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Digest of State Alcohol-Highway Safety Related Legislation

Eighteenth Edition

Current as of January 1, 2000

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**DIGEST OF STATE ALCOHOL-HIGHWAY SAFETY
RELATED LEGISLATION**

EIGHTEENTH EDITION

CURRENT AS OF

JANUARY 1, 2000

U.S. Department of Transportation
National Highway Traffic Safety Administration
Washington, DC 20590



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INTRODUCTION

PURPOSE

This Digest reports the status of State laws that are concerned with drunk driving offenses and alcoholic beverage control. Unless otherwise indicated, the status of the laws reported is January 1, 2000.

ORGANIZATION

The Digest is divided into three areas: (1) Introduction; (2) High Interest Legislation; and (3) State Law Summary. The Summary is organized by State and then by specific legal topics. The Summary includes code and, where needed, case law citations; these should help individuals conducting additional research in this area of the law. It should be noted that the Summary can be used to facilitate the comparison of State laws in the subject areas.

The Appendix, using the State Law Summary's format, gives the Uniform Vehicle Code's provisions on implied consent, drunk driving, vehicle homicide and driving while license is either suspended or revoked.

DEFINITIONS

Administrative Per Se Law. An "administrative per se law" allows a State's driver licensing agency to either suspend or revoke a driver's license based either on a specific alcohol concentration or on some other criteria related to alcohol or drug use and driving. Such action is completely independent of any licensing action related to

a driver's conviction for a drunk driving offense. These laws usually cover both resident and nonresident drivers. However, for nonresident drivers, the action would be limited to denying driving privileges in the sanctioning State.

Commercial Motor Vehicle. For drunk driving offense purposes, most States define a "commercial motor vehicle" (CMV) as one that either (1) has a gross vehicle weight $\geq 26,001$ pounds, (2) is designed to transport 16 or more persons including the driver or (3) transports hazardous materials.

Dram Shop Laws. Statutory or case law which provides that a person, who serves alcoholic beverages to an intoxicated individual, may be liable for the damages caused by such individual. In some States, a server may also be liable for injuries sustained by the intoxicated individual.

DWI, DUI & Drunk Driving Offense. These are generally "non-legal" terms that refer to any criminal action related to driving a motor vehicle either (1) while "illegal per se" or (2) while either impaired by, under the influence of or intoxicated by alcohol or other drugs.

Happy Hour Laws. For the purposes of this Digest, this is either a statute or regulation that prohibits the sale of alcoholic beverages below the price per quantity normally charged for such beverages.

Homicide by Vehicle. "Homicide by vehicle" is the unlawful and unintentional

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(continued)

death caused by a person while violating laws related to motor vehicle operation.

Illegal Per Se Law. A State law that makes it a criminal offense to operate a motor vehicle either (1) at or above a specified alcohol concentration in either the blood, breath or urine or (2) with any amount of a drug, usually a controlled (illegal) substance, in the body.

Implied Consent Law. This type of law provides that a person impliedly consents to submit to a test for either an alcohol or drug content in their body if they are arrested or otherwise detained for a DWI offense. If the person refuses to submit to such a test, the law usually provides that their driving privileges will be either suspended or revoked. The results obtained from such a test are usually admissible into evidence at a DWI trial.

Intoxicating Liquor. A number of State laws provide that it is illegal to operate a vehicle while under the influence of "intoxicating liquor" (instead of under the influence of alcohol). However, the term "intoxicating liquor" is not defined in many of the State motor vehicle codes that provide for this type of drunk driving offense. Nevertheless, such term usually refers to all types alcoholic beverages (i.e., beer, wine and liquor). See the definitions of "alcoholic liquor," "intoxicating liquor" and "liquor" in Black's Law Dictionary, Sixth Edition, West Publishing Company.

Mandatory Sanctions. A "mandatory sanction" means either a criminal sanction (e.g., jail, fine or community service) or an administrative licensing action (e.g., license suspension or revocation) which must be imposed by either a court or an administrative agency. That is, statutory law specifically requires that such sanction be given.

Preliminary Breath Test. A "Preliminary Breath Test" (PBT) refers to a breath test given by a law enforcement officer to a suspected drunk driver prior to an arrest for a drunk driving offense. The results of this test are used along with other evidence by the officer to determine if there is "probable cause" to arrest the driver for an such offense. Usually, the results of a PBT cannot be admitted into evidence.

Pre-Sentence Investigation Law. As used in this publication, this term means a law that provides that a person, who has been convicted of a drunk driving offense, undergo an evaluation to determine if they have either an alcohol or drug abuse problem.

Presumption. The term "presumption" under "Basis for a DWI Charge" refers to a specific alcohol concentration in a driver's blood, breath or urine at or above which it may be presumed that they were driving in violation of the "Standard DWI Offense".

INTRODUCTION (continued)

EXPLANATIONS

Comments & Historical Notes. Comments and historical notes have been included to alert the reader to either situations or past events that may be of significance.

Off-Highway Vehicles. Not reported in this Digest are State laws that prohibit the operation of non-highway vehicles (e.g., snowmobiles, an all-terrain vehicles (ATVs) or other Off-Road Vehicles (ORVs)) either while under the influence of alcohol or drugs or at or above a specific alcohol concentration.

Sanctions. Unless otherwise stated, the sanctions are the same for **all** alcohol and drug driving offenses (e.g., driving while under the influence of either alcohol or drugs, illegal *per se*, et al.).

The sanctions given in the Digest for criminal offenses are those that would normally apply to adult offenders. However, it should be noted, that for juvenile offenders (persons under 18 years old), the law may limit a court's ability to assign such punishment. Such offenders may also be subject to other sanctions for a violation of criminal laws that may not be listed in this Digest.

Nevertheless, this Digest does report the sanctions (criminal or administrative) related to State laws that have special provisions that make it a illegal for a young person (e.g., a

person under 21 years old) to operate a motor vehicle either (1) at or above a specific alcohol concentration, which is below the level used to determine adult intoxication, or (2) with any measurable amount of alcohol or drugs in their body. However, the Digest does not generally report the sanctions (criminal or administrative) associated with State laws that prohibit a person, who is under the legal drinking, from consuming alcoholic beverages.

Important: The fine sanctions listed in this Digest do not include court costs.

Unless otherwise noted, Table 2 lists the minimum mandatory sanctions for non-injury and non-death related driving while under the influence (alcohol/drugs) and illegal *per se* offenses.

LEGISLATIVE SUBJECT AREAS

- o Basis for a DWI Charge (e.g., Under the Influence of Alcohol or Drugs, Illegal Per Se, et al.)
- o Chemical Breath Tests
 - o Preliminary
 - o Evidential (Implied Consent Law)
- o Chemical Tests of Other Substances for Alcohol/Drugs Under the Implied Consent Law
- o Adjudication of Alcohol Driving Offenses
 - o Mandatory Adjudication
 - o Anti-Plea Bargaining Statutes

INTRODUCTION

(continued)

- o Pre-Sentence Investigation
- o Sanctions for Refusal to Submit to a Chemical Test
- o Sanctions Following a Conviction for an Alcohol Driving Offense
- o Homicide by Vehicle
- o Driving While License Suspended or Revoked Where the Basis was an Alcohol Driving Offense
- o Habitual Offender Laws
- o BAC Tests Required for Persons Killed as a Result of a Traffic Crash
- o Laws Establishing Minimum Ages Concerning the Use of Alcohol Beverages
- o Dram Shop Laws and Related Legal Actions
- o Laws Concerning Criminal/Administrative Actions Against Employees/Owners of Licensed Liquor Establishments who Sell Alcoholic Beverages to Persons who are under the Legal Drinking Age or who are Intoxicated
- o Laws Prohibiting "Happy Hours"
- o Laws Prohibiting the Possession of Open Containers of Alcoholic Beverages in the Passenger Compartment of a Motor Vehicle
- o Laws Prohibiting the Consumption of Alcoholic Beverages in Motor Vehicles

ABBREVIATIONS & SYMBOLS

BAC = blood alcohol concentration
BrAC = breath alcohol concentration
CDL = Commercial Driver's License
cl = class
CMV = Commercial Motor Vehicle
con = consecutive
dy = day
dys = days
EMS = Emergency Medical Services
hr = hour
hrs = hours
mand = mandatory
misd = misdemeanor
mo = month
mos = months
N/A = not applicable
n.a. = not available
off(s) = offense(s)
pkg = package
rev = revocation
susp = suspension
UrAC = urine alcohol concentration
UVC = Uniform Vehicle Code
veh = vehicle
w/n = within
yr = year
yrs = years
> = greater than
< = less than
≥ = equal to or greater than
≤ = equal to or less than

INTRODUCTION

(continued)

FEEDBACK & FUTURE EDITIONS

Requests for future editions of or comments
about the Digest should be sent to:

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SUMMARY TABLE 1 - IMPLIED CONSENT, ALCOHOL LEVELS, ET AL.

S T A T E	P B T ¹	Mand. Susp/Rev-Refusal*		Admin. Per Se Law (BAC)	Mandatory Susp/Rev-Admin. Per Se*			Illegal Per Se (BAC)	Presumptive Level (BAC)	Open Cont. Law ¹²	Anti- Consump. Law	Dram Shop ¹³
		1st	2nd		1st	2nd	3rd					
AL		S-90 dys	S-1 yr	0.08	S-90 dys	S-1 yr	S-3 yrs	0.08	0.08			L
AK	X	R-90 dys	R-1 yr	0.10	R-30 dys	R-1 yr	R-3 yrs	0.10	0.10	X ¹⁴	X ¹⁴	L
AZ	X	S-12 mos	S-2 yrs	0.10	S-30 dys	S-90 dys	S-90 dys	0.10	0.10		X	L
AR		S-6 mos	S-2 yrs	0.10	-- ¹⁵	S-16 mos ¹⁰	S-30 mos ¹⁰	0.10	-		X	C ¹⁵
CA	X	S-1 yr ¹⁴	R-2 yrs	0.08 ¹⁰	S-30 dys ¹⁰	S-1 yr ¹⁰	S-1 yr ¹⁰	0.08	0.08	X	X	L ¹⁶
CO	X	R-1 yr ⁶	R-2 yrs ⁶	0.10	R-3 mos ⁶	R-1 yr ⁶	R-1 yr ⁶	0.10	.05, .10 ¹⁷		X	L
CT		-- ²⁰	S-1 yr	0.10	-- ¹⁰	S-9 mos	S-2 yrs	0.10 ¹²	--			L ¹⁹
DE	X	R-6 mos	R-18 mos	(.10) ³	R-3 mos	R-1 yr	R-18 mos	0.10	(0.10 ²⁰)		X ¹⁴	No
DC	X	S-12 mos	S-12 mos	(.05) ⁴	-	-	--	0.08 ²¹	(0.05 ²⁰)	X	X	C
FL	X	S-90 dys	S-18 mos	0.08	S-30 dys	S-1 yr ¹⁴	S-1 yr ¹⁴	0.08	(0.08 ²⁰)	X		L ²²
GA		S-1 yr	S-1 yr	0.10	--	S-120 dys	S-2 yrs	0.10	0.08	X ¹⁴		L
HI		R-1 yr	R-2 yrs	0.08	R-30 dys	R-1 yr	R-2 yrs	0.08	(0.08 ¹⁴)	X	X	C
ID		S-180 dys	S-1 yr	0.08	S-30 dys	S-1 yr	S-1 yr	0.08	--	X	X	L
IL	X	--	S-2 yrs	0.08	--	S-90 dys	S-90 dys	0.08	0.08	X		L ¹⁸
IN		S-1 yr	S-1 yr	0.10	S-180 dys ¹	S-180 dys ⁵	S-180 dys ¹	0.10	0.10 ¹¹	X ¹⁵	X ¹⁴	L
IA	X	R-90 dys	R-1 yr	0.10	R-30 dys	R-1 yr	R-1 yr	0.10	-	X	X	L
KS	X	S-1 yr	S-1 yr	0.08	S-30 dys	S-1 yr	S-1 yr	0.08	(0.08 ²⁰)	X	X	No
KY	X	--	--	A ⁷	--	--	--	0.10	--		X	L
LA		-- ²¹	-- ²¹	0.10	-- ²¹	-- ²¹	-- ²¹	0.10	0.10			L ²³

SUMMARY TABLE 1 - IMPLIED CONSENT, ALCOHOL LEVELS, ET AL.
(continued)

S T A T E	P B T ¹	Mand. Susp/Rev-Refusal*		Admin. Per Se Law (BAC)	Mandatory Susp/Rev-Admin. Per Se*			Illegal Per Se (BAC)	Presumptive Level (BAC)	Open Cont. Law ¹²	Anti- Consemp. Law	Dram Shop ¹³
		1st	2nd		1st	2nd	3rd					
ME		S-275 dys ²	S-18 mos	0.08	-	S-18 mos	S-4 yrs	0.08	--	X	X	L ¹⁹
MD	X	(S-120 dys) ²⁰	(S-1 yr) ²⁰	0.10	--	(S-90 dys) ²⁰	(S-90 dys) ²⁰	0.10	(.07 ²⁵)	X ²³	X ¹⁴	No
MA		S-120 dys ²¹	S-120 dys ²¹	0.08	S≤90 dys ²²	S≤90 dys ²¹	S≤90 dys ²²	No	0.08		X ¹⁴	C
MI	X	--	S-1 yr	No	--	--	--	0.10	.07,.10 ²⁷	X	X	L
MN	X	R-15 dys	R-180 dys	0.10	R-15 dys ²⁶	R-90 dys ²⁶	R-90 dys ²⁶	0.10	-	X	X	L
MS	X	S-90 dys ⁴	S-90 dys ⁴	0.10 ⁹	--	--	--	0.10	--			L
MO	X	R-90 dys	R-1 yr	0.10	S-30 dys	R-1 yr	R-1 yr	0.10	--		X ¹⁴	L ²⁶
MT	X	S-6 mos	R-1 yr	No	--	--	--	0.10	(0.10 ²⁸)	-- ²⁹	-- ²⁹	L
NE	X	R-1 yr ⁴⁴	R-1 yr ⁴⁴	0.10	R-30 dys	R-1 yr	R-1 yr	0.10	--	X	X	No
NV	X	N/A ³⁸	N/A ³⁸	0.10	R-90 dys ⁴¹	R-90 dys ⁴¹	R-90 dys ⁴¹	0.10	--	X	X ²⁴	No
NH	X	S-180 dys	S-2 yrs	0.08	S-6 mos	S-2 yrs	S-2 yrs	0.08	(0.08 ³⁰)	X		L
NJ		R-6 mos	R-2 yrs	No	--	--	--	0.10	--		X	L
NM		R-1 yr	R-1 yr	0.08	R-30 dys	R-30 dys	R-30 dys	0.08	--	X	X	L
NY	X	R-6 mos	R-1 yr	A ⁷	-	-	-	0.10	(.07,.10 ³⁶)	X	X	L
NC	X	R-10 dys	R-12 mos ³⁹	0.08	R-10 dys	R-10 dys	R-10 dys	0.08	--	X ²³	X ^{14,23}	L ^{19,23}
ND	X	R-1 yr	R-2 yrs	0.10	S-30 dys	S-365 dys	S-2 yrs	0.10	--	X	X	L
OH		S-30 dys	S-90 dys	0.10	S-15 dys	S-30 dys ⁴⁶	S-180 dys ⁴⁷	0.10	--	X	X	L
OK		--	--	0.10	--	--	--	0.10	(.05,.10 ⁴⁵)	X	X	C
OR		S-90 dys	S-1 yr	0.08	S-30 dys	S-1 yr	S-1 yr	0.08	(0.08 ³⁵)	X	X	L

SUMMARY TABLE 1 - IMPLIED CONSENT, ALCOHOL LEVELS, ET AL.
(continued)

S T A T E	P B T ¹	Mand. Susp/Rev-Refusal*		Admin. Per Se Law (BAC)	Mandatory Susp/Rev-Admin. Per Se*			Illegal Per Se (BAC)	Presumptive Level (BAC)	Open Cont. Law ¹²	Anti- Consump. Law	Dram Shop ¹³
		1st	2nd		1st	2nd	3rd					
PA	X	S-12 mos	S-12 mos	No	--	--	--	0.10	--		X ¹⁴	L
PR	X	S-6 mos	S-1 yr	No	--	--	--	No	0.10 ¹⁰			No
RI	X	S-3 mos	S-1 yr	No	--	--	--	0.10	--	X ¹⁵		L
SC		--	--	0.15	-	--	-	No	0.08 ¹⁶	X	X	C ^{17,18}
SD	X	-	-	No	-	-	-	0.10	0.10	X	X	No
TN		--	--	No	--	--	--	0.10	.10 (.08) ¹⁹	X ¹⁴	X ¹⁴	L
TX		-- ²⁷	S-90 dys ²⁷	0.08	-	S-90 dys	S-90 dys	0.08	-		X ¹⁴	L ²¹
UT		R-1 yr	R-1 yr	0.08	S-90 dys	S-1 yr	S-1 yr	0.08	--	X	X	L ¹⁹
VT	X	S-6 mos	S-18 mos	0.08	S-90 dys	S-18 mos	S-2 yrs	0.08	0.08 ²⁵		X ¹⁴	L
VA	X	S-1 yr	S-1 yr	0.08	S-7 dys	S-7 dys	S-7 dys	0.08	0.08		X ¹⁴	No
WA		R-1 yr	R-2 yrs	0.08	S-30 dys	R-2 yrs	R-2 yrs	0.08	--	X	X	C ²⁰
WV	X	R-90 dys ²²	R-1 yr ²²	0.10 ¹¹	R-30 dys ²²	R-1 yr ²²	R-1 yr ²²	0.10	0.10 ²⁴		X	C
WI	X	R-30 dys	R-90 dys	0.10 ¹⁴	--	--	--	0.10 ¹⁰	(0.10 ¹⁶)	X	X	L ¹⁵
WY		S-6 mos	S-18 mos	0.10	--	S-90 dys	S-90 dys	0.10	--			L ²³
T O T A L S	31	S-23 R-17	S-25 R-19	42	S-17 R-11	S-22 R-13	S-22 R-13	0.10=31 0.08=18 No=3	0.08=8 0.10=10	32	40	L=36 C=8 No=8

S = Suspension, R = Revocation, A = Alternative, L = Statutory Law, C = Case (Common) Law

*A blank space in these columns for refusal (except Nevada) and for admin. per se jurisdictions does not mean that a jurisdiction does not have such a licensing sanction. It only means that a jurisdiction does not have a mandatory one.

SUMMARY TABLE 1 - IMPLIED CONSENT, ALCOHOL LEVELS, ET AL.
(continued)

¹Preliminary Breath Test (Pre-arrest/non-evidentiary breath test) Law

²If the driver participates in an alcohol or drug treatment program, the mand susp period may be less than 275 dys.

³Based on probable cause of DWI. A BAC ≥ 0.10 is conclusive evidence of a DWI offense for the purposes of an admin. per se law violation.

⁴An admin. per se law violation is based on driving while under the influence of intoxicating liquor or drugs. An alcohol concentration ≥ 0.05 is *prima facie* evidence of driving while under the influence of intoxicating liquor.

⁵Suspension up to 180 days or until the DWI charges have been disposed of which ever occurs first.

⁶Refusal. The mandatory revocation periods for 1st and 2nd refusals may be reduced to respectively 3 mos and 6 mos if the driver participates in the ignition interlock program.

⁷Admin. Per Se. The mandatory revocation periods for 1st and subsequent admin. per se violations may be reduced respectively to 1 mo and 3 mos if the driver participates in the ignition interlock program.

⁸Alternative pre-DWI criminal adjudication licensing action by the courts.

⁹License suspension for one (1) year if the driver has a prior DWI offense conviction.

¹⁰Special provisions/procedures.

¹¹If an offender is allowed to operated motor vehicles that are equipped with an ignition interlock device, the mandatory license suspension period is 1 yr.

¹²Or under the influence of alcohol.

¹³Laws prohibiting the possession of an open container of an alcoholic beverage in the passenger compartment of a motor vehicle.

¹⁴Seven (7) States and Puerto Rico do not have dram shop liability.

¹⁵Applies only to drivers.

¹⁶The lower of the two numbers is evidence of driving while impaired; the higher is *prima facie* evidence of driving while under the influence.

¹⁷Applies only to the actions of intoxicated minors.

¹⁸The lower of the two numbers is driving while impaired; the higher is driving while under the influence.

¹⁹Competent evidence of DWI.

²⁰This state has a statute that places a monetary limit on the amount of damages that can be awarded in dram shop liability actions.

²¹An alcohol concentration which indicate *prima facie* evidence of a driving while under the influence offense.

²²There is no mandatory licensing action if the violator is allowed to participate in the ignition interlock program.

²³Applies only to the actions of intoxicated minors or persons known to be habitually addicted to alcohol.

²⁴The statute appears to have limited actions to those committed by minors.

²⁵An alcohol concentration ≥ 0.07 but < 0.10 is *prima facie* evidence of driving while under the influence.

²⁶Limited application.

²⁷Cause of action limited to licensees who have been convicted of the offense of selling alcoholic beverages either to minors or to intoxicated individuals.

²⁸The statute applies specifically to the actions of intoxicated minors, but the law does not foreclose developing case law as to other types of dram shop actions.

²⁹Not less than 0.08 constitutes being under the influence of intoxicating liquor.

³⁰A person may receive a "special permit" based on a showing of "extreme hardship". Under proposed regulations dated 9/13/93, there would be a 30 dy mand. susp.

³¹Applies only to the actions of (1) intoxicated minors or (2) adults who have lost their will to stop drinking.

³²This state has both *prima facie* and presumptive evidence laws with an alcohol concentration ≥ 0.10 .

³³Statutory law has limited dram shop actions.

³⁴Liability limited only to the actions of persons who are under 21 years old.

³⁵90 days if the person pleads guilty to a DWI charge at the time of first arraignment with counsel.

³⁶Case law has been modified by statute.

³⁷This alcohol concentration is an inference of DWI.

³⁸Possible case law.

³⁹*Prima facie* evidence of impairment.

⁴⁰Applies to actions of intoxicated minors.

⁴¹A BAC ≥ 0.05 for persons who operate busses, trucks or other large motor vehicles.

⁴²A DWI conviction following an admin. revocation cancels the admin. revocation action. Thereafter, the licensing sanctions for a DWI offense apply; this includes the right to obtain restricted driving privileges.

⁴³Provided the person participates in the ignition interlock program.

⁴⁴For a 1st & 2nd off, an alcohol concentration > 0.10 ; for a 3rd or subsequent off, an alcohol concentration ≥ 0.08

⁴⁵This revocation is based on administrative action.

⁴⁶Provided the driver has an alcohol concentration ≥ 0.04 .

⁴⁷Applies only if there was a prior DWI offense conviction.

⁴⁸Applies only if there were two prior DWI offense convictions.

⁴⁹An alcohol concentration ≥ 0.10 is *prima facie* evidence for 1st and 2nd offs. An alcohol concentration ≥ 0.08 is *prima facie* evidence for 3rd and sub. offs.

⁵⁰The Open Container/Anti-Consumption law appears to be limited to persons who are operating "common carriers".

⁵¹Applies only to persons ≥ 21 years old.

⁵²Suspension for 180 days if the driver has had a previous drunk driving offense conviction. Suspension for 1 year if the driver has had two or more previous drunk driving offense convictions.

⁵³Suspension until the drunk driving charges are disposed of but not more than 90 days.

⁵⁴For a 1st offense, an alcohol concentration ≥ 0.10 is a presumption of driving while under the influence of an intoxicant. For a subsequent offense, an alcohol concentration ≥ 0.08 is a presumption of driving while under the influence of an intoxicant.

⁵⁵This 1 year suspension only applies if there have been two or more drunk driving offense convictions. The "actual" suspension period appears to be only 11 months.

⁵⁶A restricted hardship license may be issued for a 1st violation.

⁵⁷If the BAC was ≥ 0.20 , the mandatory license revocation is double that given.

⁵⁸Mand 90 dy susp if the person has either a previous refusal or a prior admin. per se violation. Mand 180 dy susp if the person has a prior drunk/drag driving offense conviction.

⁵⁹There is no licensing sanction for a refusal to submit to a chemical test. However, if a person refuses to submit to a chemical test, one may be administered via force.

⁶⁰If a person does not have previous conviction for a drunk driving offense, they may only be subject to a 10 day mandatory license revocation.

⁶¹A suspension may be modified or a restricted license may be issued if an offender participates in the "ignition interlock" program for at least 1 yr.

⁶²This level is effective through September 30, 2000. After this date, the level will be 0.10.

⁶³0.07 if the driver has a previous violation of §14-227a(a), driving under the influence intoxicating liquor/illegal per se at ≥ 0.10 .

⁶⁴The law makes it illegal for a person to "operate a motor vehicle upon the public highways with any unsealed alcoholic beverage container within the passenger section of said vehicle."

SUMMARY TABLE 2 - MANDATORY SANCTIONS

S T A T E	Mandatory Fine (\$) -- DWI Conviction			Mandatory Imprisonment -- DWI Conviction			Community Service in Lieu of Mandatory Jail			Mandatory Licensing Action -- DWI Conviction		
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
AL	--	--	--	--	48 CH	60 D	--	20 D	--	S-90 D	R-1 Y	R-3 Y
AK	250	500	1,000	72 CH ⁴⁸	20 D ⁴⁸	60 D ⁴⁸	--	--	--	R-30 D	R-1 R	R-10 Y
AZ	250	500	--	24 CH ¹³	30 CD ¹³	4 M ¹³	--	--	--	S-90 D ²⁰	R-1 Y	R-3 Y
AR	150	400	900	24 H	7 D	90 D	-- ⁴⁷	30 D	90 D	-- ⁴⁶	-- ⁴⁶	-- ⁴⁶
CA	390 ¹	375 ²	390 ¹	--	96 H ^{2,2}	30 D ^{1,2}	--	10 D ^{1,2}	-- ^{1,2}	--	--	R-18 M ²
CO ^x	--	--	--	--	10 D	10 D	(48 H) ¹⁸	(60 H) ¹⁸	(60 H) ¹⁸	--	R-1 Y	R-1 Y
CT ^x	--	--	--	48 CH	120 CD	1 Y	100 H	(100 H) ¹⁸	(100 H) ¹⁸	-- ⁴¹	-- ⁴²	-- ⁴²
DE	--	--	--	--	60 D ³⁴	3 CM ³⁴	--	--	--	-- ³⁵	R-6 M ³⁵	R-6 M
DC ^x	--	--	--	--	--	--	--	--	--	R-6 M	R-1 Y	R-2 Y
FL	--	--	--	--	10 D ¹⁰	30 D ¹⁰	(50 H) ¹⁸	--	--	--	R-12 M	R-24 M
GA	300	600	1,000	(24 H) ³²	48 H	10 D	(40 H) ¹⁸	(80 H) ¹⁸	(20 D) ¹⁸	-- ³³	S-120 D ³³	R-5 Y ³³
HI	150 ¹	500	500	48 H ¹	48 CH	10 D ^{16,40}	72 H ¹	100 H ¹⁹	--	S-30 D	S-1 Y	R-1 Y
ID	--	--	--	--	10 D ¹⁰	30 D ¹⁰	--	--	--	S-30 D	S-1 Y	S-1 Y
IL	--	--	--	--	48 CH	48 CH	--	100 H	30 D	--	--	--
IN	--	--	--	--	5 D	10 D	--	30 D	60 D	S-30 D	S-1 Y	S-1 Y
IA	500 ⁶	1,500	2,500	48 H ³⁴	7 D ⁷	30 D	--	--	--	R-30 dys ²³	R-1 Y	R-1 Y
KS	--	500	--	48 CH	48 CH ³⁶	48 CH ³⁶	100 H	--	--	S-30 D	S-1 Y	S-1 Y
KY	200 ³	--	--	48 H ¹	7 D	30 D	48 H ³	--	--	S-30 D	R-12 M	R-24 M
LA	--	--	--	2 D ²³	48 H ²³	6 M ²³	4 D	30 D	--	--	-- ⁴¹	-- ⁴¹

SUMMARY TABLE 2 - MANDATORY SANCTIONS
(continued)

S T A T E	Mandatory Fine (\$) -- DWI Conviction			Mandatory Imprisonment -- DWI Conviction			Community Service in Lieu of Mandatory Jail			Mandatory Licensing Action -- DWI Conviction		
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
ME	400	600	1,000	48 H ¹⁷	7 D	30 D	--	--	--	S-60 D ²⁴	S-18 M ²⁴	S-4 Y ²⁴
MD ^y	--	--	--	--	48 CH	48 CH	--	80 H	80 H	--	--	--
MA	--	--	--	--	30 D ^{8,25}	150 D ^{8,25}	--	--	--	S-45 D	R-6 M	R-2 Y
MI ^x	100 ¹²	200 ¹²	500 ¹²	--	48 CH	1 Y	--	--	--	--	R-1 Y	S-5 Y
MN	210 ³⁴	900 ³⁴	900 ³⁴	--	48 CH ³⁹	90 D ³⁵	--	80 H ³⁹	--	R-15 D ³⁵	R-90 D ³⁵	R-90 D ³⁵
MS	200	400	500	--	--	--	--	--	--	S-30 D	S-1 Y	S-3 Y
MO	--	--	--	--	48 CH	48 CH	--	10 D	10 D	S-30 D ²¹	R-2 Y ²¹	R-3 Y ²¹
MT	--	--	--	24 CH ⁹	3 D ^{9,10}	10 D ^{9,10}	--	--	--	--	R-3 M ²⁹	R-3 M ²⁹
NE	400 ³⁸	500 ³⁸	600 ³⁸	--	5 D ³⁴	10 D ³⁴	--	240 H ³⁸	480 H ³⁸	R-60 D ³⁵	R-1 Y ³⁸	R-1 Y ³⁸
NV	400	750	2,000	2 D ¹¹	10 D ¹²	1 Y ¹³	96 H ¹¹	(100 H) ^{12&15}	--	R-45 D	R-1 Y	R-1.5 Y
NH	300	500	500	--	10 D ¹⁴	10 D ¹⁴	--	--	--	R-90 D	R-3 Y	R-3 Y
NJ	250	500	1,000	-- ¹¹	48 CH	90 D ²⁷	--	(30 D) ¹⁴	(90 D) ¹⁴	R-6 M ²²	R-2 Y ²²	R-10 Y ²²
NM	--	500	750	--	48 CH	30 CD	--	--	--	--	R-30 D ²⁷	R-30 D ²⁷
NY ^z	500	1,000	1,000	--	--	--	--	--	--	--	R-1 Y	R-1 Y
NC	--	--	--	--	7 D	30 D	--	--	--	--	R-2 Y	R-3 Y
ND	250	500	1,000	--	5 D	60 D	--	30 D	--	S-30 D	S-365 D	S-2 Y
OH	200	300	500	--	5 CD ⁴⁵	15 CD ⁴⁵	--	--	--	S-15 D	S-30 D	S-180 D
OK ^x	--	--	--	--	--	--	--	--	--	--	--	--
OR	1,000	1,500	2,000 ⁴⁴	48 CH	48 CH	48 CH	80 H	80 H	80 H	--	S-90 D	S-1 Y

SUMMARY TABLE 2 - MANDATORY SANCTIONS
(continued)

S T A T E	Mandatory Fine (\$) -- DWI Conviction			Mandatory Imprisonment -- DWI Conviction			Community Service in Lieu of Mandatory Jail			Mandatory Licensing Action -- DWI Conviction		
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
PA	300 ³⁹	300 ³⁹	300 ³⁹	48 CH ³⁰	30 D ³⁰	90 D ²⁰	--	--	--	S-1 M ⁵	S-12 M	S-12 M ⁵
PR	--	--	--	--	24 CH	30 D	--	10 D	--	--	--	--
RI	100	400	400	--	10 D ¹⁰	6 M ¹⁰	--	--	--	S-3 M	S-1 Y	S-2 Y
SC	300	1,000	3,500	48 H ⁴¹	48 H ⁴⁵	60 D ⁴⁵	48 H ⁴¹	10 D ⁴⁵	--	--	S-1 Y	S-4 Y ⁴⁶
SD	--	--	--	--	--	--	--	--	--	--	R-1 Y ⁴¹	R-1 Y
TN	350	600	1,100	48 CH	45 D ¹⁶	120 D ¹⁶	--	--	--	--	R-2 Y	R-3 Y
TX	--	--	--	--	72 H ¹⁶	10 D ¹⁶	--	--	--	--	--	--
UT	700	800	1,500 ²¹	48 CH	240 CH	1,000 H ²¹	24 H	80 H	--	S-180 D	R-2 Y	R-2 Y
VT	--	--	--	--	48 CH	--	--	--	--	S-90 D	S-18 M	R-2 Y
VA	--	--	--	--	48 H	30 D	--	--	--	--	R-4 M ²⁴	R-3 Y
WA	350 ⁴	500 ⁴	1,000 ⁴	24 CH ^{42,24}	30 D ⁴	90 D ⁴	--	--	--	S-30 D ⁴	R-2 Y ⁴	R-3 Y ⁴
WV	100 ¹⁹	1,000 ¹⁹	3,000 ¹⁹	24 H ¹⁹	6 M ¹⁹	1 Y ¹⁹	--	--	--	R-30 D ⁴⁰	R-1 Y ⁴⁰	R-1 Y ⁴⁰
WI	150	300	600	--	5 D	30 D	--	--	--	--	R-60 D	R-90 D
WY	--	--	--	--	7 D	30 D ³¹	--	--	--	--	S-1 Y	R-3 Y
T O T A L S	28	29	27	19	47	46	10	16	7	S-18 R-9	S-15 R-28	S-12 R-32

³⁹Mandatory sanctions for the offenses of driving while under the influence and illegal per se.

⁴⁰Mandatory sanctions for the offense of driving while intoxicated.

⁴¹Mandatory sanctions for the offenses of driving while intoxicated and illegal per se.

C=Consecutive, H=Hour(s), D=Day(s), M=Month(s), Y=Years(s), S=Suspension, R=Revocation
Important: A blank space in this table does not mean that a State does not have a sanction. It only means that a State does not have a mandatory sanction.

SUMMARY TABLE 2 - MANDATORY SANCTIONS
(continued)

¹The 48 consecutive hours of imprisonment or 10 days of community service became mandatory when the Dept. of Motor Vehicles certified that an application for 23 USC §408 grant funds has been submitted to the U.S. Dept. of Transportation.

²The sanctions listed are for non-injury offenses.

³The court must sentence defendants to at least one of these sanctions but may sentence them to more than one such sanction.

⁴Where the offender's alcohol concentration was <0.15 .

⁵For a 1st off, 1 mo mand susp if defendant is accepted into the Accelerated Rehabilitation Disposition program. For a 3rd off, revocation could be 5 yrs under the habitual offender law.

⁶There is a mandatory fine of \$500 if the offender either (1) had a BAC/BrAC >0.15 or (2) refused to submit to a chemical test under implied consent law. However, a 1st offender is subject to a mandatory fine of \$1,000 if the drunk driving offense resulted in injury to another person. Nevertheless, the law appears to allow an offender to perform community service in lieu of these mandatory fines.

⁷This sentence must be served in 48 hr segments.

⁸This sanction may be served in a residential treatment facility.

⁹This sanction only applies to driving while under the influence offenses.

¹⁰Must serve 48 consecutive hours.

¹¹One day of imprisonment or 48 hrs of community service if 1 yr rehabilitation is taken.

¹²48 hours must be served consecutively. However, if the defendant agrees to participate in a 1 yr treatment program, the mand jail term is 5 dys with 50 hrs of mand community service.

¹³The following mandatory sanctions apply for 0.18 offenses: 1st offense-10 con dys and 2nd off-60 con dys. For a 3rd drunk driving offense (Aggravated DWI), a limited furlough may be granted.

¹⁴Three (3) consecutive 24 hour periods in a house of correction and seven (7) consecutive 24 hour periods in a DWI detention center. If a person has previously completed the 7 day DWI detention center program for a prior offense, they are imprisoned for 30 consecutive 24 hour periods for a subsequent offense.

¹⁵Mandatory treatment of not less than 12 nor more than 48 hours; this time is to be spent in an intoxicated driver resource center.

¹⁶As a part of community supervision.

¹⁷Provided the defendant, at the time of the drunk driving offense, either (1) had an alcohol concentration of 0.15 or more, (2) was driving 30 MPH over the speed, (3) was eluding a police officer or (4) was driving a vehicle with a passenger under 21 years old.

¹⁸Mandatory community service as well as mandatory imprisonment.

¹⁹Applies to DWI offs that are not related to injury or death.

²⁰May not apply to certain offenders who have been suspended pursuant to the administrative per se law.

²¹Applies only to driving while intoxicated offenses.

²²The law states that the right to operate a motor vehicle is "forfeited".

²³Home incarceration is possible.

²⁴Provided the defendant participates in a rehabilitation program.

²⁵Work release is available for this period of time.

²⁶The mandatory revocation period is 180 dys if the offender refused to submit to a chemical test. Also, if the BAC was ≥ 0.20 , the mandatory license revocation period is double that given.

²⁷Not more than 90 dys as an alternative to imprisonment.

²⁸In lieu of jail, a defendant may be allowed to serve 15 dys in an electronic home monitoring program.

²⁹This revocation may not be mandatory if the defendant meets certain eligibility requirements for and does participate in a driver rehabilitation or improvement program.

³⁰90 dys mandatory if the defendant has refused to submit to a chemical test under the implied consent law.

³¹Or 15 dys if the offender completes an inpatient treatment program.

³²Possible

³³Followed by a period of "house arrest" with electronic monitoring.

³⁴"House arrest" may be possible in lieu of a jail sentence.

³⁵3 months with participation in the ignition interlock program.

³⁶Followed by work release for 3 dys for a 2nd off and 88 dys for a 3rd off.

³⁷Plus the following mandatory surcharges: 1st off-\$50; 2nd off-\$100; and, 3rd off-\$200.

³⁸The mandatory sanctions given are based upon a person receiving probation.

³⁹The usually mandatory period is 30 days imprisonment with 48 consecutive hours. However, based on mitigating circumstances, the court may sentence a person without regard to this mandatory sanction. Nevertheless, the court must still impose either 48 consecutive hours of imprisonment or 80 hours of community service.

⁴⁰Applies only to DWI offenses that are not related to injury or death and provided the person participates in the ignition interlock program.

⁴¹There is no mandatory licensing action if the offender is placed on probation and is allowed to participate in the ignition interlock program.

⁴²License suspension is not mandatory in all situations. A "special permit" may be issued in cases of "significant hardship".

⁴³Home detention may be used in lieu of this sanction.

⁴⁴This mandatory fine applies only if the offender is not sentenced to a term of imprisonment.

⁴⁵If treatment is authorized by the court, confinement is only for 3 days in a medical facility.

⁴⁶Licensing sanctions are via the administrative per se law.

⁴⁷For a 1st offense, the law does not specify the length of the community service in lieu of jail.

⁴⁸Sixty (6) days mandatory for 3rd offense committed w/n 10 yrs but more than 5 yrs from a previous offense. For either a 1st or subsequent offense, it may be possible for a defendant to receive "electronic monitoring" in lieu of imprisonment.

⁴⁹The sanctions given apply only to driving either (1) while under the influence of intoxicating liquor or (2) with an alcohol concentration ≥ 0.08 . For driving while under the influence of a controlled substance, a 2nd offender, in lieu of imprisonment, must perform at least 80 hrs of community service; a 3rd offender only has to serve 48 con hrs of confinement.

⁵⁰House arrest or in-patient rehabilitation may be used as alternatives to this imprisonment sentence.

⁵¹This mandatory sanction applies only if the court suspends sentence.

⁵²24 hours if the offender's alcohol concentration was ≥ 0.08 .

⁵³Offenders <21 years old have their licenses revoked for the following mandatory periods: 1st off-6 mos (12 mos if their alcohol concentration was ≥ 0.08); and, 2nd and sub off-12 mos.

⁵⁴There is a mandatory imprisonment sentence of 48 hrs if the offender (1) had a BAC/BrAC >0.15 , (2) refused to submit to a chemical test under implied consent law or (3) committed a drunk driving offense that injured another person.

⁵⁵30 days must be served consecutively or, as an alternative, 6 dys of incarceration with a program of intensive supervision.

⁵⁶If the offense was a 3rd offense w/n 5 yrs. If the offense was 3rd offense w/n 10 yrs, the mandatory revocation period is 2 yrs.

⁵⁷A restricted license may be issued after a mandatory 30 dy rev period provided the offender is enrolled in a DWI school, an alcohol screening program and operates vehicles that are equipped with ignition interlock devices.

⁵⁸\$50 if there is undue hardship on the defendant.

STATE

General Reference:

ALABAMA

Code of Alabama

Basis for a DWI Charge:

Standard DWI Offense:
 Illegal Per Se Law (BAC/BrAC):

Under the influence of alcohol¹ §32-5A-191(a)(2)
 $\geq 0.08^2$ §32-5A-191(a)(1)
 $\geq 0.02^{2A3}$ School Bus and Day Care Vehicle Operators
 §32-5A-191(c)

Presumption (BAC/BrAC):

Persons Under 21 Years Old $\geq 0.02^{2A3}$ §32-5A-191(b)
 $\geq 0.08^2$ §32-5A-194(b)(3)
 $\geq 0.02^2$ Presumption of driving under the influence of alcohol for
 School Bus and Day Care Vehicle Operators §32-5A-194(b)(3)
 $\geq 0.02^2$ Presumption of driving under the influence of alcohol for
 persons under 21 yrs old §32-5A-194(b)(3)

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) **Any Substance**, (2) a Controlled
 Substance or (3) Alcohol and a Controlled Substance
 §32-5A-191(a)(3), (4) & (5)

Other:

For Commercial Motor Vehicle Operators, see p. 3-4.
 See **Murder** on p. 3-3.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
 Implied Consent Law:
 Arrest Required (Yes/No):
 Implied Consent Law Applies to
 Drugs (Yes/No):
 Refusal to Submit to Chemical Test
 Admitted into Evidence:
 Other Information:

No

Yes §32-5-192

No

Yes (Criminal & Civil Cases) §32-5A-194(c)
Accident Related Implied Consent Law. Under separate
 provisions of law, a person, who is involved in an accident,
 which resulted in a "serious physical injury", and where there is
 reasonable grounds that they were driving while under the
 influence of alcohol, amphetamines, opiates or cannabis, shall be
 deemed to have given consent to a test of their blood for the
 purpose of determining the alcoholic content or the presence of
 the drugs listed. §32-5-192.1(a)
Special Note: A person arrested for a DWI offense shall not be
 released until their BAC/BrAC is < 0.08 (for persons < 21 yrs
 old, < 0.02) §32-5A-191(l)

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:
 Urine:
 Other:

Yes §32-5-192

Yes §32-5-192

None

¹In *Ex Parte Buckner*, 549 So.2d 451 (Ala. 1989), the Alabama Supreme Court held that the term "under the influence of alcohol" means "having consumed such an amount of alcohol as to affect his ability to operate a vehicle in a safe manner" (549 So.2d at 454).

²Standard: Percentage of alc. by wgt. in the blood. However, the law defines this as grams of alc. per 100 cubic centimeters of blood or grams of alc. per 210 liter of breath. §32-5A-194(a)(5) This definition, therefore, establishes illegal per se based on breath.

³Except as noted, the sanctions for this offense are the same as for any other drunk driving offense.

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Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol Evaluation Required §32-5A-191(i)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	<u>1st Refusal-Susp-90 dys (mand); 2nd Alc. or Drug-Related Enforcement Contact¹ (w/n 5 yrs)-Susp-1 yr (mand); 3rd Alc. or Drug-Related Enforcement Contact¹ (w/n 5 yrs)-Susp-3 yrs (mand); 4th Alc. or Drug-Related Enforcement Contact¹ (w/n 5 yrs)-Susp-3 yrs (mand); 5th or Sub Alc. or Drug-Related Enforcement Contact¹ (w/n 5 yrs)-Susp-5 yrs (mand) §§32-5A- 300, 32-5A-304 & 32-5A-305 See the Comment below.</u>
Other:	<u>Refusing to Submit to a Test Under the Accident Related Implied Consent Law-Susp-2 yrs §32-5-192.1(a) This suspension appears to be mandatory.³</u>

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions Imprisonment/Fine:	<u>1st off-Not more than 1 yr, \$600 to \$2,100²; 2nd Off (w/n 5 yrs)-Not more than 1 yr, \$1,100 to \$5,100; 3rd off 60 dys to 1 yr, \$2,100 to \$10,100; 4th or subsequent off (Class C felony) 1 yr & 1 dy to 10 yrs, \$4,100 to \$10,100 §32-5A-191(e), (f), (g) & (h)</u>

¹An "alcohol or drug-related enforcement contact" includes either a refusal, admin. per se violation or a conviction for a drunk driving offense.

²The jail and fine sanctions do not apply to persons <21 yrs old who are convicted of a 1st offense of driving with a BAC/BrAC ≥0.02 but <0.08. §32-5A-191(b)

³However, the Director of Public Safety may reduce the suspension period for refusal if it is determined that the driver was not at fault in causing the accident. §32-5-192.1(d)

Special Note: A Class C felony conviction for a 4th drunk driving offense is not to be considered a felony for purposes of the State's Habitual Felony Offender Law. §32-5A-191(h)

Comment. Licensing sanctions for a refusal to submit to a chemical test also appear in §32-5-192(c) (1st refusal-Susp 90 dys (mand) and for a 2nd or sub. refusal-Susp 1 yr (mand)). However, these sanctions, even though they have not been specifically repealed, appear to have been superseded by the licensing sanctions in §32-5A-304(c) via §32-5A-309.

Sanctions Following a Conviction for a DWI Off: (continued)**Criminal Sanctions**

Imprisonment/Fine: (continued)

Mandatory Minimum Term:

Mandatory Minimum Fine (\$):

Other Penalties:

Community Service:

Restitution (eg Victim's Fund)

Other:

Administrative Licensing Actions:Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

Serious Bodily Injury related to a DWI Off (assault in the first degree-Class B felony): **2 to 20 yrs¹**, not more than **\$10,000¹** §§13A-5-6(a)(2), 13A-5-11(a)(2) and 13A-6-20(a)(5) & (b)

For non-injury DWI offs: 2nd off-48 cons hrs²; 3rd off-60 dys; 4th or subsequent off-1 yr & 1 dy³

None

2nd Off (w/n 5 yrs)-Not less than **20 dys²** §32-5A-191(c) & (d)
Yes Victims' Compensation Fund. §15-23-1 et seq.

Special Note: Under §15-18-65 et seq., a defendant may be required to pay restitution to a victim (or a victim's representative) as a result of damages caused by the defendant's criminal behavior.

Special Fine. In addition to any other fine, a person convicted of a DWI offense must pay a special fine of **\$100**. The funds collected from this fine are paid into an account which is used to assist persons who have spinal cord or head injuries. §32-5A-191.1(a)

Court Authorized Licensing Action. In addition to any other sanction for a criminal violation of the traffic laws, the court may issue an order "forbidding" an offender from operating a motor vehicle for either a specified period of time or perpetually. An appellate court may modify this order. §32-5-316

See Administrative Licensing Actions below.

