a test and the test indicated a BrAC \geq 0.10 or 4) a person is involved in an accident resulting in property damage, personal injury or death.
- *24 – Following a traffic accident where persons are killed, the driver can be tested if at least 16 years old and died within four hours of the accident.
- *25 – A person may be directed to submit to a blood test for controlled substances. In addition, a law enforcement officer may “direct” a person to submit to a blood test if there is “reasonable grounds to believe” the person, while operating a vehicle, either 1) caused either a death or serious injury while under the influence of intoxicating liquor or a controlled substance or 2) has been stopped for a subsequent drunk driving offense w/n 7yrs. A urine test can only be requested under 2 conditions: 1) a driver had been arrested for an alcohol driving offense and it is determined that they have hemophilia or a heart condition which would exempt them from a blood test or 2) a driver had been stopped for driving under the influence of a controlled substance.
- *26 – The sample of blood taken shall be of sufficient quantity to allow 2 tests; and testing lab shall retain for a period of 30 days..a quantity of said sample sufficient for another test, which quantity shall be made available to the respondent or his or her counsel upon request.

*27 – 1) A narcotic 2) a hallucinogen drug 3) a habit producing drug

*28 – Arrest is one of several bases for requesting a test.

*29 – Section 39-20-04.1 specifies administrative sanctions for those convicted of having certain alcohol concentration. No administrative sanctions when complying with testing.

*30 – “Other intoxicating substance” means any controlled dangerous substance or any other substance, except alcohol, which can be “ingested, inhaled, injected, or absorbed into the human body” and which can adversely affect “the central nervous system, vision, or other sensory or motor functions.”

*31 – Exception allowed on religious grounds.

*32 – Zero tolerance for persons under 21 years of age.

*33 – In 2006, South Dakota repealed its implied consent law. No person arrested for a DUI offense may refuse to submit to the withdrawal of blood or other bodily substances as evidence. Force may be used to obtain a blood sample.

*34 – Intoxicants, marijuana, narcotic drugs, drugs producing stimulating effects on the central nervous system.

*35 – Drugs, controlled substances and any other substance that could impair normal mental or physical faculties.

*36 – Person tested has the right at the person’s own expense to have someone of the person’s own choosing administer a chemical test or tests in addition to any administered at the direction of the law enforcement officer.

*37 – The implied consent law provides for a blood test only in situations where a person has been arrested for either 1) vehicle homicide, 2) vehicle assault or 3) a DWI offense and where the offense involved an accident in which there was serious bodily injury to another person.

B – Blood

U – Urine

OBS – Other Bodily Substances

R – Revocation

S – Suspension

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