Yes⁴ ≥0.08 (BAC/BrAC See Footnote No. 2 on p. 3-1.) 1st Admin. Per Se Violation-Susp-90 dys (mand); 2nd Alc. or Drug-Related Enforcement Contact⁵ (w/n 5 yrs)-Susp-1 yr (mand); 3rd Alc. or Drug-Related Enforcement Contact⁵ (w/n 5 yrs)-Susp-3 yrs (mand); 4th Alc. or Drug-Related Enforcement Contact⁵ (w/n 5 yrs)-Susp-3 yrs (mand); 5th or Sub Alc. or Drug-Related Enforcement Contact⁵ (w/n 5 yrs)-Susp-5 yrs (mand) §§32-5A-300, 32-5A-304 & 32-5A-305 See the Special Note on p. 3-4.

Under §§32-5A-195(k)(1) & (m), a person's license may be susp. without a preliminary hearing, for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI).

Comment: Such action could occur prior to a conviction.

¹These sanctions apply to 1st offence convictions for assault in the first degree. To determine the sanctions for 2nd and subsequent offenses of this type, see §13A-5-9.

²The 20 dy community service sanction may be used as an alternative to the 48 consecutive hour imprisonment term.

³This imprisonment sanction may be suspended or probated if the offender successfully completes a chemical dependency program. If probation is granted, an offender may be placed on house arrest with electronic monitoring. §32-5A-191(h)

Important. If the drunk driving criminal charges against the driver are either dismissed or *non prossed* or if the driver is found not guilty of the DWI offense, the admin. per se licensing action is rescinded. §32-5A-304(c)

⁵An "alcohol or drug-related enforcement contact" includes a refusal, admin. per se violation and a conviction for a drunk driving offense.

Murder. If a person causes the death of another while operating a motor vehicle while intoxicated and in a headless and erratic manner with excessive speed, they may be prosecuted for murder. *Tims v. State*, 711 So.2d 1118 (Ala.Crim.App. 1997)

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Sanctions Following a Conviction for a DWI Off: (continued)

Post DWI Conviction Licensing Action:

See Footnote No. 3 and the Special Note below.

Type of Licensing Action

(Susp/Rev) and Term of

Withdrawal:

1st off-Susp 90 dys^{1,3&4}; 2nd off-Rev 1 yr; 3rd off-Rev 3 yrs; 4th or subsequent offs-Rev 5 yrs §32-5A-191(e), (f), (g) & (h)

Mandatory Minimum Term of

Withdrawal:

1st off-90 dys^{2,3&4}; 2nd off-1 yr; 3rd off-3 yrs; 4th or subsequent offs-Rev 5 yrs

Other:

Rehabilitation:

Alcohol Education:

1st or sub off-Yes⁵ §32-5A-191(i)

Alcohol Treatment:

1st or sub off-Yes⁵ §32-5A-191(i)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

None

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

Child Endangerment. The minimum sentence is double the usual sanction if an offender ≥21 yrs old was operating a vehicle while transporting a passenger <14 yrs old at the time of the drunk driving offense. §32-5A-191(n)

¹Revocation is also possible via a court order. §32-5A-195(j)(2)

²It may be possible to "modify" this susp. period. §32-5A-195(l)

³A person convicted of driving while under the influence either of a controlled substance or of a combination of a controlled substance and alcohol must have their driving privileges suspended for 6 mos. §§13A-12-290 & 13A-12-291

⁴1st off-Operation of a School Bus and Day Care Vehicle Operators with a BAC/BrAC ≥0.02-Susp 1 yr (mand) §32-5A-191(c) 1st off-Persons under 21 yrs old driving with a BAC/BrAC ≥0.02 but <0.08-Susp 30 dys (mand) §32-5A-191(b)

⁵At a minimum, an offender must complete a drunk driving or substance abuse program. An offender's license cannot be reinstated until such a program has been successfully completed. §32-5A-191(h)

Special Note: The license suspensions for a drunk driving offense conviction do not apply if a person has been subject to a license suspension for an admin. per se law violation. §32-5A-304(c)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. Note: The disqualification provision, §32-6-49.11(a)(5), only applies to refusal to submit to a test to determine an alcohol concentration; however, the CMV implied consent provision, §32-6-49.13, applies to tests either for an alcohol concentration or for drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§32-6-49.3(2) & (3), 32-6-49.11, 32-6-49.12 & 32-6-49.13 Note: Under the CDL implied consent law, §32-6-49.13, a law enforcement officer can request a CMV operator to submit to a chemical test if the operator has been involved in an accident with a CMV that resulted in a death or a serious injury. Probable cause of a violation of the CDL law's DWI provisions is not required. **Important.** Under separate provisions of law, a CMV operator, who violates Federal Regulations (49 CFR 383.51) concerning alcohol and drug use and CMV operation (e.g., driving with a BAC/BrAC ≥0.04, driving a CMV under the influence of either alcohol or a controlled substance or refusing to submit to chemical testing), commits a misdemeanor with the following sanctions: Jail for not more than 30 dys and/or a fine of not less than \$25 nor more than \$2,000. Also, the court may prohibit the offender from operating a CMV for a period of time specified by the court or perpetually. §§32-9A-2 & 32-9A-4

Other Criminal Actions Related to DWI:Homicide by Vehicle:

State Has Such a Law:

Yes Two types of offenses (1) "Homicide by Veh"-Felony¹ §32-5A-192 (2) "Criminally Negligent Homicide" while DWI-Class C Felony §13A-6-4(a) & (c)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

(1) "Homicide by Veh"-Not less than 1 yr nor more than 5 yrs §32-5A-192 (2) "Criminally Negligent Homicide" while DWI-1 yr & 1 dy to 10 yrs §13A-5-6(a)(3)

Mandatory Minimum Term:

None

Fine (\$ Range):

(1) "Homicide by Veh"-Not less than \$500 nor more than \$2,000 §32-5A-192 (2) "Criminally Negligent Homicide" while DWI-Not more than \$5,000 §13A-5-11(a)(3)

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev² §32-5A-195(j)(l)

Length of Term of

Licensing Withdrawal:

Rev period is not specified in the statute.³

Mandatory Action--Minimum

Length of License

Withdrawal:

None

Other:

See Court Authorized Licensing Action on p. 3-4.

Driving While License Suspended or RevokedWhere the Basis Was a DWI Offense*:

See Footnote Nos. 4 & 5 and Vehicle Impoundment below.

Sanction:

Criminal:

Imprisonment (Term):

Misd Not more than 180 dys §32-6-19(a)

Mandatory Minimum Term

of Imprisonment:

None

Fine (\$ Range):

Not less than \$100 nor more than \$500⁶ §32-6-19(a)

¹§13A-1-2(4) & *Whirley v. State*, 481 So.2d 1151 (Ala.Cr.App. 1985)

²Applies only to "Homicide by Vehicle" or vehicle manslaughter offenses. For DWI criminally negligent homicide offs, licensing action would be via the regular DWI off. provisions.

³However, a license or privilege to drive cannot be suspended for more than 1 yr. §32-5A-195(m)

⁴Although §32-6-49.7(b) prohibits the operation of CMV while either disqualified or under an out-of-service order, the CMV law does not provide for provide specific sanctions for such violations. **Important.** However, under separate provisions of law, a CMV operator, who violates Federal Regulations (49 CFR 383.51) concerning alcohol and drug use and CMV operation (e.g., driving on an out-of-service order), commits a misdemeanor with the following sanctions: Jail for not more than 30 dys and/or a fine of not more than \$2,000. Also, the court may prohibit the offender from operating a CMV for a period of time specified by the court or perpetually. §§2 & 4 of House Bill 725

⁵A person's vehicle may be forfeited to the State, if they operate such vehicle while their license is either suspended or revoked for a drunk driving offense. §32-5A-203

⁶An additional penalty of \$50 is assessed for the purpose of funding the Traffic Safety and the Police Officers Standards and Training Funds. §32-6-19 This assessment appears to be mandatory.

Vehicle Impoundment If the offender's driving privileges were susp/rev because of a drunk driving of implied consent law violation, the vehicle used in the offense may be impounded by law enforcement officers. This impoundment does not apply if either a non-driver owner or other family member with a valid license is a passenger in the vehicle or there is an emergency or medical necessary jeopardizing life or limb. §32-6-19

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine:	None
Length of Term of License	
Administrative Licensing Actions:	
Type of Licensing Action	
(Susp/Rev):	Rev (discretionary) §32-6-19(a)
	See Court Authorized Licensing Action on p. 3-3.
Withdrawal Action:	An additional period of 6 mos §32-6-19(a)
Mandatory Term of License	
Withdrawal Action:	None
Other:	
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	No
Grounds for Being Declared an	
Habitual Offender:	
Term of License Rev While	
Under Habitual Offender Status:	
Type of Criminal Offense if	
Convicted on Charges of	
Driving While on Habitual	
Offender Status	
Sanctions Following a Conviction of	
Driving While on Habitual Offender	
Status:	
Imprisonment (Term):	
Mandatory Minimum Term of	
Imprisonment:	
Fine (\$ Range):	
Mandatory Minimum Fine (\$):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No However, the implied consent law does apply to dead persons. *Larkford v. Redwing Carriers, Inc.*, 344 So.2d 515 (Ala., 1977)

BAC Chemical Test Is Given to the
the Following Persons:

Driver:
Vehicle Passengers:
Pedestrian:

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1985) §§28-1-5 and 28-3A-25(a)(3) & (19)

Minimum Age (Years) Possession:

21¹ §28-3A-25(a)(19)

Minimum Age (Years) Consumption:

21 §28-3A-25(a)(19)

¹There is an exemption for minors, who handle either beer or table wine, within the scope of their employment. §28-3A-25(a)(19)

Other State Laws Related To Alcohol Use: (continued)Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §6-5-71¹

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes *Buchanan v. Merger Enterprises, Inc.*, 463 So.2d 121 (1984)

Dram Shop Actions-Social Hosts:

Yes **Limited** A social host can be held liable for the actions of intoxicated minors. *Martin v. Watts*, 508 So.2d 1136 (Ala. 1987)², *Williams v. Reasoner*, 668 So.2d 541 (Ala. 1995), *DeLoach v. Mayer Electric Co.*, 378 So.2d 733 (1979), *Beeson v. Scoles Cadillac Corp.*, 506 So.2d 999 (1987)³ The *DeLoach* and *Beeson* cases involved "business" social host situations. Note: In both the *Martin* and *Williams* cases, the court held that the social hosts were not liable for third party injuries because the host did not provide alcoholic beverages to the injury causing guest.

Other:

None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

Type of Criminal Action:

See Double Jeopardy on p. 3-8.

See Regulation 20-X-6-.02 which prohibits the sale of alcoholic beverages to persons "acting in a manner as to appear to be intoxicated." Reg. promulgated via §28-3-49.⁴ It is a misd. to violate a regulation (§28-3-20).

Imprisonment:

Not more than 6 mos §28-3-20⁵

Fine (\$ Range):

Not more than \$500 §28-3-20⁵

¹**Comment:** Sec. 6-5-71, the Dram Shop Law provision that applies to commercial servers, refers to the selling of "liquor" ("spirituous liquor"). In Alabama, as well as other State statutes that use this term, an issue arises from time to time as to whether the terms "spirituous liquor" or "liquor" include other types of alcoholic beverages (e.g., beer and wine) or whether they should be restricted to meaning "distilled spirits" only. Under a related provision, §6-5-70, parents of children who have been injured (or killed) as a consequence of the sale of "liquor" to the minor may bring a cause of action for damages against those responsible for such sale. *Adkison v. Thompson*, 650 So.2d 859 (Ala. 1994) Note: In interpreting the term "spirituous liquor" (really "liquor") in §6-5-70, the Alabama Supreme Court held, that for the purpose of this section, the term "spirituous liquor" includes beer, wine and other alcoholic beverages. *Espey v. Convenience Marketers*, 578 So.2d 1221 (Ala. 1991) **Comment:** It would seem likely this court would apply this same interpretation to §6-5-71.

²Note: This same case is also reported at 513 So.2d 958.

³The court held that the Dram Shop Act, §6-5-71, does not apply to social host situations where alcoholic beverages are not sold and are not given contrary to law (e.g., alcoholic beverages were not given to minors.). *Smoyer v. Birmingham Area Chamber of Commerce*, 517 So.2d 585 (Ala. 1987)

⁴The legislature repealed the law, §28-3-260(2), that prohibited the sale of alcoholic beverages to visibly intoxicated persons. Acts of 1980, No. 80-529, p. 806 §27 Reg. 20-X-6-.02 was promulgated as a substitute for this repealed law.

⁵See §28-3-19 which also makes it a misd. to violated alcoholic beverage control regulations. The sanctions for this offense are a fine of \$100 to \$200 and/or imprisonment for not more than 90 days.

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Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

See Double Jeopardy below.

Yes Susp/Rev §§28-3A-24 & 28-3A-26

1st off-susp for not more than 1 yr or rev for 1 yr¹; 2nd or sub-off-rev for 1 yr (This rev appears to be mand under §28-3A-26; however, see §28-3A-24(c) which authorizes a fine in lieu of rev.¹) §§28-3A-24 & 28-3A-26

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

See Double Jeopardy below.

1st off - Misd; 2nd off - Misd; 3rd and subsequent Off - Misd §28-3A-25(a)(3)

Term of Imprisonment:

1st off - Not more than 6 mos; 2nd off - 3 to 6 mos; 3rd and subsequent off 6 to 12 mos §28-3A-25(b)(1)

Fine (\$ Range):

1st off - \$100 to \$1,000; 2nd off - \$100 to \$1,000; 3rd and subsequent off - \$100 to \$1,000 §28-3A-25(b)(1)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

See Double Jeopardy and the Special Note below.

Yes Susp/Rev §§28-3A-24 & 28-3A-26

1st off Susp-Not more than 1 yr; rev-1 yr¹; 2nd and subsequent off - Rev-1 yr (This rev appears to be mand. under §28-3A-26; however, see §28-3A-24(c) which authorizes a fine in lieu of rev.¹) §§28-3A-24(d) & 28-3A-26

Anti-Happy Hour Laws/Regulations:

Yes Regulation 20-X-6-.14

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No

¹In lieu of a license susp/rev, an administrative fine of not more than \$1,000 may be imposed. §28-3A-24(c)

Double Jeopardy. Under certain circumstances, using constitutional principles of double jeopardy, a person, who has been prosecuted for a criminal violation of the alcoholic beverage control laws, cannot be assessed a civil fine for the same offense. *Crump v. Alabama Alcoholic Beverage Control Board*, 678 So.2d 133 (Ala.Civ.App. 1995) (cert. den. by the Alabama Supreme Court, 678 So.2d 140)

Special Note: If a licensee has been certified as a "responsible vendor," they may be exempt from either license susp or rev if an employee sells/serves alcoholic beverages to an under age person. In addition, such certification may be used to mitigate any administrative fine that may be imposed. §28-10-7 A "responsible vendor" is a licensee whose employees have undergone special training in how to prevent the sale or service of alcoholic beverages to under age persons. §28-10-1 et seq.

STATE:
General Reference:

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Alaska Statutes

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):
Presumption (BAC/BrAC):
Types of Drugs/Drugs and Alcohol:

Under the influence of intoxicating liquor¹ §28.35.030(a)(1)
≥0.10^{1,2&3} §28.35.030(a)(2)
≥0.10³ §28.35.033(a)(4)
Under the influence of (1) A Controlled Substance¹ or (2)
Intoxicating Liquor and Another Substance¹
§28.35.030(a)(1) & (3)
Persons Under 21 Years Old. See p. 3-11.
For Commercial Motor Vehicle Operators, see p. 3-12.

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes §28.35.031(b) Also applies to CMV operators
§28.33.031

Implied Consent Law:
Arrest Required (Yes/No):

Yes §28.35.031 See the Special Note below.

Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:

No Except as noted in "Other Information" below.

Other Information:

Yes (Criminal & Civil Cases) §§28.35.032(e) &
28.35.285(c)
A "chemical test" for either alcohol or a controlled
substance may be administered to a person (or a CMV
operator) without their consent if they have been arrested for
a DWI off where there has been an accident involving death
or physical injury to another person. §§28.35.035(a),
28.33.031(b) & *Municipality of Anchorage v. Ray*, 854 P.2d
740 (AlaskaApp. 1993)

Chemical Tests of Other Substances for Alcohol Concentration
Which Are Authorized Under the Implied Consent Law:

Blood:
Urine:
Other:

No Except as per the Special Note below.
No Except as per the Special Note below.
None

¹The law defines the drunk driving offense as the crime of "driving while intoxicated" which includes driving while under the influence of intoxicating liquor/controlled substance or illegal per se at an alcohol concentration ≥0.10. §28.35.030

²This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.

³Alcohol concentration is based upon either percent by wgt. of alc. in the blood, grams of alc. per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §28.35.030(a)(2) Note: Under §28.35.033(b), percent by wgt. of alc. in the blood is defined as grams of alcohol per 100 milliliters of blood.

Special Note: This State's implied consent law also requires that a driver submit to a chemical test or tests (1) of their breath or blood for alcohol content or (2) of their blood or urine for a 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." The sanctions for violating this requirement are the same as for violating the regular implied consent provisions. §28.35.031(a), (f) & (g) Note: There is a similar provision for CMV operators; see p. 3-12. **Comment:** Similar provisions of other State laws have been found unconstitutional. See *King v. Ryan, Secretary of State*, 607 N.E.2d 154 (Ill. 1992), and *Commonwealth v. Kohl*, 615 A.2d 308 (Pa. 1992).

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Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No
No

Yes §§28.35.030(h) & 28.35.032(l)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):

Infraction (non-criminal offense)-Not more than \$300
§§28.35.031(e) & 28.40.050(c) & (d)

Administrative Licensing Action
(Susp/Rev):
Other:

None

Refusal to submit to a PBT may be admitted into evidence at either a criminal or civil proceeding. §28.35.031(c) Also applies to CMV operators. §28.33.031(d)
It is a C1 B misd for a CMV operator to refuse to submit to a PBT. §28.33.031(f) The sanctions for this offense are as follows: Jail-not more than 90 dys; fine-not more than \$1,000. §§12.55.035(b)(4) & 12.55.135(b)

Refusal to Take Implied Consent
Chemical Test:
Criminal Sanction (Fine/Jail):

See the "Note" under Double Jeopardy on p. 3-11.

C1 A misd-Not more than 1 yr imprisonment/not more than \$5,000 fine; C1 C felony-if 3rd or subsequent refusal w/n 5 yrs-Not more than 5 yrs/not more than \$50,000 fine §§12.55.035, 12.55.125, 12.55.135 and 28.35.032(f) & (g)
Note: The jail and fine sanctions (including minimum mandatory sanctions), confinement in a community residential center, cost of incarceration (where applicable) for 1st and subsequent refusal offenses¹ are the same as for DWI offenses. These sanctions run concurrently with any other sanctions. §28.35.032(f) & (g)(4) See Footnote No. 2.

Administrative Licensing Action
(Susp/Rev):

Rev §§28.15.165(a)(1) & 28.15.181(a)(8) 1st Refusal-90 dys (mand) License revocation periods, including the minimum mandatory periods, veh. forfeiture for 2nd and subsequent refusals¹ are the same as for 1st and subsequent revocations for DWI offense convictions. §28.15.165(d) State Forfeiture of the vehicle used in subsequent refusal offenses. This action is not mandatory. §28.35.036

Other:

¹For either DWI offense convictions or for convictions for refusal to submit to a chemical test, a previous off is considered to be either a previous chemical test refusal or a previous DWI conviction. §§28.35.030(k)(4), 28.35.032(o) & 28.35.036(b)

²**Persons Under 21 Years Old.** A person > 14 but <21 yrs old commits an "infraction" if they refuse to submit to a chemical test after having been arrested for the offense of operating a motor vehicle after having consumed any quantity of alcohol. The sanctions for this offense are either a fine of not more than \$1,000 or community service. Community service may be offered to the defendant as an alternative to all or part of the fine sanction. §28.35.285(d) In addition, the driver's license is revoked via an administrative procedure for the following mandatory periods: 1st revocation-90 dys; 2nd revocation-1 yr; and, 3rd revocation-3 yrs. §28.15.183(d)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment/Fine:

Mandatory Minimum Term:

Mandatory Minimum Fine (\$):

Other Penalties:
Community Service:

Restitution (eg Victim's Fund)

See Footnote No. 1, Electronic Monitoring and Double Jeopardy below.

I. Cl A Misd-Not more than **1 yr**/not more than **\$5,000**
 II. Cl C felony if 3rd or subsequent offense w/n 5 yrs-Not more than **5 yrs**/not more than **\$50,000**
 §§12.55.035, 12.55.125, 12.55.135 & 28.35.030
 I. Cl A Misd offs: 1st off-**72 cons hrs²**; 2nd off (w/n 10 yrs)-**20 dys²**; 3rd off (w/n 10 yrs but more than 5 yrs)-**60 dys**; 4th off (w/n 10 yrs but more than 5 yrs)-**120 dys**; 5th off (w/n 10 yrs but more than 5 yrs)-**240 dys**; 6th and sub. off (w/n 10 yrs but more than 5 yrs)-**360 dys**
 II. Cl C felony offs: 3rd off (w/n 5 yrs)-**120 dys**; 4th off (w/n 5 yrs)-**240 dys**; 5th and sub. off (w/n 5 yrs)-**360 dys**
 §§28.35.030(b) & (n) and 28.35.032(g) & (p)
Important. See Electronic Monitoring below.
 I. Cl A misd offs: 1st off-**\$250**; 2nd off (w/n 10 yrs)-**\$500**; 3rd off (w/n 10 yrs but more than 5 yrs)-**\$1,000**; 4th off (w/n 10 yrs but more than 5 yrs)-**\$2,000**; 5th off (w/n 10 yrs but more than 5 yrs)-**\$3,000**; 6th and sub. off (w/n 10 yrs but more than 5 yrs)-**\$4,000**
 II. Cl C felony offs (3rd or sub off w/n 5 yrs)-**\$5,000**

Yes³ 1st off-At least **24 hrs**; 2nd off-At least **160 hrs**
 §§28.35.030(k) & 28.35.032(o) Discretionary for subsequent offenses §12.55.055
Yes The court may order a defendant to pay direct compensation to a victim(s). §12.55.045

¹For either DWI offense convictions or for convictions for refusal to submit to a chemical test, a previous off is considered to be either a previous chemical test refusal or a previous DWI conviction. §§28.35.030(k)(4), 28.35.032(o) & 28.35.036(b)

²If possible, this incarceration sentence is to be served in a community residential center. §§28.35.030(l) & 28.35.032(p)

³This community service is not an alternative to the mandatory minimum terms of imprisonment. For 3rd and subsequent offenses, the length and type of community service is discretionary with the court.

Persons Under 21 Years Old. A person ≥ 14 but < 21 yrs old commits an "infraction" if either (1) they operate a motor vehicle after having consumed any quantity of alcohol or (2) they operate a motor vehicle w/n 24 hrs after having either been cited for or refused to submit to a chemical test for such offense. The sanctions for these offenses are either a fine of not more than \$1,000 or community service. Community service may be offered to the defendant as an alternative to all or part of the fine sanction. §§28.35.280(a) & (d) and 28.35.290(a) & (d) In addition, for the offense of operating a motor vehicle "after having consumed any quantity of alcohol", the driver's license is revoked via an administrative procedure for the following periods: 1st revocation-30 dys (mand); 2nd revocation-60 dys (mand); 3rd revocation-90 dys (60 dys mand with limited driving privileges after this period); and, 4th or subsequent revocation-1 yr (60 dys mand with limited driving privileges after this period). §28.15.183(d) & (f)

Electronic Monitoring. A person, who is ordered to serve a definite term of imprisonment, may be allowed to serve all or part of this term by "electronic monitoring". §12.55.015(e)(2) **Comment:** This provision may have abrogated "mandatory" imprisonment.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Zerkel*, 900 P.2d 744 (AlaskaApp. 1995) Note: Likewise, a person, who has first been subjected to administrative licensing action for refusing to submit to a chemical test under the implied consent law, may also be subsequently prosecuted, under this law, for the criminal offense of refusing to submit to such a test. This subsequent criminal trial does not constitute double jeopardy. *Arron v. City of Ketchikan*, 927 P.2d 335 (AlaskaApp. 1996)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Ignition Interlock. As a condition of probation, if granted, the court may order a defendant to only operate motor vehicles equipped with "ignition interlock" devices. However, mandatory licensing sanctions still apply. §12.55.102(a)

Incarceration Costs. Except for indigent defendants, an offender may be required to pay the cost of their incarceration. However, such cost is limited to a maximum of \$1,000. §§28.35.030(k) & 28.35.032(o)

EMS, Police, Fire Department Costs. A defendant may be ordered to pay the reasonable costs of any "emergency response" associated with an accident related to the drunk driving offense. An "emergency response" includes emergency medical, law enforcement and fire department services. §28.35.030

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

On p. 3-11, see Persons Under 21 Years Old and Double Jeopardy.

Administrative Per Se Law:

Yes ≥0.10 (BAC/BrAC See Footnote No. 3 on p. 3-9.) §28.15.165(a)(1) & (d) Licensing revocation periods, including the minimum mandatory periods, for 1st and sub admin. actions are the same as for 1st and sub revocations for DWI off convictions.

Other:

None

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Rev §28.15.181(a)(5) & (c)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-Not less than **90 dys**; 2nd off (w/n 10 yrs)-Not less than **1 yr**; 3rd off (w/n 10 yrs)-Not less than **3 yrs**; 4th and sub. off (w/n 10 yrs)-Not less than **5 yrs** §28.15.181(c) See Footnote No. 1 on p. 3-11.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have either a percent by wgt. of alc. in the blood ≥0.04, a blood alcohol concentration ≥40 milligrams of alcohol per 100 milliliters of blood, or a breath alcohol concentration of ≥0.04 grams of alc. per 210 liters of breath, (2) are under the influence of intoxicating liquor or any controlled substance or (3) refuse to submit to a breath test. For either (1) a second violation or (2) a combination of two violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). For either (1) a subsequent violation or (2) a combination of more than two violations of any of the above listed items, there is a mandatory lifetime "disqualification". A person, who operates a CMV with a BAC/BrAC ≥0.04, while under the influence of any controlled substance or who refuses to submit to a breath test, is also subject to the regular DWI/implicit consent law criminal and administrative (licensing) sanctions; this includes all mandatory sanctions. In addition, a CMV operator who has any "measurable" or detectable amount of alcohol in their system must be placed "out-of-service" for 24 hours. **Special Note:** This State's CDL implicit consent law also requires that a CMV operator submit to a chemical test or tests (1) of their breath or blood for alcohol content or (2) of their blood or urine for a 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." §§28.15.165, 28.15.219, 28.33.030, 28.33.031(a)(1) & (2), 28.33.130, 28.33.140 and 28.35.032(f)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of
Withdrawal:

1st off-90 dys or 30 dys followed by a limited occupational license for 60 dys with participation in an alcohol education and treatment program §28.15.201(d); 2nd off (w/n 10 yrs)-1 yr; 3rd off (w/n 10 yrs)-3 yrs; 4th and sub. off (w/n 10 yrs)-5 yrs

Other:

Rehabilitation:

Alcohol Education:

Yes¹ §28.35.030(c)

Alcohol Treatment:

Yes¹ §28.35.030(c)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Yes **State Forfeiture** of the vehicle used in subsequent DWI offenses. This action is not mandatory. §28.35.036

Terms Upon Which Vehicle

Will Be Released:

N/A

Other:

Local Forfeiture. Under §28.35.038, municipalities may enact ordinances to impound/forfeit motor vehicles for violations of local DWI/chemical test refusal laws.

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

No²

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

See Footnote No. 3.

Length of Term of

Licensing Withdrawal:

¹For any DWI or refusal conviction, a defendant may be required to complete either an alcohol education or an alcohol treatment program that the court feels is appropriate for that defendant before their license can be restored. §28.15.211(d) A defendant may participate in this rehabilitation program either while incarcerated or while on probation. §§12.55.015(a)(10), 12.55.100(a)(5), 28.35.030(j) & 28.35.032(m)

²In some circumstances, a DWI related death may be considered second degree murder. *Puzewicz v. State*, 856 P.2d 1178 (Alaska App. 1993)

³Even though this State does not have a veh homicide statute, it, nevertheless, provides for license rev for a conviction of manslaughter resulting from the operation of a motor vehicle. §28.15.181(a)(1) & (b)

ALASKA

Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum

Length of License

Withdrawal:

Other:

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

See Footnote No. 1.

Sanction:

Criminal:

Imprisonment (Term):

Class A Misd-Not more than 1 yr §§12.55.135(a) & 28.15.291

Mandatory Minimum Term
of Imprisonment:

10 dys Also a mandatory period of 80 hrs of community service. §28.15.291(b)(1)(C) & (b)(3).

Fine (\$ Range):

Not more than **\$5,000** §§12.55.035(b)(3)

Mandatory Minimum Fine:

\$500 §28.15.291(b)(1)(C) & (b)(3).

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Rev §28.15.291(b)(4)

Length of Term of License

Withdrawal Action:

Original rev extended not less than 90 dys

Mandatory Term of License

Withdrawal Action:

Original rev extended not less than 90 dys

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

¹It is CI A misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term ≤ 1 yr or a fine ≤ \$5,000. The following mand sanctions are imposed: 1st offense, jail for 20 dys (10 dys suspended) plus not less than 80 hrs of community service; and, a subsequent offense (w/n 10 yrs), a 60 dy jail term and a fine of \$1,000. And, for both 1st and subsequent offenders, driving privileges cannot be restored for an additional 90 dys. §§12.55.035, 12.55.135 and 28.33.150(a)(4), (a)(5), (b)(4) & (c)

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on
Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):

No

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

Minimum Age (Years) Possession:

21 (Year Eff: 1983) §§04.16.051, .052 & .060

21 There are exemptions for parents or physicians
furnishing alcoholic beverages to minors. §§04.16.050,
.051 & .052

Minimum Age (Years) Consumption:

21 There are exemptions for parents or physicians
furnishing alcoholic beverages to minors. §§04.16.050,
.051 & .052Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes I. Persons Who Hold Licenses Under the Alcoholic
Beverage Law-The law limits liability to situations where a
licensee has served alcoholic beverages either (1) to a person
under 21 years old or (2) to a drunken person in a
"criminally negligent" manner. §§04.16.030, 04.21.020(a)
& 04.21.080(a)(1)^{1&2}II. Alcoholic Beverage Law Violators-Persons, who serve
alcoholic beverages to individuals without obtaining the
appropriate licenses, are "strictly liable" for the injuries
caused by such individuals, while in an intoxicated
condition, after they consume such beverages.
§04.21.020(b)"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):No Note: Previous case, *Nazareo v. Urie*, 638 P.2d 671
(Alaska 1981), was indirectly abrogated by the dram shop
statute.

Dram Shop Actions-Social Hosts:

No³ §04.16.020 & *Mulvihill v. Union Oil Co.*, 859 P.2d
1310 (Alaska 1993)

Other:

Alcoholic Beverage Law Violators-Persons, who serve
alcoholic beverages to individuals without obtaining the
appropriate licenses, are "strictly liable" for the injuries
sustain by such individuals, while in an intoxicated
condition, after they consume such beverages.
§04.21.020(b)¹*Kavorkian v. Tommy's Elbow Room, Inc.*, 694 P.2d 160 (Alaska 1985) (rehearing, 711 P.2d 521 (Alaska 1985)).²The dram shop law, §04.21.020(a), has been held constitutional. *Gonzales v. Safeway Stores, Inc.*, 882 P.2d 389 (Alaska 1994)³Under §04.21.020(a), a social host is not liable for the injuries sustained by an intoxicated guest. *Chokwak v. Worley*, 912 P.2d 1248 (Alaska 1996)

ALASKA

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Cl A misd §§04.16.030 & 04.16.180

Not more than **1 yr** §12.55.135(a)

Not more than **\$5,000** §12.55.035(b)(3) For organizations, the fine is not more than \$200,000. §12.55.035(c)(1)(B)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes §04.16.180

1st conviction-45 day susp; 2nd conviction-90 day susp; 3rd and/or subsequent convictions-Discretionary No time limit is given in the statute. Note: The susps and revs are not mandatory. §04.16.180

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Cl A Misd §§04.16.052 & 04.16.180

Not more than **1 yr** §12.55.135(a)

Not more than **\$5,000** §12.55.035(b)(3) For organizations, the fine is not more than \$200,000. §12.55.035(c)(1)(B)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes §04.16.180

1st conviction-45 day susp; 2nd convictions-90-day susp; 3rd and/or subsequent convictions-Discretionary No time limit is given in the statute. Note: The time limitations are not mandatory.

Anti-Happy Hour Laws/Regulations:

Yes §04.16.015

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes Applies only to drivers §28.35.029

Yes Drivers only 13 Alaska Administrative Code 02.545(a)

JURISDICTION:
General Reference:

AMERICAN SAMOA
American Samoa Code Annotated (Updated through 1987)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §22.0707(a)
Illegal Per Se Law (BAC):	None
Presumption (BAC):	≥0.08 §22.0607(a)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Narcotic Drug or (2) Any Other Drug §22.0707(a)
Other:	

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §22.0601
Implied Consent Law Applies to Drugs (Yes/No):	No
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) §22.0603
Other Information:	

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §22.0601
Urine:	Yes §22.0601
Other:	Saliva §22.0601

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes Limited A DWI charge cannot be plea bargained to a lesser offense if the alcohol offense was related to an accident that caused either vehicle damage or personal injury. §22.0707(b)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No ¹

Sanction for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Suspension/Revocation):	N/A
Other:	

¹For general PSI provisions, see §46.1908. There are no specific alcohol screening requirements.

AMERICAN SAMOA

Sanction for Refusal to Submit to a Chemical Test: (continued)

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Suspension/Revocation):
Other:

None

Susp 90 dys (Appears to be mandatory) §22.0608

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:
Term (Day, Month, Years,
Etc.):
Mandatory Minimum Term:
Fine:
Amount (\$ Range):
Mandatory Min. Fine (\$):

Class A Misd-Not more than 1 yr §§22.0707 & 46.2301(5)
None

Not more than \$1,000 §46.2102(a)(1)
None

Other Penalties:

Community Service:
Restitution
(eg Victim's Fund):
Other:

Yes Paid by the defendant to a victim §§46.2001 & 46.2002

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:
Other:

None

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Suspension/Revocation):

Susp/Rev (for all offenses) §22.0211 See Footnotes Nos. 1, 2 & 3.

Term of License Withdrawal
(Days, Months, Years, etc.):
Mandatory Minimum Term of
Withdrawal:

1st off-6 mos; 2nd off-2 yrs; 3rd off-Permanently §22.0211

1st off-6 mos; 2nd off-2 yrs; 3rd off-Permanently

¹The driver's license may be permanently revoked for any DWI offense if it is shown that the driver has a "drinking pattern which indicates that [they] cannot safely operate a motor vehicle." §22.0211(a)(4)

²The suspension period may be doubled if the defendant has caused either an injury or a death to another person. 22.0211(b)

³Either suspension or revocation for the periods indicated.

Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

Other Criminal Actions Related to DWI:Homicide by Vehicle:

Jurisdiction Has Such a Law:

Yes Felony §§22.0706, 22.0708 & 46.3102(b)¹

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than 5 yrs §§22.0706 & 22.0708

Mandatory Minimum Term:

None

Fine (\$ Range):

Not more than \$5,000 §§22.0706 & 22.0708

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Susp or Rev §22.0203 See Footnotes Nos. 2, 3 and 4.

Length of Term of

Licensing Withdrawal:

1st off-180 dys; 2nd & sub off-2 yrs See Footnote Nos. 2 & 4.

Mandatory Action--Minimum

Length of License

Withdrawal:

None

Other:

¹Sec. 22.0708 concerns a death related to a DWI offense whereas §22.0706 concerns a death caused by the operation of a vehicle for other traffic law violations. However, the criminal sanctions for a violation of these sections are the same.

²The suspension period may be doubled. §22.0213(b)

³Either suspension or revocation for the periods indicated.

⁴These susp/revs apply only to violations of §22.0706. For violations of §22.0708, see Administrative Licensing Actions for a Post DWI Offense Conviction and Footnote No. 2 on p. 3-18.

AMERICAN SAMOA

Other Criminal Actions Related to DWI: (continued)

Driving While Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment:

Mandatory Minimum Term

of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action

(Suspension/Revocation):

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Other:

Class D Felony Not more than 5 yrs §§22.0233 & 46.2301(4)

90 dys §22.0223

Not more than \$5,000 §46.2101(a)(1)

None

Susp §22.0219

If convicted of driving while suspended, extend the period of susp.
for a like period (unless otherwise directed) §22.0219

If convicted of driving while suspended, extend the period of susp.
for a like period (unless otherwise directed) §22.0219

Habitual Traffic Offender Law:

Jurisdiction Has Such a Law (Yes/No):

No Note: This jurisdiction does not have a per se habitual traffic
offender law. However, the law does provide for permanent license
revocation if a person has been convicted of 3 serious traffic offenses
(e.g., DWI) w/n 10 yrs. §§22.0213(a)(3)

Grounds for Being Declared an

Habitual Offender:

Term of License Revocation While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on
Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):	None
BAC Chemical Test Is Given to the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 (Sales Only) (Year Eff: 1961) §27.0531(a)(1)
Minimum Age (Years) Possession:	None
Minimum Age (Years) Consumption:	None

Dram Shop Laws and Related Legal Actions:

Jurisdiction Has a Dram Shop Law (Yes/No):	No
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the Case (Case Citation):	n.a.
Dram Shop Actions-Social Hosts:	
Other:	

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:	Class B Misd §§27.0531 & 27.0534
Term of Imprisonment:	Not more than 6 mos §46.2301(6)
Fine (\$ Range):	Not more than \$500 ¹ §46.2102(a)(2)

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes Susp/Rev §27.0533
Length of Term of License Withdrawal:	1st off-30 dy susp; 2nd off-60 dy susp; 3rd off-Rev Note: The period of revocation is not specified in the statute.

¹For corporations, the fine is not more than \$2,000. §22.2103(a)(3)

AMERICAN SAMOA

Other laws Related to Alcohol Use: (continued)

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Class B Misd §§27.0531 & 27.0534

Not more than **6 mos** §46.2301(6)

Not more than **\$500¹** §46.2102(a)(2)

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp/Rev §27.0533

1st off-30 dy susp; 2nd off-60 dy susp; 3rd off-Rev Note: The
period of revocation is not specified in the statute.

Anti-Happy Hour Laws/Regulations:

None

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes §27.0532

Yes (Driver and passengers) §27.0532

¹For corporations, the fine is not more than \$2,000. §22.2103(a)(3)

Special Note: The definitions for "alcoholic beverage" and "beer" are as follows. "Alcoholic Beverage means beer, distilled spirit, wine or liquor which contains eight percent or more alcohol by weight". §27.0501(1) However, beer is defined as having an alcoholic content less than eight percent alcohol by weight. §7.0501(6)

STATE:
General Reference:

ARIZONA
Arizona Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Under the influence of intoxicating liquor §28-1381(A)(1)
I. $\geq 0.10^{1&2}$ and **Any Controlled Substance in a Person's Body**^{3&4} §28-1381(A)(2) & (3)
II. $\geq 0.18^5$ §28-1382(A)

Presumption (BAC/BrAC):
Types of Drugs/Drugs and Alcohol:

Persons Under 21 Years Old. Operating a motor vehicle with any "**Spirituosus Liquor**" in their body. §§4-244(34) & 4-246(B) $\geq 0.10^2$ §28-1381(G)(3)
Under the influence of (1) **Any Drug**, a vapor releasing substance containing a toxic substance or (2) a combination of liquor, drugs or toxic vapor releasing substance if the person is impaired to the slightest degree. §28-1381(A)(1)
For Commercial Motor Vehicle Operators, see p. 3-27.

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

Yes §28-1322 Based on reasonable suspicion of a DWI offense.

Yes⁶ §28-1321(A)

Yes⁶ §28-1321(A)

Yes (Criminal & Civil Cases) §28-1388(D)
I. Persons (e.g., medical facility personnel), who collect blood, urine or other bodily substances from drivers, may be requested by law enforcement authorities to supply samples of such substances to them for testing. §28-1388(E)
II. Blood or urine samples can also be obtained via search warrants. §28-1321(D)(1)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:
Urine:
Other:

Yes §28-1321
Yes §28-1321
"Other bodily substances" §28-1321

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.

²Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §28-101(2)

³A person is not guilty of operating a motor vehicle with a controlled substance in their body if they are legally entitled to use these drugs. §28-1381(D) Nevertheless, it is still illegal under §28-2881(A)(1) for such a person to operate a motor vehicle while under the influence of such substances. §28-1381(B)

⁴The illegal per se provision (previously codified as §28-692(A)(3)), that prohibits the operation of a motor vehicle with a controlled substance in the body, was held to be constitutional. *State v. Phillips*, 873 P.2d 706 (Ariz.App. 1994), & *State v. Hammonds*, 968 P.2d 601 (Ariz.App. 1998) (Review denied by the Arizona Supreme Court, 1998 Ariz. LEXIS 615, ____ P.2d ____)

⁵Driving at or above this level is considered to be driving "while under extreme influence of intoxicating liquor." §28-1382(A)

⁶Under a separate implied consent law, a law enforcement office can request a driver to submit to a chemical test for either alcohol concentration or 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 (e.g., a drunk driving offense, racing on the highway, reckless driving, or other "moving traffic violation"). The sanctions for refusing to submit to this test are the same as for refusing to submit to test under the regular implied consent law (§28-1321). §28-673

ARIZONA

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes §28-1387(H) ¹
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol Screening Required §28-1387(B)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	1st refusal-12 mo susp (mand); sub refusal (w/n 60 mos)-2 yr susp (mand) §28-1321(G)(3) & (L)
Other:	A person under 21 years old, who has been arrested for a violation of §4-244(34) (driving with any amount of "spirituous liquor" in their body) is subject to the implied consent law. §28- 1321(A)(1)(b)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Child Endangerment and Double Jeopardy below. <u>Important:</u> For persons under 18 yrs old, see Miscellaneous Sanctions on p. 3-28.
Imprisonment/Fine/Term:	I. 1st off-CI 1 misd-Not more than 6 mos (with 10 con dys), Not more than \$2,500; 2nd off ² (w/n 60 mos)-CI 1 misd-Not more than 6 mos (with 90 dys), not more than \$2,500 II. 0.18 Offense-1st off-CI 1 misd-Not more than 6 mos (with 30 con dys), Not more than \$2,500; 2nd off ² (w/n 60 mos)-CI 1 misd-Not more than 6 mos (with 120 dys), not more than \$2,500

¹"Except for another violation of the this article [the drunk driving law provisions], the state shall not dismiss a charge of violating any provision of this article unless there is an insufficient legal or factual basis to pursue that charge." §28-1387(H)

²For sentence enhancement purposes, a prior off includes any previous drunk driving offense.

Child Endangerment. A person commits a CI 6 felony (Aggravated DWT), if they violate the drunk driving laws while transporting a passenger who is <15 yrs old. Sanctions: Imprisonment-1st Off-1 yr; with one prior felony conviction-1 to 2.5 yrs; with two or more prior felony convictions-3 to 4.5 yrs; fine-\$150,000. **Minimum Sanctions:** For 1st & 2nd offs the minimum sanctions for drunk driving offenses apply. The minimum applicable sanction will depended on whether the offender was convicted under §28-1381 or §13-1382 (0.18 offense); and, for 3rd or sub offenses, the minimum sanctions are the same as for multiple offenses under the Aggravated DWI law. §§13-604(A), (C) & (U)(1)(a), 13-701(C), 13-801, and 28-1383(A)(3), (F), (G) & (L)(2)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Nichols*, 819 P.2d 995 (Ariz.App. 1991), & *Snow v. Superior Court of Arizona*, 903 P.2d 628 (Ariz.App. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

	III. Aggravated DWI*-Cl 4 felony-2½ to 12 yrs¹, not more than \$150,000 §§13-604, 13-701, 13-707, 13-801, 13-802, 28-1381, 28-1382 & 28-1383 Special Note: For sanctions related to Aggravated DWI based on a DWI offense <u>and</u> vehicle operation while suspended or revoked for DWI, see "Driving While Suspended or Revoked Where the Basis Was a DWI Offense" on p. 3-28. Persons Under 21 Years Old. Operating a motor vehicle with any "Spirituos Liquor" in their body. Cl 1 misd-Not more than 6 mos/not more than \$2,500 §§4-244(34) & 4-246(B), 13-701, 13-707, 13-801 & 13-802
Mandatory Minimum Term:	I. 1st off-24 cons hrs² §28-1381(J) 2nd off³ (w/n 60 mos)-30 con dys² §28-1381(L) II. 0.18 Offense-1st off-10 con dys² §28-1382(E); 2nd off³ (w/n 60 mos)-60 con dys² §28-1382(G) III. Aggravated DWI*-3rd off (w/n 60 mos)-4 mos⁴ §28-1383(D); 4th and sub. off (w/n 60 mos)-8 mos⁴ §28-1383(E) Persons Under 21 Years Old. Operating a motor vehicle with any "Spirituos Liquor" in their body. None
Mandatory Minimum Fine (\$):	I. 1st off Cl 1 misd-\$250; 2nd off Cl 1 misd (w/n 60 mos)-\$500; II. 0.18 Offense- Cl 1 misd-\$250 (and a \$250 assessment); 2nd off Cl 1 misd (w/n 60 mos)-\$500 (and a \$250 assessment) III. Aggravated DWI*- Cl 4 felony-None Persons Under 21 Years Old. Operating a motor vehicle with any "Spirituos Liquor" in their body. None
Other Penalties:	
Community Service:	1st & 2nd offs (including 0.18 offs)-Yes⁵ Discretionary with the court. The number of hrs is not specified in the law. §§28-1381(I)(3) & (K)(3) and 28-1382(D)(4) & (F)(4); 3rd and sub off-Community service cannot be assigned. §11-459(R)
Restitution (eg Victim's Fund):	Yes A victims' compensation fund §41-2407 Where there was an economic loss to a victim, the <u>Court may order that all or any portion of the fine be allocated as restitution.</u> §13-804
Other:	Driver Training Course. A person may be required to attend and successfully complete a driver training course. §28-1706

¹Imprisonment sanctions for Cl 4 felony: 1st Off-2½ to 3 yrs; with one prior felony conviction-3 to 6 yrs; with two or more prior felony convictions-8 to 12 yrs. §§13-604(A), (C) & (U)(1)(a)

²Provided the defendant completes an alcohol/drug screening, counseling, education/treatment program.

³For sentence enhancement purposes, a prior off includes any previous drunk driving offense.

⁴A limited furlough may be granted. §31-233(B)

⁵1st offenders are eligible of community service after they have severed 24 con hrs in jail. 2nd offenders are eligible for community service after they have served 15 con dys in jail. §§9-499.07(N) & 11-459(M)

***Definition of Aggravated DWI Based on Prior Offenses.** "Within a period of sixty months commits a third or subsequent violation of section 28-1381 [regular DWI offense], section 28-1382 [0.18 offense] or this section [§28-1383] or is convicted of a violation of section 28-1381, section 28-1382 or this section and has previously been convicted of any combination of convictions of section 28-1381 or 28-1382 or this section...." §28-1383(A)(2)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other: (continued)

Probation (Discretionary). 1st or 2nd offense (including 0.18 offenses)-Not more than 5 yrs; **Aggravated DWI Offenses***-Not more than 10 yrs §13-902(B)

Assessments. Under §§12-116.01 & 12-116.02, the court is to levy respectively penalty assessments of 47% and 13% of the fine imposed. These assessments may be waived if they would work a hardship on the offender or their family.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

See Double Jeopardy on p. 3-24.

Yes ≥0.10 (BAC/BrAC See Footnote No. 2 on p. 3-23.) **Susp-Not less than 90 cons dy** (30 cons dys mand)¹ §28-1385(A) & (E)

Special Note: The procedures of the admin. per se law also apply to persons who are under 21 years old and who have been arrested for a violation of §4-244(34) (driving with any amount of "spirituous liquor" in their body). **Comment:** The admin per se law does not appear to actually authorize a lic. susp. for a violation of §4-244(34). It may well be that the legislature intended to impose admin. per se license susps. for a §4-244(34) offense but the language used in the admin. per se law is not clear on this point.

Other:

Under §§28-3306(A)(1) and 28-3315(A), it may be "possible" to susp/rev a person's license for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., a 2nd DWI off). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev) and Term
of License Withdrawal:

I. Except as noted in II, 1st off (including 0.18 offs)-**Susp-not less than 90 con dys nor more than 1 yr²; 2nd off** (including 0.18 offs)-**Rev-1 yr²; Aggravated DWI offenses*-Rev-3 yrs**

II. Driving under the influence of a controlled substance or with any amount of a controlled substance in the body: 1st off or 2nd off (w/n 60 mos)-**Rev-1 yr²; Aggravated DWI offenses*-Rev-3 yrs**

§§28-1381(K)(4), 28-1382(F)(5), 28-1383(J)(1), 28-1387(D), 28-3304(A)(2), (8) & (9) and 28-3315

¹For an admin. per se violation, where there has not been (1) serious physical injury, (2) a prior drunk driving offense conviction w/n 60 mos or (3) a refusal to submit to a chemical test w/n 60 mos, the license suspension period is not less than 30 cons days (mandatory) and a restricted license for not less than 60 cons days. §28-1385(F)

²This licensing action does not apply to 1st and 2nd offenders who have been suspended pursuant to either the implied consent or the admin. per se laws. §28-1387(D)

*See the **Definition of Aggravated DWI Based on Prior Offenses** on p. 3-25.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of
Withdrawal:

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Persons Under 18 Years Old. A person <18 yrs old, who is convicted of either a DWI offense (under either §28-1381 or §28-1382 [0.18 offense]) or driving with any "spirituous liquor in their body, is subject a susp for 2 yrs. However, if they are convicted of an Aggravated DWI offense (§28-1383), they are subject to a susp for 3 yrs. This licensing actions is in addition to any other sanctions that may be imposed. This action is not mandatory. Restricted driving privileges are available. §28-3320

Persons ≥18 but <21 Years Old. **Comment:** There appears to be no licensing sanction against a person, who is ≥18 but <21 years old and who operates a motor vehicle with any "spirituous liquor" in their body. §§4-244(34) & 4-246(B).

ALL OFFENSES: 1st off-90 con dys^{1&2} 2nd off-1 yr² 3rd & sub off-3 yrs

1st or 2nd off-Yes³ §28-1387(B)

1st, 2nd, 3rd or sub. offs-Yes³ §28-1387(B)

Forfeiture (Mandatory). The vehicle used in the offense and owned by the offender is forfeited for (1) a 3rd or subsequent DWI offense, (2) a DWI offense while transporting a child <15 yrs old or (3) a DWI off while their license is still suspended or revoked for a prior DWI off. §28-1384(A)

¹For a drunk driving offense conviction, where there has not been (1) serious physical injury, (2) a prior drunk driving offense conviction w/n 60 mos or (3) a refusal to submit to a chemical test w/n 60 mos of the DWI offense, the license suspension period is not less than 30 cons dys (mandatory) and a restricted license for not less than 60 cons dys. §§28-1385(F) & 28-1387(E)

²This suspension does not apply to 1st or 2nd offenders who have been suspended pursuant to either the implied consent or admin. per se laws. §28-1387(D)

³If a defendant has been ordered to participate in either an alcohol education or treatment program, their license cannot be restored until they prove that they have completed such program. §28-3319(C)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (For standards, see Footnote No. 2 on p. 3-23.) or (2) are under the influence of intoxicating liquor or a controlled substance. For a subsequent violation, the "disqualification" is for life. A CMV operator is subject to the normal DWI sanctions. Under the regular DWI law, it is illegal per se for a person to drive a CMV with a BAC/BrAC ≥0.04. Also, a CMV operator is subject to the sanctions and procedures of the admin. per se law if they operate a CMV with a BAC/BrAC ≥0.04. (Again, for BAC/BrAC standards, see Footnote No. 2 on p. 3-23.) §§28-101(2), 28-101(7), 28-1301, 28-1381(A)(4), 28-1385(A)(2)(b), 28-1501(3) & (5) and 28-3312 The State has also adopted Federal CDL disqualification (which are similar to the above actions) and out-of-service provisions via §28-5204(B). Under these provisions, a person holding a CDL must be placed "out-of-service" for 24 hrs if they operate a CMV with any measurable or detectable amount of alcohol in their system. 49 CFR 383.51 & 392.5

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Sanctions Following a Conviction for a DWI Offense: (continued)

Terms Upon Which Vehicle
Will Be Released:
Other:

N/A
None

Miscellaneous Sanctions
Not Included Elsewhere:

Home Detention (Work Release). Only 1st and 2nd DWI offenders (including 0.18 offenders) are eligible for the "home detention" (or work release) program. However, before starting this program 1st offenders must complete 24 con hrs in jail and 2nd offenders must complete 15 con dys in jail. §§9-499.07(N) and 11-459(M) & (R)

Ignition Interlock. The court **MUST** order persons, who are convicted of the following offenses, to equip vehicles that they operate with "ignition interlock" devices for at least 1 yr: (1) A 2nd drunk driving offense under §28-1381; (2) a 3rd or subsequent drunk driving offense under §28-1383 (Aggravated DWI); (3) a drunk driving offense where the offender is driving on either a suspended or revoked license for a prior DWI offense or a prior admin. per se violation (Aggravated DWI); or, (4) a 1st or 2nd 0.18 offense. §§28-1381(K)(5), 28-1382(D)(5) & (F)(6) and 28-1383(J)(3)

Incarceration Costs. All drunk driving law offender must be assessed the costs of their incarceration. The costs charged are based on the offender's financial capabilities. §28-1444

EMS Costs. A person convicted of a DWI offense, who as a result of such offense has negligently caused an accident that resulted in an emergency response, is liable for the expenses associated with the response. §28-1386(A)

Prison Furlough. Available for 3rd & sub. offenders §31-233
Drunk Driving Offenders (including 0.18 offenders) Under 18 Years Old. 1st off-Incarceration for 24 con hrs; sub off (w/n 60 mos)-Incarceration for 30 con dys in a juvenile detention center or in the dept of juvenile corrections. In addition, 1st or sub offenders are subject to a fine of \$100 to \$500 plus at least 80 hrs of community service. They must also undergo alcohol screening and may, depending upon the results of the screening, be required to attend an alcohol education or treatment program. §§8-232.01 and 8-343(A), (B) & (D)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:
Sanctions:
Criminal Sanction:
Imprisonment (Term):

No¹

¹A person, who causes a death while committing certain traffic violations (failure to stop a red light, failure to yield to on coming traffic while making a left turn and failure to stop at a stop sign), is subject to a "civil penalty" of not more than \$1,000 and must complete a Traffic Survival School. §28-672(C) & (D)

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term:
 Fine (\$ Range):
 Mandatory Minimum Fine:
 Administrative Licensing Action:
 Licensing Authorized and
 Type of Action:

Note: License rev for 3 yrs for any homicide resulting from the operation of a motor veh. §§28-1704(1) & 28-1715(D)(1)

Length of Term of
 Licensing Withdrawal:
 Mandatory Action--Minimum
 Length of License
 Withdrawal:

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

See Footnote No. 1 below.

Sanction:
 Criminal:
 Imprisonment (Term):

Cl 1 Misd-Not more than 6 mos Cl 4 Felony-Any DWI off and driving on a susp/rev lic. for a previous DWI conviction² (Aggravated DWI)-2½ to 12 yrs³ §§13-701, 13-707, 13-801, 13-802, 28-1716, 28-1383 & 28-3473(B)

Mandatory Minimum Term
 of Imprisonment:

Cl 1 Misd off-48 cons hrs §28-3473(B) Cl 4 Felony off-4 mos §28-1383(D)

Fine (\$ Range):

Cl 1 Misd off-Not more than \$2,500 §13-802 Cl 4 Felony off-Not more than \$150,000 §13-801

Assessments. An offender is also subject to assessments which can be ≤60% of the fine imposed. §§12-116.01 & 12-116.02
 None

Mandatory Minimum Fine:
 Administrative Licensing Actions:
 Type of Licensing Action
 (Susp/Rev):

See **Ignition Interlock** on p. 3-28.

Length of Term of License
 Withdrawal Action:

Cl 1 Misd off-For driving while suspended-Susp For driving while revoked-Rev §28-3473(D) Cl 4 Felony-Rev §28-1383(I)

Cl 1 Misd off-Susp equal to original susp period not to exceed one yr form the date of reinstatement Rev for one additional yr of rev §28-3473(D) Cl 4 Felony-3 yrs §28-1383(I)

Mandatory Term of License
 Withdrawal Action:

Cl 1 Misd off-Susp equal to original susp period not to exceed one yr form the date of reinstatement Rev for one additional year §28-3473(D) Cl 4 Felony-3 yrs §28-1283(I)

¹I. The law specifically provides that the sanctions given also apply to persons who operate a CMV during a CDL disqualification.
 II. The law provides for the following sanctions for a violation of an "out-of-service" order. A civil penalty of at least \$1,000. §28-5241(B), (D)(1) & (F) In addition, a person is subject to the following CDL disqualification periods: 1st violation-90 dys (mand); 2nd violation (w/n 10 yrs)-1 yr (mand); and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand). If the violation involved the transportation of hazardous materials, the disqualification periods are as follows: 1st violation-180 dys (mand); and, 2nd or sub violation (w/n 10 yrs)-2 yrs (mand). §28-3312(B) & (C)

²See "Forfeiture" under Vehicle Impoundment/Confiscation on p. 3-27.

³Imprisonment sanctions for Cl 4 felony: 1st Off-2½ to 3 yrs; with one prior felony conviction-3 to 6 yrs; with two or more prior felony convictions-8 to 12 yrs. §§13-604(A), (C) & (U)(1)(a)

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Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

State Has Such Law (Yes/No):

No

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §28-2642

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes §28-2642

Vehicle Passengers:

No

Pedestrian:

No

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1985) §§4-101(16), 4-101(27) and 4-244(9) & (16)

Minimum Age (Years) Possession:

21 There is an exemption for religious services or ceremonies. §§4-101(16), 4-101(27), 4-244(9) & 4-249

Minimum Age (Years) Consumption:

21 There is an exemption for religious services or ceremonies. §§4-101(16), 4-101(27), 4-244(9) & 4-249

Other State Laws Related To Alcohol Use: (continued)Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §4-311^{1&2}

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes *Ontiveros v. Borak*, et al., 667 P.2d 200 (Ariz. 1983)², &
Brannigan et al. v. Ray Buck, 667 P.2d 213 (Ariz. 1983)

Dram Shop Actions-Social Hosts:

Yes (Limited) Liability is limited to the actions of intoxicated
minors. §§4-301, 4-312(B), *Estate of Hernandez v. Board of
Regents*, 866 P.2d 1330 (Ariz. 1994)*, *Petolicchio v. Sanata
Cruz County Fair*, 866 P.2d 1342 (Ariz. 1994), *Knoell v.
Cerkvenik-Anderson Travel, Inc.*, 891 P.2d 861 (Ariz.App.
1994), *Bruce v. Chas Roberts Air Conditioning, Inc.*, 801 P.2d
456 (Ariz.App. 1990), & *Keckonen v. Robles*, 705 P.2d 945
(Ariz.App. 1985).

Other:

None³Criminal Action Against Owner or Employees
of Establishments that Serve AlcoholicBeverages to Intoxicated Patrons:

Type of Criminal Action:

CI 1 Misd §§4-244(14) & 4-246(B)

Term of Imprisonment:

Not more than 6 mos §13-707(A)

Fine (\$ Range):

Not more than \$2,500 for individuals §13-802(A); not more than
\$20,000 for businesses §13-803 Assessments. An offender is
also subject to assessments which can be ≤60% of the fine
imposed. §§12-116.01 & 12-116.02

Administrative Actions Against Owners ofEstablishments that Serve AlcoholicBeverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or rev⁴ §4-210(A)(9)

Length of Term of License Withdrawal:

Length of term not fixed

¹The law, §4-311, limits liability to situations where the injury causing patron was either (1) "obviously intoxicated" or (2) "under the legal drinking age". Furthermore, §4-312(B) (declared unconstitutional See Footnote No. 2.) provides that §4-311 is the exclusive remedy in dram shop actions.

²Under Article 18, §6 of the Arizona Constitution, a person has the right to a full recovery for any injuries sustained. However, §4-312(B) restricts an injured persons right to a full recovery in dram shop situations by providing that §4-311 is the exclusive remedy available at law. And, as noted above in Footnote No. 1, this later provision restricts liability to certain factual situations. As a result, the Arizona Court of Appeals declared §4-312(B) unconstitutional and held that an injured party in a dram shop type action has the right to full recovery via common law negligence under *Ontiveros*. Accordingly, the court determined that the plaintiff did not have to establish that the injury causing patron was "obviously intoxicated". *Young through Young v. DFW Corp.*, 908 P.1 (Ariz.App. Div. 2 1995) (Review denied by the Arizona Supreme Court.) Note: Since the matter was not argued by the parties, the court, in *Young*, specifically stated that it would not address the issue of whether the restrictions contained in §4-311 are unconstitutional.

³Note: Sec. 4-312(A), which abolished commercial server liability in situations involving injuries sustained either (1) by a patron due to his/her own intoxication or (2) by a patron as the result of an accompanying intoxicated patron's actions, was declared in violation of the State's constitution. *Schwab v. Matley*, 793 P.2d 1088 (Ariz. 1990)

⁴In lieu of or in addition to either suspension or revocation, a licensee may be subject to a civil fine of \$200 to \$3,000. §4-210.01

*See remanded case on appeal to the State supreme court for the second time, *Estate of Hernandez v. Flavio*, 930 P.2d 1309 (Ariz. 1997).

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Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Cl 1 Misd¹ §§4-244(9) & 4-246(B)

Not more than 6 mos §13-707(A)

Not more than \$2,500 for individuals §13-802(A); not more than \$20,000 for businesses §13-803 Assessments. An offender is also subject to assessments which can be ≤60% of the fine imposed. §§12-116.01 & 12-116.02

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp or rev² §4-210(A)(9)

Length of term not fixed

Anti-Happy Hour Laws/Regulations:

Yes³ §4-244(24)

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

No

Yes Driver & passengers §§4-244(20), 4-244(22) & *State v. Castellano*, 784 P.2d 287 (Ariz.App. 1989)

¹**Special Note:** In addition to the sanctions given, under separate provisions of the law, it is a Class 2 misdemeanor to give or furnish "spirituous liquor" to a person who is under 21 years old. The sanctions for this offense are a jail term of not more than 4 mos and/or a fine of not more than \$750. §§4-244(16), 4-246(A), 13-707(A) & 13-802(B)

²In lieu of or in addition to either suspension or revocation, a licensee may be subject to a civil fine of \$200 to \$3,000. §4-210.01

³The Arizona Court of Appeals has held that the Anti-Happy Hour Law applies only to the number of drinks sold. This law does not limit the alcoholic content or size of such drinks. *Callender v. Transpacific Hotel Corp.*, 880 P.2d 1103 (Ariz.App. Div. 2 1993)

STATE:

General Reference:

ARKANSAS

Arkansas Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Intoxicated¹ §§5-65-102(1) & 5-65-103(a)
For Persons Under 21 Years Old-Under the Influence¹ §5-65-303(a) See the Special Note below.

Illegal Per Se Law (BAC/BrAC):

≥0.10² §§5-65-103(b) & 5-65-204(a)
For Persons Under 21 Years Old-≥0.02 but <0.10² §5-65-303(b) See the Special Note below.

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

Any Intoxicant³ or Controlled Substance¹ §§5-65-102(1) & 5-65-103(a)

For Persons Under 21 Years Old-Under the Influence¹ See the Special Note below.

Other:

For Commercial Motor Vehicle Operators, see p. 3-35.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

No⁴ §§5-65-202 & 5-65-309(a)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §5-65-202

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) *Weaver v. City of Fort Smith*, 777 S.W.2d 867 (Ark.App. 1989), *Spicer v. State*, 799 S.W.2d 562 (Ark.App. 1990), & *Medlock v. State*, 964 S.W.2d 196 (Ark. 1998)

¹The term "intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination thereof. §5-65-102(1) The term "influence" means being controlled or affected by an alcoholic beverage or similar intoxicant or a combination thereof to a such a degree that a person's driving ability is altered or diminished even to the slightest degree. §5-65-302(1)

²For either an illegal per se offense or an administrative per se law violation, the law provides that the alcohol concentration standard is percent by weight of alcohol in the blood. §§5-65-103(b), 5-65-303(b) & 5-65-104 However, under the chemical analysis provisions of the implied consent law, §5-65-204(a), alcohol concentration means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

³The Arkansas Supreme Court has held that the term "any intoxicant" is not constitutionally void for vagueness. *Thornton v. State*, 883 S.W.2d 453 (Ark. 1994)

⁴A law enforcement officer can request a driver to submit to a chemical test (1) if the driver has been arrested for a DWI offense, (2) if the driver has been involved in an accident or (3) if, at the time of a DWI arrest, there is "reasonable cause to believe" that the driver is intoxicated or has a BAC ≥0.10. §5-65-202(a) A law enforcement officer can request a driver, who is under 21 years old, to submit to a chemical test (1) if the underage person has been arrested for any offense arising out of driving while under the influence or with a BAC ≥0.02 but <0.10, (2) if the underage person has been involved in an accident or (3) if a law enforcement officer has stopped the underage person based upon "reasonable cause to believe" that the underage person has been driving while under the influence or with a BAC ≥0.02 but <0.10. §5-65-309(a)

Special Note: Under §5-65-311(a), the sanctions for this offense are in addition to any other sanctions that may be applicable under other provisions of law. To complement this provision, §5-65-311(d) provides that a person under 21 years old may be prosecuted for a regular DWI offense if they have a BAC >0.05 but <0.10.

ARKANSAS

Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information:

Based upon probable cause of DWI offense related to an accident involving either a death or where there is reason to believe that a death may occur, a driver may be compelled to submit to a test of their blood, breath or urine for alcohol or drug presence and concentration. §5-65-208(a)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes ¹
Urine:	Yes ¹
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	Yes ²
Anti-Plea Bargaining Statute (Yes/No):	Yes ²
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §5-65-109 Alcohol abuse assessment is required.

Sanction for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent
Chemical Test:
Criminal Sanction (Fine/Jail):

Persons Under 21 Years Old. Fines and community service for refusing to submit to a chemical test under §5-65-310*: 1st off-\$100 to \$500 (and possible community service); 2nd off-\$200 to \$1,000 and not less than 30 dys (mand) community service; 3rd or sub off-\$500 to \$2,000 and not less than 60 dys (mand) community service §§5-65-305(a) & 5-65-306 Note: The minimum fines appear to be mandatory.

¹Note: The implied consent laws only apply to a test to determine the alcohol or controlled substances content of a person's blood. §§5-65-202(a) & 5-65-309(a)

²Persons charged with a DWI offense shall be tried on such charges or plead to such charges and no such charges shall be reduced. §5-65-107 However, for persons who are either convicted of or who have either pleaded guilty to or *non-contendere* to a 1st DWI offense, the court is prohibited from placing such persons on probation and later discharging the accused without adjudication after the probation period has been served. §5-65-108 For persons under 21 years old who have either pleaded guilty to or *nolo contendere* to a 1st offense of "driving while under the influence" or with a BAC of "≥0.02 but <0.10", the court is prohibited from placing such persons on probation prior to adjudication and discharging the accused without an adjudication of guilt and expunging the record. §5-65-308

³A previous offense also includes either a prior drunk driving offense conviction or a refusal under the regular implied consent law.

*A special implied consent law that applies only to persons under 21 years old.

Sanction for Refusal to Submit to a
Chemical Test: (continued)

Administrative Licensing Action
(Susp/Rev):

1st refusal-susp 180 dys¹ or 90 dys susp followed by 90 dys of restricted driving privileges with the use of an ignition interlock device¹; 2nd refusal (w/n 5 yrs)-susp 2 yrs (mand); 3rd refusal (w/n 5 yrs)-rev 3 yrs (mand); 4th or sub refusal (w/n 5 yrs)-rev For Life (mand) §§5-65-104, 5-65-118, 5-65-205(a) & 5-65-402 See Ignition Interlock on p. 3-38.

For Persons Under 21 Years Old. Licensing action for refusing to submit to a chemical test under §5-65-310*: 1st ref-susp 90 dys¹; 2nd ref-susp 1 yr (mand); 3rd or sub refusal-rev until the person reaches 21 or for 3 yrs whichever is longer (mand) §§5-65-120(b), 5-65-310(b) & 5-65-402

Other:

None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment Term/Fine:

1st off-24 hrs to 1 yr/\$150 to \$1,000²; 2nd off (w/n 5 yrs)-7 dys-1 yr/\$400 to \$3,000²; 3rd off (w/n 5 yrs)-90 dys to 1 yr/\$900 to \$5,000²; 4th and sub. offs (w/n 5 yrs)(Felony)-1 to 6 yrs/\$900 to \$5,000² §5-65-111 & 5-65-112

¹A person is eligible for a restricted license based upon extreme and unusual hardship that the person must use a vehicle either (1) to go to and from a place of employment, (2) in the course of employment, (3) to and from an educational institution, (4) to and from an Alcohol Safety Education and Treatment Course or (5) to and from either a hospital or a clinic for medical treatment. §5-65-120(a)

²Note: There is a special court cost of \$250 for any person who either pleads guilty to or *nolo contendere* to or is found guilty of a DWI offense. §5-65-113

*A special implied consent law that applies only to persons under 21 years old.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): I. A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are intoxicated or (3) refuse to submit to a chemical test for an alcohol concentration. (Note: The CMV implied consent provision, §27-23-115(a), applies to a test for both an alcohol concentration and drugs; however, the disqualification provision, §27-23-112, applies only to a refusal to submit to a test for an alcohol concentration.) For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). II. It is a Class B Misd to operate a CMV while intoxicated or with a BAC/BrAC ≥ 0.04 ; sanctions: Jail-not more than 90 dys; fine-not more than \$500 (§§5-4-201(b)(2) & 5-4-401(b)(2)). For a 2nd offense, mandatory community service for not less than 30 dys in lieu of jail and for a 3rd of subsequent offense, mandatory community service for not less than 60 dys in lieu of jail. §27-23-114(g) A person, who is convicted of this offense, must undergo an alcohol abuse assessment. §27-23-114(f) III. In addition, a person who has any alcohol in their system must be placed "out-of-service" for 24 hours. §§27-23-103, 27-23-111, 27-23-112, 27-23-113, 27-23-114 & 27-23-115 Under separate provisions of law, a person may have their CDL suspended for 1 yr if they are convicted of operating a CMV while under the influence of a controlled substance. §§27-16-915(a) & (b) and 27-23-112(a) See **Motor Vehicle Registration Suspension** on p. 3-38.

DWI Offenses Involving Motor Vehicles Used In Commerce and Regulated Under the State's Motor Carrier Act. A person commits a misdemeanor if they operate a motor vehicle regulated under this act while under the influence of (1) intoxicating liquor, (2) a controlled substance or (3) any substance that render the person incapable of safely operating a motor vehicle. The sanctions for this offense are as follows: 1st offense-Jail-None, Fine-\$200 to \$1,000; 2nd and subsequent offense-Jail-None, Fine-\$500 to \$1,000. §23-13-258 This law cannot abrogate or supersede the regular DWI law. I.e., a person must be charged with a violation of the DWI law in preference to this one. Note: Sec. 23-13-258 may also apply to CMV operators as noted above.

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Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term:

For Persons Under 21 Years Old who are convicted of "driving while under the influence" or with a BAC of ≥ 0.02 but < 0.10 under §5-65-303: 1st off-\$100 to \$500; 2nd off¹-\$200 to \$1,000; 3rd or sub off¹-\$500 to \$2,000 §5-65-305(a) Note: There are no imprisonment sanctions associated with a conviction for these offenses.

1st off-24 hrs; 2nd off (w/n 5 yrs)-7 dys; 3rd off (w/n 5 yrs)-90 dys; 4th & sub off (w/n 5 yrs)-1 yr §5-65-111 See Footnote No. 2 and Community Service.

Mandatory Min. Fine (\$):

1st off-\$150; 2nd off (w/n 3 yrs)-\$400; 3rd & sub off (w/n 3 yrs)-\$900 §5-65-112 See Footnote No. 2.

For Persons Under 21 Years Old who are convicted of "driving while under the influence" or with a BAC of ≥ 0.02 but < 0.10 " under §5-65-303: 1st off-\$100; 2nd off¹-\$200; 3rd or sub off¹-\$500 §5-65-305(a) Note: These minimum fines appear to be mandatory.

Special Note: The sanctions that may be applied against a person under 21 years old, who is convicted of "driving while under the influence" or with a BAC of ≥ 0.02 but < 0.10 ", are in addition to any other sanctions that may be applied against such an individual for any another offense committed under State law. §5-65-311(a)

Other Penalties:

Community Service:

I. 1st off-In lieu of imprisonment (The law does not specify the length of time a person must service community service.); 2nd off (w/n 5 yrs)-Not less than 30 dys (mand) in lieu of jail; 3rd off (w/n 5 yrs)-Not less than 90 dys (mand) in lieu of jail; 4th or sub off (w/n 5 yrs)-Not less than 1 yr (mand) in lieu of jail §5-65-111(a) & (b)

II. If a person is unable to pay a fine, they may be given community service as an alternative sanction. §5-65-114

III. For Persons Under 21 Years Old, who are convicted of "driving while under the influence" or with a BAC of ≥ 0.02 but < 0.10 under §5-65-303 the court shall order public service work. 1st off-Time period is not specified; 2nd off-For not less than 30 dys (mand); 3rd or sub off-For not less than 60 dys (mand) §5-65-306

Restitution

(eg, Victim's Fund)

Yes By the defendant (§§5-4-104(d)(4) & 5-4-205) and via crime victims' compensation funds (§§16-90-307 & 16-90-701 et seq.). For the fund established under §16-90-701 et seq, the maximum amount that may be paid is \$10,000. §16-90-716(a)

¹Note: a previous conviction also includes a conviction under the regular DWI law. §5-65-305(b)

²Certain minimum sanctions for DWI offenses under §§5-4-104(e)(1)(A)(iv), 5-4-301(a)(1)(D), 5-65-111 & 5-65-112 are mandatory. §§5-65-108 & 16-90-107, *Lovell v. State*, 678 S.W.2d 318 (Ark. 1984), *Lovell v. State*, 681 S.W.2d 395 (Ark. 1984), *Harris v. State*, 686 S.W.2d 440 (Ark. 1985) and *Lawson v. State*, 746 S.W.2d 544 (Ark. 1988). **Comment:** A DWI offender has a statutory right to a jury trial. In such trials, the jury affixes punishment (criminal and administrative (licensing) sanctions). *Tharp v. State*, 745 S.W.2d 612 (Ark. 1988) Under §16-90-107, the jury or the court must sentence a person to the statutory minimum fine or jail/prison sanction provided by law for the offense committed.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

A defendant is required or may have to pay the following assessments or fees. (1) Under §16-90-718, a DWI defendant has to pay an assessment, as determined by the court, of from \$25 to \$10,000. This assessment is paid into the State's Crime Victims Reparations Revolving Fund. (2) Under §16-90-307, each circuit court can establish a separate victim's restitution fund. Persons convicted of any offense may be required by the court to pay a fee, which is not to exceed the amount of the "criminal penalty fine", into this separate fund. (3) And, under §5-65-113, a defendant is to pay "additional" costs of \$250.

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

See Ignition Interlock on p. 3-38.

Yes¹ BAC ≥ 0.10 (For standards, see Footnote No. 2 on p. 3-33.) or **While Intoxicated** (alcohol/drugs) 1st violation (BAC ≥ 0.10 but < 0.18)-Susp 120 dys²; 1st violation (driving while intoxicated by a controlled substance)-Susp 6 mos²; 1st violation (BAC ≥ 0.18)-Susp 180 dys² or 30 dys susp² followed by restricted driving privileges for 150 dys with ignition interlock use; 2nd violation (BAC ≥ 0.10) (w/n 5 yrs)-Susp 16 mos (mand) or 1 yr (mand) followed by 4 mos of restricted driving privileges with ignition interlock use; 3rd violation (BAC ≥ 0.10) (w/n 5 yrs)-Rev 30 mos (mand) or 1 yr (mand) followed by 18 mos of restricted driving privileges with ignition interlock use; 4th or sub violation (BAC ≥ 0.10) (w/n 5 yrs)-Rev 4 yrs (mand) §§5-65-104, 5-65-118, 5-65-120(b) & 5-65-402 For Persons Under 21 Years Old. "Driving while under the influence" or driving with a BAC of "0.02 but < 0.10" under §5-65-303: 1st off-Susp 90²; 2nd off-Susp 1 yr (mand); 3rd or sub offs-Rev until the person reaches 21 or for 3 yrs whichever is longer (mand) §§5-65-120(b), 5-65-304(a) & (b) and 5-65-402

Other:

None

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev) and Term of
License Withdrawal Action:

See Footnote Nos. 3 & 4.

Important. See the Special Note below.

¹The administrative licensing action is reversed if the licensee is acquitted of the drunk driving charges upon which such action was based. §5-65-402(D)(2)(b)

²A person is eligible for a restricted license based upon extreme and unusual hardship that the person must use a vehicle either (1) to go to and from a place of employment, (2) in the course of employment, (3) to and from an educational institution, (4) to and from an Alcohol Safety Education and Treatment Course or (5) to and from either a hospital or a clinic for medical treatment. §5-65-120

³Via separate laws, a person convicted of driving while under the influence of a controlled substance must have their driving privileges suspended for 6 mos. For extreme hardships, restricted driving privileges may be granted. §§5-64-710(a) and 27-16-915(a) & (b)

⁴In addition to any other sanctions provided by law, a person under 18 years old, who is convicted of a DWI offense (including driving while under the influence of a controlled substance), must have their license suspended for either 12 months or until they reach 18 whichever is the longer suspension period. However, a restricted hardship driving permit is available for employment/educational purposes. §§5-64-710, 5-65-116 & 27-16-914

Special Note: There are NO specific licensing following a conviction under either §5-65-102 (regular drunk driving offenses) or §5-65-303 (0.02 offense for persons < 21 yrs old). Licensing action is NOW via the administrative per se laws.

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Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term of
Withdrawal:

N/A

Other:

Rehabilitation:

Alcohol Education:

Yes §§5-65-104(h) & 5-65-115(a)¹

Persons Under 21 Years Old, who either (1) are convicted of "driving while under the influence" or with a BAC ≥ 0.02 but < 0.10 under §5-65-303 or (2) have refused to submit to a chemical test under 5-65-310, must complete an alcohol and driving education program. §5-65-307(a) This program must be completed before a person's license can be reinstated. §5-65-307(b) & (e)(1)

Alcohol Treatment:

Yes §5-65-115(a)¹

Special Note: Alcohol education or treatment is mandatory and is in addition to any other sanction. *Harris v. State*, 686 S.W.2d 440 (Ark. 1985)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Forfeiture. For a 4th DWI off (w/n 3 yrs), a court may order the defendant's motor vehicle forfeited. §5-65-117(a)

Terms Upon Which Vehicle

Will Be Released:

Other:

N/A

I. **License Plate Impoundment.** License plates shall be impounded for 90 dys if a driver has been arrested for driving while suspended/revoked where such susp/rev was based on a n alcohol off conviction.² §5-65-106

II. **Motor Vehicle Registration Suspension.** A person, who either has had their license suspended or revoked for ANY drunk driving offense (§§5-65-103 or 5-65-303) or their CDL disqualified for driving a CMV in violation of the drunk driving provisions of §27-23-114, must have the registration of ALL of the vehicles owned by them suspended for the same period of time as the licensing action or for 1 yr whichever is longer.³ §§5-65-401(3) & 5-65-403

Miscellaneous Sanctions

Not Included Elsewhere:

Ignition Interlock. In addition to any other sanction for a DWI offense, the court may require them only to operate a motor vehicle equipped with an ignition interlock device. This requirement may continue for up to 1 yr after the person's license is no longer suspended or revoked. However, if restricted

¹An alcohol education/treatment program must be completed before a suspended/revoked license can be reinstated. §5-65-115(b)

²However, a temporary license plate may be issued if the court determines that it is in the best interests of the dependents of the offender.

³If either a family member or a co-owner of a vehicle, that is subject to registration suspension, is completely dependent upon the use of such vehicle for the "necessities of life", a restricted registration may be issued allowing such dependent person to operate the vehicle. §5-65-403(h)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere: (continued)

Ignition Interlock. (continued) licenses have been issued (for either a refusal or an admin. per se violation), the required use of an ignition interlock device "shall be at least the remaining time period of the original suspension" period. §5-65-118

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

- I. Death caused by driving in a reckless or wanton manner in disregard of the safety of others (negligent homicide) - Class A Misdemeanor/Class C Felony¹ §27-50-307
- II. Death caused by driving while intoxicated or with a BAC ≥0.10 (negligent homicide) - Class C Felony §5-10-105(a)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Class A Misdemeanor - Not more than 1 yr §5-4-401(b)(1)
Class C Felony - 3 to 10 yrs §5-4-401(a)(4)

Mandatory Minimum Term:

Fine (\$ Range):

None
Class A Misdemeanor - Not more than \$1,000 §5-4-201(b)(1)
Class C Felony - Not more than \$10,000 §5-4-201(a)(2)
None

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev §§27-16-905(1) & 27-50-307(b)

Length of Term of

Licensing Withdrawal:

1 yr §27-16-912

Mandatory Action--Minimum

Length of License

Withdrawal:

1 yr §§27-16-905(1) & 27-16-912

Other:

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense*:

See Footnote No. 2.

¹**Comment:** Under §27-50-307, a persons commits "negligent homicide" if they cause the death of another while operating motor vehicle in a reckless or wanton manner in disregard of the safety of others and provides that this offense "shall be included in and be a lesser degree of involuntary manslaughter." However, a "negligent homicide" offense, not related to drunk driving, is a Class A Misdemeanor (§5-10-105(b)) whereas, if such an offense is considered manslaughter, it would be a Class C Felony (§5-10-104(c)).

²I. It is CI C misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term <30 dys or a fine <\$100. §§5-4-201(a)(3), 5-4-401(b)(3) and 27-23-107(b) & (c) II. In addition, a person, who has been convicted of violating an out-of-service order, is subject to a civil penalty of from \$1,000 to \$2,500. §27-23-113(c) The law also provides for the following disqualification periods against a person who has been convicted of an out-of-service order: 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 (mand) to 5 yrs; 3rd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or more than 15 persons: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. §27-23-112(g)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

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Other Criminal Actions Related to DWI: (continued)

Sanction:

Criminal:

Imprisonment (Term):

Misd 2 dys to 6 mos §27-16-303

Mandatory Minimum Term
of Imprisonment:

10 dys if susp or rev is based on a DWI charge §5-65-105

Fine (\$ Range):

Not more than \$500

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

If based on susp, susp. If based on rev, rev. §27-16-303

See Vehicle Impoundment/Confiscation on p. 3-38.

Length of Term of License

Withdrawal Action:

Original susp period is extended a like period. Original period of
rev is extended 1 yr. §27-16-303 See Footnote No. 1.

Mandatory Term of License

Withdrawal Action:

Same as above. See Footnote No. 1.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

¹**Ignition Interlock.** If the basis of the suspension or revocation was a drunk driving offense, the court may require a person to only operate motor vehicles that are equipped with ignition interlock devices with a restricted license for a period of 1 yr after they become eligible for driving privileges. §§5-65-104 & 5-65-118

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on
Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:

Yes §5-65-208(a)

Driver:
Vehicle Passengers:
Pedestrian:

Yes¹
Possible
Possible

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:
Minimum Age (Years) Possession:

21² §§3-3-202 & 3-3-203 (Year Eff: 1935)21² §§3-3-203 There is an employment exemption for persons over 18. §3-3-204

Minimum Age (Years) Consumption:

None Note: Under §3-3-203(a)(2), "intoxicating liquor, wine or beer in the body of a minor shall not be deemed to be in his possession."Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

The Arkansas Legislature has modified the holdings in the *Shannon* and *Jackson* cases noted below and has declared that, except in certain circumstances, the consumption of, rather than the service of, alcoholic beverages, is the proximate cause of injuries or property damage caused by intoxicated persons. §§16-126-103, 16-126-104 & 16-126-105 However, the State legislature has determined that "the knowing sale of alcoholic beverages by a retailer to a minor is contrary to the public policy of the State of Arkansas." §16-126-102

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the Case (Case
Citation):

Yes^{3,4} *Shannon v. Wilson*, 947 S.W.2d 349 (Ark. 1997), & *Jackson v. Cadillac Cowboy, Inc.*, 986 S.W.2d 410 (Ark. 1999)

Dram Shop Actions-Social Hosts:

No Social host liability is prohibited via statute. §16-126-106⁵

¹Based upon probable cause of DWI offense related to an accident involving either a death or where there is reason to believe that a death may occur, a deceased driver may be administered a test of their blood, breath or urine for alcohol or drug presence and concentration. §5-65-208(a)

²There is an exemption for either serving alcoholic beverages to one's family or using wine for religious purposes. §3-3-202

³I. In cases involving the sale of alcoholic beverages to minors, the law provides that a "jury may determine whether or not such knowing sale constituted the proximate cause of any injury to such minor, or to a third person, caused by such minor." §16-126-103 II. In cases involving the sale of alcoholic beverages "to a person who was clearly intoxicated", the law provides that a "jury may determine whether or not such sale constitutes a proximate cause of any subsequent injury to other persons." §16-126-104

⁴For previous cases denying liability, see *Carr v. Turner*, 385 S.W. 2d 656 (Ark. 1965), *Milligan v. County Line Liquor*, 709 S.W.2d 409 (Ark. 1986), *Yancy v. Beverage House of Little Rock, Inc.*, 723 S.W.2d 826 (Ark. 1987), & *Mann v. Orrell*, 912 S.W.2d 1 (Ark. 1995).

⁵See *Alpha Zeta Chapter of Pi Kappa Alpha Fraternity v. Sullivan*, 740 S.W.2d 127 (Ark. 1987) which held against social host liability.

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Other State Laws Related To Alcohol Use: (continued)

Other:

A licensee is liable for the injuries sustained by a minor intoxicated patron. §16-126-103 **Comment:** Given the language in §16-126-104, a licensee may not be liable for the injuries that are sustained by an intoxicated adult patron.

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Misd for all offenses. See Footnote No. 1 for citations.

Package Sales: (1) All alcoholic beverages except those noted below-1st off-none; 2nd & sub. off-6 mos to 1yr; (2) Beer and wine not in excess of 5% alcohol by wgt-none. On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below-not more than 6 mos; (2) beer (all types)-none; (3) wine not exceeding 14%-10 to 30 dys

Fine (\$ Range):

Package Sales: (1) All alcoholic beverages except those noted below-1st off-\$100 to \$250; 2nd & sub. off-\$250 to \$500; (2) Beer and wine not in excess of 5% alcohol by wgt-None. On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below-Not more than \$1,000; (2) beer (all types)-None; (3) wine not exceeding 14%-\$100 to \$500

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Under certain conditions

Package Sales: (1) All alcoholic beverages except those noted below-for two or more convictions-Rev² (and a possible administrative fine); (2) Beer and wine not in excess of 5% alcohol by wgt-none. On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below-Susp/Rev²; (2) beer (all types)-Susp/Rev²; (3) wine not exceeding 14%-Susp/Rev². See the Special Note concerning administrative fines on p. 3-43.

Criminal Action Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Misd for all offs. (except as noted) See Footnote No. 1 for citations.

Package Sales: (1) All alcoholic beverages except those noted below - (a) where "knowledge" is a factor³-1st off (Cl D felony)-not more than 6 yrs; 2nd off (w/n 5 yrs) (Cl C felony)-3 to 10 yrs; (b) where "knowledge" is not a factor³-1st off-none;

¹Citations: §§3-3-102, 3-3-103, 3-3-201, 3-3-202, 3-3-206 to 3-3-210, 3-4-301, 3-4-401 to 3-4-405, 3-4-604, 3-5-202, 3-5-203, 3-5-207, 3-5-221, 3-5-307, 3-5-410, 3-9-301, 3-9-302, 3-9-306, 3-9-307, 3-9-236, 3-9-204, 5-4-201(a)(2) and 5-4-401(4) & (5).

²Length of Rev/Susp is not specified in the statute.

³State v. Jarvis, 427 S.W.2d 531 (Ark. 1968)

Other State Laws Related To Alcohol Use: (continued)

Fine (\$ Range):

Package Sales: (continued) 2nd & sub. off-**not more than 1 yr**; (2) beer and wine not in excess of 5% alcohol by wgt.-**not more than 1 yr**

On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below-**not more than 6 mos**; (2) beer and wine not in excess of 5% alcohol by wgt-**not more than 1 yr**; (3) wine not in excess of 14%-**10 to 30 dys**

Package Sales: (1) All alcoholic beverages except those noted below-(a) where "knowledge" is a factor¹-**1st off-not more than \$10,000; 2nd off (w/n 5 yrs)-not more than \$10,000**; (b) where "knowledge" is not a factor¹-**1st off-\$200 to \$500; 2nd & sub. off-\$500 to \$1,000**; (2) beer and wine not in excess of 5% alcohol by wgt.-**not more than \$500** On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below-**not more than \$1,000**; (2) beer and wine not in excess of 5% alcohol by wgt-**not more than \$500**; (3) wine not in excess of 14%-**\$100-\$500**

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Under certain conditions

Package Sales: (1) All alcoholic beverages except those noted below - for two or more convictions-**Rev²**; (2) beer and wine not in excess of 5% alcohol by wgt.-**1 yr Rev/Susp** On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below-**Rev/Susp²**; (2) beer and wine not in excess of 5% alcohol by wgt-**1 yr Rev/Susp**; (3) wine not in excess of 14%-**Rev/Susp²**

See the Special Note concerning administrative fines below.

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

No

Yes Probably The law makes it an offense for a person to consume alcoholic beverages "in any public place, on any highway, or street, or upon any passenger coach, streetcar or in or upon any vehicle commonly used for the transportation of passengers...." §5-71-212(c)

¹State v. Jarvis, 427 S.W.2d 531 (Ark. 1968)²Length of Rev/Susp is not specified in the statute.

Special Note: The following administrative fines may be imposed retailers (Class B Permit holders) for a violation of the Alcoholic Beverage Control Laws: 1st off-\$200 to \$500; 2nd off (w/n 12 mos)-\$400 to \$1,000; 3rd off (w/n 12 mos)-\$600 to \$1,500 §§3-4-401, 3-4-402(a)(2) & (b) and 3-4-404(11) & (18)

ARKANSAS

STATE:
General Reference:

CALIFORNIA
West's Annotated California Codes

Basis for a DWI Charge:

See Bicycle Riders below.

Standard DWI Offense:

Under the influence of an alcoholic beverage Veh. Code §§23152 & 23153

Illegal Per Se Law (BAC/BrAC):

≥0.08^{1,2a3} Veh. Code §§23152(b) & 23153(b)

Presumption (BAC/BrAC):

≥0.08² Veh. Code §23610(a)(3)

Types of Drugs/Alcohol and Drugs:

Under the influence of (1) **Any Drug** or (2) a Combination of Alcohol and Any Drug⁴ Veh. Code §§23152 & 23153

Other:

For Commercial Motor Vehicle Operators, see p. 3-49.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes Veh. Code §23612(h)⁵ See Footnote No. 1 on p. 3-52.

Persons under 21 years old who have been detained for operating a motor vehicle with a "blood-alcohol concentration" ≥0.01. Veh. Code §§13388 & 23136(c)

Implied Consent Law:

Yes Veh. Code §23612

Arrest Required (Yes/No):

Implied Consent Law Applies to

Yes Veh. Code §23612(a)(1)

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Yes (Criminal & Civil Cases) Veh. Code §23612(a)(4)

Admitted into Evidence:

A person, who has been arrested for a DWI offense, may be compelled to submit to a blood test for either alcohol concentration or the presence of drugs. *Mercer v. Department of Motor Vehicles*, 809 P.2d 404 (Cal. 1991).

Other Information:

Chemical Tests of Other Substances for Alcohol Concentration
Which Are Authorized Under the Implied Consent Law:

Blood:

Yes Veh. Code §23612

Urine:

Yes (Limited)⁶ Veh. Code §23612

Other:

None

¹Persons Under 21 Years Old. See Juvenile Offenses Involving Alcohol on p. 3-49 and admin. licensing actions on pp. 3-51 & 3-52.

²Percent by wgt. of alcohol in the blood which is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. Veh. Code §§23152(b) & 223610(b) Note: The provision of the vehicle code related to DWI injury offenses, Veh. Code §23153, only refers alcohol concentration in terms of percent by weight.

³This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more. *People v. Bransford*, 884 P.2d 70 (Cal. 1994)

⁴It is illegal to be under the influence of certain "controlled substances" irrespective of whether the offender was operating a motor vehicle. Health and Safety Code §11550

⁵A PBT may be conducted without legislative authority. A.G. Opinion 88-1102, Oct. 26, 1989

⁶Applies only to person who has been arrested for driving under the influence of drugs.

Bicycle Riders. Bicycle riders are subject to the provisions of the drunk driving laws. Veh. Code §21200(a) Nevertheless, there is a separate provision that makes it is illegal to ride a bicycle on the highways while under the influence of either alcohol or drugs. A person, who violates this provision is subject to a fine of not more than \$250. This provision further provides that a person under 21 years old, who commits this offense, is subject to license suspension under Veh. Code §13202.5 (See the Special Note on p. 3-52 for details on this license suspension.). Veh. Code §21200.5

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Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):

No

Yes Plea bargaining is prohibited in serious felony and DWI cases unless (1) there is insufficient evidence of the offense or (2) the reduction/dismissal of charges would not result in a substantial change in sentence. Penal Code §1192.7 & *People v. Arauz*, 7 Cal.Rptr.2d 145 (Cal.App. 2 Dist. 1992) In addition, a criminal charge cannot be dismissed without the courts approval. Penal Code §1385 Note: Under Veh. Code §23635, the court must give the reasons a DWI charge either was reduced to a lesser offense, changed to reckless driving or was dismissed.

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes¹ (Mand for sub offs) Veh. Code §§23646 se seq. and 23655

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

None

Persons Under 21 Years Old. Refusal to submit to a PBT where there has been a lawful detention and where there is reasonable cause to believe that the person was operating a motor vehicle with a "blood-alcohol concentration" ≥ 0.01 . 1st Refusal-Susp 1 yr (mand); 2nd Refusal² (w/n 7 yrs)-Rev 2 yrs (mand); 3rd & Sub Refusal³-Rev 3 yrs (mand) Veh. Code §§13353.1(a), 13353.8, 13388 & 23136(c)

Other:

None

Refusal to Take Implied Consent
Chemical Test:
Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

No

1st Refusal-Susp-1 yr (mand); 2nd Refusal (w/n 7 yrs)-Rev-2 yrs⁴ (mand); 3rd Refusal (w/n 7 yrs)-Rev-3 yrs⁵ (mand) Note: These sanctions also apply to persons under 21 yrs old, who are arrested for a violation of Veh. Code §23140 (driving with a BAC ≥ 0.05) and who refuse to submit to a test under the implied consent law. Veh. Code §§13353, 13353.4(a) & 23612
See the Special Note on p. 3-49.

Other:

¹Each county must develop a PSI alcohol assessment program Veh. Code §23646 et seq.

²Or a refusal where w/n 7 yrs a person has either been convicted of a DWI/Veh. Homicide offense convictions, refused to submit to a test under the implied consent law, or has a prior admin. per se license suspension of any type.

³Or a refusal where w/n 7 yrs a person has either two or more separate DWI/Veh. Homicide offense convictions, refusals to submit to a test under the implied consent law, or prior admin. per se license suspensions of any type.

⁴Or, if w/n 7 yrs, a person refuses after having (1) been previously convicted of a DWI/Veh. Homicide off or (2) their license previously suspended/revoked for an admin. per se violation as of the date of refusal.

⁵Or, if w/n 7 yrs, a person refuses after having (1) been convicted two or more times of a DWI/Veh. Homicide off or (2) their license suspended/revoked two or more times for an admin. per se violation as of the date of refusal.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See the Special Note, Double Jeopardy and Prior Drunk Driving Felony Offenses below.

Note: Non-Injury DWI Offenses are misdemeanors. Veh. Code §§23152 & 40000.15

Citations: The sanctions for violating the drunk driving laws are codified under §23536 et seq.

See **Double Fines** on p. 3-48.

Imprisonment/Fine:

Non-Injury DWI Off (with no previous DWI offs¹-96 hrs (at least 48 hrs shall be continuous) to 6 mos, \$390 to \$1,000

Non-Injury DWI Off (with one previous DWI off¹ w/n 7 yrs-90 dys to 1 yr, \$390 to \$1,000

Non-Injury DWI Off (with two previous DWI offs¹ w/n 7 yrs-120 dys to 1 yr, \$390 to \$1,000

Non-Injury DWI Off (with three previous DWI offs¹ w/n 7 yrs-180 dys to 1 yr², \$390 to \$1,000

See Felony/Misdemeanor below.

Injury Related DWI Off³ (with no previous DWI offs)-90 dys to 1 yr, \$390 to \$1,000

Injury Related DWI Off³ (with one previous DWI off¹ w/n 7 yrs)-120 dys to 1 yr², \$390 to \$5,000;

Injury Related DWI Off^{3&4} (with two or more previous DWI offs¹ w/n 7 yrs)-State prison 2, 3 or 4 yrs, \$1,015 to \$5,000 Veh. Code §§23536 et seq. And, if there has been a DWI off with Great Bodily Injury where there has been 4 or more previous DWI offs w/n 7 yrs, an additional consecutive sentence of 3 yrs in the State prison. Veh. Code §23566(c)

Important. See the Special Note below, Special Note No. 1 on p. 3-48, the Special Note on p. 3-49 and "Other" on p. 3-49.

¹A previous off includes Veh. Code §§23152 & 23153 (non-injury or injury DWI offs). A guilty or nolo contendere plea to reckless driving (Veh. Code §23103) instead of a DWI charge is also considered a previous DWI offense. Veh. Code §23103.5(c)

²Or 16 mos, 2 or 3 yrs in the State prison. See also Penal Code §18.

³If more than one individual has been injured, an enhanced prison term of one (1) year is added for each victim. The maximum number of such enhancements is three (3). Veh. Code §23558

⁴Also includes DWI offenses where there has been great bodily injury and there were 2 or more previous DWI offenses (injury/non-injury) w/n 7 yrs. Veh. Code §23566(b)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *People v. Superior Court (Moore)*, 58 Cal.Rptr.2d 205 (Cal.App. 1 Dist. 1996)

Prior Drunk Driving Felony Offenses. A person, who has been convicted either of a drunk driving offense (injury or non-injury offense) and they have prior conviction w/n 10 yrs either for a felony drunk driving offense (injury or non-injury) or for vehicle manslaughter related to either gross negligence or driving drunk, is subject to the following sanctions: (1) Incarceration in either a county jail or State prison for not more than 1 yr (or incarceration in the county jail from 180 dys to 1 yr if probation is granted) (either 48 con hrs or 10 dys of community service are mandatory); (2) a fine of not less than \$390 nor more than \$1,000; and, (3) license revocation for 4 yrs (24 mos mandatory with restricted driving after this period provided the offender participates in either a 18 or 30 month alcohol rehabilitation program). Veh. Code §§13352(a)(7), 23550.5, 23552, 23580 & 23600 See I under Miscellaneous Sanctions on p. 3-54.

Felony/Misdemeanor. Generally, a non-injury drunk offense under Veh. Code §23152 et seq. is classified as a misdemeanor. Veh. Code §40000.15 However, a 4th or subsequent non-injury drunk driving offense is a felony if the offender is sentenced to incarceration in the State prison. Penal Code §17, Veh. Code §§23550 & *People v. Coronado*, 906 P.2d 1232 (Cal. 1995)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term:

Non-Injury DWI off (with no previous DWI offs)-None¹
Non-Injury DWI off (with one previous DWI off w/n 7 yrs)-96 hrs (w/2 continuous periods of 48 hrs) ^{1&2}
Non-Injury DWI off (with two previous DWI offs w/n 7 yrs)-30 dys^{1&2}
Non-Injury DWI off (with three or more previous DWI offs w/n 7 yrs)-180 dys^{1&2}
Injury related DWI off (with no previous DWI offs)-5 dys
Injury related DWI off (with one previous DWI off w/n 7 yrs)-30 dys²
Injury related DWI off (with two or more previous DWI offs w/n 7 yrs)-30 dys² See Special Note No. 2 below, the Special Notes on pp. 3-47 & 3-49 and Home Detention on p. 3-51.
Non-Injury DWI off (with no previous DWI offs)-\$390
Non-Injury DWI off (with one previous DWI off w/n 7 yrs)-\$390
Non-Injury DWI off (with two previous DWI offs w/n 7 yrs)-\$390
Non-Injury DWI off (with three or more previous DWI offs w/n 7 yrs)-\$390
Injury related DWI off (with no previous DWI offs)-\$390
Injury related DWI off (with one previous DWI off w/n 7 yrs)-\$390
Injury related DWI off (with two or more previous DWI offs w/n 7 yrs)-\$390 See (1) the Special Note on p. 3-47 and (2) the Special Note and "Other" on p. 3-49.

Mandatory Min. Fine (\$):

¹**Child Endangerment.** For non-injury offs, where a minor under 14 yrs old was a passenger, the following mandatory jail sanctions are imposed: 1st off-48 continuous hrs; 2nd off-10 dys; 3rd off-30 dys; 4th off-90 dys. These sanctions are not imposed if the driver has been convicted of violating Penal Code §273a that concerns endangering the life or health of a child. Veh. Code §23572

²In addition to those given, the following mandatory sanctions became operative when the Dept of Motor Vehicles certified to the State Sec. of State that the Dept. had submitted a completed application to the U.S. Dept. of Trans. for alcohol incentive grant funds under 23 USC §408: One period of 48 con. hrs of imprisonment (jail, minimum security facility or inpatient rehabilitation facility) or 10 dys of community service. Veh. Code §23580 Note: The U.S. Congress has not authorized and appropriated funds for this grant program since 1994. As a result, the U.S. Dept. of Trans. has withdrawn the regulations, 23 CFR Part 1309, that implemented this program. 61 FR 23427 (May 13, 1996)

Double Fines. The law provides that the fine sanction is to be **double** the amount otherwise prescribed by law for persons, who commit a drunk driving offense on the segments of certain highways. The prescribed sanction applies on (1) Route 37, between the intersection with Route 121 and the intersection with Route 29, (2) Route 4, between the intersection with Cummings Skyway and the intersection with Route 80, (3) Route 74, between the intersection with Route 5 and the intersection with the Riverside-Orange County line, (4) Route 46, between the intersection with Route 101 and the junction with Route 41, (5) the Golden Gate Bridge, (6) Route 12, between the intersection with Walters Road in the City of Suisun and the intersection with Lower Sacramento Road in the City of Lodi, (7) Route 138, between the intersection with Avenue T and Pearblossom Highway and the intersection with Interstate Highway Route 15, (8) Route 101, between the intersection with Boronda Road and the intersection with the Benito-Monterey County Line and, (9) Route 152, between the junction with Route 156 at the Don Pacheco "Y" and the intersection with Ferguson Road. Note: Additional forfeitures or assessments, which are based on the fine imposed, are to be calculated using only the base fine prior to the above enhancement. Streets and Highways Code §97 and Veh. Code §42010 These sections are repealed January 1, 2004.

Special Note No. 1: Also, a person convicted of a DWI injury related offense in which more than one individual has been injured shall receive an enhanced prison term of one (1) year for each additional injured individual. The maximum number of one (1) year enhancements which may be imposed is three (3). Veh. Code §23558

Special Note No. 2: A person is subject to a mandatory 60 con. days of imprisonment if they operate a vehicle under the following three (3) conditions: (1) In a reckless manner; (2) while DWI; and, (3) while driving 30 or more MPH above the posted speed limit on a freeway/20 or more MPH above the posted speed limit on any other highway or street. Veh. Code §23582

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:

Community Service:

Restitution (eg

Victim's Fund)

Yes See Footnote No. 2 on p. 3-48.

Yes Injury related DWI offs Gov't. Code §13959 et seq. (Victims' Assistance Fund)

The court may also order direct compensation by the defendant to the victim(s). Gov't. Code §13967 & Penal Code §1203.1

Test Fee. The counties (except Contra Costa County) are authorized to impose on defendants a fee of not more \$50 for conducting an alcohol chemical test. Penal Code §1463.14

Physician/Surgeon Assessment. A county may via resolution require a defendant to pay an assessment fee of \$2 per every \$10 of fine or fraction thereof actually imposed for the purpose of reimbursing physicians/surgeons who perform emergency medical procedures resulting from DWI offenses. Penal Code §1465

EMS Cost. A person may be held liable for up to \$1,000 to pay for the cost of an emergency response which resulted from the negligent operation of a motor vehicle while under the influence of either alcohol or drugs¹. Gov't. Code §§53150 et seq.

Other:

¹Note: The law does not specifically require a DWI offense conviction as a condition of liability.

Juvenile Offenses Involving Alcohol. I. Under Veh. Code §§23140, it is unlawful for a person under 21 yrs old to operate a motor vehicle if they have a BAC ≥ 0.05 (Standard: Percent by weight of alcohol in the blood). This statute was (1) held not to violate constitutional principles of equal protection of the laws and (2) was determined not to be constitutionally vague. *People v. Goslar*, 82 Cal.Rptr.2d 558 (Cal.App. 4 Dist. 1999) II. The sanctions for this offense are participation in either (1) an alcohol education program or (2) a community service program with an alcohol education component. Such offenders are also subject to administrative licensing sanctions; see p. 3-51. Veh. Code §§23502 & 23504 III. A person under 21 years old who violates the regular DWI laws must also participate in either an alcohol education or rehabilitation program. Veh. Code §23520 If such person fails to complete such programs, their license may be either suspended or revoked until they either show proof of completion or until they are 21 years old. Veh. Code §24508

Special Note: A person, who has been convicted of any DWI offense and who has also "willfully refused" to submit to a chemical test, is subject to the following sanctions: DWI non-injury offs: 1st off, if probation is granted, the court must use the following sentence structure: Jail-48 hrs (mandatory) up to 6 mos; fine-\$390 (mandatory) up to \$1,000; and lic. susp-6 mos; 2nd off.-96 hrs in jail (mandatory); 3rd off.-10 days in jail (mandatory); 4th & sub. offs.-18 days in jail (mandatory) DWI injury offs 1st off-48 continuous hrs in jail (mandatory); 2nd off-96 hrs in jail (mandatory) Veh. Code §23577

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is prohibited from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if they are convicted of driving a CMV while under the influence of alcohol or a controlled substance. For a subsequent conviction of driving A CMV while under the influence of alcohol or a controlled substance, a person is prohibited from operating such a vehicle for life. A person, who refuses to submit to a chemical test while operating a CMV, is subject to licensing sanctions (including license sanction enhancements) under the implied consent law; however, if they were transporting hazardous materials, the susp is for 3 yrs (mand). A CMV operator must be placed "out-of-service" for 24 hrs if they have a BAC ≥ 0.01 (Standard: Percent by weight of alcohol in the blood.). A CMV operator commits a DWI offense if they operate a CMV with a BAC/BrAC ≥ 0.04 (For standards, see Footnote No. 2 on p. 3-45.); a conviction for this offense subjects the offender to the same sanctions as would a conviction for any other DWI offense. Veh. Code §§13353(a), 15210(b) & (d), 15300, 15302, 23152(d), 23153(d) and 34501.15(a)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other (continued):

Alcohol Program Assessments. I. A person convicted of a DWI offense must pay an assessment, not to exceed \$50, for the purpose of funding alcohol abuse education and prevention programs. Veh. Code §23645(a) II. A fee of not more than \$75 may be assessed against a person convicted of a DWI offense in counties participating in an alcohol and drug assessment program. Veh. Code §23649 III. An assessment not to exceed \$100 may be imposed for PSI alcohol/drug evaluation. Veh. Code §23649(a)

Special State Penalty (Fine). An additional State penalty of \$10 is assessed against every defendant for every \$10 of a fine (or fraction thereof) actually imposed and paid by a defendant.¹ Penal Code §§1463(h) & 1464(a)

Special County Penalty (Fine). An additional county penalty of \$7 is assessed against every defendant for every \$10 of a fine (or fraction thereof) actually imposed and paid by a defendant.¹ Gov't. Code §76000 and Penal Code §§1463(h) & 1464

Ignition Interlock. I. The court may order a 1st offender (injury or non-injury related) to only operate motor vehicles that are equipped with "ignition interlock" devices for not more than 3 yrs. Veh. Code §23575(a)(1)

II. If a subsequent offender (injury/non-injury) is granted restricted driving privileges, the State driver licensing agency must require them to only operate motor vehicles that are equipped with "ignition interlock" devices. Veh. Code §§13352(a) & 23575(f)(1)

Drunk Driver Visitation Program (Persons Under 21 Years Old). For a 1st DWI non-injury offense or a violation of Veh. Code §23140 (Juvenile Offenses Involving Alcohol, see p. 3-49.) A person, with their consent and as part of their probation, may be ordered by the court to visit trauma or hospital facilities to observe victims of accidents where alcohol was involved. Veh. Code Note: In order to participate in this program, persons under 21 must agree not to drink alcoholic beverages until they are 21. Veh. Code §23509 et seq.

Home Detention. DWI offenders are eligible for "home detention" as an alternative to imprisonment. This alternative includes "home detention" for certain minimum mandatory jail sentences. However, the mandatory sanctions for multiple DWI offenders under Veh. Code §23580 (48 con hrs in jail or 10 dys of community service) apply nevertheless. Penal Code §1203.016 & *People v. Superior Court (Hubbard)*, 281 Cal.Rptr. 309 (Cal.App. 2 Dist. 1991).

¹I.e., the portion of any fine that has been either suspended or reduced is not considered when calculating this assessment.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

See the Special Note below and Double Jeopardy on p. 3-47.

Yes Persons 21 Years Old and Above-BAC ≥ 0.08 ¹ or Persons Under 21 Years Old-BAC $\geq 0.05/0.01$ ¹ (See the Comment on p. 3-52.) 1st violation-Susp 4 mos (mand for persons under 21 years old) A person 21 yrs old and above, who participates in an alcohol education or treatment program, is subject to a mand license susp for 30 dys followed by restricted driving privileges, except as noted, for 60 dys for the purpose of either participating in the program or going to and from a place of employment. Following successful completion of the program, "unrestricted" driving privileges may be granted after the 60 dy restricted driving privileges. However, if the restricted license is used to go to and from a place of employment, the suspension with restrictions must be for 6 mos. Veh. Code §13353.7 2nd & sub. violations^{2,3} (w/n 7 yrs)-Susp 1 yr (mand) Veh. Code §§13353.2, 13353.3 13353.4(a), 13380 & 13382 See Footnotes No. 4, 5, 6 & 7.

Under Separate Provisions of Law, Persons Under 21 Years Old are subject to a, susp for not less than 1 yr (30 dys mand) if a "preliminary breath test"¹ or "other chemical test" result indicates a "blood-alcohol concentration" ≥ 0.01 . After the mandatory susp period, restricted driving privileges are available based upon a critical need to drive. Veh. Code §§13353.3(b)(3), 13353.8, 13390 & 23136

Comment: The law provides for two separate administrative licensing actions against persons under 21 years old who are operating a motor vehicle with an alcohol concentration ≥ 0.01 . See Veh. Code §§13352.2 & 23136.

¹Based upon a person driving either (1) with a blood alcohol concentration ≥ 0.05 based on percent by weight of alcohol in the blood or (2) with an alcohol concentration of 0.01 based on either a preliminary breath test or "other chemical test". Veh. Code §13353.2(a)

²For purposes of determining whether a license sanction enhancement should be imposed, the following violations/convictions are considered prior violations: Any DWI offense, vehicle homicide, refusal to submit to a chemical test and, of course, a previous admin. per se violation (appears to include any previous type of admin. per se action). Veh. Code §13353.3(b)(2)

³Under Veh. Code §13353.7(d), the 1 yr mand susp remains in effect only so long as such suspension is required for subsequent violations per 23 USC §§408 & 410.

⁴If a person is "acquitted" of DWI charges associated with the admin. per se violation, the admin. per se suspension is cancelled and the driver's license is reinstated. Veh. Code §13353.2(e) **Special Note:** "Dismissal" of DWI charges is not the same as "acquittal" of such charges and will not result in license reinstatement. *Gikas v. Zolin*, 863 P.2d 745 (Cal. 1993), *Agresti v. Dept. of Motor Vehicles*, 7 Cal.Rptr.2d 353 (Cal.App. 5 Dist. 1992), & *Helmandollar v. Director, DMV*, 9 Cal.Rptr.2d 155 (Cal.App. 3 Dist. 1992)

⁵Admin. per se suspensions and DWI susp/revs are to run concurrently. The total period of license susp/rev shall not exceed the longer of the two periods. Veh. Code §13353.3(c)

⁶Note: A CDL driver, who is found subject to the admin. per se law for 1st violation while not operating a CMV, would have their CDL privileges susp for a mandatory period of 30 dys followed by restricted driving privileges for 5 mos. Veh. Code §13353.6 & *Murphy v. Pierce*, 2 Cal.Rptr.2d 18 (Cal.App. 6 Dist. 1991)

⁷Administrative suspensions are "independent" of licensing actions taken via convictions for DWI offenses. E.g., a mand susp of 1 yr for a 2nd admin. per se violation will apply notwithstanding a court order allowing restricted driving privileges for a 2nd DWI (non-injury) offense conviction. *Robertson v. Dept. of Motor Vehicles*, 9 Cal.Rptr.2d 319 (Cal.App. 1 Dist. 1992)

Special Note: The administrative per se law does not violate a person's constitutional rights to due process of law or equal protection of the laws. *Peretto v. Department of Motor Vehicles*, 1 Cal.Rptr.2d 392 (Cal.App. 1 Dist. 1991)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

See Prior Drunk Driving Felony Offenses on p. 3-47.

Non-Injury DWI Off (with no previous DWI offs)-Susp Veh.
Code §§13352(a)(1) & 23536

Non-Injury DWI Off (with one previous DWI off w/n 7 yrs)-Susp
Veh. Code §§13352(a)(3) & 23540

Non-Injury DWI Off (with two previous DWI offs w/n 7 yrs)-Rev
Veh. Code §§13352(a)(5) & 23546(a)

Non-Injury DWI Off (with three or more previous DWI offs w/n
7 yrs)-Rev Veh. Code §§13352(a)(7) & 23550

Injury Related DWI Off (with no previous DWI offs)-Susp
Veh. §§13352(a)(2) & 23554

Injury Related DWI Off (with one previous DWI off w/n 7
yrs)-Rev Veh. Code §§13352(a)(4) & 23560

Injury Related DWI Off (with two or more previous DWI offs
w/n 7 yrs)-Rev Veh. Code §§13352(a)(6) & 23566 See Footnote
No. 2 and the Special Note below.

Additional Citations: Veh. Code §§23538, 23542, 23548,
23552, 23556, 23562 & 23568

Postponement of Licensing Action. If an offender is sentence to
serve either 1 yr in the county jail or mor than 1 yr in prison, the
court may postpone the imposition of either a suspension or
revocation until the offender is release from incarceration. Veh.
Code §23665

¹The California Court of Appeal has held that the State has not established the reliability of preliminary breath screening devices.
Coniglio v. Department of Motor Vehicles, 46 Cal.Rptr.2d 123 (Cal.App. 6 Dist. 1995) (review denied by the California Supreme
Court, 1996 Cal. LEXIS 533)

²If a person is involved in an accident and they have a BAC ≥ 0.08 and they have been convicted of a DWI related vehicle homicide
(w/n 5 yrs), their license shall be either suspended or revoked as follows: 1) If the accident does not result in a DWI conviction (either
injury or non-injury) - suspension for 1 year (mandatory); and, 2) If the accident results in a DWI conviction (either injury or
non-injury) - revocation for 3 years (mandatory). This revocation period is concurrent with any other DWI imposed restriction,
suspension or revocation if this is a first DWI conviction or a second conviction w/n 5 years. This revocation period is cumulative with
any other DWI imposed restrictions, suspension or revocation, if there have been two (2) or more previous DWI convictions w/n 5
yrs. Veh. Code §13954

Special Note: There are two provisions of the California Vehicle Code that provide for special licensing sanctions against minors who
violate the DWI laws. I. Under Veh. Code §13352.3, a person, who is under 18 yrs old and who is convicted of an alcohol driving
offense, is subject to a license revocation (1) until they are 18, (2) for 1 yr or (3) per Veh. Code §13352 whichever period is longer.
II. Under Veh. Code §13202.5, a person, who is under 21 years old and who is convicted either of a DWI (alcohol or drugs) offense
or of a vehicle manslaughter offense, is subject to a license suspension for one (1) year. However, such person may be eligible for
restricted driving privileges based on "a showing of a critical need to drive" (Veh. Code §13202.5(c)).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

See the Special Note on p. 3-49.

Non-Injury DWI Off (with no previous DWI offs)-6 mos;

Non-Injury DWI Off (with one previous DWI off w/n 7 yrs)-2 yrs;

Non-Injury DWI Off (with two previous DWI offs w/n 7 yrs)-3 yrs¹;

Non-Injury DWI Off (with three or more previous DWI offs w/n 7 yrs)-4 yrs;

Injury Related DWI Off (with no previous DWI offs)-1 yr;

Injury Related DWI Off (with one previous DWI off w/n 7 yrs)-3 yrs;

Injury Related DWI Off (with two or more previous DWI offs w/n 7 yrs)-5 yrs Veh. Code §§13352 & 13352.5

Mandatory Minimum Term of
Withdrawal:

Non-Injury DWI Off (with no previous DWI offs)-² (6 mos mand for persons who operate certain types of heavy trucks or buses. Veh. Code §§12804.9, 13252(a)(1), & 23536(e));

Non-Injury DWI Off (with one previous DWI off w/n 7 yrs)-³;

Non-Injury DWI Off (with two previous DWI offs w/n 7 yrs)-18 mos⁴;

Non-Injury DWI Off (with three or more previous DWI offs w/n 7 yrs)-24 mos⁴;

Injury Related DWI Off (with no previous DWI offs)-1 yr;

Injury Related DWI Off (with one previous DWI off w/n 7 yrs)-18 mos⁵;

Injury Related DWI Off (with two or more previous DWI offs w/n 7 yrs)-30 mos⁴

Special Note No. 1: If a DWI conviction results either in a jail sanction of 1 yr in the county jail or in imprisonment of 1 yr or more in the State prison, the court may postpone the suspension of driving privileges until the term of incarceration has been served. Veh. Code §23665

Special Note No 2. For either non-injury or injury related DWI offenses, an offender's license (i.e., complete driving privileges) cannot be reinstated until they have completed an either an alcohol or drug education and counseling program. Veh. Code §§13352 & 13353.4(e)

¹Note: A license cannot be reinstated unless the defendant has completed either an 18 or 30 month alcohol treatment program. Veh. Code §13352(a)(5)

²Driving privileges may be restricted for 90 days under certain probation conditions. Veh. Code §§13352, 13352.5 & 23538 and Health and Safety Code §11837(a), (c) & (d)

³Restricted driving privileges may be granted after a defendant enrolls in or completes an alcohol rehabilitation program. This does not apply if they were operating certain types of heavy trucks or buses at the time of the offense. As an alternative, the defendant may granted a restricted license after a 12 mo susp if they are enrolled in an alcohol treatment program and they install **ignition interlock** devices on their vehicles. Veh. Code §§12804.9, 13352(a)(3), 13352.5 & 23542(b)(3) and Health and Safety Code §11837

⁴Restricted driving privileges may be granted after this period provided the defendant (1) has completed or is continuing to participate in an alcohol treatment program and (2) only uses vehicles equipped with an **ignition interlock** device. Veh. Code §13352(a)(5), (6) & (7) See **Ignition Interlock** on p. 3-50.

⁵Restricted driving privileges may be granted after 18 mos provided the defendant has completed an alcohol treatment program and consents to use **ignition interlock** devices on their vehicles. Veh. Code §§13352(a)(4) & 23562

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Rehabilitation:

Alcohol Education:

See Special Note No. 2 on p. 3-53.

Conditions of probation, which normally provide for a reduced period of incarceration, usually require a defendant to participate in an alcohol education/rehab. program for any DWI off conviction.¹ Veh. Code §§23161, et seq. and 13352 Note: a person convicted of a first DWI offense in a juvenile court must participate in and complete either an alcohol or drug education program. Veh. Code §§23154, 23538 & 23556 and Health and Safety Code §11837(a), (c) & (d)

Yes See Alcohol Education above.

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Important: There are two vehicle impoundment laws.

Impoundment.² A vehicle owned and driven by the offender may be impounded as follows for a DWI off (non-injury/injury): 1st or 2nd offs (w/n 5 yrs)-1 to 30 dys; subsequent offs (w/n 5 yrs) -1 to 90 dys Veh. Code §23594

Impoundment. The vehicle owned and driven by the offender may be impounded as follows for a DWI off (non-injury/injury): 1st off-Not more than 6 mos; sub off-Not more than 12 mos Veh. Code §23592(a)(1)

Forfeiture.² However, a defendant's vehicle may be subject to forfeiture if they have been convicted of (1) a DWI vehicle homicide off, (2) a non-injury related DWI off and have had two or more (or combinations of) convictions w/n 7 yrs for either a veh. homicide off or a non-injury/injury related DWI off or (3) a DWI serious injury off and have had one or more (or combinations of) convictions w/n 7 yrs for either a veh homicide off or a non-injury/injury DWI off. Veh. Code §23596

Terms Upon Which Vehicle
Will Be Released:

There are no special terms which have to be satisfied prior to releasing a vehicle. However, vehicles are impounded at the owners' expense. Veh. Code §23594

Other:

Temporary Impoundment. A law enforcement officer may "remove" from the highway any vehicle driven (1) by a person who has been taken into custody or (2) by a person under 21 yrs old who has been issued a notice of license suspension for operating a motor vehicle with a BAC ≥ 0.01 . The vehicle may be released to the legal owner upon the payment of towing and storage charges. Veh. Code §22651.

Miscellaneous Sanctions

Not Included Elsewhere:

I. A person granted probation for a DWI (non-injury/injury) offense must include but is not limited to the following conditions:

¹However, in lieu of the more traditional alcohol and drug education and treatment programs, an offender, again as a condition of probation, may be allowed to participate in a special "live-in alternative". This alternative focuses on substance abuse users and requires them to live full time at a special facility. Penal Code §8001

²Under this impoundment/forfeiture law, no vehicle may be impounded or forfeited if another person has a community property interest in the vehicle and if it is the sole vehicle available to the defendant's immediate family. Veh. Code §§23594 & 23596

Sanctions Following a Conviction for a DWI Offense:
(continued)

(1) They are placed on probation for 3 to 5 years (but not more than the maximum confinement time in State prison); (2) they agree not to driving with any measurable amount of alcohol in the blood; (3) they agree not to refusal to submit to an implied consent test; and (4) they agree not to commit any criminal offense. Veh. Code §23600

II. For the purpose of imposing enhanced sanctions, the court may consider whether either (1) the offender's blood alcohol level was ≥ 0.20 or (2) they refused to submit to a test under the implied consent law. Veh. Code §23578

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes Vehicle Manslaughter¹ Penal Code §§17 191.5, 192(c) & 193. See the Special Note below.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

1. Death caused by driving a motor veh. not involving alcohol/drugs: a. with gross negligence - Either in the county jail for not more than 1 yr or 2, 4, or 6 yrs in the State prison; b. without gross negligence - Not more than 1 yr

2. Death caused by driving a motor veh in violation of Veh. Code §§23140², 23152 or 23153: a. with gross negligence - 4, 6, or 10 yrs^{3&4}; b. without gross negligence - Not more than 1 yr in the county jail (or 16 mos, 2 or 4 yrs in the State prison)³.

None

For ANY Vehicle Homicide Offense-Not more than \$10,000 Penal Code §672

None

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

1. Death caused by driving a motor veh. not involving alcohol/drugs: a. with gross negligence - Rev - 3 yrs (mand); b. without gross negligence - Susp - not more than 6 mos (not mand)

2. Death caused by driving a motor veh in violation of Veh. Code §§23140², 23152 or 23153: a. with gross negligence - Rev - 3 yrs (mand); b. without gross negligence - Same lic susp/rev

¹**Implied Malice.** Under certain circumstances, in situations where a person has been killed by an intoxicated driver, evidence of voluntary intoxication can be introduced as evidence of implied malice in a murder case against the driver. Penal Code §§22 & 188, Vehicle Code §191.5(g), *People v. Watson*, 637 P.2d 279 (Cal. 1981), and *People v. Whitfield*, 868 P.2d 272 (Cal. 1994)

²Note: Veh. Code §23140 makes it illegal for a person under 21 years old to operate a motor vehicle with a BAC ≥ 0.05 .

³If more than one individual has been killed, an enhanced prison term of one (1) year is added for each victim. The maximum number of such enhancements is three (3). Veh. Code §23182

⁴**Subsequent Offenses:** A defendant convicted of this offense is subject to imprisonment from 15 year to life, if they had either (1) a prior vehicle manslaughter offense with gross negligence, (2) a prior vehicle intoxicated manslaughter offense without gross negligence, (3) a prior injury related drunk driving offense or (4) two or more drunk driving offenses w/n 7 yrs. Penal Code §191.5(d)

Special Note: Generally, under Penal Code §17, a crime is classified as a felony only if the defendant is punishable by confinement in the State prison. However, if the court has discretion to punish a defendant for such a crime in a place other than the State prison (such as a county jail), impose just a fine, or place the person on probation without a confinement sentence, the crime is usually classified as a misdemeanor.

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Other Criminal Actions Related to DWI: (continued)

Length of Term of Licensing Withdrawal:	action as for a DWI vehicle injury offense. Veh. Code §§13350.5, 13351(a)(1) & (3), 13351(b), 13556(a) and 13361(c). For persons under 21 years old, see Special Note on p. 3-52.
Mandatory Action--Minimum Length of License Withdrawal:	See above.
Other:	See above. I. Vehicle Forfeiture. Veh. Code §23596 II. Victims' Assistance Fund. Gov't. Code §13959 et seq. III. See Special State Penalty (Fine) and Special County Penalty (Fine) on p. 3-50.
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:</u>	
Sanction:	See Vehicle Forfeiture, Ignition Interlock, CMV/CDL and Footnote No. 3 below and the Special Note on p. 3-57.
Criminal:	See Habitual Traffic Offender Law on p. 3-57.
Imprisonment (Term):	Misd 1st off-10 dys to 6 mos; 2nd and subsequent offs¹ (w/n 5 yrs)-30 dys to 1 yr Veh. Code §14601.2
Mandatory Minimum Term of Imprisonment:	1st off-10 dys²; 2nd and subsequent offs¹ (w/n 5 yrs)-30 dys²; For a 2nd or subsequent off¹ (w/n 7 but more than 5 yrs)-10 dys² Veh. Code §14601.2(g)
Fine (\$ Range):	1st off-\$300 to \$1,000; 2nd and subsequent offs¹ (w/n 5 yrs)-Not more than \$500 to \$2,000
Mandatory Minimum Fine:	None

¹A previous offense includes not only a prior conviction under Veh. Code §14601.2, but also a violation of Veh. Code §§14601 (which prohibits driving after a license has been suspended or revoked for a reckless driving offense), 14601.1 (the general prohibition against driving while a license is either suspended or revoked) and 14601.5. See the Special Note on p. 3-57.

²If a defendant injures a person while violating this law, they must also serve this mandatory minimum imprisonment term. I.e., they cannot receive work release, community service or other similar programs. Veh. Code §14601.4

³**Impoundment.** If the vehicle used in the offense is owned by the offender, it may be impounded following a conviction as follows: 1st off-6 mos impoundment; sub. off-12 mos impoundment. Veh. Code §§14602.5, 23524 & 23592. Note: Any vehicle driven by an arrested person may be impounded for 30 dys. Veh. Code §14602.6(a)

⁴This fine is usually mandatory. However, the court may reduce this fine in the "interests of justice".

⁵A previous offense includes a violation of Veh. Code §§14601 (which prohibits driving after a license has been suspended or revoked for a reckless driving offense), 14601.1 (the general prohibition against driving while a license is either suspended or revoked) and 14602.2 (which prohibits driving while a license is either suspended or revoked for a drunk driving offense).

Vehicle Forfeiture. A vehicle is subject to forfeiture if it is driven by a person (1) who has a suspended or revoked license, (2) who has had a previous misd conviction either of driving while suspended or revoked under other provisions of law or the habitual offender law and (3) who is the registered owner of such vehicle. However, the vehicle is not subject forfeiture if there is a community property interest in the vehicle and it is "only vehicle available to the driver's immediate family." Veh. Code §14607.6

Ignition Interlock. The court must order offenders to only operate motor vehicles that are equipped with ignition interlock devices. This requirement can be imposed for not more than 3 yrs. Veh. Code §23575(a)(2).

CMV/CDL. A self employed CMV operator is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. It appears to be an infraction to violate this prohibition. The sanctions for this offense are as follows: 1st offense, a fine ≤\$100; 2nd off (w/n 1 yr), a fine ≤\$200; and, for a subsequent offense (w/n 1 yr), a fine ≤\$250. Veh. Code §§15240, 15242, 40000.1 & 42000.5

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

2 points are assigned to the driving record. Veh. Code §12810(i)

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Special Note: The following sanctions apply if a person was driving while their license was either suspended or revoked and where the basis for the licensing action was either an implied consent refusal or an admin. per se violation. 1st off: Jail-Not more than 6 mos; fine-\$300¹ to \$1,000 Subsequent off (w/n 5 yrs)²: Jail-10 dys (mand) to 1 yr; fine-\$500¹ to \$2,000 Veh. Code §14601.5 See Vehicle Forfeiture above.

Other:

See **Special State Penalty (Fine)** and **Special County Penalty (Fine)** on p. 3-50.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes Penal Code §193.7 and Veh. Code §§13350(b), 14601.3(a), 23522, 23546(b), 23550, 23550.5, 23564(d) & 23590

Grounds for Being Declared an

Habitual Offender:

A person is declared to be an **"habitual traffic offender"** for 3 yrs, if any one of the following occurs. (1) They commit DWI related vehicle homicide (Penal Code §192(c)(3)) and they have two or more previous¹ convictions or a combination of two or more prior convictions¹ for DWI (non-injury or injury offs) or reckless driving instead of a DWI non-injury off. (2) They commit a DWI non-injury or injury offense and have two or more previous DWI offs¹ (injury or non-injury or a combination thereof). (3) They are sanctioned under Veh. Code §23550 because they have Prior Drunk Driving Felony Offenses. (4) They accumulate a "driving record"² while operating a vehicle when their license is either suspended or revoked; a declaration of "habitual offender status" on this basis "automatically" means that a person may be subject to the criminal sanctions noted below.

Term of License Rev While

Under Habitual Offender Status:

None

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Misd Penal Code §17 & Veh. Code §14601.3(e)

Sanctions Following a Conviction of

Driving While on Habitual Offender Status:

Imprisonment (Term):

For "habitual traffic offender" status based on veh. homicide or DWI offenses: 180 dys Note: Imprisonment is in the county jail and is "consecutive" to any other sanction. Veh. Code §14601.3(e)(3)

¹w/n 7 yrs

²A "driving record" consists of any one of the following: (1) Two or more convictions for 2 point violations w/n 12 months; three or more convictions for 1 point violations w/n 12 months; (3) three or more "reportable" accidents w/n 12 months; or (4) any combination of convictions/accidents which results in 3 points w/n 12 months. Veh. Code §14601.3(a)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):

Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

For "habitual traffic offender" status based on vehicle operation while susp/rev and after accumulating a "driving record": 1st off-30 dys; 2nd and sub off (w/n 7 yrs)-180 dys Note: Imprisonment is in the county jail.

None
For "habitual traffic offender" status based on veh. homicide or DWI offenses: **\$2,000**
For "habitual traffic offender" status based on vehicle operation while susp/rev and after accumulating a "driving record": 1st off-\$1,000; 2nd and sub off (w/n 7 yrs)-\$2,000
See **Special State Penalty (Fine)** and **Special County Penalty (Fine)** on p. 3-50.
None
None

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:

Driver:
Vehicle Passengers:
Pedestrian:

Yes Govt. Code §27491.25

Yes
Yes
Yes

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:
Minimum Age (Years) Possession:

Minimum Age (Years) Consumption:

21 Bus. & Prof. Code §§25658 & 25662 (Year Eff: 1933)
21 Possession in a public place; exception, possession under 21 is legal if the minor is acting via a parent's order. Bus. & Prof. Code §§25658 & 25662
21 This applies only to consumption of alcohol on the premises of licensed "on sale" establishments. Bus. & Prof. Code §§25658 & 25662

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes The law is limited to the serving of alcoholic beverages to obviously intoxicated minors. Bus. & Prof. Code §§25602 & 25602.1 and Civil Code §1714

No Note: See Bus. & Prof. Code §25602(c) & 25602.1, Civil Code §1714 and *Cory v. Shierloh*, 629 P.2d 8, 174 Cal. Rptr. 500 (1981).

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:

No Bus. & Prof. Code §25602(c) & 25602.1, Civil Code §1714(c), *Cory v. Shierloh*, 629 P.2d 8 (Cal. 1981), *Strang v. Cabrol*, 691 P.2d 1013 (Cal. 1984), and *Zieff v. Weinstein*, 236 Cal.Rptr. 536 (Cal.App. 1 Dist. 1987)

Other:

None

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd Bus. & Prof. Code §25602

Term of Imprisonment:

Not more than 6 mos Bus. & Prof. Code §25617

Fine (\$ Range):

Not more than \$1,000 Bus. & Prof. Code §25617

See Special State Penalty (Fine) and Special County Penalty (Fine) on p. 3-50.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes susp or rev Bus. & Prof. Code §24200

Length of Term of License Withdrawal:

The length of susp/rev is not fixed by statute.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

See Footnote No. 1.

Term of Imprisonment:

Misd Cal. Const. Art. 20, §22 and Bus. & Prof. Code §25658(a)

Fine (\$ Range):

None²

\$1,000 (mand) Bus. & Prof. Code §25658(e)(2)

See Special State Penalty (Fine) and Special County Penalty (Fine) on p. 3-50.

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes susp or rev Bus. & Prof. Code §§24200 & 25658.1(b)

Length of Term License Withdrawal:

The length of susp/rev is not fixed by statute.

Anti-Happy Hour Laws/Regulations:

No

¹A defendant must also perform at least 24 hrs of community service. Bus. & Prof. Code §25658(e)(2)

²**Comment:** Since Bus. & Prof. Code §25658 provides for a sanction, the general penalty provision for a violation of the alcoholic beverage control provisions of the Business & Professions Code (Bus. & Prof. Code §25617) would not apply. The general penalty provision provides for an imprisonment term of not more than 6 mos.

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Other State Laws Related To Alcohol Use: (continued)

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes Veh. Code §§23222, 23223, 23225 & 23226

Yes Driver and passengers Veh. Code §§23220 & 23221

STATE:
General Reference:

COLORADO
Colorado Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Other:

I. Under the influence of alcohol §42-4-1301(1)(a)

II. Impaired by the consumption of alcohol §42-4-1301(1)(b)
≥0.10^{1&2} §42-4-1301(2)(a)

Persons Under 21 Years Old- >0.02 but ≤0.05² (CI A Traffic
Infraction) §42-4-1301(2)(a.5)

>0.05 but <0.10²-Driving while impaired; ≥0.10²-Driving under
the influence §42-4-1301(5)(b) & (c)

(1) Any Drug or (2) a Combination of Alcohol and Drugs³
(applies to both driving under the influence and driving while
impaired) §§42-4-1301(1)(a) & 42-4-1301(1)(b)

For Commercial Motor Vehicle Operators, see p. 3-65.

It is an offense for habitual drug users to operate a motor vehicle.
The sanctions for this offense are the same as for driving while
under the influence. §42-4-1301(1)(c) & (9)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

Yes §42-4-1301(6)

See Footnote No. 4.

No But, "probable cause" is required. §42-4-1301(7)(a)(II) &
(III)

Yes §42-4-1301(7)(a)(III)

Yes (Criminal Cases) §42-4-1301(7)(e)

A person's blood may be taken from them by force if there is
probable cause that they committed criminally negligent homicide
with a motor vehicle, vehicle homicide, assault in the third degree
with a motor vehicle or vehicle assault. §42-4-1301(7)(a)(IV) &
People v. Shepherd, 906 P.2d 607 (Colo. 1995)

Chemical Tests of Other Substances for Alcohol Concentration
Which Are Authorized Under the Implied Consent Law:

Blood:

Urine:

Other:

Yes (Alc & Drugs) §42-4-1301(7)(a)(II) & (III)

Yes (For Drugs only) §42-4-1301(7)(a)(III)

Saliva (For Drugs only) §42-4-1301(7)(a)(III)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.

²Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §§42-2-126(2)(a)(I) and 42-4-1301(2)(a), (2)(a.5), (5)(b) & (5)(c)

Historical Note: The State's drunk driving and vehicle homicide laws now define alcohol concentration as either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. However, prior to 1989, the vehicle homicide law defined alcohol concentration as "percent by weight" of alcohol in the blood. Despite this statutory language and obvious scientific difference, the Colorado Supreme Court held that "percent by weight" should be interpreted to mean grams of alcohol per 100 milliliters of blood. *Ricstrew v. People*, 822 P.2d 505 (Colo. 1991)

³A "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 or (3) toxic vapor or vapors including, but not limited to, glue sniffing and aerosol inhalation. §§12-27-303(7) & (13) and 42-4-1301(1)(d)

⁴This State has an "express consent" law instead of an "implied consent" one. I.e., any person, who operates a motor vehicle in this State, is "deemed to have expressed such person's consent" to submit to chemical test of their either blood, breath, urine or saliva.

COLORADO

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea Bargaining Statute (Yes/No):

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No Note: Deferred prosecution or deferred sentence of drunk driving offenses is available. §§16-7-401 & 16-7-403

Yes¹ §42-4-1301(8)

Yes Alc. and Drug Evaluations Required §42-4-1301(10)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

Administrative Licensing Action

(Susp/Rev):

Other:

No

No

None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

Administrative Licensing Action

(Susp/Rev):

None

1st refusal-Rev 1 yr²; 2nd refusal-Rev 2 yrs²; 3rd or sub. refusal-Rev 3 yrs² §§42-2-126(2)(a)(II), 42-2-126(6)(b)(III), (VI) & (VII) and 2-4-1301(7)(d) Note: For a DWI offense arising out of the same incident, the license revocation or suspension periods for refusal and conviction are to run consecutively but any admin. per se licensing action runs consecutively. §§42-2-126(6)(c)(II) & (III) and 42-4-1301(7)(d).

Other:

None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Persons Under 21 Years Old on p. 3-66.

See Double Jeopardy below.

Important. See Sanctions for Driving with BAC/BrAC ≥ 0.20 under Miscellaneous Sanctions on p. 3-66.

Imprisonment:

Term (Day, Months, Years

Etc.):

Driving under the influence/illegal per se, 1st Off (Misd)-5 dys to 1 yr; 1st Off³-70 dys to 1 yr; 2nd or subsequent off (w/n 5 yrs)-90 dys to 1 yr; Driving while impaired (Misd)-1st Off-2 dys to 180 dys; 1st Off⁴-60 dys to 1 yr; 2nd or subsequent off (w/n 5 yrs)-45 dys to 1 yr §42-4-1301(9) Injury Related DWI Off (Vehicle Assault) (Class 4 Felony)-2 to 6 yrs §§18-1-105 & 18-3-205

¹The court cannot except a guilty plea to a non-alcohol or non-drug related traffic offense in lieu of a drunk driving offense unless the prosecutor makes a good faith representation that they could not establish a *prima facie* case on the original charge.

²These revocation periods are mandatory unless a person participates in the "ignition interlock" program (under §42-2-126.1). Such a participant is eligible for probationary driving privileges after the following mandatory revocation periods: 1st refusal-3 mos; 2nd refusal-6 mos; and, 3rd or sub. refusal-9 mos. See Ignition Interlock Program on p. 3-65.

³But where there has been w/n 5 yrs a conviction for a driving while impaired off.

⁴But where there has been w/n 5 yrs a conviction for a driving while under the influence off/illegal per se.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Deutschendorf v. People*, 920 P.2d 53 (Colo. 1996)

Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term:	<u>Driving Under the Influence/Illegal per se-1st off-1st off-None¹; Driving under the Influence/Illegal per se-1st off²-70 dys (7 dys³); Driving under the Influence/Illegal per se-2nd or sub off (w/n 5 yrs)-90 dys (10 dys³); Driving While Impaired-1st off-2 dys⁴; Driving While Impaired-1st off⁴-60 dys (6 dys³); Driving While Impaired-2nd or sub. off-45 dys (5 dys³)</u> §42-4-1301(9)
Fine:	See Miscellaneous Sanctions on p. 3-66.
Amount (\$ Range):	<u>Driving under the influence/illegal per se, 1st Off-\$300 to \$1,000; 1st Off²-\$450 to \$1,500; 2nd or subsequent off (w/n 5 yrs)- \$500 to \$1,500; Driving while impaired, 1st Off- \$100 to \$500; 1st Off²-\$450 to \$1,200; 2nd or subsequent off (w/n 5 yrs)-\$300 to \$1,000</u> §42-4-1301(9) <u>Injury Related DWI Off (Vehicle Assault) (Class 4 Felony)-\$2,000 to \$500,000</u>
Mandatory Minimum Fine (\$):	None
Other Penalties:	
Community Service:	<u>Driving under the influence/illegal per se, 1st Off-48 to 96 hrs (48 hrs mandatory); 1st Off-56 to 112 hrs (56 hrs mand); 2nd or subsequent off (w/n 5 yrs)-60 to 120 hrs (60 hrs mand), Driving While Impaired, 1st Off-24 to 48 hrs (24 hrs mand), 2nd or subsequent off-48 to 96 hrs (48 hrs mandatory)</u> §42-4-1301(9) Persons assigned to community service must pay fee of no more than \$60; this is used to keep the community service self-supporting and to purchase insurance. §42-4-1301(9)(g)(V) Yes A victims' compensation fund §24-4.1-100.1 et seq. Also, as a condition of probation for a DWI offense, a defendant shall be required to make restitution. §42-4-1301(9)(h) DWI offenders must pay a fee of \$25 which is deposited into the crime victims compensation fund. §24-4.1-119(c)
Restitution (eg, Victim's Fund):	
Other:	Mandatory Parole. Persons, who have been convicted of Vehicle Assault must be placed on parole for 3 yrs. §18-1-105 Child Endangerment. A person is guilty of child abuse if they knowingly or reckless commit an act that either kills or injures a child (a person < 16 yrs old). A person commits a CI 2 felony where death results from such child abuse and is subject to imprisonment from 8 to 24 yrs and/or a fine from \$5,000 to \$1,000,000. A person commits a CI 3 felony where injury results from such child abuse and is subject to imprisonment from 4 to 12 yrs and/or a fine from \$3,000 to \$750,000. For either felony, there is mandatory parole for 5 yrs. §§18-1-105(1)(a)(III) & (V)(A) and 18-6-401(1), (2), (7)(a)(I) & (III) A drunk driving offender is guilty of child abuse if they either kill or injure a child who is riding in <u>another</u> vehicle that is involved in a collision with the offender's vehicle at the time of the offense. <i>People v. Deskins</i> , 927 P.2d 368 (Colo. 1996)

¹There is a mandatory imprisonment sanction of 5 dys unless the defendant participates in an alcohol education/treatment program. §42-4-1301(9)(a)(I), (b)(I) & (f)(II)

²But where there has been w/n 5 yrs a conviction for a driving while impaired offense.

³The mandatory imprisonment sanction is reduced to this number of days of confinement if the defendant participates in an alcohol education/treatment program. §42-4-1301(9)(a)(II), (b)(II) & (III) and (f)(I)

⁴But where there has been w/n 5 yrs a conviction for a driving while under the influence or illegal per se.

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Sanctions Following a Conviction for a DWI Offense: (continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):

Term of License Withdrawal (Days, Months, Years, etc.):

See Double Jeopardy on p. 3-62 and the Special Note below.
See Persons Under 21 Years Old on p. 3-66.

Yes ≥ 0.10 (BAC/BrAC See Footnote No. 2 on p. 3-61.) 1st Violation-Rev 3 mos¹; 2nd & Subsequent Violations-Rev 1 yr¹ §§42-2-126(2)(a)(I) and 42-2-126(6)(b)(I) & (II) Note: If the person is also convicted of a DWI offense, the licensing actions for the admin. per se violation and for the DWI conviction shall run concurrently but any refusal licensing action runs consecutively. The total revocation period shall not exceed the longer of the two (2) periods. §§42-2-125(5) and & 42-2-126(6)(c)(I) & (III)
None

See Persons Under 21 Years Old on p. 3-66 and Habitual Traffic Offender Law on p. 3-68.

Driving while under the influence and illegal per se, 1st off - Susp/Rev; Driving while impaired - Susp/Rev^{2,3} §§42-2-125(1)(b), (g) & (i) & 42-2-127(9)(a) Injury Related DWI Off (Vehicle Assault) - Rev §42-2-125(1)(a)

Driving while under the influence and illegal per se, 1st off-Susp¹ Not less than **1 yr**; Driving while impaired, 1st off-1 yr^{2,3,4,5&6} §§42-2-125(1)(b), (g) & (i), 42-2-127(9)(a) and 42-2-132 Injury Related DWI Off (Vehicle Assault) - 1 yr §§42-2-125(1)(a) & 42-2-132(2)(a)

¹The revocation periods for admin. per se violations are mandatory unless a person participates in the "ignition interlock" program (under §42-2-126.1). Such a participant is eligible for probationary driving privileges after the following mandatory revocation periods: 1st violation-1 mo; and, 2nd or sub violation-3 mos See Ignition Interlock Program on p. 3-65.

²For driving while under the influence, 12 points and, for driving while impaired conviction, eight (8) points are placed on driver's record; generally the accumulation of either 12 points in 12 mos or 18 points in 24 mos results in license susp for not more than 1 yr (or for not less than 1 yr for 1st driving while under the influence offenses) but a probationary-restricted license may be issued. §§42-2-127(1)(a), (5), (12) & 14) and 42-2-132(1)

³A conviction for either an impaired, under the influence, or illegal per se off where there has been a previous alcohol driving off conviction of any type within a 5-yr period -- **Rev** §§42-2-125(1)(g) & 42-2-132(2) A conviction for either an impaired, under the influence of illegal per se influence or illegal per se off where there has been two previous alcohol driving off convictions of any type -- **Rev** §42-2-125(1)(i)

⁴A conviction for either an impaired, under the influence, or illegal per se off where there has been a previous alcohol driving off convictions of any type within a 5-yr period -- **Revocation for 1 yr.** §§42-2-125(1)(g) & 42-2-132(2) A conviction for either an impaired, under the influence of illegal per se influence or illegal per se off where there has been two previous alcohol driving off convictions of any type -- **Revocation for an indefinite period.** §42-2-125(1)(i)

⁵A person convicted of operating a vehicle while under the influence of a controlled substance must have their license revoked for a mandatory period of one (1) year for a 1st off. §§42-2-125(1)(b) & (2) and 42-2-132(2)

⁶For a 1st off, a person <21 yrs old or a provisional driver must have their license revoked for 1 yr. §§2-4-402(b), 42-2-125(g) & 42-2-132(2)

Special Note: The administrative per se law does not violate a person's constitutional right to due process of law. *Nefizger v. Department of Revenue*, 739 P.2d 224 (Colo. 1987)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of
Withdrawal:

Driving while under the influence and illegal per se, 1st off
-None¹; Driving while impaired, 1st off-None See Footnote Nos.
2 and 3. Injury Related DWI Off (Veh. Assault)-1 yr

Other:

Rehabilitation:

Alcohol Education:

Yes §42-4-1301(9)

Alcohol Treatment:

Yes §42-4-1301(9)

¹A 1 yr probationary-restricted license may be issued for reasons of employment/alcohol education, et al. This license is renewal for additional 1 yr periods. §42-2-127(12) & (14)

²**Special Note:** If the first offender is a minor, a person under 21 yrs old (§2-4-402(b)), their license must be revoked for a 1 yr period. §§42-2-125(1)(g) & 42-2-132(2)

³I. A conviction for either an impaired, under the influence, or illegal per se off where there has been a previous alcohol driving off conviction of any type w/n a 5-yr period-Rev 1 yr (1 yr mand notwithstanding the person's participation in an ignition interlock program). §§42-2-125(1)(g) & (2.3), 42-2-126.1(1) & (1.5) and 42-2-132(2) II. A conviction for either an impaired, under the influence of illegal per se influence or illegal per se off where there has been two previous alcohol driving off convictions of any type-Rev 2 yrs (1 yr mand notwithstanding the person's participation in an ignition interlock program). §42-2-125(1)(i) & (2.3) and *Rogers v. Dept. of Revenue*, 841 P.2d 369 (Colo.App. 1992) See "ignition interlock" programs below.

Ignition Interlock Program (Under §42-2-126.1). 1. A person is eligible to participate in the "ignition interlock" program if the revocation was based on alcohol related driving and they accept the following conditions. (1) They agree to only operate motor vehicles that are equipped with an ignition interlock device. And, (2) they agree to have any license revocation period remaining after the mandatory period converted to a license suspension. This suspension period is to be twice the remaining revocation period with at least a minimum suspension period of 6 mos. II. A person, who participates in the "ignition interlock" program and who is subject to a license revocation for either 3 mos, 1 yr, 2 yrs, 3 yrs, 4 yrs or 5 (or more) yrs may be issued a probationary license after they have completed respectively either 1 mo, 3 mos, 6 mos, 9 mos, 1 yr or 2 yrs of the revocation period. III. A probationary license can only be issued for 1 yr; however, it is renewable for additional 1 yr periods. IV. However, for persons convicted of an impaired, under the influence of illegal per se influence or illegal per se off where there has been a previous alcohol driving off convictions of any type w/n 5 yrs, there is a mandatory waiting period of 1 yr before they can apply for this program. Important: This "ignition interlock" program is repealed July 1, 2000.

Ignition Interlock Program (Under §42-2-132.5). 1. For an impaired, under the influence, or illegal per se off where there has been NO previous alcohol driving off convictions of any type w/n a 5-yr period, an offender must have installed ignition interlock devices on the vehicles they operate and are required to hold a restricted license for at least 6 mos prior to full license reinstatement. II. For an impaired, under the influence, or illegal per se off where there has been a previous alcohol driving off conviction of any type w/n a 5-yr period, an offender must have installed ignition interlock devices on the vehicles they operate and are required to hold a restricted licensed license for at least 1 yr prior to full license reinstatement. See also §42-2-125(2.3) & (2.4).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege (i.e., their CDL) to operate a CMV is "revoked" for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration or drug content. (Note: For a 1st offense of operating a CMV "while under the influence of alcohol", the normal DWI license suspension sanctions apply. As a result, a person may be eligible for a probationary license for this offense. However, a person is not eligible for "probationary CDL" in circumstances where they operated a CMC with a BAC ≥0.04 but <0.10). For a either (1) a subsequent violation or (2) a combination of two or more violations of either driving while under the influence of alcohol or of any of the above listed items, the CDL is "cancelled" for life (10 yrs mand). In addition, a person who has any alcohol in their system is placed "out-of-service" for 24 hours. §§42-2-125(1)(b) & (2), 42-2-126(2)(a)(II) & (III), (6)(b)(III), (6)(b)(IV), (6)(b)(V) & (7)(a)(I), 42-2-127(1)(a) & (5)(b), 42-2-402(4) & (8) and 42-2-405 Persons <21 Years Old. A person <21 yrs old, who operates CMV with a BAC/BrAC ≥0.02 but <0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), is subject to the following license revocations: 1st off-3 mos (30 dys mand with restricted driving privileges for the remainder of the revocation period); 2nd off-6 mos (mand); and 3rd or sub off-1 yr (mand). §42-2-126(2)(a)(IV) & (6)(b)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

None

Miscellaneous Sanctions
Not Included Elsewhere:

- I. A DWI offender may be sentenced to attend a "victim impact panel" for which they may be assessed a fee of not more than \$25. §42-4-1301(9)(h)
- II. A DWI offender is required to pay \$75 (deposited into the Law Enforcement Assistance Fund) and \$15 (deposited into the county treasury). §43-4-402(1)
- III. A DWI offender is assessed the "cost" for alc/drug evaluation and supervision services. §42-4-1301(10)(d)
- IV. For misd. offenses, persons are assessed a surcharge of either 37% of the fine imposed or \$40 whichever is the greater amount. For felony offenses, persons are assessed a surcharge of either 37% of the fine imposed or \$100 whichever is the greater amount. §24-4.2-104(1)(a)(I)
- V. **Traffic School.** A person, who violates the State's traffic laws, may be ordered by the court to attend a course of instruction on traffic laws, hazardous driving situations and accident prevention. §42-4-1717
- VI. **Sanctions for Driving with BAC/BrAC ≥ 0.20 .** If a driving while under the influence is reduced to driving while impaired but the defendant's BAC/BrAC was ≥ 0.20 , the sanctions imposed must, nevertheless, be for the former (greater) offense. §42-4-1301(9)(b)(IV)
- VII. **Persistent Drunk Driver Surcharge.** All drunk driving law offenders must pay a surcharge of not less than \$25 nor more than \$500 to fund the Persistent Drunk Driver Cash Fund. §42-4-1301(9)(g)(II)

Persons Under 21 Years Old. I. **Infraction.** A person <21 yrs old, who operates a motor vehicle with a BAC/BrAC ≥ 0.02 but ≤ 0.05 commits a CI A Traffic Infraction and is subject to a fine of \$50. §§42-4-1301(2)(a.5) & 42-4-1701(4)(a)(I)(N) In addition, a person, who has been convicted of this offense is subject to license revocation for the following periods: 1st off-3 mos (30 dys mand with restricted driving privileges for the remainder of the revocation period); 2nd off-6 mos (mand); and 3rd or sub off-1 yr (mand). §42-2-125(1)(g.5), (2.5) & (2.7) II. **Administrative Action.** A person <21 yrs old, who operates a motor vehicle with a BAC/BrAC ≥ 0.02 but < 0.10 , is subject to license revocation via independent administrative action. §42-2-126(2)(a)(I.5) Via such action, a person's license is subject to license revocation for the following periods: 1st off-3 mos (mand) (However, if the person's BAC/BrAC was ≤ 0.05 , they are only subject to a 30 dys mand rev with suspension and restricted driving privileges for the remainder of the 3 mos period.); 2nd off-6 mos (mand); and 3rd or sub off-1 yr (mand). §42-2-126(6)(b) III. A person under 21 yrs old, who has been convicted of driving a motor vehicle with a BAC/BrAC ≥ 0.02 but ≤ 0.05 , has 5 points assessed against their driving record. §42-2-127(5)(b)(IV)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Reckless Driving Vehicle Homicide **Cl 4 Felony** §18-3-106(1)(a) & (c)
DWI Vehicle Homicide¹ **Cl 3 Felony** §18-3-106(1)(b) & (c)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Cl 4 Felony **2 to 6 yrs** (presumptive range) §18-1-105(1)(a)(V)(A)
Cl 3 Felony **4 to 12 yrs** (presumptive range) §18-1-105(1)(a)(V)(A)

Mandatory Minimum Term:
Fine (\$ Range):

None²
Cl 4 Felony **\$2,000 to \$500,000** §18-1-105(1)(a)(III)(A)
Cl 3 Felony **\$3,000 to \$750,000** §18-1-105(1)(a)(III)(A)
None

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Length of Term of

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

Other:

Rev §§42-2-125(a) & 42-2-128

1 yr §42-2-132(2)(a)

1 yr §42-2-132(2)(a)

Cl 4 Felony-Mandatory probation for 3 yrs §18-1-105(1)(a)(V)(A)
Cl 3 Felony-Mandatory probation for 5 yrs §18-1-105(1)(a)(V)(A)
See Traffic School above.

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

See Footnote No. 3 below and Traffic School on p. 3-66.
See Vehicle Forfeiture on p. 3-68.

Sanction:

Criminal:

Imprisonment (Term):

Misd 1st off-30 dys to 1 yr; 2nd and subsequent offs-90 dys to 2 yrs §42-2-138(1)(d)(I)

Mandatory Minimum Term
of Imprisonment:

1st off-30 dys; 2nd and subsequent offs-90 dys §42-2-138(1)(d)(I)
1st off-\$500 to \$1,000; 2nd and subsequent offs-\$500 to \$3,000
§42-2-138(1)(d)(I)

Fine (\$ Range):

Mandatory Minimum Fine:

None

¹Homicide related to "driving under the influence" of alcohol or drugs. As used in this offense, "driving under the influence" means the operation of a vehicle by a person who has consumed alcohol or drugs to such a degree that they are "substantially incapable, either mentally or physically, or both mentally and physically, of exercising clear judgment, sufficient physical control, or due care in the safe operation of a vehicle." §18-3-106(1)(b)(IV) There is a rebuttable presumption that a person was under the influence of alcohol if they have an alcohol concentration of 0.10 or more. §18-3-106(2)(c) See Footnote Nos. 1 & 2 on p. 3-61.

²A vehicle homicide offender, who commits such offense while fleeing from another felony, must be sentenced at the mid-point range of the above presumptive ranges but not more than twice the maximum sentence. §18-1-105(9)(g)

³The sanctions given for driving while license is suspended or revoked for a drunk driving offense also apply to persons who operate a CMV during a CDL revocation or cancellation. §42-2-138(1)(d) However, the regular sanctions for the misd offense of driving while license is either suspended or revoked appear to apply to situations concerned with operating a CMV while under a CDL out-of-service order; for this offense, an offender is (1) subject to a jail term of 5 dys (mand) to 6 mos and/or a fine of \$50 (mand) to \$500 and (2), for a 2nd offense (w/n 5 yrs), is ineligible for a license for 3 yrs. §42-2-138(1)(a)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	For a 2nd or subsequent offense w/n 5 yrs, the driver is not "eligible" for driving privileges. §42-2-138(1)(e)
Length of Term of License Withdrawal Action:	<u>2nd and subsequent offenses-4 yrs</u> §42-2-138(1)(e)
Mandatory Term of License Withdrawal Action:	<u>2nd and subsequent offenses-4 yrs</u> §42-2-138(1)(e)
<u>Habitual Traffic Offender Law:</u>	See Traffic School on p. 3-66.
State Has Such a Law (Yes/No):	Yes §42-2-201 et seq.
Grounds for Being Declared an Habitual Offender:	(1) 3 or more serious offs within 7 yrs, (2) 10 or more convictions for offs of 4 points or more within 5 yrs or (3) 18 or more convictions of 3 points or less within 5 yrs. §42-2-202
Term of License Rev While Under Habitual Offender Status:	Rev 5 yrs ¹ §42-2-205
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	CI 6 Felony §42-2-206 See Vehicle Forfeiture below.
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	1 to 18 mos ² §18-1-105(1)(a)(V)(A)
Imprisonment (Term):	None
Mandatory Minimum Term of Imprisonment:	\$1,000 to \$100,000 §18-1-105(1)(a)(III)(A)
Fine (\$ Range):	None
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	None

¹This revocation period is mandatory unless a person participates in the "ignition interlock" program. Such a participant is eligible for probationary driving privileges after a 2 yr mand rev. §42-2-126.1 For further details, see Ignition Interlock Program on p. 3-65. If the revocation was based primarily on non drunk driving offenses, the offender must agree to only operate a vehicle for the purpose of going to and from a place of employment. §42-2-126.1(2)(e)

²An offender is also subject to mandatory probation for 1 yr. §18-1-105(1)(a)(V)(A)

Vehicle Forfeiture. A vehicle used in the commission of a "felony" is subject to *in rem* civil forfeiture. §§16-13-302 & 16-13-303(1)(i) Via this law, the State was able to obtain forfeiture a driver's vehicle based upon the offense of driving after license revocation. Subsequently, such driver was subjected to criminal prosecution for such behavior. The court held that the subsequent criminal prosecution did not constitute double jeopardy. *People v. Ferrel*, 929 P.2d 65 (Colo.App. 1996) **Comment:** Driving while either suspended or revoked may be either a misdemeanor (e.g., §42-2-138) or a felony (e.g., §42-2-206) depending on the law violated. In *Ferrel*, the court did not state what criminal statute the offender had violated.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §42-4-1304

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes (15 years of age or older)

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 §12-47-901 (Year Eff: 1987)

Minimum Age (Years) Possession:

21 Applies to possession in public places and motor vehicles. There is an exemption for possession on private property with parental consent or for religious purposes. §§12-47-901 & 18-13-122

Minimum Age (Years) Consumption:

21 There is an exemption for consumption on private property with parental consent or for religious purposes. §18-13-122

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §12-47-801¹⁶² Under this law, a licensee is liable for the injuries caused by a patron if the sale or service of alcoholic beverages was "willfully and knowingly" made either to such patron who was either under 21 years old or who was visibly intoxicated person.

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Note: Dram shop case law (e.g., *Kerby v. Flamingo Club, Inc.*, 532 P.2d 975 (Colo. 1974)) has been abrogated by legislation. §12-47-801(1).

Dram Shop Actions-Social Hosts:

Yes (Limited) §12-47-801(4)¹⁶² Liability is limited to the actions of those under the legal drinking age. Under the dram shop law, the service of alcoholic beverages must be "willfully and knowingly" made to persons under 21 yrs old.

Other:

None

¹There is a separate dram shop law, §13-21-103, which provides that "[e]very husband, wife, child, parent, guardian, employer, or other person who is injured in person, or property, or means of support by any intoxicated person, or in consequence of the intoxication of any person, has a right of action, in his name, against any person who, by selling or giving away intoxicating liquors to any habitual drunkard, causes the intoxication, in whole or in part, of such habitual drunkard." Note: The law does not appear to put a monetary limit on the amount of damages that can be recovered under this law.

²Damage awards are limited to \$150,000. §12-47-801(3)(c) & (4)(c) However, these limits are adjusted each year to reflect the effects of inflation. §§2, 3, & 4 of Chapter 172, Session Laws of 1997, amending respectively §§12-46-112.5, 12-47-128.5 & 13-21-102.5

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Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Class 2 Misd §§12-47-901(1)(a) & (5)(a)(I) and 12-47-903(2)

Term of Imprisonment:

3 to 12 mos §18-1-106

Fine (\$ Range):

\$250 to \$1,000 §18-1-106

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or Rev §12-47-601(1) See the Special Note below.

Length of Term of License Withdrawal:

Susp-Not more than 6 mos¹; Rev-Period not specified in the statutes

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Class 2 Misd §§12-47-901(1)(a) & (5)(a)(I) and 12-47-903(2)

Term of Imprisonment:

3 to 12 mos §18-1-106

Fine (\$ Range):

\$250 to \$1,000 §18-1-106

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or Rev §12-47-601(1) See the Special Note below.

Length of Term License Withdrawal:

Susp-Not more than 6 mos¹; Rev-Period not specified in the statutes.

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes - Driver and passengers² §12-47-901(1)(h) The law states that "it is unlawful for any person: to consume malt, vinous, or spiritous liquor in a public place." Of course, licensed premises are excepted.

¹Summary suspension is allowed for not more than 15 days. §12-47-601(2)

²There is an exception for passengers at least 21 yrs old who are riding in either a luxury limousine or a chartered bus.

Special Note: If lieu of license suspension, the licensee may be allowed to pay an administrative fine. The fine shall be 20% of the estimated gross revenues of the sale of either alcoholic beverages or fermented malt beverages over the period of the proposed suspension. However, such a fine must be at least \$200 but cannot be more than \$5,000. §12-47-601(3)

STATE:
General Reference:

CONNECTICUT
Connecticut General Statutes Annotated and Regulations of Connecticut
State Agencies (RCSA)

Basis for a DWI Charge:

Standard DWI Offense:	I. Under the influence of intoxicating liquor ¹ §14-227a(a) II. Impaired by the consumption of intoxicating liquor §14-227a(b)
Illegal Per Se Law (BAC):	I. $\geq 0.10^2$ or $\geq 0.07^2$ if the driver has a previous conviction under <u>§14-227a(a)</u> §14-227a(a)(2) II. <u>Persons Under 21 Years Old</u> BAC $> 0.02^{243}$ §14-227g(a) & (c)
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug or (2) Any Drug and Intoxicating Liquor ¹ §14-227a(a) Note: The impaired offense applies only to impairment by alcohol.
Other:	A person is "deemed" driving while impaired if they have a BAC > 0.07 but $< 0.10^2$ §14-227a(b) For Commercial Motor Vehicle Operators, see p. 3-73.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §§14-227b & 14-227g(a)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §14-227b(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §14-227a(f)
Other Information:	None

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §14-227(d)
Urine:	Yes §14-227(d)
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No⁴
Anti-Plea Bargaining Statute (Yes/No):	No However, the law does require the State to give to the court, in open session, the reasons why a DWI charge was reduced or dismissed. §14-227a(g)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No⁵

¹The sanctions listed below for driving while "under the influence" apply to driving while under the influence of either intoxicating liquor (alcohol) or drugs.

²Standard: Percent by wgt. of alcohol in the blood. §§14-227a(a) & (b) and 14-227g(a)

³The sanctions for a violation of this offense are the same as for a violation of §14-227a(a), driving under the influence intoxicating liquor/illegal per se at either ≥ 0.10 or ≥ 0.07 . §14-227g(c)

⁴A pre-trial diversion program is available only for first DWI offenders. §§54-56g & 54-56e See the Rehabilitation Section on p. 3-74.

⁵A court may but is not required to conduct a pre-sentence investigation. The law is silent as to whether "alcohol screening" has to be given to persons convicted of a drunk driving offense. §54-91g

CONNECTICUT

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

N/A

Administrative Licensing Action
(Susp/Rev):

N/A

Other:

N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

None

Administrative Licensing Action
(Susp/Rev):

1st action (refusal)-Susp 6 mos (90 dys mand)¹; 2nd action (refusal)²-Susp 1 yr (mand); sub action (refusal)²-Susp 3 yrs (mand) §14-227b(i) Under §54-56g(b), a person's participation in an alc. or treatment program does not effect the mand. lic. susp. Furthermore, for a 2nd or subsequent refusal, the person must satisfactorily complete an alcohol treatment program before their driving privileges can be reinstated. §14-227f

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Double Jeopardy below.

Imprisonment:

Under the Influence/Illegal per se: 1st off (misd)-Not more than 6 mos; 2nd off (w/n 10 yrs) (misd)-Not more than 2 yrs; 3rd or sub off (w/n 10 yrs) (felony)-Not more than 3 yrs §§14-227a(h), 53a-25 & 53a-26 Driving While Impaired (Infraction)-None Veh Assault-CI D felony (See Persistent Offender on p. 3-76.) Not more than 5 yrs §§53a-35a & 53a-60d

Mandatory Minimum Term:

Under the Influence/Illegal per se: 1st off-48 con hrs; 2nd off-120 con dys; 3rd and sub offs-1 yr

Fine:

Amount (\$ Range):

Under the Influence/Illegal per se: 1st off (misd)-\$500 to \$1,000; 2nd off (w/n 10 yrs) (misd)-\$1,000 to \$4,000; 3rd and sub off (w/n 10 yrs) (felony)-\$2,000 to \$8,000 §§14-227a(h), 53a-25 & 53a-26 Driving While Impaired (Infraction)-Not more than \$400 §14-227a(i) Veh Assault-CI D felony-Not more than \$5,000 §§53a-41 & 53a-60d

Mandatory Minimum Fine (\$):

None

¹After the 90 day mand period, a person is eligible for a "special permit" based on "a showing of significant hardship" to operate a motor vehicle either to and from a place of employment or, if necessary, in the course of a business or profession. §14-37a

²A previous action includes a prior administrative per se action. §14-227b(h)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Hickam*, 668 A.2d 1321 (Conn. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:

Community Service:

Under the Influence/Illegal per se: 1st off-100 hrs in lieu of the 48 con hrs of mandatory imprisonment. For this alternative, the entire jail sentence is suspended and the required community service is to be performed as a part of probation.¹ 2nd and sub off (w/n 10 yrs)-100 hrs (mand) in addition to incarceration and as part of probation §§14-227a(h) & 14-227e

Restitution (eg Victim's Fund)

Yes Criminal injuries compensation fund §§54-209 & 54-215

Other:

Special Cost. A special cost of \$15 is imposed for a DWI offense conviction. §54-143(a)

Incarceration Cost. A defendant may be required to pay the cost of their incarceration. §18-85a

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

See Double Jeopardy on p. 3-72 and Injury Related Admin. Per Se below.

Administrative Per Se Law:

Yes ≥ 0.10 (BAC) or ≥ 0.07 (BAC) if the driver has a previous violation of §14-227a(a) For persons < 21 yrs old- ≥ 0.02 (BAC) (See Footnote No. 2 on p. 3-71 for the BAC standard.) §14-227b(c) & (n) 1st action-susp-90 dys²; 1st action if BAC ≥ 0.16 -susp-120 dys²; 2nd action³-susp-9 mos (mand); 2nd action if BAC ≥ 0.16 ³-susp-10 mos (mand); sub. action³-susp-2 yrs (mand); sub. action if BAC ≥ 0.16 ³-susp-2½ yrs (mand) §§14-37a and 14-227b(b) & (i) Under §54-56g(b), a person's participation in an alc. or treatment program does not effect the mandatory license suspension. And, for a 2nd or sub refusal, the person must satisfactorily complete an alcohol treatment program before their driving privileges can be reinstated. §14-227f Under §14-111(a), a person's license may be susp for any cause the licensing agency "deems sufficient". Such action may be taken with or without a preliminary hearing. The law does not specify the length of this susp.

Other:

¹Under separate provisions of law, an offender, who is sentenced to probation, may be required to perform community service. §53a-28(e)

²A person is eligible for a "special permit" based on "a showing of significant hardship" to operate a motor vehicle either to and from a place of employment or, if necessary, in the course of a business or profession. §14-37a **Special Note:** Under proposed regulations dated September 13, 1993, by the Commissioner of Motor Vehicles, the first 30 dys of the susp period would be mand.

³A previous action includes a prior refusal to submit to a chemical test. §14-227b(h)

Injury Related Admin. Per Se. A law enforcement officer, who obtains a chemical test result of a blood sample indicating a BAC ≥ 0.10 of an injured driver, shall report this result to the licensing agency. Such agency, based on a number of factors including whether there was probable cause of a drunk driving offense, may suspend the driver's license for 90 dys for a 1st and 1 yr for a sub. admin. per se violation. §14-227b(j)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's License (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs mand if transporting hazardous materials) if, while operating CMV, they (1) have a BAC ≥ 0.04 (Standard: Percent of alcohol by weight in the blood), (2) are convicted of driving while under the influence of intoxicating liquor or drugs or (3) refuse to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life. The lifetime "disqualification" may be reduced to 10 yrs (mand) if certain conditions are satisfied. Note: A person is not eligible for a "special permit" based on hardship. §§14-1(a)(11), (16) & (18), 14-37a and 14-44k

CONNECTICUT

Sanctions Following a Conviction for a DWI Offense: (continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

Under the Influence/Illegal per se: For 1st and 2nd offs-Susp; 3rd and sub off-Rev §14-227a(h) Driving While Impaired-None Veh Assault (DWI off)-Susp §53a-60d See Persons Under 18 Years Old below.

Term of License Withdrawal
(Days, Months, Years, etc.):

Under the Influence/Illegal per se: 1st off-1 yr; 2nd off-3 yrs; 3rd and sub off-Permanently Driving While Impaired-None Veh Assault (DWI off)-1 yr See Footnote No. 2.

Mandatory Minimum Term of
Withdrawal:

Under the Influence/Illegal per se: 1st & sub offs-None^{1&2} Driving While Impaired-None Veh Assault (DWI off)-1 yr

Persons Under 18 Years Old. Under §14-227a(j)(1), a person, under 18 years old, who is convicted of any DWI offense, has their license suspended either until they are 18 or for the normal suspension period for the offense convicted of which ever is the longer suspension period. Of course, persons under 18 years old can also have their driver's license revoked permanently for a 3rd conviction under §14-227a(a), §14-227a(h)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Yes For all DWI criminal offs §14-227a(k)

Yes For all DWI criminal offs §14-227a(k) Note: Persons charged with a 1st DWI offense (any type) may be allowed to participate in an accelerated pre-trial rehabilitation/alcohol education program. If a defendant satisfactorily completes this program, the court may dismiss the drunk driving charges. §§54-56e & 54-56g Furthermore, for a 2nd or subsequent conviction, persons must satisfactorily complete an alcohol treatment program before their driving privileges can be reinstated. §14-227f

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Limited Impoundment. The vehicle driven by a person, who has been arrested for driving either while under the influence of intoxicating liquor or with a BAC level ≥ 0.10 , shall be impounded for 48 hrs if the person's driving privilege was either suspended or revoked at the time of the offense. §14-227h

At Risk Driver. The license of a person convicted of a violation of §14-227a(a), must be imprinted with the statement that they are an "at risk driver" on the reverse side of such license. §14-227a(j)(1)

¹Note: The law does not specifically prohibit a court from reducing these susp periods.

²Special Note: These licensing actions are not mandatory. Based upon "a showing of significant hardship", a person is eligible for a "special permit" which may be used to operate a motor vehicle either to and from a place of employment or, if necessary, in the course of a business or profession. §14-37a If a person is convicted of driving while under the influence of intoxicating liquor while operating a motor vehicle on a "special permit", the period of revocation is twice as long as indicated above. §14-227a(j)(1)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

See Civil Damages below.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes I. If DWI Related, **Cl C felony** A person is guilty of manslaughter with a motor vehicle when, while operating a motor vehicle under the influence of intoxicating liquor or any drug or both, they cause the death of another person. §53a-56b
II. Causing the death of another person while operating a motor vehicle with criminal negligence. **Cl D felony** §53a-57²
III. Causing the death of another person while operating a motor vehicle with negligence. **Unclassified Misd** §§53a-26 & 14-222a²

Sanctions:
Criminal Sanction:
Imprisonment (Term):

I. **Cl C felony: 1 to 10 yrs** II. **Cl D felony: 1 to 5 yrs** III. **Unclassified Misd: Not more than 6 mos** §§14-222a, 53a-26, 53a-35a & 53a-56b

Mandatory Minimum Term:
Fine (\$ Range):

None
I. **Cl C felony: Not more than \$10,000** II. **Cl D felony: Not more than \$5,000** III. **Unclassified Misd: Not more than \$1,000** §§14-222a, 53a-26, 53a-41 & 53a-56b
None

Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and
Type of Action:

I. **Cl C felony: Susp** §53a-56b II. **Cl D felony: See Footnote Nos. 2 & 3.** III. **Unclassified Misd: See Footnote Nos. 2 & 3.**

Length of Term of
Licensing Withdrawal:

I. **Cl C felony: 1 yr** §53a-56b II. **Cl D felony: See Footnote Nos. 2 & 3.** III. **Unclassified Misd: See Footnote Nos. 2 & 3.**

Mandatory Action--Minimum
Length of License
Withdrawal:

I. **Cl C felony: 1 yr¹** §53a-56b II. **Cl D felony: See Footnote Nos. 2 & 3.** III. **Unclassified Misd: See Footnote Nos. 2 & 3.**

Other:

See Civil Damages below.

¹A person is not eligible for a "special permit" based on an occupational hardship. §14-37a

²**Historical Note:** Sec. 14-111(c), which imposed a licensing sanction (a susp for not less than 1 yr) for a violation of the motor vehicle laws related to a fatal accident (such as a violation of either §53a-57 or §14-222a), has been repealed. §23 of Public Act No. 95-260

³A suspension for a violation of §14-222a is via the point system. **Five (5) points** are assessed for a violation of this law. A **susp for 30 dys** is imposed if a person accumulates **> 10 points** w/n a 24 mo period. §14-137a and RCSA §§14-137a-5(e)(2) & 14-137a-8

Comment: There does not appear to be a specified licensing sanction for a violation of §53a-57. However, it may be possible to impose a license suspension for a violation of §53a-57 via §14-222a since this latter section is considered a lesser included offense of §53a-57. *State v. Klutts*, 521 A.2d 178 (Conn.App. 1987)

Civil Damages. (1) Either a person injured in person or property in a drunk driving related traffic accident or (2) a plaintiff in a wrongful death action related to a drunk driving offense may be entitled to **double** or **treble** civil damages provided the defendant was operating a motor vehicle deliberately or reckless in violation of the drunk driving laws. §14-295

CONNECTICUT

Other Criminal Actions Related to DWI: (continued)

Other: (continued)

Community Service. An offender, who is sentenced to probation, may be required to perform community service. §53a-28(e)

Persistent Offender. A person, who has been convicted of DWI manslaughter or DWI Assault and who has a previous conviction for either of these offenses or a drunk driving violation under §14-227a w/n 10 yrs, may be incarcerated at the next higher level felony offense. §53a-40f Note: CI B felony-1 to 20 yrs. §53a-35a

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:

See Footnote Nos. 1 & 2.

Sanction:

Criminal:

Imprisonment (Term):

Misd Not more than 1 yr³ §§14-215(c) & 53a-26(a)

Mandatory Minimum Term
of Imprisonment:

30 con dys³ §14-215(c)

Fine (\$ Range):

\$500 to \$1,000³ §14-215(c)

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

1st off-Susp³; Subsequent off (w/n 10 yrs)^{3&4}-**Susp** §14-111(b)

Length of Term of License

Withdrawal Action:

1st off-Not less than 1 yr³; Subsequent off (w/n 10 yrs)-**Not less than 5 yrs**³ §14-111(b)

Mandatory Term of License

Withdrawal Action:

Licensing action appears to be mandatory.⁵ However, the licensing agency may have some authority to modify or cancel a suspension or revocation. §14-111(k)

Special Note: An offender, who is sentenced to probation, may be required to perform community service. §53a-28(e)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

¹The Commercial Motor Vehicle Law prohibits a person from operating a CMV if they have been disqualified. A person convicted of this offense appears to have committed a violation; the sanction for this offense is a fine sanction of ≤\$100. §§14-44k(a), 14-164 & 53a-27(a)

²A person who operates a CMV after they have been placed "out-of-service" is subject to the following CDL disqualification periods: 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 (mand) to 5 yrs; 3rd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. If the offender was transporting passengers or hazardous materials, the disqualification periods are as follows: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. §14-44k(g)(1) & (2) In addition, such an offender is subject to a civil penalty of \$1,000 to \$2,500. §14-44k(g)(3)

³The sanctions given also apply to persons who operate a motor vehicle after their driving privileges have been suspended for an implied consent law violation.

⁴§§14-1(69) & 14-212(1)

⁵A person is not eligible for a "special permit" based on an occupational hardship. §14-37a

Other Criminal Actions Related to DWI:
(continued)

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status
Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:
Imprisonment (Term):
Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §14-227c

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1985) §§30-1(12) & 30-86

Minimum Age (Years) Possession:

21 §30-89(b) Note: Applies only to possession in a public place.
Exceptions: Employment or under an order of a physical or while
accompanied by a parent or legal guardian who is over 21 years of age.

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §30-102¹

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes Limited In situations where there has been wanton and reckless
misconduct in either the selling or furnishing of alcoholic beverages, a
common law negligence action can be maintained. *Kowal v. Hofler*,
436 A.2d 1 (Conn. 1980), & *Boehm v. Kish*, 517 A.2d 624 (Conn.
1986).

¹For the same incident, the dram shop law limits damages to \$20,000 per person up to an aggregate amount of \$50,000 for all persons. These limits on damages were held to be constitutional. *Sanders v. Officer's Club of Connecticut*, 493 A.2d 184 (Conn. 1985)

CONNECTICUT

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:

Yes *Kfy v. Murphy*, 540 A.2d 54 (Conn. 1988) Applies to the actions of intoxicated minor guests.¹ For wanton and reckless misconduct in the furnishing of alcoholic beverages, see the above cases.

Other:

None

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd §30-86

Term of Imprisonment:

Not more than 1 yr §30-113

Fine (\$ Range):

Not more than \$1,000 §30-113

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or rev §30-55

Length of Term of License Withdrawal:

Not stated in the statute

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misd §30-86²

Term of Imprisonment:

Not more than 1 yr §30-113

Fine (\$ Range):

Not more than \$1,000 §30-113

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp of rev §30-55

Length of Term License Withdrawal:

Not stated in the statute

Anti-Happy Hour Laws/Regulations:

No³

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No

¹In applying *Kfy* case, the Connecticut Supreme Court has also held that bar patrons, who provided alcoholic beverages to minors, can be held liable for injuries caused by such minors while intoxicated. *Bohan v. Last*, 674 A.2d 839 (Conn. 1996)

²Special Note: Any person, except a parent, guardian or physician, who gives/delivers liquors to a minor, shall be fined not more than \$1,500 or imprisoned not more than 18 months, or both. §30-86

³The law prohibits the alcoholic beverage licensing agency from adopting a regulation that mandates the minimum price above which a permittee is required to sell alcoholic beverages. §30-6a(c)(5)

STATE:
General Reference:

DELAWARE
Delaware Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):
Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Other:

Under the influence of alcohol 21 §4177(a)(1)
≥0.10^{1a2} 21 §4177(a)(4) See the Historical Note below.
None
Under the influence of (1) **Any Drug** or (2) a Combination of Alcohol and a Drug³ 21 §4177(a)(2) & (3)
Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor⁴ 21 §4177L(a)
For Commercial Motor Vehicle operators, see p. 3-84.
See DWI Bicycle below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

Yes⁵ 21 §2741

Probably not 21 §§2740 & 2742(e)

Yes 21 §2740

Yes (Criminal & Civil Cases) 21 §2749

I. A person may be required to submit to a chemical test if there is probable cause of a DWI offense. However, if a person is informed of their statutory right to refuse to submit to a test and they exercise this right, a test cannot be administered by involuntary means. 21 §§2740, 2741(b) & 2742(a), *McCann v. State*, 588 A.2d 1100 (Del. 1991), and *Seth v. State*, 592 A.2d 436 (Del. 1991)

II. A person must to submit to a chemical test if there is probable cause to believe that they committed a DWI offense that was related to an accident in which there was a death. 21 §2740 **Comment:** In death related DWI situations, it appears that a driver cannot refuse to submit to a test. Therefore, "forced" taking of blood samples for testing purposes may now be possible under these circumstances.

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.

²Standard: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 21 §§4177(c)(1) & 4177L(b)

³The term "drug" includes (1) those drugs defined in Titles 11 and 16 (e.g., see schedule of controlled substances in Ch. 47 of Title 16) and (2) any substance or preparation which releases intoxicating vapors or fumes. 21 §4177(c)(7)

⁴An alcohol concentration ≥0.02 is "per se evidence" of having consumed alcoholic liquor. 21 §4177L(b) For standards, see Footnote No. 2 above.

⁵**Comment:** The law appears to only indirectly authorize PBT use.

DWI Bicycle. Separate provisions of law make it illegal to ride a bicycle while under the influence of either an intoxicating liquor or narcotic drugs. The sanctions for this offense are as follows: 1st off-a fine of \$150 to \$1,150; subsequent off (w/n 2 yrs of a prior offense)-an imprisonment term of 10 to 30 dys and/or a fine of \$400 to \$1,500. Note: A violation of this law is not entered on an offender's driver licensing record. 21 §4198J

Historical Note: In 1999, the State legislature amended 21, §4177(a)(5) to make it illegal for a person to driver with a BAC ≥0.10 w/n 4 hrs after driving if the BAC "is the result of an amount of alcohol present in, or consumed by the person when that person was driving." Prior law simply made it illegal for a person to drive with a BAC ≥0.10 w/n 4 yrs "after the time of driving." However, the State supreme court had held that the prior provision was "void for vagueness and constitutionally overbroad." *State v. Baker*, 720 A.2d 1139, 1151 (Del. 1998) Note: Another 1999 provision provides, that in order for a person to be found guilty under 21, §4177(a)(5), alcohol must have been consumed either before or during driving. 21, §4177(b)(2)

DELAWARE

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes 21 §2740
Urine:	Yes 21 §2740
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No ¹
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None

Refusal to Take <u>Implied Consent Chemical Test</u> : Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	

1st Refusal-Rev 1 yr (6 mos mand); 2nd Refusal² (w/n 5 yrs)- Rev 18 mos (mand); 3rd or Sub. Refusals² (w/n 5 yrs)-Rev 24 mos (mand) 21 §§2742(b)(1) & 2743(a) See the Special Note below and Footnote No. 2 on p. 3-82.

Other:	See Vehicle Impoundment/Confiscation on p. 3-83.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note on p. 3-79 concerning bicycle riders.
Imprisonment:	<u>1st Off</u> (Unclassified Misd 11 §4202(b))- <u>60 dys to 6 mos</u> ; <u>2nd off</u> ³ (w/n 5 yrs) (Unclassified Misd 11 §4202(b))- <u>60 dys to 18 mos</u> ; <u>3rd off</u> ³ (w/n 5 yrs) (Cl G felony)- <u>1 to 2 yrs</u> ; <u>4th and sub off</u> ³ (Cl E felony)- <u>2 to 5 yrs</u> 21 §§4177(d) & 4177B(e)(2) <u>Veh Assault-2nd degree-Cl B misd-A DWI related injury</u> where there has been negligent driving-Not more than <u>6 mos</u> 11 §§628 & 4206

¹A 1st offender cannot substitute the probation before judgment program for the one under 21 §4177B. 11 §4218(b)(4) Note: An offender is not eligible for the probation before judgement program if they have participated in it w/n a 5 yr period. 11 §4218(d)

²For the purpose of license sanction enhancement for refusing to submit to a chemical test, a prior DWI offense/admin. per se violation is considered the same as a prior refusal. 21 §2742(b)

³For sentencing purposes, all prior drunk driving offenses are considered. 21 §4177B(e)(2)

Special Note: The following licensing sanctions apply to persons <21 yrs old, who refuse to submit to chemical test, after they have been arrested for a violation of 21 §4177L(a) which prohibits these persons from driving while either consuming or after consuming alcoholic beverages. I. Refusal-Rev-2 mos (appears mand) II. Refusal where the person has had a one previous violation of 21 §4177L(a)-Rev-6 mos (appears mand) III. Refusal where the person has had two previous violations of 21 §4177L(a)-Rev-12 mos (appears mand) 21 §2742(b)(2)

Sanctions Following a Conviction for a DWI Offense:**Criminal Sanctions:**

Imprisonment: (continued)

Vehicle Assault-1st degree-CI F felony-A DWI related serious injury where there has been negligent driving -Not more than 3 yrs 11 §§629 & 4205(b)(6)

Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-None

Mandatory Minimum Term:

1st off-None Imprisonment sanctions may be suspended. 21 §4177(e) 2nd off (w/n 5 yrs)-60 dys; 3rd off (w/n 5 yrs)-3 con mos¹; 4th and sub off-6 con mos¹ 21 §4177(d)

Special Note: "House arrest" may be possible in lieu of incarceration despite the fact that, under 21 §4177(d), a person convicted of a second or subsequent DWI off may not receive a suspended sentence. See the Miscellaneous Sanctions on p. 3-84.

Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-N/A

Fine:

Amount (\$ Range):

1st Off-\$230 to \$1,150²; 2nd off (w/n 5 yrs)-\$575 to \$2,300²; 3rd off (w/n 5 yrs)-\$1,000 to \$3,000²; 4th and sub off-\$2,000 to \$6,000² 21 §4177(d); (1) Veh Assault-2nd degree-CI B misd-Not more than \$1,500 11 §4206 (2) Veh Assault-1st degree-CI F felony-The court may impose a fine as it deems appropriate 11 §4205(k)

Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-None³

Mandatory Minimum Fine (\$):

1st Off-\$230²; 2nd off (w/n 5 yrs)-\$575²; 3rd off (w/n 5 yrs)-\$1,000²; 4th and sub off-\$2,000² Except in the case of a subsequent offender who is admitted into the "ignition interlock" program under 21 §4177F(a), these fines appear to be mandatory via 21 §4177(d) which provides that a DWI offender's sentence is not to be suspended.

Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-N/A

Other Penalties:

Community Service:

Restitution (eg Victim's Fund)

Yes^{2&4} Discretionary 11 §4333A

Yes (1) The court may order the defendant to pay compensation to a victim. 11 §4204(c)(9) (2) Also, a victim of a DWI offense is eligible for compensation from the State's Violent Crime Compensation Board. 11 §9002(3)

¹This mand imprisonment sanction appears to be consecutive as early release, furlough and suspended sentence are prohibited.

²**Child Endangerment.** A person, who commits a drunk driving offense while transporting an individual <17 yrs old, is subject to the following sanctions which are in addition to any other sanctions that are authorized by law this offense. 1st off-An additional fine of \$230 to \$1,150 and 40 hrs of community service benefiting children; subsequent off-An additional fine of \$575 to \$2,300 and 80 hrs of community service benefiting children. 21 §4177(d)(5) These sanctions do not apply to 1st offenders who are participating in the probation for judgement program. 21 §4177B

³If the offender does not have a license, 1st off-\$200; sub. off-\$400 to \$1,000 21 §4177L(a)

⁴The total number of community service hrs that may be imposed cannot exceed the maximum term of incarceration for the offense.

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Assessment. An additional amount equal to 15% of any fine (whether the fine is suspended or not) is assessed against the defendant. The assessment is deposited in the Victim compensation fund. 11 §9012
Drunk Driving Offense While in Violation of Ignition Interlock Order. A person, who has been convicted of a drunk driving offense while driving in violation of an order requiring them to only operate motor vehicles that are equipped with ignition interlock devices, is subject to additional imprisonment term of **60 dys** and an additional fine of **\$2,000**. 21 §4177(e).

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Yes Based on probable cause of DWI (alcohol or drugs)¹ 1st off-Rev -3 mos (mand); 2nd off¹-Rev-1 yr (mand); 3rd or subsequent offs-Rev -18 mos (mand)² 21 §§2742(c)(1) & 2743(b)

Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor³-1st off-Rev-2 mos (appears mand); sub. off-Rev-6 to 12 mos (6 mos appears mand) 21 §2742(c)(2)

Other:

A license may be susp for not more than 1 yr if a person has "committed" an off requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing. 21 §§2733(a)(1) & (e)
Comment: Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

1st off-Rev; 2nd off (w/n 5 yrs)-Rev; 3rd or subsequent off (w/n 5 yrs)-Rev 21 §4177A Veh Assault (1st & 2nd degrees)-Rev 21 §2732(a)(2) See the Special Note below.

Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-Rev 21 §4177L(a)

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-1 yr; 2nd off (w/n 5 yrs)-1 yr; 3rd or sub. off (w/n 5 yrs)-18 mos Veh Assault (2nd degree)-1 yr; Veh Assault (1st degree)-2 yrs
Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-1st off-2 mos; sub. off-6 to 12 mos

¹Under 21 §2742(f)(2) with reference only to an admin. per se violation, an alcohol concentration ≥ 0.10 (See Footnote No. 2 on p. 3-79.) or a "positive indication of drugs" is conclusive evidence of a DWI (21 §4177) offense.

²For the purpose of license sanction enhancement, prior DWI offense/implied consent test refusal is considered the same as a prior admin. per se violation. 21 §2742(c)

³For persons < 21 yrs old, an alcohol concentration ≥ 0.02 is "conclusive evidence" of vehicle operation while or after consuming alcoholic liquor. 21 §2742(f)(3) For alcohol concentration standards, see Footnote No. 2 on p. 3-79.

Special Note: For persons under 18 years old, license suspension/revocation until they are 21 (6 mos mand). After the mandatory period, a restricted license may be issued provided (1) there is a "critical need" for such a license and (2) the minor is attending an alcohol program. 1 §302(2) & (12) and 10 §§927(a)(6) & 1009(f) Also, under 21 §2707(b)(10), the licensing agency is not supposed to issue a license for either 2 yrs or until the person is 18 whichever is longer to anyone under 21 who has been convicted of either a DWI or any drug offense; the minimum period of 2 yrs appears to be mand.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of
Withdrawal:

1st off-90 dys¹ A conditional license may be issued after the first 90 dys of the rev period 21 §§4177B, 4177C & 4177E 2nd and subsequent offs-6 mos¹ A person may be permitted to apply for a driver's license after 6 mos provided they have satisfactorily completed an alcohol or drug instruction or rehabilitation program. 21 §§4177C(b) & 4177D Veh Assault (2nd degree)-1 yr; Veh Assault (1st degree)-2 yrs

Persons Under 21 Years Old-Operation of Vehicle While or After the Consuming Alcoholic Liquor-1st off-2 mos; sub. off-6 mos These actions appear to be mandatory.

Other:

Rehabilitation:

Alcohol Education:

Yes²

Alcohol Treatment:

Yes²

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

Note: Impoundment of a vehicle or surrender of license plates/registration (1st off-90 dys; sub off-1 yr) is authorized if the vehicle operator was operating his/her vehicle while they were under license susp or rev for a DWI off., implied consent refusal or other situations which require mandatory license revocation. 21 §2756(c)(1)

Ignition Interlock. Court Order. Under 21 §4177(e), the court, in addition to any other penalty, may order the defendant only to operate vehicles equipped with an "ignition interlock" device. This requirement must remain in effect for not less than 1 yr. Voluntary Participation in Ignition Interlock Program. First offenders, who have refused to submit to a chemical test, and 2nd or subsequent offenders are eligible for a regular Class D licenses via the licensing agency if they agree to install and use ignition interlock devices on the vehicles they operate. (1) If the original revocation was for 12 months, a person must agree to participate in the program for 14 months whereupon a conditional license is available after 1 month. (2) If the original revocation was for 12 months where there are no prior offenses but there is a refusal to submit to a chemical test, a person must agree to participate in the program for 14 months whereupon a conditional license is available after 2 months. (3) If the original revocation was for 18 months, a person must agree to participate in the program for 20 months whereupon a conditional license is available after 6 months. And, (4) if the original revocation was for 24 months, a person must agree to participate in the program for 26 months whereupon a conditional license is available after 12 months. Offenders must agree to complete an alcohol education or rehabilitation program following revocation. Note: Certain offenders are not eligible for this voluntary program. E.g., persons who have been convicted for drunk driving offenses related to death or serious injury or who are under license suspension or revocation. 21 §§2702(e) & 4177F

²I. 1st offenders are required to complete either a DWI education or rehabilitation program. 21 §4177(d)(1) II. 1st offenders, who elect to participate in probation before judgement program, are placed on probation and required to complete either a DWI education or rehabilitation program. However, offenders (1) whose blood alcohol concentration was ≥ 0.20 , (2) who were driving on a suspended or revoked license, (3) who were involved in an injury causing accident or (4) who had 3 or more moving violations (w/n 2 yrs) are not eligible for this program. 21 §4177B(a) Such persons may also participate in the ignition interlock program. 21 §§4177B(g) & 4177F(d) III. Historical Note: The law, concerning the participation of subsequent offenders in either a DWI education or treatment program, may have been repealed. See §6 of Public Act 26 of 1995 which amended 21 §4177(f). Prior to this 1995 enactment, the law provided that these offenders could be "[o]rdered to complete a program of education or rehabilitation which may include in-patient treatment followed by such other programs as established by training facility" for a time not to exceed 15 mos and pay a fee not to exceed the maximum fine.

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Sanctions Following a Conviction for a DWI Offense: (continued)

Miscellaneous Sanctions
Not Included Elsewhere:

It appears that "house arrest" may be used as an alternative to imprisonment. 11 §§4332, 4347(j), 4391 et seq. See especially 11 §4392(c).

Other Criminal Actions Related To DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes¹ 1st degree (death caused by criminally negligent driving while DWI) **CI E felony** 11 §630A; 2nd degree (death caused by (1) criminally negligent driving or (2) negligent driving while DWI) **CI F felony** 11 §630

Sanctions:
Criminal Sanction:
Imprisonment (Term):

1st degree-Not more than 5 yrs; 2nd degree-Not more than 3 yrs 11 §4205

Mandatory Minimum Term:
Fine (\$ Range):
Mandatory Minimum Fine:

1st degree-2 yrs; 2nd degree-1 yr 11 §§630 & 630A
1st & 2nd degrees-As deemed appropriate by the court 11 §4205(k)
None

¹A defendant may be required to pay restitution to a victim of a vehicle homicide offense. 11 §4202(c)(9)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of alcohol, a controlled substance or any drug or (3) refuse to submit to a chemical test for an alcohol concentration. A person is not eligible for an occupational CDL if they have been "disqualified". Note: The disqualification provision, 21 §2612(a)(5), only applies to a refusal to submit to a test to determine an alcohol concentration; however, the CMV implied consent provision, 21 §2614, applies to tests for either an alcohol concentration or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 dys mand). In addition, a CMV operator who has any measurable amount of alcohol (defined as having BAC/BrAC ≥ 0.02 but < 0.04) in their system must be placed "out-of-service" for 24 hours. A CMV operator is also subject to the following criminal sanctions for violating driving while in violation of either the "disqualification" or "any measurable amount" provisions of the CMV/CDL statute: 1st off: Fine-\$200 to \$2,500; subsequent offense: Fine-\$500 to \$5,000, jail-not more than 90 days. 21 §§2603(2), (6), (7), (9), (18) & (21), 2607, 2612(a), (b) & (c), 2613, 2614(a) & (b) and 2622 Important. Separate provisions of law also make it an offense to operate a CMV with a BAC/BrAC ≥ 0.04 (Standard: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.) or while impaired by any drug or controlled substance. A person, who violates this law, is subject to the "disqualifications" noted above and the following criminal sanctions. For a 1st offense they are subject to a fine of \$25 to \$115. For a subsequent offense, they are subject to an imprisonment term of 10 to 30 dys and/or a fine of \$57.50 to \$230. However, a 2nd offense must occur w/n 12 mos of a 1st. Note: Prosecution under this law does not preclude prosecution under other provisions of law. 21 §§4177J & 4205(a)

Other Criminal Actions Related To DWI: (continued)

Administrative Licensing Action:	
Licensing Authorized and	
Type of Action:	<u>1st degree-Rev; 2nd degree-Rev</u> 21 §2732
Length of Term of	
Licensing Withdrawal:	<u>1st degree-4 yrs; 2nd degree-3 yrs</u>
Mandatory Action--Minimum	
Length of License	
Withdrawal:	<u>1st degree-4 yrs; 2nd degree-3 yrs</u>
Other:	None
<u>Driving While License Suspended or Revoked</u>	
<u>Where the Basis Was a DWI Offense*:</u>	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	Misd (Unclassified) <u>1st off-30 dys to 6 mos; subsequent off</u> (w/n 3 yrs)- <u>60 dys to 1 yr</u> 11 §§233(c) & 4202(b) and 21 §2756
Mandatory Minimum Term	
of Imprisonment:	<u>1st off-None¹; subsequent off</u> (w/n 3 yrs)- <u>60 dys</u> 21 §2756
Fine (\$ Range):	<u>1st off-\$500 to \$1,000; subsequent off</u> (w/n 3 yrs)- <u>\$1,000 to \$4,000</u> 21 §2756
Mandatory Minimum Fine:	<u>1st off-\$500^{1&2}; subsequent off</u> (w/n 3 yrs)- <u>\$1,000</u> 21 §2756
Administrative Licensing Actions:	
Type of Licensing Action	
(Susp/Rev):	None ³
Length of Term of License	
Withdrawal Action:	
Mandatory Term of License	
Withdrawal Action:	

¹If the offense involved operating a motor vehicle while revoked where the revocation was based on a drunk driving offense related to either a death or an injury, there is a mandatory 30 dy period of imprisonment and a mandatory fine of \$2,000.

²If the original revocation was based on a drunk driving offense, the minimum mandatory fine is \$600. 21 §2756(a)

³See Vehicle Impoundment/Consiscation on p. 3-83.

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: 1. It is an unclassified misd to operate a CMV while either disqualified or under a CDL out-of-service order. For a 1st offense, a person is subject to a fine of from \$200 to \$2,500; for a subsequent offense, a person is subject to an imprisonment term of not more than 90 dys and/or a fine of from \$500 to \$5,000. 11 §§233(c) & 4202(b) and 21 §§2607(b) & 2622 II. Under separate provisions of law, the following sanctions may be imposed for a violation of an "out-of-service" order. Fine: A fine of \$1,000 to \$2,500. 21 §2612(h)(4) Disqualification: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 to 5 yrs (1 yr mand); and, 3rd or subsequent violation (w/n 10 yrs)-3 to 5 yrs (3 yrs mand). If the driver was either transporting hazardous materials or driving a vehicle designed to transport > 15 persons, the following disqualification periods apply: 1st violation-180 dys (mand) to 2 yrs; 2nd violation (w/n 10 yrs)-3 to 5 yrs (3 yrs mand); and, 3rd or subsequent violation (w/n 10 yrs)-3 to 5 yrs (3 yrs mand). 21 §2612(h)(1), (2) & (3)

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Other Criminal Actions Related To DWI: (continued)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes 21 §2801 et seq. See Footnote No. 3.

Grounds for Being Declared an

Habitual Offender:

3 serious or 10 minor moving violations within a 5-yr period

Term of License Rev While

Under Habitual Offender Status:

Rev for 5 yrs if based on serious offs or for 3 yrs if based on minor moving violations

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Misd (Unclassified) 11 §§233(c) & 4202(b)

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

1st off-90 dys to 30 mos⁴; subsequent off-180 dys to 5 yrs⁴ 21 §2810

Mandatory Minimum Term of

Imprisonment:

1st off-90 dys⁴; subsequent off-180 dys⁴ 21 §2810

Fine (\$ Range):

1st off-not more than \$1,150; subsequent off-not more than \$2,300 21 §2810

Mandatory Minimum Fine (\$):

None

Licensing Actions (Specify):

None

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No

BAC Chemical Test Is Given to the

the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

³Under 21 §2814, a person, who is convicted of a traffic offense that would make them an habitual offender, is subject to the following additional sanctions: Jail-30 dys to 12 mos; fine-\$115 to \$1,150. No execution is taken to impose these additional sanctions until the person is finally adjudged an habitual offender.

⁴Under 21 §2810, the court cannot suspended an imprisonment term. **Comment:** This in effect makes the minimum period of incarceration mandatory.

Other State Laws Related to Alcohol Use: (continued)Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21¹ (Year Eff: 1983) 4 §904(a) & (b)

Minimum Age (Years) Possession:

21 Does not apply to alcohol use in religious services or in the home.
4 §904(f)

Minimum Age (Years) Consumption:

21 Does not apply to alcohol use in religious services or in the home.
4 §904(f)Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

No

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No Note: For cases denying liability, see *Wright v. Moffitt*, 437 A.2d 554 (Del. 1981)², *Oakes v. Megaw*, 565 A.2d 914 (Del. 1989), *Samson v. Smith*, 560 A.2d 1024 (Del. 1989), and *Acker v. Cantinas, Inc.*, 586 A.2d 1178 (Del. 1991).

Dram Shop Actions-Social Hosts:

No (No cases)³

Other:

A licensee is not liable for the injuries sustained by an intoxicated patron. *Wright v. Moffitt*, 437 A.2d 554 (Del. 1981), & *McCall v. Villa Pizza, Inc.*, 636 A.2d 912 (Del. 1994)

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd (Unclassified) 4 §706 and 11 §§233(c) & 4202(b)

Term of Imprisonment:

No¹

Fine (\$ Range):

Not more than \$100² 4 §903(4)

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp 4 §561(b)(1)

Length of Term of License Withdrawal:

Not specified by statute

¹It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to make a "false statement" about their age in order to obtain alcoholic beverages. 4 §904(b)

²The *Wright* case concerned a patron who brought a cause of action against a licensee for injuries they sustained as a result of becoming intoxicated at the licensee's establishment. At the conclusion of its decision, the court made a general statement that, in effect, held that a licensee is not liable for the injuries caused by an intoxicated patron to a third party (437 A.2d at 559).

³Special Note: A "business invitee" (employee) on the premises of a social host (employer) may have a cause of action against such social host for injuries sustained as a result of actions by an intoxicated guest. *DiOssi v. Maroney*, 548 A.2d 1361 (Del. 1988)

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Other State Laws Related to Alcohol Use: (continued)

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misd (Unclassified) 4 §§708(a)(1) & 904(a) and 11 §§233(c) & 4202(b)

Term of Imprisonment:

No¹

Fine (\$ Range):

Not more than \$250² 4 §904(a)

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp 4 §561(b)(1)

Length of Term License Withdrawal:

Not specified by statute

Anti-Happy Hour Laws/Regulations:

No³

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes Applies only to drivers⁴ 21 §4177J

¹A person may be imprisoned for 30 dys for failure to pay the fine. 4 §§903 & 904(a)

²Under 4 §902, also authorized is a fine of \$500 to \$1,000; failure to pay this fine will subject a violator to 3 to 6 months in jail.

³"No more than 1 alcoholic beverage may be sold to a person less than fifteen minutes prior to closing...." 4 §727

⁴Applies to persons who consume an alcoholic beverage while "operating a motor vehicle in the presence of, or in the view of, a police officer."

JURISDICTION:
General References:

DISTRICT OF COLUMBIA
D.C. Code and D.C. Municipal Regulations (DCMR)

Basis for a DWI Charge:

Standard DWI Offense:

I. Under the influence of intoxicating liquor¹ §40-716(b)(1)
II. Impaired by the consumption of intoxicating liquor¹
§40-716(b)(2)

Illegal Per Se Law (BAC/BrAC):

≥0.08^{2,3} (>0.10)* §40-716(b)(1)

For Persons Under 21 Years Old-Operating a Vehicle with **Any**
Measurable Amount of Alcohol in Either the Blood, Breath or
Urine⁴ §40-716(b)(1)

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

Driving under the influence of (1) **Any Drug** or (2) a
Combination of Any Drug and Alcohol¹ §40-716(b)(1)

Other:

A BAC ≥0.05³, a UrAC of ≥0.06 percent by wgt. or a BrAC of
≥0.24 micrograms of alcohol in 1 milliliter of breath constitutes
prima facie evidence of either driving while under the influence
or driving while impaired. §40-717.1(2) See Footnote No. 1
on p. 3-91 which gives *prima facie* levels under the D.C.
Municipal Regulations.

For Commercial Motor Vehicle Operators, see p. 3-91.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes⁵ §40-716(b-1)

Implied Consent Law:

Yes⁵ §40-502

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Yes⁵ §40-502(a)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal & Civil Cases) §40-505(c)

Other Information:

As person is required to submit a chemical test, if they have
been involved in an accident (regardless of whether there has
been an injury) and they have been arrested for any DWI
offense. §40-502(b) & *Marshall v. District of Columbia*, 498
A.2d 190 (D.C.App. 1985)

Chemical Tests of Other Substances for Alcohol Concentration
Which Are Authorized Under the Implied Consent Law:

Blood:

Yes §40-502

¹The driving while impaired offense applies only to the use of alcohol. The driving while under the influence offense applies to the use of either alcohol or drugs.

²This jurisdiction's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a BrAC of 0.38 (0.48)* micrograms or more of alcohol in 1 milliliter of breath or (2) a UrAC of 0.10 (0.13)* or more (percent by weight).

³The BAC standard is percent by weight of alcohol in the blood. §§40-716(b)(1) & 40-717.1

⁴The sanctions (criminal and administrative) against persons under 21 years old, who are convicted of operating a motor vehicle with any amount of alcohol in their system, are the same as for the offenses of illegal per se and driving while under the influence.

⁵The PBT and Implied Consent Laws also apply to persons under 21 years old who operate a vehicle with any measurable amount of alcohol in their blood, breath or urine.

*The "lower" alcohol concentration is effective through September 30, 2000. After this date, the "higher" alcohol concentration indicated within the parenthesis will become effective. §8(b) of D.C. Act 12-212

DISTRICT OF COLUMBIA

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law: (continued)

Urine:	Yes §40-502
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Susp 12 mos §40-505(a) (Mandatory No occupational hardship license shall be issued. 18 DCMR 310.7(a))
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	I. Illegal per se/Under the Influence (See Footnote No. 4 on p. 3-89.): <u>1st Off</u> -Not more than 90 dys ; <u>2nd Off</u> ¹ -(w/n 15 yrs)-Not more than 1 yr ; <u>3rd and subsequent offs</u> ² (w/n 15 yrs)-Not more than 1 yr II. Impaired: <u>1st Off</u> -Not more than 30 dys ; <u>2nd Off</u> ³ (w/n 15 yrs)-Not more than 90 dys ; <u>3rd or sub. off</u> ⁴ (w/n 15 yrs)-Not more than 1 yr §40-716(b)(1) & (2)
Mandatory Minimum Term:	None
Fine:	
Amount (\$ Range):	I. Illegal per se/Under the Influence (See Footnote No. 4 on p. 3-89.): <u>1st Off</u> -Not more than \$300 ; <u>2nd Off</u> ¹ (w/n 15 yrs)- \$1000 to \$5,000 ; <u>3rd and subsequent offs</u> ² (w/n 15 yrs)- \$2,000 to \$10,000 II. Impaired: <u>1st Off</u> - \$200 to \$300 ; <u>2nd Off</u> ³ (w/n 15 yrs)- \$300 to \$500 ; <u>3rd or sub. off</u> ⁴ (w/n 15 yrs)- \$1,000 to \$5,000

¹or a 1st offense where there has been a previous impaired offense (w/n 15 yrs).

²or a 2nd offense where there has been a previous impaired offense (w/n 15 yrs).

³or a 1st offense where there has been previous illegal per se/under the influence offense (w/n 15 yrs).

⁴or a 2nd offense where there has been previous illegal per se/under the influence offense (w/n 15 yrs).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Fine (\$):	None
Other Penalties:	None
Community Service:	Yes I. A Victim's Compensation Fund §3-421 et seq. Awards are limited to a maximum amount of \$25,000. §3-427(b) II. A defendant may be required to pay restitution to a victim. §16-711
Restitution (eg Victim's Fund)	Assessments. Offenders are required to pay the following assessments which are used to finance the Crime Victim's Compensation Fund: (1) Violations of §40-716 (drunk driving offenses)-\$100 (mand); serious traffic and misdemeanor offenses-\$50 (mand) to \$250; and, felony offense-\$100 (mand) to \$5,000. §3-436 & <i>Parrish v. District of Columbia</i> , 718 A.2d 133 (D.C. 1998)
Other:	
Administrative Licensing Actions:	
<u>Pre-DWI Conviction</u> Licensing Action:	
Administrative Per Se Law:	Under the Influence of Intoxicating Liquor or Drugs ¹ 1st violation-Susp 2 to 90 dys or Rev for 6 mos; sub. violation-Susp from 2 to 90 dys or rev where the time period is discretionary but must be for definitive period of time. ² Note: At the discretion of the licensing agency, the suspension may be from 2 to 90 dys "based upon the seriousness of the case." 18 DCMR §§302.5, 306.1 & 306.4
Other:	None
<u>Post DWI Conviction</u> Licensing Action:	
Type of Licensing Action (Susp/Rev):	I. Driving under the influence/illegal per se ² : Rev for all offs §§40-302(a), 40-716(d)(1) & 18 DCMR §301.1 II. Driving while impaired: Either susp or rev at the discretion of D.C. officials §40-302(a)

¹A blood alcohol concentration ≥ 0.05 percent by weight of alcohol in the blood or an equivalent quantity of alcohol in 2,000 cubic centimeters of breath is considered *prima facie* evidence of driving while under the influence. 18 DCMR §1034.3 See "Other" under Basis for a DWI Charge on p. 3-89 which gives *prima facie* levels under the D.C. Code.

²These licensing actions are not mandatory. A person is eligible for either limited or occupational driving privileges. 18 DCMR §§309.1 et seq. & 310.1 et seq.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" (suspended) from operating a CMV for 1 yr (mand) if they are convicted of driving a CMV (1) with an alcohol concentration ≥ 0.04 (Note: Alcohol concentration standards for CMV operations are not specifically provided for in the D.C. Code. However, the code does make reference to the Federal CMV law on this subject. Federal regulations promulgated pursuant to this law provided that the standards for alcohol concentration are grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. 49 CFR 383.5) or (2) while under the influence of alcohol or a controlled substance. For either (1) a second violation or (2) a combination of two violations of any of the above listed items, the "disqualification" (suspension) is from 10 yrs (mand) to life. For either (1) a third violation or (2) a combination of three violations of any of the above listed items, the "disqualification" (suspension) is for life (mand). A person is "disqualified" for not less than 3 yrs (mand) if they are using a CMV in the commission of a felony if such a violation occurred while transporting hazardous materials. §§40-1801(3) & (4) and 40-1806

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Sanctions Following a Conviction for a DWI Offense: (continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

I. Driving under the influence/illegal per se¹: 1st off-6 mos; 2nd off-1 yr; 3rd and sub. offs-2 yrs §§40-302(a) & (b), 40-716(d) and 18 DCMR §§301.1 & 306.5

II. Driving while impaired: 1st off-Susp from 2 to 90 dys² or Rev for 6 mos; sub.off-Susp from 2 to 90 dys² or Rev where the time period is discretionary but must be for definitive period of time §40-302(a) and 18 DCMR §§306.1 & 306.4

Mandatory Minimum Term of
Withdrawal:

I. Driving under the influence/illegal per se (See Footnote No. 1 below.): 1st off-6 mos; 2nd off-1 yr; 3rd and sub. offs-2 yrs
Note: No occupational hardship licenses shall be issued. 18 DCMR §310.7(a)

II. Driving while impaired: None Note: Either a limited license (19 DCMR §309.1 et seq.) or a limited occupational hardship license (18 DCMR §310.1 et seq.) may be issued.

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

No

Limited Impoundment. Under §40-716(c-1), a vehicle driven by a person arrested for any drunk driving offense may be impounded for a limited time (24 hrs). However, a licensed registered owner of the vehicle, who was with the offender at the time of their arrest, may take immediate possession of the vehicle. Also, after authorization by the arrested person, the vehicle may be released to an individual who is a licensed driver.

Limited Registration Suspension. The registrations of all vehicles owned by a person, who has been convicted of any drunk driving offense, must be suspended until the offender gives and maintains proof of financial responsibility. §§40-437 & 40-438

Miscellaneous Sanctions

Not Included Elsewhere:

None

¹See Footnote No. 4 on p. 3-89. **Special Note:** Sec. 40-716(d) authorizes lic rev for driving while under the influence/illegal per se offs. However, this section does not authorize such action against persons under 21 yrs old who are convicted of operating a motor vehicle with any measurable amount of alc in their body. Nevertheless, via legislation, 18 DCMR §301.1 was amended to authorize such action against these young persons. §7 D.C. Act 10-214 of 1994

²At the discretion of the licensing agency, the suspension may be from 2 to 90 dys "based upon the seriousness of the case." 18 DCMR §306.1

Other Criminal Actions Related to DWI:Homicide by Vehicle:

Jurisdiction Has Such a Law:

Yes Felony Negligent Homicide §40-713

Sanctions:

Criminal Sanction:

Not more than 5 yrs

Imprisonment (Term):

None

Mandatory Minimum Term:

Not more than \$5,000

Fine (\$ Range):

None

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev §40-716(d)(2) and 18 DCMR §§301.1(b) & 306.5

Length of Term of

Licensing Withdrawal:

1st off - 6 mos; 2nd off - 1 yr; 3rd and subsequent offs - 2 yrs

Mandatory Action--Minimum

Length of License

Withdrawal:

1st off - 6 mos; 2nd off - 1 yr; 3rd and subsequent offs - 2 yrs

Other:

See Assessments on p. 3-91.

Driving While License Suspended or RevokedWhere the Basis Was a DWI Offense*:

See Footnote No. 1.

Sanction:

Criminal:

Imprisonment (Term):

Not more than 1 yr §40-302(e)

Mandatory Minimum Term

of Imprisonment:

None

Fine (\$ Range):

Not more than \$5,000 §40-302(e)

Mandatory Minimum Fine:

None See Assessments on p. 3-91.

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Rev/Susp

Length of Term of License

Withdrawal Action:

Extend the period of susp or rev for an additional period of time which is equal to the length of the original susp or rev period. §40-302 and 18 DCMR §§305.1 & 305.5

Mandatory Term of License

Withdrawal Action:

Licensing action is mandatory; no occupational license can be granted. 18 DCMR §310.7(c)

¹Neither the CMV law nor the general code provisions concerned with driving while suspended or revoked provide specific sanctions for operating a CMV during a CDL disqualification.

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

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Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

Jurisdiction Has Such a Law (Yes/No): No

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): No

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1986) §§25-121 & 25-130(a)

Minimum Age (Years) Possession:

21 §25-130(a)

Minimum Age (Years) Consumption:

21 §25-130(a)

Other Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

No

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the Jurisdiction
(Citation):

Yes *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, 534
A.2d 1268 (D.C.App. 1987), & *Marusa v. D.C.*, 484 F.2d 828
(D.C.Cir. 1973)

Dram Shop Actions-Social Hosts:

No (No cases)

Other:

None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Unspecified but would probably be considered to be a misd.

Term of Imprisonment:

Not more than 1 yr

Fine (\$ Range):

Not more than \$1,000 §§25-121 & 25-132 See Assessments on
p. 3-91.

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or rev¹ §25-118

Length of Term of License Withdrawal:

For rev, no new license shall be issued for 1 yr.

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Unspecified but would probably be considered to be a misd.²
§§25-121 & 25-132

Term of Imprisonment:

Not more than 1 yr

Fine (\$ Range):

Not more than \$1,000 See Assessments on p. 3-91.

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or rev¹ §§25-118 & 25-121

Length of Term License Withdrawal:

For rev, no new license shall be issued for 1 yr.

¹Under §25-118(a), "an offer in compromise" may be made by the licensing authority in lieu of a suspension.

²Anyone who offers, gives, provides or otherwise makes available alcoholic beverages to a person under 21 years old is subject not only to the criminal penalties noted but also to the following administrative sanctions. They are subject (1) to a fine of from \$100 to \$300 and (2) to suspension of their driving privileges (1st off-90 con. dys; 2nd off-180 dys; 3rd and sub. off-1 yr). §25-130(d) & (e)

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Other Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Yes §25-128(a) & 18 DCMR §2219a.1 et seq.

Anti-Consumption Law (Yes/No):

Yes Driver and passengers §25-128(a)

STATE:

General Reference:

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Florida Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):
Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Under the influence of alcoholic beverages¹ §316.193(1)(a)
≥0.08^{1,2&3} §§316.193(1)(b) & (c) and 316.1932(1)(b)1
None

Under the influence of a **Controlled Substance or Chemical Substance** listed respectively in chapter 893 and §877.111
§§316.193(1)(a) & 316.1931

Other

1) A BAC/BrAC ≥0.08³ is *prima facie* evidence of driving under the influence §316.1934(2)(c) See the Special Note below.
2) For Commercial Motor Vehicle Operators, see p. 3-101.
3) A person arrested for a DWI offense cannot be released from custody until either (1) they are no longer under the influence of alcohol or other chemical substance, (2) their BAC/BrAC is <0.05 or (3) eight (8) hrs have elapsed from the time of their arrest. §316.193(9)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):

Yes §§316.1932(4)(a) & 322.2616(17)

Yes §§316.1932(1)(a) & 322.2616(1)(b)⁴ Under §316.1932(1)(c), 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. *Kenson v. State*, 577 So.2d 694 (Fla.App. 3 Dist. 1991)

Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

Yes §316.1932(1)(a) Limited to the testing of urine.

Yes⁵ (Criminal Cases) §§316.1932(1)(a) & 316.1932(1)(b)
A driver may be compelled (forced) to provide a blood sample for testing only if they have been involved in an accident resulting in either death or serious bodily injury. §316.1933(1), *State v. Stanley*, 653 So.2d 422 (Fla.App. 3 Dist. 1995), *Robertson v. State*, 604 So.2d 783 (Fla. 1992), *Carbone v. State*, 564 So.2d 1253 (Fla.App. 4 Dist. 1990), & *State v. Perez*, 531 So.2d 961 (Fla. 1988).

¹The offense of "driving under the influence" includes (1) driving under the influence of alcoholic beverages or (2) driving with a blood or breath level of 0.08 or more. §316.193(1)(a) & (b) and *State v. Rolle*, 560 So.2d 1154 (Fla. 1990)

²This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

³Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liter of breath. §§316.193(1)(b) & (c), 316.1932(1)(b)1 and 316.1934(2)(c)

⁴Under §322.2616(1)(b), a person under 21 yrs old may be lawfully detained and requested to submit to a chemical test if a there is probable cause to believe that they were driving while under the influence of alcohol or with any alcohol level.

⁵A refusal to submit to field sobriety testing is admissible into evidence at a drunk driving offense trial. §316.1932(4)(b). *State v. Taylor*, 648 So.2d 701 (Fla. 1995), *State v. Cook*, 659 So.2d 473 (Fla.App. 2 Dist. 1995), & *State v. Burns*, 661 So.2d 842 (Fla.App. 5 Dist. 1995)

Special Note: A jury instruction, that was based in part on a verbatim reading of §316.1934(2)(c), was held to be unconstitutional in that it created a mandatory "irrebuttable" presumption that shifted the burden of proof of the DWI offense to the defendant. *Wilhelm v. State*, 568 So.2d 1 (Fla. 1990). Notwithstanding this case, the statutory language was held constitutional in a prior decision. *State v. Rolle*, 560 So.2d 1154 (Fla. 1990). Note: A Federal court has held, in similar circumstances, that there was no constitutional infirmity. However, the Federal court did express its concern that a jury could be confused with the term "*prima facie*". Despite this concern, the court felt that no unconstitutional mandatory presumption had been created when this instruction was viewed in conjunction with the other jury instructions that were given. *Santiago Sanchez Defuentes v. Dugger*, 923 F.2d 801 (11th Cir. 1991)

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes Limited 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. §316.1932(1)(b)
Urine:	Yes Limited Under §316.1932(1)(a), there is an implied consent to submit to a urine test for the purpose of detecting the presence of controlled substances.
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	Yes Applies to (1) DWI, (2) manslaughter resulting from the operation of a motor vehicle and (3) vehicle homicide offenses. §316.656(1)
Anti-Plea Bargaining Statute (Yes/No):	Yes Applies to (1) DWI where the alcohol concentration is 0.20 or more, (2) to DWI where there has been property damage, (3) to manslaughter related to the operation of a motor vehicle and (2) to vehicle homicide. §316.656(2)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No However, all drunk driving offenders must undergo a "psychosocial evaluation". §316.193(5)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail): Administrative Licensing Action (Susp/Rev): Other:	None None None
Refusal to Take <u>Implied Consent Chemical Test</u> : Criminal Sanction (Fine/Jail): Administrative Licensing Action (Susp/Rev):	None <u>1st refusal</u> -Susp for 1 yr (90 dys mand. A hardship license is available after this mand period.); <u>Subsequent refusals</u> -Susp for 18 mos (Mandatory) ¹ §§322.2615(8)(a) & (10) and 322.271(2)(a) <u>Persons Under 21 Years Old</u> . <u>1st refusal</u> -Susp for 1 yr (30 dys mand) ² ; <u>Subsequent refusals</u> -Susp for 18 mos (30 dys mand) ² §322.2616(2), (9) & (11)

¹**Comment:** The "actual" suspension period appears to be only 17 mos. The law provides that a person be issued a 30 dy temporary license at the time of arrest. However, since the law also provides that the suspension "commences" at the time of arrest, the person is only denied driving privileges for 17 mos. §322.2615(b)(1.a), (2) & (4) Unlike the mandatory suspension associated with a 1st refusal, the law does not provide that the mandatory suspension period start after the expiration of the 30 dy temporary license.

²The law provides that the suspension "commences" at the time notice is given. This is usually after the person has been stopped by a law enforcement officer. However, the 30 dy mand period begins after the temporary permit, issued at the time of the stop, expires. A hardship license is available after this mand period. §322.2616(9) & (11)

Sanctions for Refusal to Submit to a Chemical Test:

Other: Under §322.291, an implied consent law violator is required to complete a driver training course.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 1 and Double Jeopardy below.
Imprisonment:	<u>1st Off (Misd)-Not more than 6 mos; 2nd Off (Misd)-Not more than 9 mos; 3rd Off (Misd)-Not more than 12 mos; 4th or sub. Off (3rd degree felony)-Not more than 5 yrs¹</u> §§316.193 & 775.08(2) See Footnote No. 2.
Mandatory Minimum Term:	<u>2nd Off-10 dys (w/48 con hrs)² if 2nd off was w/n 5 yrs of a previous DWI conviction §316.193(6); 3rd or sub. Off-30 dys (w/48 con hrs)² if 3rd or sub. off was w/n 10 yrs of a previous DWI off §316.193(6)</u>
Fine:	
Amount (\$ Range):	<u>1st Off-\$250 to \$500; 2nd Off-\$500 to \$1,000; 3rd Off-\$1,000 to \$2,500; 4th or sub. Off (3rd degree felony)-\$1,000 to \$5,000</u>
Mandatory Minimum Fine (\$):	None
Other Penalties:	
Community Service:	<u>1st off-50 hrs</u> or if the court thinks it in the best interests of the State, a \$10 fine for each hour of community work otherwise required (required notwithstanding other sanctions) Note: This sanction for 1st offenders is part of mandatory probation which is not to exceed 1 yr. §316.193(6)(a) Also, under §775.091, the court may order a defendant (a 1st or sub. offender) to perform specified public service.
Restitution (eg Victim's Fund)	(1) The court may order a defendant to pay restitution to a victim. §775.089. (2) In addition, the State has a victim's compensation fund. A victim of DWI offense is eligible to receive payments from this fund. §960.01 et seq.
Other:	Mandatory Probation. 1st offenders must be placed on probation for 1 yr. §316.193(6)(a) Crimes Compensation Trust Fund. The following surcharges, costs and fines are paid into the Crimes Compensation Trust Fund: (1) A surcharge which is 5% of the fine; (2) a special cost of \$50; and, (3)

¹For under the influence offenses involving: (1) Property damage or personal injury-Misd of the 1st degree-Not more than 1 yr in jail, a fine of not more than \$1,000; (2) serious bodily injury-3rd degree felony-Not more than 5 yrs in prison, a fine of not more than \$5,000; or, (3) a BAC/BrAC ≥ 0.20 or a passenger under 18 years old (child endangerment): 1st Off-Not more than 9 mos in jail, a fine of \$500 to \$1,000; 2nd Off-Not more than 12 mos in jail, a fine of \$1,000 to \$2,000; 3rd Off-Not more than 12 mos in jail, a fine of \$2,000 to \$5,000 Note: The minimum mandatory sanctions for "regular" DWI offense convictions also apply to these offenses. §§316.193(3) & (4), 775.082, 775.083 and 775.084

²The court at its discretion may require a defendant to serve all or any part of a sentence of imprisonment for a DWI offense in either an alcohol or a drug residential treatment program. §316.193(6)(e)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Freeman v. State*, 611 So.2d 1260 (Fla.App. 2 Dist. 1992) (review denied by the Florida Supreme Court, 623 So.2d 493)(cert. den., 510 U.S. 957, 114 S.Ct. 415, 126 L.Ed.2d 361 (1993)), *Gomes v. State*, 621 So.2d 578 (Fla.App. 3 Dist. 1993), *Davidson v. MacKinnon*, 656 So.2d 223 (Fla.App. 5 Dist. 1995) & *Colby v. State*, 675 So.2d 1025 (Fla.App. 4 Dist. 1996)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other: (continued)

Crimes Compensation Trust Fund. (continued) if injury or death resulted from the offense, a special fine of not more than **\$10,000**.
Note: This fine is contingent on the offender's ability to pay. §§960.25, 775.0835(1) & 938.03

Special Court Cost. A court cost of **\$135** is added to any fine and is distributed as follows: **\$25** is deposited into the EMS Trust Fund; **\$50** is deposited into the Criminal Justice Standards and Training Trust Fund; and, **\$60** is deposited into the Brain and Spinal Cord Injury Rehabilitation Trust Fund. §938.07

Alcohol/Drug Assessment. In addition to any other fine, a defendant may be assessed an amount not to exceed the maximum fine authorized for the offense. This assessment is used to finance alcohol and drug programs. §§893.13, 893.16 & 893.165

Reinstatement Fee. In addition to any other license reinstatement fee, a person, who has been either convicted of a DWI offense or found in violation of the admin. per se law, must pay a special fee of **\$105**. This fee is paid into the Accident Reports Trust Fund. §322.12(2)

Program Fee. A defendant, attending a DWI program, is assessed a **\$10** fee which is used to support such program. §25.387(3)(a)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

See Double Jeopardy on p. 3-99.

Yes >0.08 BAC/BrAC §§316.193 & 322.2615(1)(a) See Footnote No. 3 on p. 3-97. A violation-Susp 6 mos (30 dys mand A restricted hardship license may be issued after this mand period.) A violation where there has been two or more DWI offenses-Susp 1 yr (mand)¹ §§316.193, 322.2615(1)(a), (1)(b), (8)(b) & (10) and 322.271(2)(a)

Persons Under 21 Years Old, >0.02 BAC/BrAC 1st violation-Susp 6 mos (30 dys mand); Subsequent violations-Susp 1 yr (30 dys mand) §322.2616(1)(a), (2), (9) & (11) See Footnote No. 2 on p. 3-98.

Other:

Under §§322.27(a)(1) & 322.28(1), a person's license may be susp for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

1st Off^{1&3}-Rev; 2nd Off^{2&3} (w/n 5 yrs)-Rev; 3rd Off^{1&2} (w/n 10 yrs)-Rev; 4th off^{2&3}-Rev §322.28 **Special Note:** Rev is permanent

¹**Comment:** The "actual" suspension period appears to be only 11 mos. The law provides that a person be issued a 30 dy temporary license at the time of arrest. However, since the law also provides that the suspension "commences" at the time of arrest, the person is only denied driving privileges for 11 mos. §322.2615(b)(1.b), (2) & (4) Unlike the mandatory suspension associated with an admin. per se violation where there has not been a prior drunk driving offense, the law does not provided that the mandatory suspension period start after the expiration of the 30 dy temporary license.

²Under §316.655(5), a court can susp/rev a driver's license, in addition to any other sanction which may be authorized, for a violation of any law regarding motor vehicles. In considering whether to exercise this privilege, the court considers the "totality of the circumstances", the need to protect the motoring public and the severity of the offense committed.

³This revocation applies to both non-injury and injury related DWI offense convictions. §322.28(2)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

if there is an alcohol off in connection with a veh manslaughter/homicide off. §§322.26 & 322.28(2)(e)

1st Off-180 dys-1 yr; 2nd Off (w/n 5 yrs)-Not less than 5 yrs; 3rd off (w/n 10 yrs)-Not less than 10 yrs.; and 4th off-Permanently §322.28

Mandatory Minimum Term of
Withdrawal:

1st Off-None¹; 2nd Off (w/n 5 yrs)-12 mos²; 3rd Off (w/n 10 yrs)-24 mos²; 4th Off-5 yrs³ §§322.271(2)(b) & 322.28

Important. These licensing sanctions may not be mandatory. Driving privileges may be "temporarily reinstated" on a restricted basis if the offender is participating in a DWI treatment/education program and evaluation has been completed. §316.193(5)

Other:
Rehabilitation:
Alcohol Education:

Yes A substance abuse course/alcohol treatment program is required for a defendant convicted of any DWI off. §316.193(5) & 322.291 Such a course must be successfully completed by defendants who have been convicted of either two DWI offs (w/n 5 yrs) or 3 such offs (w/n 10 yrs) before their license can be restored. §322.03(2)
See Alcohol Education above.

Alcohol Treatment:
Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Yes (Limited)-A drunk driving offender's vehicle is subject to forfeiture, if at the time of the DWI offense, they were driving on a suspended or revoked license for a prior drunk driving offense. §§322.34(9)(a) & 932.701(2)(a)(8)

¹A temporary restricted use license for business/employment may be issued for 45 dys following the completion of either a driver training program or substance abuse course. The law is silent as to whether this license can be renewed for additional 45-day periods. §322.271(1) & (2)

²After this period of time, a restricted occupational license may be issued. Before such restricted driving privileges are granted, the person must demonstrate that they have been drug-free for 12 mos. §322.271(2)(b)

³After this period of time, a person is eligible for restricted occupational driving privileges for not less than 1 yr and unrestricted privileges thereafter. Before being granted these privileges by the State licensing agency, the person must demonstrate that they have been drug-free for five (5) years and that they have completed a substance abuse driver training course. Following the granting of such privileges, the person must continue to participate in a substance abuse program. §322.271(4)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if they are convicted of the following offenses: They drive a CMV while (1) have a BAC/BrAC/UrAC ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. (Note: A "conviction" includes an administrative determination as well as a criminal law conviction.) For either (1) a subsequent conviction or (2) a combination of two or more convictions of any of the above listed items, the "disqualification" is permanent. (**Comment:** There is an inconsistency in the law. Under §322.64(1)(b) & (8)(b), if the "disqualification" is based on a violation of §316.193 with an unlawful blood alcohol level (i.e., a BAC ≥ 0.08), the periods of "disqualification" are six (6) months for a first violation and one (1) year of a subsequent one. This obviously is inconsistent with the previously listed "disqualifications" as provided in §§322.61 and 322.64(8)(a).) A CMV operator, who has any amount of alcohol in their system, must be placed "out-of-service" for 24 hours and is subject to a moving violation civil penalty of \$52 plus a \$5 assessment. §§318.18(3) & (12), 322.01(3), 322.01(8), 322.01(14), 322.01 (29), 322.39, 322.61(3), 322.61(4), 322.61(5), 322.62, 322.63, 322.64(1)(b) & (8), 775.082(4)(b), 775.083(1)(e) & Ch. 90-253

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Sanctions Following a Conviction for a DWI Offense: (continued)

Terms Upon Which Vehicle
Will Be Released:

None

Other:

Impoundment or Immobilization. The motor vehicle used in the offense may be either impounded or immobilized as follows: 1st off-10 dys; 2nd off (w/n 3 yrs)-30 dys; 3rd off (w/n 5 yrs)-90 dys. This action may not be concurrent with probation or imprisonment. The court may decide not to order the action if the family of the vehicle owner "has no other public or private means of transportation." §316.193(6)(d)

Miscellaneous Sanctions
Not Included Elsewhere:

Special Note: Under §322.291, a defendant is required to complete a driver training course.

Medical Facility Visitation Requirement. A DWI offender under 18 years old may be ordered by the court to visit medical facilities that treat victims of traffic accidents. §322.0602

Ignition Interlock. A DWI defendant, who is placed on probation and who is otherwise "permitted" to operate a motor vehicle, may be required to operate vehicles equipped with "ignition interlock" devices for not less than 6 mos. §316.1937 In addition, the licensing agency may require any person seeking reinstatement of their driving privileges to use an "ignition interlock" device on their vehicle. §322.271(2)(d) This requirement can apply to either occupational restricted or "regular" driving privileges. However, there is a limited exemption in situations where such a person is operating a vehicle while in the course of employment.

Probation Requirements. A court, under its general probation powers, may require a person convicted of a DWI offense (1) to place a bumper sticker on their vehicle that identifies them as a convicted DWI offender, who is operating a motor vehicle on a restricted license, or (2) to place, at their own expense, an advertisement in a local newspaper along with their photograph that identifies them as DWI offender. These probation conditions have been held to be constitutional under both the Federal and State constitutions. *Lindsay v. State*, 606 So.2d 652 (Fla.App. 4 Dist. 1992), & *Goldschmitt v. State*, 490 So.2d 123 (Fla.App. 2 Dist. 1986).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

See Footnote No. 1.

Yes I. DWI (DUI) Manslaughter (a death related to a drunk driving offense)-Felony 2nd degree II. Manslaughter (death related to veh. operation where there is negligent action without lawful justification)-Felony 2nd degree III. Veh Homicide (death related to reckless veh. operation)-Felony 2nd degree §§316.193(3)(c)(3), §782.07 & 782.071

¹Under §322.34(3), it is 3rd degree felony for a person to carelessly or negligently cause death or serious bodily injury to another with a motor vehicle while the person's license is either suspended or revoked and where the basis of the suspension or revocation was (1) a 2nd DWI off, (2) veh. manslaughter, (3) veh. homicide or (4) a DWI off. that requires an enhanced sanction. See Footnote No. 1 on p. 3-99. Sanctions: Jail-not more than 5 yrs (§775.082(3)(d)); fine-not more than \$5,000 (§775.083(1)(c)).

Other Criminal Actions Related to DWI: (continued)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Felony 2nd degree-Not more than **15 yrs**

§775.082(3)(c)

Mandatory Minimum Term:

None

Fine (\$ Range):

Felony 2nd degree-Not more than **\$10,000**

§775.083(1)(b)

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev (All offenses) §322.28(3)(e) & (5)(a)

Length of Term of

Licensing Withdrawal:

I. DWI (DUI) Manslaughter-3 yrs (minimum) II. Manslaughter-3 yrs (minimum); if related to a DWI offense conviction-**Permanent**
 III. Veh Homicide-3 yrs (minimum); if related to a DWI offense conviction-**Permanent** §322.28(2)(e) & (5)(a)

Mandatory Action--Minimum

Length of License

Withdrawal:

I. DWI (DUI) Manslaughter-3 yrs II. Manslaughter-3 yrs; if related to a DWI offense conviction-**5 yrs**¹ III. Veh Homicide-3 yrs; if related to a DWI offense conviction-**5 yrs**¹ §322.28(2)(e) & (5)(a)
 A defendant may be required to pay restitution to a victim. §775.089
 Under §322.291, a defendant must complete a driver training course.
 See Crimes Compensation Trust Fund on p. 3-99.

Other:

Driving While License Suspended or RevokedWhere the Basis Was a DWI Offense*:

See Footnote No. 2 and the Special Note below.

Sanction:

Criminal:

Imprisonment (Term):

1st off (Misd 2nd degree)-Not more than **60 dys**; 2nd off (Misd 1st degree)-Not more than **1 yr**; 3rd or sub off (Felony 3rd degree)-Not more than **5 yrs** §§322.34(2) & 775.082

¹After 5 yrs, a person is eligible for restricted occupational driving privileges for not less than 1 yr and unrestricted privileges thereafter. Before being granted these privileges, the person must demonstrate that they have been drug-free for 5 yrs and that they have completed a substance abuse driver training course. Following the granting of such privileges, the person must continue to participate in a substance abuse program. §322.271(4)

²A person, who has had their driving privileges revoked for either a DWI or vehicle homicide offense and who causes either a death or a serious bodily injury while operating vehicle while still revoked for these offenses, commits a 3rd degree felony. The sanctions for this offense are a term of incarceration of not more than 5 yrs and/or a fine of not more than \$5,000. §§322.34(3), 775.082 & 775.083

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked and the person knew that their driving privileges had been suspended or revoked. §322.34(2) If the person had no knowledge of such action and they operate a motor vehicle, they commit a moving traffic infraction. §322.34(1) The sanction for such an infraction is not more than \$500 (\$60 if the person does not request a hearing). §§318.14(5), 318.18(3)(a) & 322.34(1)

Special Note: The following sanctions apply if a person operates a CMV during a CDL disqualification: 1st off (1st Degree misd) a jail term ≤ 1 yr and/or a fine ≤ \$1,000; 2nd or sub off (3rd Degree felony) an imprisonment ≤ 5 yr and/or a fine ≤ \$5,000. And, for both 1st and subsequent offenders, driving privileges cannot be restored for an additional 3 mos. §322.28(3) & 322.34(4)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	<u>1st off</u> -Not more than \$500 ; <u>2nd off</u> -Not more than \$1,000 ; <u>3rd and sub off</u> -Not more than \$5,000 §775.083
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	See Footnote No. 1.
Type of Licensing Action (Susp/Rev):	<u>1st off</u> - Susp/Rev ; <u>2nd and subsequent offs</u> - Susp/Rev §322.28(3)
Length of Term of License Withdrawal Action:	<u>1st off</u> -An additional 3 mos ; <u>2nd and subsequent offs</u> -An additional 3 mos §322.28(3)
Mandatory Term of License Withdrawal Action:	No A restricted hardship license may be issued. §322.271
<u>Habitual Traffic Offender Law:</u>	
State Has a Such Law (Yes/No):	Yes §322.264
Grounds for Being Declared an Habitual Offender:	3 serious or 15 normal moving violations within a 5-yr period
Term of License Rev While Under Habitual Offender Status:	Rev-5 yrs §322.27(5) Note: After 12 mos, the offender may have his/her driving privileges restored. §322.271(1)(b) Special Note: Under §322.291, a defendant is required to complete a driver training course.
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	3rd Degree felony §322.34(5)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than 5 yrs §775.082
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not more than \$5,000 §775.083
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	Rev period extended an additional 3 mos §322.28(3)

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:
State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the the Following Persons:
Driver:
Vehicle Passengers:
Pedestrian:

No

- I. The vehicle used in the offense, if it is owned of the driver, is impounded by law enforcement officials. The vehicle remains impounded until the owner presents proof either (1) of insurance or (2) of sale of the vehicle to another person. §322.34(5)
II. See Vehicle Impoundment/Confiscation on p. 3-101.

Other State Laws Related To Alcohol Use: (continued)Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21¹ (Year Eff: 1985) §562.11(1)(a) & (2)

Minimum Age (Years) Possession:

21 Except for employment purposes §562.111

Minimum Age (Years) Consumption:

None²Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes Limited §768.125 See Footnote Nos. 3, 4 & 7.

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No⁵

Dram Shop Actions-Social Hosts:

Limited *Bankston v. Brennan*, 507 So.2d 1385 (Fla. 1987), &
Newsome v. Haffner, 710 So.2d 184 (Fla.App. 1 Dist. 1998)⁶

Other:

See Footnote No. 7.

¹It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to "misrepresent" their age in order to obtain alcoholic beverages. §562.11(2)

²Under §562.11(1)(a), it is illegal for a licensee to allow a minor to consume alcoholic beverages on their premises.

³This law limits liability to damages caused either (1) by selling or furnishing alcoholic beverages to persons under the legal drinking or (2) by knowingly serving alcoholic beverages to persons who are habitually addicted to alcohol. *Peoples Restaurant v. Shbo*, 591 So.2d 907 (Fla. 1991) **Comment:** Concerning this law, several things should be kept in mind. I. For injuries caused by a minor, the injured party must prove that alcoholic beverages were "willfully and unlawfully" served to the minor by the licensee. For injuries caused by an habitual drunkard, the injured party must prove that alcoholic beverages were only "knowingly" served by the licensee. *Ellis v. N.G.N. of Tampa*, 586 So.2d 1042 (Fla. 1991) II. Also, liability does not apply in situations where injury causing habitual drunkards are sold alcoholic beverages in closed containers. Liability only occurs if such persons are served alcoholic beverages for consumption on the premises. *Persen v. Southland Corp.*, 656 So.2d 453 (Fla. 1995)

⁴A licensee may be held liable for the actions of an intoxicated minor to whom they have not sold alcoholic beverages. Such is the case if an under age person is allowed to purchase alcoholic beverages where the licensee is "on notice" that the purchaser will give such beverages to another minor who could become intoxicated and cause injury to a third party. I.e., the licensee is considered to have sold or furnished alcoholic beverages to both minors. *O'Neale v. Hershoff*, 634 So.2d 644 (Fla.App. 3 Dist. 1994)

⁵The law limits this type of liability. It appears that previous case law has been abrogated by this statute. *Migliore v. Crown Liquors of Broward, Inc.*, 448 So.2d 978 (Fla. 1984), & *Bennett v. Godfather's Pizza, Inc.*, 570 So.2d 1351 (Fla.App. 3 Dist. 1990)

⁶I. Despite the *Bankston* decision above, an employer may be held liable, via a respondeat superior, for the negligent actions of an intoxicated employee while attending a convention related to the employer's business. The court considered the employee to be "in the course and scope of his employment". *Carroll Air Systems, Inc. v. Greenbaum*, 629 So.2d 914 (Fla.App. 4 Dist. 1993)

II. In *Newsome*, a social host was held liable for a minor's injuries that occurred after the minor consumed alcoholic beverages at a social function given by the host. This case is based on §856.015 which makes it a criminal offense to host an "open house party" (a general social gathering of persons) where the social host has knowledge that alcoholic beverages are being consumed by minors. The court held that a violation of this statute which results in an injury to a minor creates a cause of action (negligence per se) by the minor against the social host.

⁷I. A patron, who is a known "habitual drunkard," can hold a licensee liable, under the dram shop law, for injuries they sustain as a result of becoming intoxicated at the licensee's establishment. *Ellis v. N.G.N. of Tampa*, 586 So.2d 1042 (Fla. 1991) II. Under the dram shop law, a licensee may be liable for the injuries or death (including suicide) of an intoxicated minor patron. *Kirkman Road Sports Pub and Restaurant, Inc. v. Dempsey*, 723 So.2d 384 (Fla.App. 5 Dist. 1998) Licensees may also be liable for injuries to intoxicated minor patrons which are indirect in nature. E.g., a minor, due to their intoxication, was injured in a traffic accident while riding with minor driver who was also intoxicated. The court reasoned that the minor passenger's intoxication could have obscured his judgement as to the danger of riding with a drunk driver. *Nieves v. Camacho Clothes, Inc.*, 645 So.2d 507 (Fla.App. 5 Dist. 1994) In another case, the court held that a licensee may be held liable for the death of an intoxicated minor patron who was shot and killed by another person in self defense. The minor's intoxication lead him into an altercation with an adult which resulted in the shooting. *Sipes v. Alterson's, Inc.*, 728 So.2d 1243 (Fla.App. 5 Dist. 1999)

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Other State Laws Related to Alcohol Use: (continued)

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:	None ¹
Term of Imprisonment:	None
Fine (\$ Range):	None

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	No ¹
Length of Term of License Withdrawal:	N/A

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:	Misd 2nd degree §562.11(1)(a)
Term of Imprisonment:	Not more than 60 dys §775.082
Fine (\$ Range):	Not more than \$500 §775.083

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes Susp or rev ² §561.29(1)(a) & (w)
Length of Term License Withdrawal:	Time period is not specified in the statute.

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):	Yes §316.1963
Anti-Consumption Law (Yes/No):	No

¹It is a 2nd degree misd (jail-not more than 60 days; fine-not more than \$500) for a person (e.g., a licensee) to sell or dispose of intoxicating liquors to an individual after the seller or dispenser has written notice that such individual is an habitual drunkard. §§562.50, 775.082 & 775.083 A licensee is also subject to license suspension under §561.29(1)(a) & (b).

²Admin. sanctions may be mitigated if the licensee has been certified as a responsible vendor. Such a vendor must have provided special training to their employees/managers in how to sell alcoholic beverages so as not to violated the ABC laws by selling such beverages to minors. §561.701 et seq.

STATE:
General Reference:

GEORGIA
Code of Georgia Annotated (Code of 1981)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC):

Types of Drugs/Drugs and Alcohol:

Other:

Under the influence of alcohol §40-6-391(a)(1) See the Special Note below.

≥0.10^{1,2} or Any Amount of a Controlled Substance or Marijuana (in the blood or urine)^{3,4} §§40-1-1(1), 40-6-391(a)(5) & (6) and 40-6-392(b)(4) See the Special Note below.

Persons Under 21 Years Old ≥0.02^{1,2,5} §40-6-391(k)(1) & 40-6-392(c)(2) See Court Decision below.

≥0.08 §40-6-392(b)(3)

(1) Under the influence of Any Drug, (2) under the intentional influence of Any Glue, Aerosol, or Other Toxic Vapor or (3) under the combined influence of alcohol and/or any of the previous substances §40-6-391(a)(2), (3) & (4)

For Commercial Motor Vehicle Operators, see p. 3-113.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

No⁶

Yes⁷ §40-5-55(a)

Yes §40-5-55(a)

Yes⁸ (Criminal Cases) §40-6-392(d), *Hassell v. State*, 442 S.E.2d 261 (Ga.App. 1994)⁹, *Allen v. State*, 494 S.E.2d 229 (Ga.App. 1997), & *Brinson v. State*, 503 S.E.2d 599 (Ga.App. 1998)

Refusal to submit to alco-sensor (PBT), Horizontal Gaze Nystagmus and field sobriety tests can be admitted into evidence. *Turner v. State*, 504 S.E.2d 229 (Ga.App. 1998)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 (0.02 for persons under 21 years old) or more.

²Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §40-1-1(1)

³The law, making it illegal to operate a motor vehicle with any amount of a control substance or marijuana in the blood or urine, has been held to be constitutional. No evidence of impairment by drugs is necessary. *Stevenson v. State*, 453 S.E.2d 18 (Ga. 1995)

⁴This applies in situations where the driver was not legally entitled to use the controlled substance(s)/marijuana. §40-6-391(a)(5)

⁵Except as noted, the sanctions for this offense are the same as for any other drunk driving offense.

⁶Law enforcement officers are using preliminary breath testing devices without express legislative authorization. Such use has not been subject to court challenge. However, the Georgia Supreme Court has noted such use. *Keenan v. State*, 436 S.E.2d 475 (Ga. 1993) See also *White v. State*, 503 S.E.2d 891 (Ga.App. 1998), and *State v. Stansbury*, 505 S.E.2d 564 (Ga.App. 1998).

⁷Comment: It appears that an arrest is not required if there is "reasonable grounds" to believe that a person was DWI and they were involved in an accident that resulted in either serious injury or death. §40-5-55(a)

⁸Refusal to submit to a PBT can also be admitted into evidence at a DWI trial. *Keenan v. State*, 436 S.E.2d 475 (Ga. 1993)

⁹Note: If proper warnings are not given, evidence of refusal may not be admissible. *State v. Leviner*, 443 S.E.2d 688 (Ga.App. 1994)

Special Note: The courts have held that §40-6-391 establishes one offense namely that of "driving under the influence". Subsection (a)(1), the standard DWI offense, and subsection (a)(5), the 0.10 (formally 0.12) illegal per se offense, represent two (2) different methods of proving this "one" offense. *Kupitz v. State*, 345 S.E.2d 670 (Ga.App. 1986), & *French v. State*, 401 S.E.2d 67 (Ga.App. 1990) (affirmed by the Georgia Supreme Court, 405 S.E.2d 35 (Ga. 1991))

Court Decision. The State supreme court has held that §40-6-391(k), which makes it illegal for a person under 21 yrs old to operate a motor vehicle with an alcohol concentration ≥0.02, does not violate such a person's right to equal protection of the laws under either the State or Federal constitutions. *Barnett v. State*, 510 S.E.2d 527 (Ga. 1999)

GEORGIA

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes ¹ §40-5-55(a)
Urine:	Yes ¹ §40-5-55(a)
Other:	"Other Bodily Substance" §40-5-55(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No ²
Anti-Plea Bargaining Statute (Yes/No):	No ²
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes 1st off (discretionary); 2nd or sub off (mand) §§40-5-1(9), 40-5-63.1 & 40-6-391(c)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Susp 1 yr (mand) §40-5-67.1(d)
Other:	

Sanctions Following a Conviction for a DWI Offense:

See Footnote Nos. 1 & 2 on p. 109.

Criminal Sanctions:	See Double Jeopardy below.
Imprisonment:	<u>1st off (Misd)-10 dys to 12 mos; 2nd off (w/n 5 yrs) (Misd)-90 dys to 12 mos; 3rd and subsequent offs (w/n 5 yrs) (High and Aggravated Misd)-120 dys to 12 mos</u> §40-6-391(c) & (k) <u>Persons Under 21 Years Old:</u> These offenders must be kept segregated from all other offenders. §17-10-3.1(b) Also, such persons, if convicted of operating a motor vehicle with a BAC/BrAC level ≥ 0.02 , at the discretion of the court may be sentenced to serve imprisonment time either on weekends or during nonworking hours. §17-10-3.1(a)

¹The law further provides that a blood test with a "drug screen" be administered to driver's involved in accidents that result in either a serious injury or death. This requirement, however, is not "mandatory". §40-5-55(a)

²The court cannot except a *nolo contendere* plea in two situations. (1) For a violation of the illegal per se provision, where the offender's BAC or BrAC was ≥ 0.15 or (2) for a violation of §40-6-391(k), where a person under 21 years old was operating a motor vehicle with a BAC or BrAC ≥ 0.02 . §§40-6-391(k)(3) & 40-6-391.1(a)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the admin per se law, may also be subsequently prosecuted for DWI. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Jackson v. State*, 462 S.E.2d 802 (Ga.App. 1995), *Nolen v. State*, 463 S.E.2d 504 (Ga.App. 1995), *Kirkpatrick v. State*, 464 S.E.2d 882 (Ga.App. 1995), *Howard v. State*, 465 S.E.2d 281 (Ga.App. 1995), *Walsh v. State*, 469 S.E.2d 526 (Ga.App. 1996), *Martinez v. State*, 471 S.E.2d 551 (Ga.App. 1996), and *Smith v. State*, 471 S.E.2d 591 (Ga.App. 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

See Footnote Nos. 1 & 2 below.

Mandatory Minimum Term:

1st off-24 hrs¹ if BAC/BrAC was ≥ 0.08 ; 2nd off (Misd)-48 hrs²; 3rd and sub. offs (w/n 5 yrs) (High and Aggravated Misd)-10 dys³

Fine:

Amount (\$ Range):

1st off (Misd)-\$300 to \$1,000; 2nd off (w/n 5 yrs) (Misd)-\$600 to \$1,000; 3rd and subsequent offs (w/n 5 yrs) (High and Aggravated Misd)-\$1,000 to \$5,000 §40-6-391(c) & (k)

Mandatory Minimum Fine (\$):

1st off (Misd)-\$300; 2nd off (w/n 5 yrs) (Misd)-\$600; 3rd and subsequent offs (w/n 5 yrs) (High and Aggravated Misd)-\$1,000 or a \$500 fine on condition that the defendant undergoes an alcohol or drug treatment program (§40-6-391(g)(2))
In cases of "extreme hardship", the fine may be paid in installments. For sub offs, half of the fine may be suspended if the offender participates in a treatment program. §40-6-391(g)

Other Penalties:

Community Service:

1st off (Misd)-Not less than 40 hrs (40 hrs mand)³; 2nd off(w/n 5 yrs)(Misd)-Not less than 80 hrs (80 hrs mand)³; 3rd and subsequent offs (w/n 5 yrs)(High and Aggravated Misd)-Not less than 20 dys (20 dys mand)³ §40-6-391(c)

Persons Under 21 Years Old with an alcohol concentration of < 0.08 : 1st off-Not less than 20 hrs (20 hrs mand); 2nd or sub off-Not less than 40 hrs (40 hrs mand) §40-6-391(c)(1)(C), (c)(2)(C) & (c)(3)(C)

Restitution (eg Victim's Fund)

Yes (1) A defendant may have to pay restitution (or other relief to a victim) as a condition of probation. §17-14-1 et seq. (2) A victim may also receive payment from the State's victims' compensation fund. §17-15-1 et seq. Awards are limited to a maximum amount of \$1,000. §17-15-8(c)

Other:

Photo, Name & Address Publication. For a 2nd or sub offs, a defendant's name, address and photograph shall be published in the "legal organ of the appropriate county." §40-6-391(j)

Assessment. An assessment penalty of \$25 or 10 percent of the original fine whichever is less. This penalty is used to support the Crime Victims Emergency Fund. §§15-21-112 & 15-21-115
Special Fine for the Peace Officer's Annuity and Benefit Fund.⁴ An additional fine equal to 5% of the original fine is imposed and deposited into this fund. §15-21-131

Probation. If jail is < 12 mos, mandatory probation for any period of time not served in confinement. §40-6-391(c) 2nd offenders on probation must operate motor vehicles for 6 mos that are equipped with ignition interlock devices. §42-8-111

¹DWI, where there is a **serious injury** (i.e., where a member of a person's body has been deprived, rendered useless or disfigured), is a felony. The sanction for this offense is imprisonment from 1 to 15 years. §40-6-394 DWI while operating a **school bus** imprisonment from 1 to 5 yrs and/or a fine of \$1,000 to \$5,000. §40-6-391.3

²**Child Endangerment.** It is a separate offense to transport a child under 14 yrs old while DWI. The sanctions for this offense are as follows: 1st off (misd)-jail 1 to 5 mos; fine \$200 to \$500; 2nd off (misd)-jail 3 mos to 1 yr; fine \$400 to \$1,000; 3rd and sub. off (felony)-jail 1 to 3 yrs; fine \$1,000 to \$5,000. §§16-12-1(d) & 40-6-391(i)

³An offender is subject to **both** a period of mand jail and mand community service. *Gidey v. State*, 491 S.E.2d 406 (Ga.App. 1997)

⁴**Special Penalty for the Brain and Spinal Injury Trust Fund.** An additional fine equal to 10% of the original fine is imposed and deposited into this fund. §§15-21-149, 15-21-150 & Article III, §IX, ¶VI(k) of the State Constitution

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other: (continued)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Special Note: Under §17-10-8, the court in felony cases where probation is allowed may condition such probation upon the defendant paying a fine of not more than \$100,000.

See Double Jeopardy on p. 3-108.

Yes ≥ 0.10 BAC/BrAC (≥ 0.02 for persons under 21 yrs old)
See Footnote No. 2 on p. 3-107. §§40-5-67.1(c) & 40-5-67.2(a)
1st action-Susp 1 yr (License reinstatement after 30 dys and after completion of an Alcohol or Drug Use Risk Reduction Program. An **ignition interlock** must be used for 6 mos following license reinstatement. §42-8-112(b) However, limited driving privileges may be granted at any time. §40-5-64(a) & (e) 2nd action (w/n 5 yrs)-Susp 3 yrs (120 dys mand with lic reinstatement after 120 dys) or 30 dys mand susp followed by 6 mos use of an **ignition interlock** device after which full driving privileges are reinstated; driving privileges are restricted following the 30 dy mand period up to 120 dys after the susp period has started. Before a license can be reinstated, an offender must have completed an Alcohol or Drug Use Risk Reduction Program. 3rd and sub action (w/n 5 yrs)-Susp 5 yrs (2 yrs mand) After 2 yrs, a person may be issued a "probationary" driver's license with the stipulation that they only operated vehicles equipped with an **ignition interlock** device. Before a license can be reinstated or a probationary license issued, an offender must have completed an Alcohol or Drug Use Risk Reduction Program. §§40-5-67.1, 40-5-67.2 & 42-8-112 See Miscellaneous Sanctions on p. 3-112.

Other:

None

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

Persons ≥ 21 Years Old: For all DWI offenses: 1st off-Susp; 2nd off-Susp; 3rd off (w/n 5 yrs)-Rev (See Habitual Traffic Offender Law on p. 3-114.) See Footnote No. 1. §§40-5-62(a)(1), 40-5-63, 42-8-111 & 42-8-112 DWI-Serious Injury-Susp §40-5-63(d)
See Miscellaneous Sanctions on p. 3-112.

Persons Under 21 Years Old: For any violation of the drunk driving laws (§40-6-391)-1st of sub off-Rev §40-5-57.1(a) & (b)

Term of License Withdrawal
(Days, Months, Years, etc.):

Persons ≥ 21 Years Old: I. For Alcohol and Non-controlled Substance (Drug) DWI Offenses: 1st off-12 mos²; 2nd offs-3 yrs²; 3rd off-5 yrs (See Habitual Traffic Offender Law on p. 3-114.) DWI-Serious Injury-3 yrs

¹If the vehicle operator was below the driving age (age 16) at the time of the DWI offense, their privilege to obtain a driver's license must be "delayed" until they are 17 for a first offense and until they are 18 for a subsequent offense. However, the privilege may be reinstated if the person completes a DWI alcohol and drug use risk reduction program. §40-5-22.1

²See Footnote No. 1 on p. 3-111.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of
Withdrawal:

II. For Controlled Substance DWI Offenses: 1st off-Not less than **180 dys**; 2nd off-**3 yrs**; 3rd off-**5 yrs** §§40-5-63(a) & 40-5-75(a)

Persons Under 21 Years Old: 1st off-**6 mos** or **12 mos** if alcohol concentration was ≥ 0.08 2nd or sub off-**12 mos** §40-5-57.1(b)

Persons ≥ 21 Years Old: I. For Alcohol and Non-controlled Substance (Drug) DWI Offenses: 1st off-None^{1a2}; 2nd off-**120 dys**¹ or if a person is placed on probation, 30 dys mand. susp. followed by 6 mos use of an **ignition interlock** device after which full driving privileges are reinstated; driving privileges are restricted following the 30 dy mand period up to 120 dys after the susp period has started. 3rd off (w/n 5 yrs)-**2 yrs**¹ After 2 yrs, an offender may be issued a "probationary" driver's license with the stipulation that they only operate vehicles equipped with an **ignition interlock** device. (See Habitual Traffic Offender Law on p. 3-114. §40-5-63(a)(3)) DWI-Serious Injury-**3 yrs**

II. For Controlled Substance DWI Offenses: 1st off-**180 dys**; 2nd off-**1 yr**; 3rd off-**2 yrs**² §§40-5-63(a) & 40-5-75(a)

Persons Under 21 Years Old: 1st off-**6 mos** or **12 mos** if alcohol concentration was ≥ 0.08 2nd or sub off-**12 mos** §40-5-57.1(b) & (c)

Other:
Rehabilitation:
Alcohol Education:
Alcohol Treatment:

Yes See Alcohol Treatment below.

Yes I. For a 1st or 2nd DWI conviction listed under admin. action I or II on p. 3-111, a person's license cannot be reinstated until they have completed an alcohol or drug risk reduction program. §40-5-63(a)(1) & (2)

II. For 2nd or 3rd DWI offense convictions, a defendant must complete an "alcohol or drug use reduction program" and, if an evaluation indicates that treatment is necessary, a substance treatment program before their license can be restored. §§40-5-62(b), 40-5-63(a)(2) & 40-5-63.1

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Yes Forfeiture (Appears to be Mandatory) A person's vehicle is subject to forfeiture if they are convicted of a 4th DWI offense and such off occurred while they were operating a vehicle in habitual offender status based on 3 prior DWI convictions. §40-6-391.2

¹For 1st and 2nd DWI offense convictions, the license suspension period may be limited to only 120 days. Under §40-5-63(a)(1) & (2), a driver's license may be reinstated after 120 days of the suspension period have passed provided the defendant has completed a DWI alcohol or drug use risk reduction program. The offender must have completed this program before their license can be restored.

²For a 1st DWI offense conviction, a defendant may receive for limited driving privileges in cases of "extreme hardship." §40-5-64

³Driving privileges (license) may be reinstated after this period provided the offender has completed a drug treatment program and a refusal to allow such privileges (issue such a license) would cause "extreme hardship".

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Sanctions Following a Conviction for a DWI Offense: (continued)

Terms Upon Which Vehicle
Will Be Released:
Other:

Miscellaneous Sanctions
Not Included Elsewhere:

Forfeiture (continued) In lieu of forfeiture and based on the financial hardship to the defendant's family, the court may order that the vehicle's title be transferred to another family member who is licensed and who needs the vehicle for employment or other family needs. §40-6-391.2(i)

None
See Term of License Rev While Under Habitual Offender Status on p. 3-114.

The court has the authority to order a defendant "to wear a fluorescent pink plastic bracelet imprinted with the words 'D.U.I. CONVICT'" (436 S.E.2d at 794) as a condition of probation. *Ballenger v. State*, 436 S.E.2d 793 (Ga.App. 1993)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Three Types: I. Vehicle Homicide in the first degree (Felony)-Death where there is no "malice aforethought" but where there is either reckless driving or a DWI offense.
II. Vehicle Homicide in the Second Degree (Misd)-Where the death is caused "without an intention to do so" and where there is neither reckless driving nor a DWI offense.
III. Vehicle Homicide in the First Degree (Felony)-Death where the defendant is an "Habitual Violator", his/her license has been revoked and there is no "malice aforethought". §§16-1-3(5) (defines a felony offense) & 40-6-393

Sanctions:
Criminal Sanction:
Imprisonment (Term):

I. 3 to 15 yrs (§40-6-393); II. Not more than 12 mos (§17-10-3(a)(2)); III. 5 to 20 yrs (§40-6-393)

Mandatory Minimum Term:
Fine (\$ Range):

I. None; II. None; III. 1 yr (§40-6-393)
I. None¹; II. Not more than \$1,000 (§17-10-3(a)(2)); III. None¹
See **Special Fine for the Peace Officer's Annuity and Benefit Fund** on p. 3-109.

Mandatory Minimum Fine:

None (This applies to all veh. homicide offs.)

¹Under §17-10-8, the court as a condition of probation for a felony offense may require an offender to pay a fine of not more than \$100,000.

Comment: A "narrow" interpretation of §§40-5-54(a)(1) and 40-5-63(a) would indicate that the same licensing sanctions apply to both Type II and Type III Vehicle Homicide offenses. I.e., the law "apparently" does not provide for special licensing sanctions for persons who are convicted of a Type III Vehicle Homicide Offense. However, it is more likely that a Type III Vehicle Homicide offender (1st or subsequent) would be subject to another license revocation for 5 yrs with 2 yrs mand. in as much as they would have, no doubt, been convicted of more than 3 serious traffic offenses w/n 5 yrs and would, therefore, be subject once again to the Habitual Violator Law (§40-5-58).

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:	See the Comment below.
Licensing Authorized and Type of Action:	Susp/Rev §§40-5-54(a)(1), 40-5-58 & 40-5-63
Length of Term of Licensing Withdrawal:	<u>I. Susp-3 yrs (§40-5-63(e))/Rev-5 yrs if "Habitual Violator"; II. 1st off-Susp-12 mos; 2nd off (w/n 5 yrs)-Susp-5 yrs; 3rd off (w/n 5 yrs)-"Habitual Violator"-Rev-5 yrs III. Rev-5 yrs</u>
Mandatory Action--Minimum Length of License Withdrawal:	<u>I. Susp-3 yrs (§40-5-63(e))/Rev-5 yrs if "Habitual Violator" (§40-5-58(f)); II. 1st off-Susp-None; 2nd off (w/n 5 yrs)-Susp-120 dys; 3rd off (w/n 5 yrs)-"Habitual Violator"-Rev-2 yrs III. Rev-2 yrs</u>
Other:	None
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:</u>	See Footnote No. 1.
Sanction:	
Criminal:	
Imprisonment (Term):	<u>1st off-2 dys to 12 mos (misd); 2nd and sub. off (w/n 5 yrs)(high and aggravated misd)-10 dys to 12 mos §40-5-121(a)</u>
Mandatory Minimum Term of Imprisonment:	<u>1st off-2 dys; 2nd and sub. off (w/n 5 yrs)-10 dys §40-5-121(a) Op. Atty. Gen. U92-4</u>
Fine (\$ Range):	<u>1st off-\$500 to \$1,000; 2nd and sub. off (w/n 5 yrs)-\$1,000 to \$2,500 §40-5-121(a) See Special Fine for the Peace Officer's Annuity and Benefit Fund on p. 3-109.</u>
Mandatory Minimum Fine:	<u>1st off-\$500; 2nd and sub. off (w/n 5 yrs)-\$1,000 §40-5-121(a) & Op. Atty. Gen. U92-4</u>

¹It is a misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a fine of not less than \$500 and a CDL suspension for 6 mos. §§40-5-146(b) & 40-5-159(c) In addition, a person, who violates an out-of-service order, is subject to the following disqualification periods: 1st violation-90 dys to 1 yr; 2nd violation-1 to 5 yrs; and, 3rd or sub. violation-3 to 5 yrs. The minimum period of disqualification appears to be mandatory. §40-5-151(g)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either susp or rev.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (mand) (not less than 3 yrs (3yrs mand) if transporting hazardous materials) if they are convicted of driving a CMV (1) with a BAC/BrAC/UrAC ≥ 0.04 percent by weight of alcohol or more in the blood, breath or urine (Note: The usual standards for alcohol concentrations in the blood (grams of alc. per 100 milliliters of blood), breath (grams of alc. per 210 liters of breath) or urine (grams of alc. per 67 milliliters of urine) are listed in the CMV law. However, since the disqualification provisions use the term "percent by weight", there is a question as to whether such standards apply to these provisions.), (2) while under the influence of alcohol or any drug or (3) of a refusal to submit to a chemical test for alcohol concentration. (Note: The CMV implied consent provision, §40-5-153, applies to the testing for both an alcohol concentration and for the presence of drugs; however, the disqualification provision, §40-5-151(a)(2), applies only to a refusal to submit to a test for an alcohol concentration.) For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). It is a misd. to operate a CMV with a BAC ≥ 0.04 ; the only sanctions for this offense are the fines associated with DWI offense convictions. In addition, a CMV operator, who has any measurable amount of alcohol in their system, must be placed "out-of-service" for 24 hours. §§40-5-67.1(c), 40-5-142(2), (7), (9), (10) & (21), 40-5-151, 40-5-152, 40-5-153, 40-6-391(i) and 40-6-392(c)(1)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp/Rev §40-5-121(b)(2) & (c)

Length of Term of License

Withdrawal Action:

Original susp or rev period is extended **6 mos**

Mandatory Term of License

Withdrawal Action:

Original susp or rev period is extended **6 mos**

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes §40-5-58

Grounds for Being Declared an

Habitual Offender:

3 or more serious violations w/n 5 yrs

Term of License Rev While

Under Habitual Offender Status:

Rev 5 yrs¹ §40-5-62(c)(1) **Special Note:** A drunk driving offender, who is subject to license revocation as an habitual offender, must have the **license plates** of the vehicles they own surrendered to the court. **Specially numbered plates** may be issued for such vehicles provided the offender has a limited or probationary license or some other member of the offender's household has a valid license. Such special plates shall not constitute probable cause to stop a motor vehicle. §40-2-136

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Felony² §§16-1-3(5) & 40-5-58(c)(1) & (2)

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

1 to 5 yrs §40-5-58(c)(1) & (2)

Mandatory Minimum Term of

Imprisonment:

None

Fine (\$ Range):

Not less than **\$750** §40-5-58(c)(1) If habitual offender status was based only on DWI offense convictions, not less than **\$1,000** §40-5-58(c)(2) See **Special Fine for the Peace Officer's Annuity and Benefit Fund** on p. 3-109.

Mandatory Minimum Fine (\$):

None

Licensing Actions (Specify):

None

¹A 3 yr probationary restricted hardship license may be issued after 2 yrs of the rev period have passed. The issuance of a probationary license must be based upon "extreme hardship" which is defined as a need for transportation to go to and from employment, medical care facilities, school or college, or court ordered alcohol or drug treatment programs. The person is also required to complete defensive driver course or an alcohol or drug risk reduction program before this probationary license can be issued. §40-5-58(e). However, if habitual offender status is based on two or more DWI offense convictions, the use of a probationary license is conditioned of the use of an **ignition interlock device**. See the Special Note on p. 3-110. §42-8-112 **Special Note:** A probationary license is not available if (1) the person's regular license has been revoked for a DWI related death (§40-5-58(f)), (2) the person has been convicted of any other motor vehicle related death (§40-5-58(e)(1)(B)) or (3) the person has been convicted of violating either the alcoholic beverage control law or the controlled substances law. (§40-5-58(e)(1)(D)).

²It is a misdemeanor (jail-not more 12 mos; fine-not more than \$1,000) to operate a vehicle without a license after the 5 yr revocation has passed. §§17-10-3(a) & 40-5-58(c)

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Possible §§45-16-27 & 45-16-46 and Ops. Att. Gen. U79-10 & U80-56 A chemical test may be obtained via the coroner or medical examiner.¹

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Possible

Vehicle Passengers:

Possible

Pedestrian:

Possible

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1986) §3-3-23(a)(1) & (2)

Minimum Age (Years) Possession:

21 §3-3-23(a)(2) & (b) Exceptions: Medical purposes, religious ceremonies, and home use with parental consent.

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes Limited §51-1-40(b)^{2&3} See the Special Note below.

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No⁴

Dram Shop Actions-Social Hosts:

Yes⁴ Limited §51-1-40(b) See the Special Note below.

Other:

A patron, who has been injured by a intoxicated patron at a social function, may bring a cause of action against the social host for damages. The cause of action is based on negligence in failing to maintain a safe premises. *Borders v. Board of Trustees, VFW*, 500 S.E.2d 362 (Ga.App. 1998)

¹At the request of either a coroner or police officer, the medical examiner may take a blood sample from a person, who has been killed, for the purpose of determining the presence of intoxicating substances in such person. §45-16-46

²Also, under §51-1-18, a parent has a right to bring an action against any person who sells or furnishes alcoholic beverages to that parent's underage child without the parent's permission. *Eldridge v. Aronson*, 472 S.E.2d 497 (Ga.App. 1996)

³Sec. 51-1-40 has been held not to violate the due process clause of the U.S. Constitution. *Riley v. H & H Operations, Inc.*, 436 S.E.2d 659 (Ga. 1993)

⁴Comment: The following case law, it appears, has been abrogated, at least in part, by the dram shop law (§51-1-40(b)): *Sutter v. Hutchings*, 327 S.E.2d 716 (Ga. 1985); *Bishop v. Fair Lanes Bowling, Inc.*, 623 F.Supp. 1195 (D.C. Ga. 1985) (reversed and remanded on other grounds, 803 F.2d 1548 (11th Cir. 1986)); and, *Tibbs v. Studebaker's of Savannah*, 362 S.E.2d 377 (Ga.App. 1987).

Special Note: Action is limited to the selling, furnishing or serving of alcoholic beverages either (1) to persons under the legal drinking age (in a willful, knowing and unlawful manner) or (2) to persons who are "in a state of noticeable intoxication" and only for injuries and damages resulting from the operation of a motor vehicle "when the sale, furnishing, or serving is the proximate cause of such injury or damage." *Perryman v. Lufkin, Inc.*, 434 S.E.2d 112 (Ga.App. 1993), and *Kappa Sigma Intern. Fraternity v. Toole*, 473 S.E.2d 213 (Ga.App. 1996) A motor vehicle passenger can recover damages from a licensee for any injuries they may have sustained in an accident while riding with an intoxicated driver who had become inebriated at the licensee's establishment. Liability applies even if the passenger also consumed alcoholic beverages with the vehicle operator at the establishment prior to the accident. The court held that a passenger is not considered a "consumer" under the dram shop law. *Griffen Motel Co. v. Strickland*, 479 S.E.2d 401 (Ga.App. 1996)

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Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd §§3-1-2(2), 3-3-9, 3-3-22 & 17-10-3

Not more than 12 mos

Not more than \$1,000 See Special Fine for the Peace Officer's Annuity and Benefit Fund on p. 3-109.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Susp or cancellation §3-2-3

2 yrs

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

1st off- Misd Subsequent offs- Misd of a high and aggravated nature. §§3-1-2(2), 3-3-23, 3-3-23.1, 17-10-3 & 17-10-4

For 1st and subsequent off-Not more than 12 mos

1st off- Not more than \$1,000; Subsequent off- Not more than \$5,000 See Special Fine for the Peace Officer's Annuity and Benefit Fund on p. 3-109.

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp or cancellation §3-2-3

2 yrs

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes Limited Applies only to drivers §40-6-253

No

JURISDICTION:
General References:

GUAM
Guam Code Annotated (Updated through 1992)

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC):
Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Other:

Under the influence of alcohol Title 16, §9104(a) & (f)
≥0.10¹ Title 16, §9104(b) & (g)
≥0.10¹ Title 16, §9104(j)(3)
Under (1) the influence of any drug¹ or (2) the combined
influence of alcohol and any drug¹ Title 16, §9104(a) & (f)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

No
Note: This jurisdiction does not appear to have an implied
consent law.

Chemical Tests of Other Substances for Alcohol Concentration
Which Are Authorized Under the Implied Consent Law:

Blood:
Urine:
Other:

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes Alcohol Assessment Title 16, §9104.1

Sanction for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
Administrative Licensing Action
(Suspension/Revocation):
Other:

N/A

N/A

Refusal to Take Implied Consent
Chemical Test:
Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Suspension/Revocation):
Other:

N/A

N/A

¹Percent by wgt. of alcohol in the blood which is defined statutorily as grams of alcohol per 100 milliliters of blood. Title 16, §9104(j)(4) "Drug" means a controlled substance other than a prescription drug. Title 16, § 9104(a)

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Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	(1) Non-Injury Related DWI Off-Misd-1st & sub. off-Not more than 1 yr Title 9, §80.34 & Title 16, §9104(c) & (d) (2) Injury Related DWI off-Third Degree Felony-Not more than 5 yrs ¹ Title 9, §§1.19(b) & 80.30(c) and Title 16, §§9104(h) & 9106
Mandatory Minimum Term:	Non-Injury Related DWI Off-1st off-None; 2nd and sub off-48 hrs ² Title 16, §9104(c) & (d)
Fine:	
Amount (\$ Range):	(1) Non-Injury Related DWI Off-1st & sub. off-Not more than \$1,000 ³ Title 9, §80.50(c) (2) Injury Related DWI off-Not more than \$5,000 ³ Title 9, §80.50(b)
Mandatory Min. Fine (\$):	Non-Injury Related DWI Off-1st & sub off-\$1,000 ^{2&3} Title 16, §9104(c) & (d)
Other Penalties:	
Community Service:	
Restitution (eg Victim's Fund):	A defendant may be ordered by the court to pay restitution to a victim. ³ Title 9, §80.53
Other:	
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	None
Other:	
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Suspension/Revocation):	Susp/Rev ⁴ Title 16, §§3111 & 9104
Term of License Withdrawal (Days, Months, Years, etc.):	Non-Injury Related DWI Off ² -1st and sub off-Susp-90 dys to 6 mos Title 16, §9104(c) & (d)

¹For 1st offenders, the imprisonment term is not more than 3 yrs. Title 9, §80.31(c) However, repeat felony offenders may be subject to imprisonment terms of from 3 to 10 yrs. Title 9, §80.50(b)

²The mandatory sanctions associated with non-injury DWI offenses may also apply to injury related DWI ones. However, the law is not clear on this matter.

³The law provides that the court may designate whether the amount paid is a fine or restitution to victims.

⁴There is 1 yr rev (mand) for driving when addicted to the use of or under the influence of narcotic or other drug. Title 16, §31119(e)(2) Also, under Title 16, §3111(f), a driver's license is either suspended or revoked for driving while under the influence of "intoxicating liquor". The length of such suspension or revocation is not specified.

Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term of
Withdrawal:

Non-Injury Related DWI Off¹-1st off-None (Limited driving may be granted for employment purposes.); 2nd off-Susp-6 mos; 3rd and sub off-None²

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Forfeiture. For a 3rd or sub off, the vehicle used in the offense is subject to forfeiture. Title 16, §9104(e)

Special Note: In lieu of forfeiture, the offender's license may be suspended from 1 yr (mand) to 5 yrs. Title 16, §9104(e)

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

Jurisdiction Has Such a Law:

No

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Action:

Special Note: Even though this jurisdiction does not have a vehicle homicide statute, it does provide for driver's license revocation for 1 yr (mand) in situations where a person has been convicted of criminal homicide resulting from the operation of a motor vehicle. Title 9, §16.20 & Title 16, §3111(e)(1)

Licensing Authorized and

Type of Action:

Length of Term of

Licensing Withdrawal:

¹See Footnote No. 2 on p. 3-118.

²The law does not specifically provide for a mandatory license suspension for a 3rd or subsequent offense.

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Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum Length of License Withdrawal: Other:	
<u>Driving While License Suspended or Revoked</u> <u>Where the Basis Was a DWI Offense*:</u> Sanction:	
Criminal:	
Imprisonment (Term):	Petty Misd -Not more than 6 mos Title 9, §80.34(b) & Title 16, §3110
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not more than \$500 ¹ Title 9, §80.50(d)
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action (Suspension/Revocation):	Susp/Rev Title 16, §3111(k)
Length of Term of License Withdrawal Action	(1) <u>For Operating While Suspended</u> -Extend period of suspension for a like period (2) <u>For Operating While Revoked</u> -An additional 1 yr period of revocation
Mandatory Term of License Withdrawal Action:	(1) For Operating While Suspended-Extend period of suspension for a like period (2) <u>For Operating While Revoked</u> -An additional 1 yr period of revocation
Other:	
<u>Habitual Traffic Offender Law:</u> Jurisdiction Has Such a Law (Yes/No): Grounds for Being Declared an Habitual Offender: Term of License Suspension While Under Habitual Offender Status: Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status Sanctions Following a Conviction of Driving While on Habitual Offender Status:	No

¹Or restitution up to this amount in lieu of the fine. Title 9, §80.50(d)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Imprisonment (Term):
 Mandatory Minimum Term of
 Imprisonment:
 Fine (\$ Range):
 Mandatory Minimum Fine (\$):
 Licensing Actions (Specify):

Other Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on
Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):
 BAC Chemical Test Is Given to the
 Following Persons:

No

Driver:
 Vehicle Passengers:
 Pedestrian:

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:
 Minimum Age (Years) Possession:
 Minimum Age (Years) Consumption:

18 (Year Eff: n.a.) Title 11, §3419

Dram Shop Laws and Related Legal Actions:

Jurisdiction Has a Dram Shop Law (Yes/No):

No¹

"Dram Shop Law" Concept Has Been
 Adopted Via a Change to the Common
 Law Rule by Action of the Highest
 Court of Record in the Case (Case
 Citation):

n.a.

Dram Shop Actions-Social Hosts:
 Other:

n.a.

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:
 Term of Imprisonment:
 Fine (\$ Range):

Misd Title 11, §§3418 & 3617

Not more than 1 yr Title 9, §80.34(a)

Not more than \$1,000² Title 9, §80.50(c)

¹Note: Under Title 20, §§2101 & 2102, a person, who suffers a loss as a result of someone's illegal act, may recover damages.

²Or restitution up to this amount in lieu of the fine. Title 9, §80.50(c)

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Other Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Susp/Rev Title 11, §§3611 & 3616

Time period for either susp or rev is not specified in the statute.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Petty Misd Title 11, §§3611 & 3616

Not more than **6 mos** Title 9, §80.34(b)

Not more than **\$500¹** Title 9, §80.50(d)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp/Rev Title 11, §§3611 & 3616

Time period for either susp or rev is not specified in the statute.

Anti-Happy Hour Laws/Regulations:

No However, Title 11, §3432 prohibits the service of more than 1 drink at a time to any person.

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes² Title 16, §9105

Yes³ Driver and Passengers Title 16, §9105

¹Or restitution up to this amount in lieu of the fine. Title 9, §80.50(d)

²The law makes it an offense either to drink from or to open "a container of any alcoholic beverage" in a motor vehicle.

³Also, under Title 11, §3423, a person is prohibited from consuming alcoholic beverages "on any public highway or road."

STATE:
General Reference:

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Hawaii Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor^{1&2} §§291-4(a)(1) & 291-4.4

Illegal Per Se Law (BAC/BrAC):

≥0.08^{1,3&4} §§291-4(a)(2) & 291-4.4

Presumption (BAC):

Persons Under 21 Years Old-≥0.02 but <0.08^{4&5} §291-4.3(a)
None

Types of Drugs/Drugs and Alcohol:

Under the influence of a **Controlled Substance** §§291-7⁶ & 291-4.4

Other:

An alcohol concentration ≥0.08⁴ is considered "competent evidence" of driving under the influence if the either the blood or breath chemical test to determine such concentration was taken w/n 3 hrs of the offense. §291-5(a)

For Commercial Motor Vehicle Operators, see p. 3-127.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Yes §§286-A, 286-151 & 286-155.5 Note: An arrest is needed before licensing action can be taken for a refusal to submit to a chemical test.

Arrest Required (Yes/No):

Implied Consent Law Applies to
Drugs (Yes/No):

Yes §§286-A & 286-151

Refusal to Submit Chemical Test
Admitted into Evidence:

Yes Limited A refusal can be admitted into evidence at the administrative per se offense hearing. However, the law specifically prohibits the admission of such evidence in other criminal and civil cases. §286-159

Other Information:

Special Note: A blood, breath or urine sample may be obtained from a driver, without their consent, in order to obtain evidence of their being intoxicated by alcohol or under the influence of drugs if they are involved in a "collision" resulting in either injury or death to any person. §286-163(a) **Comment:** This provision of the law is "silent" as to whether there must be "probable cause" of an offense (e.g., DWI) before a sample can be obtained. However, under §286-163(c) & (d), in either death or injury related DWI accidents where there is "probable cause" that a person has committed an offense (e.g., DWI), law

¹The offense of driving while under the influence of intoxicating liquor includes operating a motor vehicle with an alcohol concentration ≥0.10 (now ≥0.08). *State v. Grindles*, 777 P.2d 1187 (Hawaii 1989)

²Under the influence of intoxicating liquor means that the driver "is under the influence of intoxicating liquor in an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty[.]" §291-4(a)(1) Note: The term "intoxicating liquor" is defined to include all alcoholic beverages (spirits, wine and beer) containing one-half of one percent or more alcohol by volume. §§281-1 & 291-1

³This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

⁴Standards: (1) Grams of alc. per 100 cubic centimeters or milliliters of blood or (2) grams of alc. per 210 liters of breath. §§291-4(a)(2), 291.4.3(a), 291-4.4 & 291-5(a)

⁵The law makes it illegal for a person <21 yrs old to operate a motor vehicle with "a measurable amount of alcohol concentration." However, "measurable amount of alcohol" is defined to mean a BAC/BrAC ≥0.02 but <0.08. §291-4.3(a)

⁶*State v. Engcabo*, 784 P.2d 865 (Hawaii 1989)

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Chemical Breath Tests for Alcohol Concentration:

enforcement officers can request that medical facility personnel recover a blood sample (for intoxication evidence purposes) from such a person, provided such person has been admitted for treatment.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:
Urine:
Other:

Yes For alcohol or drugs §286-151(c) & (d)
Yes For drugs §286-151(d)
None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No
No

Yes Alcohol assessment (screening) is required for all persons who have been convicted of an alcohol related DWI offense.¹ Substance abuse assessment (screening) is required for all persons who have been convicted a 2nd or 3rd time of a drug related DWI offense.¹ §§291-4(c) & 291-7(c) Also, if a person's license is revoked under the administrative per se law, they must undergo alcohol screening. §286-261(d)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):
Other:

N/A
N/A
N/A

Refusal to Take Implied Consent Chemical Test:
Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

See Persons Under 21 Years Old on p. 3-127.
None

1st action-Rev-1 yr (mand)²; 2nd action (w/n 5 yrs)-Rev-2 yrs (mand); 3rd action (w/n 7 yrs)-Rev-4 yrs (mand); 4th & sub. actions (w/n 10 yrs)-Rev-For Life (mand) For persons under 18 years old, their license is revoked until they reach 18 or for the normal revocation period whichever is longer. §§286-A, 286-257(b) & 286-261(b)(5)
None

Other:

¹The offender pays the cost for this assessment. §§286-261(d), 291-4(c) & 291-7(c)

²**Ignition Interlock.** Persons, who have refused to submit to a chemical test for the first time, may be required to use vehicles equipped with "ignition interlock" devices. §286-264(d)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Notes and Double Jeopardy below.
Imprisonment:	See <u>Persons Under 21 Years Old</u> on p. 3-127. Petty Misdemeanors: <u>1st alcohol off¹-48 hrs² to 5 dys; 1st drug off¹-48 hrs²; 2nd alcohol off (w/n 5 yrs)-48 con hrs to 14 dys; 2nd drug off (w/n 5 yrs)-Not less than 48 con hrs; 3rd alcohol off (w/n 5 yrs)-10 to 30 dys; 3rd drug off (w/n 5 yrs)-10 to 180 dys</u> Cl C Felony: <u>4th or sub off</u> (See Special Note No. 3.) (w/n 10 yrs)-Not more than 5 yrs §§291-4, 291-4.4, 291-7, 701-107(5) & 706-660
Mandatory Minimum Term:	<u>2nd alcohol or drug off (w/n 5 yrs)-48 cons hrs; 3rd alcohol off (w/n 5 yrs)-10 dys (with at least 48 cons hrs); 3rd drug off (w/n 5 yrs)-10 dys</u> §§291-4(b)(2)(B)(ii) & (3)(C) and 291-7(2)(B)(ii) <u>Important.</u> See Alternative Programs on p. 3-128.
Fine: Amount (\$ Range):	Petty Misdemeanors: <u>1st alcohol or drug off-\$150 to \$1,000²; 2nd alcohol off (w/n 5 yrs)-\$500 to \$1,500; 2nd drug off (w/n 5 yrs)-\$500 to \$1,000; 3rd alcohol off (w/n 5 yrs)-\$500 to \$2,500; 3rd drug off (w/n 5 yrs)-\$500 to \$1,000</u> Cl C Felony: <u>4th or sub off</u> (See Special Note No. 3.) (w/n 10 yrs)-Not more than \$10,000 §§291-4, 291-4.4, 291-7, 701-107(5) & 706-640
Mandatory Minimum Fine (\$):	<u>2nd & 3rd offs (alcohol or drugs)(w/n 5 yrs)-\$500³</u>
Other Penalties:	
Community Service:	<u>1st off (alcohol or drug off)-72 hrs²; 2nd off alcohol off (w/n 5 yrs)-100 hrs; 2nd drug off (w/n 5 yrs)-80 hrs</u> as an alternative to imprisonment §§291-4 & 291-7
Restitution (eg Victim's Fund)	Yes I. Direct compensation paid by defendants to the victims §706-605(d) ⁴ II. Also, payment from a State Compenstaion Fund. §351-52 et seq.
Other:	<u>Home detention</u> may be assigned as a condition of probation. §706-624(2)(p)

¹An alcohol offense means driving either while under the influence of intoxicating liquor or with an alcohol concentration ≥ 0.08 . A drug offense means driving while under the influence of a controlled substance.

²The Court must sentence a person convicted of a 1st off to at least one of the sanctions listed but it has the authority to sentence such person to more than one such sanction.

³*State v. Auakuelo*, 683 P.2d 400 (HawaiiApp. 1984)

⁴Note: The payment of restitution shall have priority over the payment of the fine. §706-605(b)

Special Note No. 1: "Documentary and testimonial evidence provided by an arrestee" at an administrative per se proceeding cannot be admitted into evidence against the arrestee in a DWI criminal offense trial. §286-253(a)

Special Note No. 2. I. A prior alcohol offense does not include a prior drug offense. However, it does include a previous conviction under §291-4.4 (Habitually Driving Under the Influence of Intoxicating Liquor or Drugs). II. Likewise, a prior drug offense does not include a prior alcohol offense.

Special Note No. 3. A person, who has been convicted of 3 or more alcohol/drug offenses or a combination thereof, commits an Habitually Driving Under the Influence of Intoxicating Liquor or Drugs Offense (a Cl C Felony). §291-4.4

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Higa*, 897 P.2d 928 (Hawaii 1995), *State v. Toyomura*, 904 P.2d 893 (Hawaii 1995), *State v. Okuno*, 915 P.2d 700 (Hawaii 1996), & *State v. Ontiveros*, 923 P.2d 388 (Hawaii 1996)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other: (continued)

Driver Education and Training Assessments. An offender is subject to an additional assessment of \$100 which is to be used to defray the costs of the driver education and training program. The payment of this assessment can only be waived if the court determines that the defendant is unable to pay it. §286G-3

Child Endangerment. A driver ≥18 yrs old, who is convicted of an alcohol offense while transporting a passenger <15 yrs old, is subject to the following additional sanctions: Jail-48 hrs (mand) but the total jail term shall not exceed 30 dys and a fine of \$500 (mand). §291-4(b)(4)(¶1)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

See Special Notes below and Double Jeopardy on p. 3-125.
Yes ≥0.08 BAC/BrAC¹ or Under the Influence of Intoxicating Liquor §§286-251 & 286-258(d) 1st action-Rev-3 mos^{2&3} (30 dys mand); 2nd action (w/n 5 yrs)-Rev-1 yr (mand)³; 3rd action (w/n 7 yrs)-Rev-2 yrs (mand)³; 4th & sub. actions (w/n 10 yrs)-Rev-For Life (mand)³ §286-261(b) & *Gray v. Administrative Director of Court*, 931 P.2d 580 (Hawaii 1997)
Persons Under 18 Years Old. For persons under 18 years old, their license is revoked until they reach 18 or for the normal revocation period whichever is longer. §286-261(b)(5)
None

Other:

Post DWI Conviction Licensing Action:

See Special Note No. 2 below.
See Persons Under 21 Years Old on p. 3-127.

Type of Licensing Action
(Susp/Rev):

1st off-Susp^{3&4}; 2nd off-Susp³; 3rd off-Rev³ §§291-4, 291-4.5(a) & 291-7 The sanctions apply to both alcohol and drug offs. On p. 3-125, see Footnote No. 1 and Special Note No. 3.

Term of License Withdrawal
(Days, Months, Years, etc.):
Mandatory Minimum Term of
Withdrawal:

1st off-90 dys^{3,4&5}; 2nd off-1 yr^{3&5}; 3rd off-1-5 yrs^{3&5}

1st off-30 dys with a restricted license for 60 dys^{3,4&5}; 2nd off-1 yr^{3&5}; 3rd off-1 yr^{3&5}

¹Standards: (1) Grams of alc. per 100 cubic centimeters or milliliters of blood or (2) grams of alc. per 210 liters of breath. §286-251

²1st admin. per se action, a conditional lic for hardship purposes may be issued after 30 dys of rev period have passed. §286-264(a)

³If a person's license is both revoked and suspended for the same occurrence under the admin. per se law and for a DWI offense conviction, the total time the person's driving privilege can be denied cannot exceed the longer of the two periods. §286-253(b)

⁴Note: For certain serious traffic law violations, e.g., an alcohol driving offense, a person receives points on their driving record. A license is suspended from 1 to 6 months if a person accumulates 12 points on their record. For an alcohol driving offense conviction, a person receives from 4 to 8 points. Consequently, for a first conviction for an alcohol driving offense, a person could receive up to a 6 month license suspension if they have accumulated 12 points as a result of this conviction and from other previous traffic law violations. §286-128

⁵The suspension or revocation begins after the offender is released from imprisonment. §291-4.5(a)

Special Note No. 1: The administrative per se law does not violate a person's constitutional right to due process of law. *Kernan v. Tanaka*, 856 P.2d 1207 (Hawaii 1993) (cert. den., 510 U.S. 1119, 114 S.Ct. 1070, 127 L.Ed.2d 389 (1994))

Special Note No. 2: If a person's license has been revoked for an administrative per se violation, their driving privileges cannot be suspended or revoked for a DWI offense conviction based on the same incident. However, if the administrative action is reversed, a person's driving privileges must be suspended or revoked based on the conviction. §291-4(b)(4)(¶3)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:	
Rehabilitation:	
Alcohol Education:	1st off - A mandatory 14 hr alcohol/drug abuse education or counseling program. §§291-4(b)(1)(A) & 291-7(b)(1)(A)
Alcohol Treatment:	The court may require either a 1st or sub. DWI offender to obtain appropriate treatment for an alcohol abuse problem. Treatment costs must be paid by the offender. §291-4(c)
Vehicle Impoundment/Confiscation:	
Authorized by Specific	
Statutory Authority:	No
Terms Upon Which Vehicle	
Will Be Released:	
Other:	None
Miscellaneous Sanctions	
Not Included Elsewhere:	DWI Bodily Injury Offenses. I. <u>Serious bodily injury caused by negligent veh operation</u> (negligent injury in the 1st degree)-CI C felony: Jail-Not more than 5 yrs; fine-Not more than \$10,000. A mandatory imprisonment term of 1 yr, 8 mos if the person injured was either 60 years old or older, blind, paraplegic, quadriplegic or eight (8) years old or younger (child endangerment). II. <u>Substantial bodily injury caused by negligent veh operation</u> (negligent injury in the 2nd degree)-misd: Jail-Not more than 1 yr; fine-Not more than \$2,000. §§706-620, 706-640, 706-660, 706-660.2, 706-663, 707-705 & 707-706 Ignitions Interlock. Persons, who have been convicted of a 1st DWI offense, may be required to use vehicles equipped with "ignition interlock" devices. §286-264(d)

Persons Under 21 Years Old. Refusal. If a person <21 yrs old refuses to submit to test for alcohol concentration after having been arrested for driving with BAC/BrAC ≥ 0.02 but < 0.08 , their license is suspended as follows: 1st refusal-12 mos (mand); sub refusal (w/n 5 yrs)-2 (mand) to 5 yrs §286-151.5(c) **Sanctions.** If a person <21 yrs old operates a motor vehicle with a BAC/BrAC ≥ 0.02 but < 0.08 , they are guilty of a violation and are subject to the following sanctions: 1st offense: The court must (1) require that the offender attend an alcohol abuse education and counseling program and (2) impose a license suspension as follows: For persons <18 yrs old, a susp for **180 dys (mand)** and, for persons ≥ 18 yrs old, either a susp for **180 dys** or a susp for **30 dys (mand)** followed by a restricted license for 150 dys for either work-related purposes or for alcohol abuse education and treatment programs. In addition, the court may impose (1) a fine of **\$150 to \$500** and/or (2) community service of **36 hrs**. 2nd offense (w/n 5 yrs): The court must impose a license suspension for **1 yr (mand)**. In addition, the court may impose (1) a fine of **\$300 to \$1,000** and/or (2) community service of **50 hrs**. 3rd offense (w/n 5 yrs): The court must impose a license revocation for **2 yrs (mand)**. In addition, the court may impose (1) a fine of **\$300 to \$1,000** and/or (2) community service of **100 hrs**. §291-4.3(b)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥ 0.04 percent by weight (Percent by weight is defined to mean grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of alcohol, a controlled substance or any drug which impairs driving ability or (3) refuse to submit to a chemical test for an alcohol concentration. Note: The CMV "disqualification" provision, based on refusal, applies only to a refusal to submit to a chemical test for alcohol concentration; however, the CMV implied consent provision applies to the testing for both alcohol or controlled substances. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). In addition, a CMV operator who has a BAC/BrAC ≥ 0.01 must be placed "out-of-service" for 24 hours. §§286-2, 286-231, 286-240, 286-242 & 286-243

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Sanctions Following a Conviction for a DWI Offense: (continued)

Alternative Programs. DWI (alcohol or drug) offenders may be eligible to participate in programs that provide for alternatives to imprisonment. Such programs could include (1) home detention or curfew using monitoring (surveillance), (2) supervised release, graduated release or furlough with structured educational or vocational programs or (3) regimental discipline. §353-10.5

Note: The legislature established these programs as a means of reducing prison overcrowding. §1 of Act 25 of 1995 Special Session **Comment:** These programs could impact the mandatory jail requirements under the DWI (alcohol or drug) laws.

License Suspension/Revocation via Court Order. For any violation of the traffic laws, the court can either suspend or revoke an offender's license. A suspension cannot be > 5 yrs. If the license is revoked, the licensing agency cannot restore driving privileges for at least 1 yr. §§286-125 & 286-126

Compensation Fund. A person, who has been convicted of a criminal offense, must pay the following fees into the State Criminal Injuries Compensation Fund: For a felony off-\$100 to \$500; for a misd-\$50; and, for a petty misd-\$25. §351-351

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes 3 types of offs: (1) Death caused by negligent veh operation while DWI (negligent homicide in the first degree) a CI B felony; (2) death caused by negligent veh operation (negligent homicide in the second degree) a CI C felony; (3) death caused by simple negligence-(negligent homicide in the third degree) a misd §§706-620, 706-640, 706-660, 706-660.2, 706-663, 707-702.5, 707-703 & 707-704

Sanctions:
Criminal Sanction:
Imprisonment (Term):

Death caused by negligent veh operation while DWI (negligent homicide in the 1st degree) a CI B felony-Not more than **10 yrs**; death caused by negligent veh operation (negligent homicide in the 2nd degree) a CI C felony-Not more than **5 yrs**; death caused by simple negligence-(negligent homicide in the 3rd degree) a misd-Not more than **1 yr**

Mandatory Minimum Term:

The following mandatory imprisonment sanctions apply if the person killed was either 60 years old or older, blind, paraplegic, quadriplegic or eight (8) years old or younger. Negligent homicide in the first degree-3 yrs, 4 mos; negligent homicide in the second degree-1 yr, 8 mos. §§706.620 & 706-660.2

Fine (\$ Range):

Death caused by negligent veh operation while DWI (negligent homicide in the 1st degree) a CI B felony-Not more than **\$25,000**; death caused by negligent veh operation (negligent homicide in the 2nd degree) a CI C felony-Not more than **\$10,000**; death caused by simple negligence-(negligent homicide in the 3rd degree) a misd-Not more than **\$2,000**

Mandatory Minimum Fine:

None

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:
Licensing Authorized and
Type of Action:

Death caused by negligent veh operation while DWI (negligent homicide in the first degree) a CI B felony-Rev¹; death caused by negligent veh operation (negligent homicide in the second degree) a CI C felony-Rev¹; death caused by simple negligence-(negligent homicide in the third degree) a misd-Rev¹

Length of Term of
Licensing Withdrawal:

Death caused by negligent veh operation while DWI (homicide in the first degree) a CI B felony-Not less than 1 yr; death caused by negligent veh operation (homicide in the second degree) a CI C felony-Not less than 1 yr; death caused by simple negligence-homicide in the third degree) a misd-Not less than 1 yr

Mandatory Action--Minimum
Length of License
Withdrawal:
Other:

1 yr¹
See Compensation Fund on p. 3-128.

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense²:

See the Special Note Nos. 1, 2 & 3 below.

Sanction:
Criminal:
Imprisonment (Term):

Misd 1st off-3 con dys³ to 30 dys; 2nd off (w/n 5 yrs)-30 dys³; 3rd and sub. off (w/n 5 yrs)-1 yr³ §§291-4.5 & 701-107(3)

Mandatory Minimum Term
of Imprisonment:
Fine (\$ Range):

See Footnote No. 3.
1st off-\$250³ to \$1,000; 2nd off (w/n 5 yrs)-\$1,000³; 3rd and sub. off (w/n 5 yrs)-\$2,000³ §291-4.5
See Compensation Fund on p. 3-128.
See Footnote No. 3.

Mandatory Minimum Fine:

¹Note: Mandatory rev applies to a conviction of the driver for "manslaughter". §§286-124 & 286-126

²The sanctions given also apply to a person who operates a motor vehicle after having their driving privileges revoked under the admin. per se law.

³This sanction may not be mandatory. The law is not clear on this point.

Special Note No. 1: The sanctions given apply only to persons who operate a motor vehicle while in a suspended or revoked status, where such suspension or revocation was based on a conviction for driving either while under the influence of alcohol or with an alcohol concentration ≥ 0.10 . I.e., these sanctions do not apply to persons who operate a motor vehicle while in a suspended or revoked status, where such suspension or revocation was based on a conviction for driving while under the influence of a controlled substance. For this last situation, the general sanctions for operating motor vehicle while either suspended or revoked apply; the sanctions for this general offense are a term imprisonment of not more than 1 yr and/or a fine of \$250 to \$1,000. §286-132. A person is also assessed from 3 to 6 points on their driving record. A license can be suspended from 1 to 6 mos if a person accumulates 12 points. §286-128

Special Note No. 2: It is a misd to operate a CMV following CDL disqualification. The sanctions for this offense are a jail term of not more than 1 yr, a fine of \$500 to \$1,000 and disqualification for not less than 1 yr and up to life. §§286.235(b), 286-249(a) & 701.107(3)

Special Note No. 3: It is a misd to operate a CMV during a CDL out-of-service order. The sanctions for this offense are a fine of not more than \$2,500 and disqualification for not less than 1 yr and up to life with the following specific disqualification periods: 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub off (w/n 10 yrs)-3 yrs (mand) to 5 yrs. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or 15 or more persons: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 yrs (mand) to 5 yrs. §§286.235(b), 286-240(g) & (h), 286-249(b) & 701.107(3)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp/Rev¹ §291-4.5

Length of Term of License

Withdrawal Action:

1st off-An additional susp/rev period of **1 yr**; 2nd off (w/n 5 yrs)-An additional susp/rev period of **2 yrs**; 3rd and sub. off (w/n 5 yrs)-**Permanent Revocation** See Footnote No. 2. §291-4.5

Mandatory Term of License

Withdrawal Action:

The above suspensions or revocations appear to be mandatory.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Possible §841-3 Indirect chemical test via the coroner

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Possible

Vehicle Passengers:

Possible

Pedestrian:

Possible

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21³ (Year Eff: 1986) §§281-1, 281-78 & 281-101.5

¹See License Suspension/Revocation via Court Order on p. 3-128.

²The period of suspension or revocation shall commence upon the person's release from imprisonment. §291-4.5(a)

³Notwithstanding the prohibitions contained in §281-78, a university or college student, who is under the legal drinking age, may participate in wine tasting as part of a course of study in food and beverage control, club management or classical food and beverage management offered by the University of Hawaii. §304-55

Other State Laws Related To Alcohol Use: (continued)

Minimum Age (Years) Possession:	21 Employment situations, medical treatment and religious ceremonies are excluded. §§281-1, 281-78, 281-101.5 and 712-1250.5(2)(a) & (b)
Minimum Age (Years) Consumption:	None
<u>Dram Shop Laws and Related Legal Actions:</u>	
State Has a Dram Shop Law (Yes/No):	No
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	Yes <i>Ono v. Applegate</i> , 612 P.2d 533 (Hawaii 1980) ¹
Dram Shop Actions-Social Hosts:	No <i>Johnston v. KFC Nat. Management Co.</i> , 788 P.2d 159 (Hawaii 1990), & <i>Faulk v. Suzuki Motor Co., Ltd.</i> , 851 P.2d 332 (Hawaii App. 1993)
Other:	None
<u>Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
Type of Criminal Action:	Misd
Term of Imprisonment:	Not more than 6 mos §§281-78, 281-91 & 281-102
Fine (\$ Range):	Not more than \$1,000 ²
<u>Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes Susp or Rev
Length of Term of License Withdrawal:	Not specified in the statute Note: A civil penalty of not more than \$2,000 may be assessed in lieu of a license susp or rev. §§281-78, 281-91 & 281-10
<u>Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:</u>	
Type of Criminal Action:	Misd ³
Term of Imprisonment:	Not more than 6 mos ³
Fine (\$ Range):	Not more than \$1,000 ^{2&3} §§281-78, 281-91 & 281-102

¹Under some circumstances, a licensee may be held liable for the actions of an intoxicated minor to whom they have not sold alcoholic beverages. Such is the case if an under age person is allowed to purchase alcoholic beverages where it is "reasonably foreseeable" that the purchaser will give such beverages to another minor who could become intoxicated and cause injury to a third party. *Reyes v. Kuboyama*, 870 P.2d 1281 (Hawaii 1994)

²See Compensation Fund on p. 3-128.

³Under §712-1250.5, it is a misdemeanor to promote intoxicating liquor to a minor: Jail-not more than 1 yr (§706-663) and/or a fine-not more than \$2,000 (§706-640(4)).

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Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp or Rev

Not specified in the statute. Note: A civil penalty of not more than \$2,000 may be assessed in lieu of a license susp or rev. §§281-78, 281-91 & 281-10

Special Note: In Hawaii, alcoholic beverage licensing and enforcement is under the authority of the various county liquor commissions. §281-17

Anti-Happy Hour Laws/Regulations:

Yes (City & County of Honolulu) Rule 78.5 (regulation)¹

Note: Under §281-78.5(a), persons licensed to sell alcoholic beverages are prohibited from engaging in practices that promote the excessive consumption of such beverages. To supplement this prohibition, the various county liquor commissions are required, under §281-78.5(b), to promulgate regulations which prohibit specific practices that promote such excessive consumption. **Comment:** Except for the City and County of Honolulu, such regulations may or may not be concerned with prohibiting or limiting the sale of an unlimited quantity of alcoholic beverages at a fixed price.

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes² §§291-3.1(a) & 291-3.2(a)

Yes² Driver and passengers §§291-3.1(b), 291-3.2(b) & 291-3.3

¹This regulation was promulgated by the Liquor Commission of the City and County of Honolulu and applies only to these places.

²There is an exception in the case of motor vehicles for hire. §291-3.4

STATE:
General Reference:

IDAHO
Idaho Code (General Laws of Idaho Annotated)

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Under the influence of alcohol* §18-8004(1)(a)
≥0.08^{1,42} §18-8004(1)(a)
Persons Under 21 Years Old >0.02 but <0.08² §18-8004(1)(d)
None
Under the influence of (1) **Any Drug**, (2) Intoxicating Substance
(3) Any Narcotic Drug, (4) a Combination of Any Drug and
Alcohol³ §§18-8004(1)(a) & 18-8004(5)
For Commercial Motor Vehicle Operators, see below.

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):

Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit Chemical Test
Admitted into Evidence:
Other Information:

No

No⁴ The implied consent law, §18-8002, applies to CMV DWI
offenses committed under §18-8004(1)(b) & (c).

Yes §18-8002(1)

Yes (Criminal Cases) *State v. Bock*, 328 P.2d 1065 (1958)
Under §18-8002(6)(b), a law enforcement officer may order a

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of 0.08 or more or (2) a urine alcohol concentration of 0.08 or more.

²Standards: Grams of alc. per 100 cubic centimeters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §18-8004(4)

³Under §37-2732C, it is misdemeanor to be under the influence of a controlled substance on either a public roadway, a public conveyance, public property or private property. See the cited section for details.

⁴The police need only "reasonable grounds" of a DWI off before the implied consent law is applicable. §18-8002(1) However, §18-8002(4)(b) appears to indicate that "probable cause" is needed.

*Under separate provisions of law, it is a misdemeanor to operate either a snowmobile or allterrain vehicle on either a public roadway or highway while under the influence of either alcohol, drugs or any other intoxicating substance. The sanctions for this offense are a jail term for not more than 6 mos and/or a fine of not more than \$300. §§18-113 & 67-7114

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): I. A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/Alcohol Concentration in a "Bodily Substance" ≥0.04 (For standards, see Footnote No. 2 above.), (2) are under the influence of alcohol or a controlled substance (not all drugs) or (3) refuse to submit to a chemical test for an alcohol concentration (not drugs). For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). II. A person, who operates a CMV with an alcohol concentration ≥0.04 but <0.08 or while under the influence of alcohol/any drug/intoxicating substances, commits a DWI offense and is subject to same criminal sanctions as other DWI offenders. III. Under separate provisions, A person, who operates a CMV with an alcohol concentration ≥0.08 or while under the influence of alcohol/any drug/intoxicating substances, commits a DWI offense and is subject to same criminal sanctions as other DWI offenders. IV. For II or III, the administrative (licensing) sanctions for a 1st DWI offense do not apply but they do apply for subsequent ones. **Comment:** It would appear that a CMV operator, who is a 1st offender and who is only charged with a CMV DWI offense under either II or III (§§18-8004(1)(b) and 18-8004(1)(c) respectively), (not a DWI offense applicable to all drivers), is not subject to licensing actions against their "regular" driving privileges. Of course, the CDL "disqualification" provided for in I would still apply. V. In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§49-104(9), 49-105(6), 49-123, 49-335 (Reference is made to 49 CFR part 383.), 18-8002(3)(a), 18-8004(1)(b), (1)(c) & (6), 18-8004(4) and 18-8005(2), (3) & (4)

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Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information: (continued)

"qualified person" to withdraw blood from a driver for evidential purposes in cases where there is probable cause to believe that such driver has committed either a DWI aggravated or homicide offense. **Comment:** This provision appears to allow law enforcement officers to obtain a blood sample via force.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §§18-8002(1) & 18-8004
Urine:	Yes §§18-8002(1) & 18-8004
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (Alcohol Evaluation Required) §§18-8004A(1)(d), (2)(e) & (3)(e) and 18-8005(9)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	No
Administrative Licensing Action (Susp/Rev):	<u>1st Refusal-180 dys susp</u> (mand); <u>2nd Refusal</u> (w/n 5 yrs)-1 yr susp (mand) §18-8002(3)(c), (4)(b) & (4)(c)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note and Double Jeopardy below.
Imprisonment:	<u>1st off</u> Misd-Not more than 6 mos; <u>1st off</u> with BAC/BrAC

Special Note: If a person is convicted of a DWI offense and they have had within the past 10 yrs a prior conviction for either (1) a DWI felony offense, (2) Aggravated DWI or (3) DWI Vehicle Homicide, they are guilty of a felony. The sanctions for this offense are as follows: Jail-not more than 5 yrs; fine-not more than \$5,000; and license suspension from 1 to 5 yrs after release from imprisonment (a 1 yr license suspension after release from imprisonment is mandatory). §18-8005(5) & (7)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Talavera*, 905 P.2d 633 (Idaho 1995), & *State v. Reichenberg*, 915 P.2d 14 (Idaho 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Imprisonment: (continued)

≥0.20-Misd-Not more than 1 yr; 2nd off (w/n 5 yrs) Misd-10 dys to 1 yr; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs Felony-Not more than 5 yrs; 3rd & sub off (w/n 5 yrs) or 4th or sub off (w/n 10 yrs) Felony-Not more than 5 years Aggravated DWI off where there is bodily harm or disfigurement Felony-Not more than 5 years §§18-8004C(1)(a) & (2)(a), 18-8005 and 18-8006 Persons Under 21 Years Old (0.02 Offense)-1st off Misd-None; 2nd off Misd-Not more than 30 dys; 3rd and sub off Misd-Not more than 6 mos §18-8004A(2)(a) & (3)(a)

Mandatory Minimum Term:

1st off-None; 1st off with BAC/BrAC ≥0.20 -10 dys (must serve 48 con hrs)¹; 2nd off (w/n 5 yrs)-10 dys (must serve 48 con hrs)^{1,42}; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-30 dys¹; 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs)-30 dys (must serve 48 con hrs)¹ Aggravated DWI off where there is bodily harm/disfigurement-30 dys (must serve 48 con hrs)¹ §§18-8004C, 18-8005 & 18-8006

Fine:

Amount (\$ Range):

Persons Under 21 Years Old (0.02 Offense)-None

1st off-Not more than \$1,000³; 1st off with BAC/BrAC ≥0.20-Not more than \$2,000³; 2nd off (w/n 5 yrs)-Not more than \$2,000³; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-Not more than \$5,000³; 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs)-Not more than \$5,000³ Aggravated DWI off where there is bodily harm/disfigurement-Not more than \$5,000³ §§18-8004C(1)(b) & (2)(b), 18-8005 and 18-8006 See Footnote No. 4.

Mandatory Minimum Fine (\$):

Persons Under 21 Years Old (0.02 Offense)-1st off-Not more than \$1,000; 2nd off-\$500 to \$2,000; 3rd and sub off-\$1,000 to \$2,000 §18-8004A(1)(a), (2)(b) & (3)(b)
Regular DWI offenses and Aggravated DWI-None
Persons Under 21 Years Old (0.02 Offense)-1st off-None; 2nd off-\$500³; 3rd and sub off-\$1,000³

Other Penalties:

Community Service:

Possible Although not specifically authorized by statute, community service could be a condition of probation. §19-2601

¹**Historical Note:** Under Art. 5, §13 of the State's constitution, the legislature may provide for mandatory minimum sanctions. This constitutional provision indirectly abrogated the Idaho Supreme Court's decision in *State v. McCoy*, 486 P.2d 247 (Idaho 1971), that had voided a statute requiring mandatory sanctions.

²The court may assign an offender to a work detail program w/n the custody of the count sheriff during the period of incarceration. §18-8005(4)(a)

³A defendant is also assessed a special fine of \$10 which is paid into a crime victims' compensation account. §72-1025

⁴Under §18-8010, a surcharge of \$15 is added to all fines for the purpose of purchasing ignition interlock and electronic monitoring devices.

⁵**Comment:** The law is not clear as to whether this fine sanction is mandatory.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Restitution (eg Victim's Fund)

Yes (1) Under §19-5304, a person, who has been convicted of any criminal offense, may be ordered to pay restitution to a victim. (2) Aggravated DWI off-paid by the defendant to a victim §18-8006(1)(e) And, (3) there is also a victims' compensation fund. §72-1001 et seq. See Footnote No. 3.

Other:

Under §18-8008, if any part of a jail sentence or fine is suspended, the court may impose, in addition to any other penalty, the following requirements. (1) The defendant may only operate a motor vehicle equipped with an "ignition interlock" device; an imprint/notice shall be made on/attached to the defendant's license stating that driving privileges are granted only for use on motor vehicles equipped with this device; the court can require use of this device for a period of time not in excess of the defendant's probation period. And, (2) the court may require the defendant to use an "electronic monitoring" device to record their movements while they are on probation to insure that they comply with either curfew hours, driving privilege restrictions or home confinement requirements.

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:

Important. See Double Jeopardy on p. 3-134 and the Special Note below.

Administrative Per Se Law:

Yes (1) ≥0.08 (BAC/BrAC/UrAC See Footnote No. 2 on p. 3-133.) or (2) under the influence of either alcohol, drugs or an intoxicating substance 1st Violation-Susp 90 dys (30 dys mand followed by 60 dys restricted driving privileges); 2nd or subsequent violation (w/n 5 yrs)-Susp 1 yr (mand) §18-8002A Under §49-326(a)(1) & (5), a person's license may be susp for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., veh. homicide)¹. Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

Other:

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

See the Special Notes below and on p. 3-134.

1st off-Susp²; 1st off with BAC/BrAC ≥0.20-Susp; 2nd off-Susp²; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-Susp; 3rd & sub off-Susp² Aggravated DWI off-Susp §§18-4004C(1)(e) & (2)(e), 18-8005 and 18-8006 Persons Under 21 Years Old (0.02 Offense)-1st off-Susp; 2nd off-Susp; 3rd and sub off-Susp §18-8004A(1)(b), (2)(c) & (3)(d)

¹These provisions do not apply to DWI offense convictions since such convictions result in license suspension not revocation.

²If the offender is a minor (a person under 18 years old), their license is suspended or denied for either an additional period of 1 yr or until the person reaches 21 which ever period is longer following the end of any regular period of suspension or revocation. This licensing action appears to be mandatory. §§18-8005(11) & 32-101

Special Note: If an offender is subject to licensing action for both an administrative per se law and a criminal drunk driving offense conviction, the license suspension periods are to run concurrently unless the court order to the contrary. §18-8002A(7)(e)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-30 to 150 dys; 1st off with BAC/BrAC ≥ 0.20 -1 yr after release from confinement; 2nd off-1 yr after release from confinement; 2nd or sub off with a BAC/BrAC ≥ 0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-1 to 5 yrs after release from confinement; 3rd & sub off-1 to 5 yrs after release from confinement Aggravated DWI off-1 to 5 yrs after release from confinement §§18-4004C(1)(e) & (2)(e), 18-8005 and 18-8006

Persons Under 21 Years Old (0.02 Offense)-1st off-1 yr; 2nd off-Not more than 2 yrs; 3rd and sub off-1 yr or until the person reaches 21 whichever is greater §18-8004A(1)(b), (2)(c) & (3)(d)

Mandatory Minimum Term of
Withdrawal:

1st off-30 dys¹; 1st off with BAC/BrAC ≥ 0.20 -1 yr after release from confinement; 2nd off-1 yr after release from confinement; 2nd or sub off with a BAC/BrAC ≥ 0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-1 after release from confinement; 3rd & sub off-1 year after release from confinement Aggravated DWI off-1 year after release from confinement §§18-4004C(1)(e) & (2)(e), 18-8005 and 18-8006

Persons Under 21 Years Old (0.02 Offense)-1st off-90 dys (restricted driving privileges may be granted after this mand period); 2nd off-180 dys; 3rd and sub. off-1 yr §18-8004A(1)(b), (2)(c) & (3)(d)

Other:
Rehabilitation:
Alcohol Education:
Alcohol Treatment:

A DWI offender may be required to participate in an alcohol treatment program by the court. §§128-8004A(1)(d), (2)(e) & (3)(e) and 18-8005(12)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

No

None

Miscellaneous Sanctions
Not Included Elsewhere:

Surcharge. A mandatory \$15 surcharge is added to all fines. Funds collected from this surcharge are deposited into a special account which is used either (1) to purchase ignition interlock or electronic monitoring devices or (2) for misdemeanor drunk driving offense probation programs. §18-8010

Child Endangerment. It is an offense for a person > 18 years old to operate a motor vehicle in violation of the drunk driving laws while transporting a "minor." If there is no injury or death associated with this offense, it is a misdemeanor with a jail term

¹After the 30 dy period, the license must be suspended by the court for at least 60 additional dys but not more than 150 dys. However, the defendant may be issued a restricted license for employment/family needs during this 60 to 150 dy period. §18-8005(1)(d)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Child Endangerment. (continued) of not more than 6 mos and/or a fine of not more than \$300. However, if the child is either injured or killed, it is a felony with imprisonment of 1 to 10 yrs (unless a more severe penalty is authorized by law.) §§18-113 & 18-1501(3)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes There are three (3) types of veh manslaughter offs. Death as a result of either (1) an unlawful act not amounting to a felony where gross negligence is involved (Felony), (2) a DWI off (Felony) or (3) death as a result of an unlawful act not amounting to a felony where there is no gross negligence (Misd). §§18-111, 18-4006(3) & 20-201 et seq.

Sanctions:
Criminal Sanction:
Imprisonment (Term):

Death as a result of either (1) gross negligence or (2) a DWI off-Not more than **10 years**; (3) death as a result of an unlawful act not amounting to gross negligence - Not more than **1 year** §18-4007(3)

Mandatory Minimum Term:
Fine (\$ Range):

None
Death as a result of either (1) gross negligence or (2) a DWI off-Not more than **\$10,000**; (3) death as a result of an unlawful act not amounting to gross negligence - Not more than **\$2,000** §18-4007(3)

Mandatory Minimum Fine:

None

Administrative Licensing Action:
Licensing Authorized and
Type of Action:

Death as a result of either (1) gross negligence or (2) a DWI offs-**Rev §49-325(1)(a)**; (3) death as a result of an unlawful act not amounting to gross negligence - **Rev §49-325(1)(a)**

Length of Term of
Licensing Withdrawal:

Death as a result of either (1) gross negligence or (2) a DWI offs-Not less than **1 yr** §49-326(5) (3) death as a result of an unlawful act not amounting to gross negligence - Not less than **1 yr** §49-326(5)

Court Suspension. In addition, an offender's license "may be suspended for a time determined by the court." §18-4007(3)(a)

Mandatory Action--Minimum
Length of License
Withdrawal:

Death as a result of either (1) gross negligence or (2) a DWI offs-**1 yr**; (2) Death as a result of an unlawful act not amounting to gross negligence-**1 yr** §§49-325(a) & 49-326(5)

Other:

Note: A temporary restricted license cannot be issued following revs based on veh manslaughter. §49-325(2)

Death of a Parent-If a parent of a minor was fatally injured, the offender may be required to pay child support until the minor reaches 18 yrs old. §18-4007(3)(c)

Other Criminal Actions Related to DWI: (continued)Driving While License Suspended or RevokedWhere the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term
of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):Length of Term of License
Withdrawal Action:Mandatory Term of License
Withdrawal Action:

See Footnote No. 1 and the Special Note below.

1st off Misd-Not less than 2 dys to 6 mos; 2nd off Misd (w/n 5 years)-20 dys to 1 yr; 3rd and subsequent offs Misd (w/n 5 years)-Not more than 1 yrs §18-80011st off Misd-2 dys²; 2nd off Misd (w/n 5 years)-20 dys²; 3rd and subsequent offs Misd (w/n 5 years)-30 dys

Note: A defendant may be assigned to a work release program within the custody of the county sheriff. However, they are not eligible for community service in lieu of imprisonment. §18-8001(3)(a), (4)(a), (5)(a) & (8)

1st off Misd-Not more than \$500; 2nd off Misd (w/n 5 years)-Not more than \$1,000; 3rd and subsequent offs Misd (w/n 5 years)-Not more than \$3,000
None1st off-Susp; 2nd off (w/n 5 years)-Susp; 3rd and subsequent offs (w/n 5 years)-Susp §18-80011st off (Misd)-License susp for an additional 6 mos; 2nd Off (Misd) (w/n 5 yrs)-License susp for an additional 1 yr; 3rd and subsequent offs (Misd) (w/n 5 yrs)-License suspended for an additional 2 yrs §18-80011st off-None³; 2nd off (w/n 5 yrs)-An additional susp for 30 dys mand⁴; 3rd and subsequent offs (w/n 5 yrs)-An additional susp for 90 dys is mand.⁴ §18-8001(3)(c), (4)(c) & (5)(c)

¹If a person is convicted of an alcohol driving off and such person had no driving privileges at the time of arrest, the penalties imposed under §18-8001 are in addition to any penalties imposed for an alcohol driving off conviction. §18-8001(7)

²The court may assign an offender to a work detail program w/n the custody of the count sheriff during the period of incarceration. §18-8001(1)(a) & (4)(a)

³Restricted licenses available for employment or education reasons or family health needs. §18-8001(3)(c)

⁴After the mand suspension period, a person is eligible for a restricted license for employment or education or family health needs. §18-8001(4)(c) & (5)(c)

Special Note: I. The law (§18-8001) provides that the sanctions given also apply to persons who operate a CMV during a CDL disqualification. II. **Comment:** Idaho law does not appear to make it a criminal offense to operate a CMV following a CDL out-of-service order. Notwithstanding, the law does provide for the following disqualification periods against persons "convicted of an out-of-service order": 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 (mand) to 5 yrs; 3rd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or 16 or more persons: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. §49-335(8)

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Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §49-1314

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1987) §§23-312, 23-603, 23-615(1) & 23-1401(2)

Minimum Age (Years) Possession:

21 §23-949 There is an employment exemption for persons who are at least 19 yrs old. §§23-949, 23-1013, 23-1023 & 23-1334

Minimum Age (Years) Consumption:

21 §23-949 There is an exemption for the home consumption of beer and wine. §§23-1023 & 23-1334

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §23-808 Note: This law limits liability to situations where the patron/guest was either (1) obviously intoxicated or (2) intoxicated and under the legal drinking age.

Other State Laws Related To Alcohol Use: (continued)

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Dram Shop Actions-Social Hosts:
Other:

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:
Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:
License to Serve Alcoholic Beverages
Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Note: Case law (e.g., *Alegria v. Payonk*, 619 P.2d 135 (1980))
may have been abrogated via legislation. §23-808

Yes §23-808 See the Note above.

No

I. State liquor dispensary employees (pkg. sales)-Misd
§§23-312 & 23-601

II. State authorized licensees (beer, wine & liquor by the
drink)-Misd §§18-113, 23-605 and 23-615(2) & (3)

I. State liquor dispensary employees (pkg. sales)-3 mos to 1 yr;

II. State authorized licensees (beer, wine & liquor by the
drink)-not more than 6 mos

I. State liquor dispensary employees (pkg. sales)-\$300 to \$1,000;

II. State authorized licensees (beer, wine & liquor by the drink)-
not more than \$300

I. State authorized licensees (beer, wine & liquor by the
drink)-Susp or Rev¹ §§23-933, 23-1037 & 23-1331

II. The court must include in its judgement of a licensee, who is
convicted of a violation of the alcoholic beverage control code,
Title 23, a forfeiture of the alcoholic beverage license or permit.
§23-608

For revs for all licensees, no stated rev period in the law. For
retail sale of beer, a susp of not more than 6 mos. § 23-1037(1)

¹As an alternative to license suspension action, a licensee may be allowed to pay a monetary payment not to exceed \$5,000. §§23-933(2), 23-1037(2) & 23-1331(2)

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Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:
Type of Criminal Action:

I. State liquor dispensary employees (pkg. sales)-Misd §§23-312 & 23-601

II. State authorized licensees (beer, wine & liquor by the drink)-1st off-Misd; 2nd or subsequent off-Felony §§18-112, 18-113, 23-603 & 23-615(1)

Term of Imprisonment:

I. State liquor dispensary employees (pkg. sales)-3 mos to 1 yr;

II. State authorized licensees (beer, wine & liquor by the drink)-1st off-Not more than 6 mos; 2nd or subsequent off-Not more than 5 yrs

Fine (\$ Range):

I. State liquor dispensary employees (pkg. sales)-\$300 to \$1,000;

II. State authorized licensees (beer, wine & liquor by the drink)-1st off-Not more than \$300; 2nd or subsequent off-Not more than \$50,000

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:
License to Serve Alcoholic Beverages
Withdrawn (Yes/No):

I. State authorized licensees (beer, wine & liquor by the drink)-Susp or Rev¹ §§23-603², 23-933, 23-1037 & 23-1331

II. The court must include in its judgement of a licensee, who is convicted of a violation of the alcoholic beverage control code, Title 23,), a **forfeiture** of the alcoholic beverage license or permit. §23-608

Length of Term of License Withdrawal:

For revs for all licensees, no stated rev period in the law. For retail sale of alcoholic beverages (beer, wine or liquor by the drink), a susp of not more than 6 mos. § 23-603

¹As an alternative to license suspension action, a licensee may be allowed to pay a monetary payment not to exceed \$5,000. §§23-933(2), 23-1037(2) & 23-1331(2)

²Under §23-603, the licensee is also subject to an administrative fine. Note: The law establishes no limits for this fine.

Other State Laws Related To Alcohol Use: (continued)Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Yes¹ §§23-505 & 23-1333

Anti-Consumption Law (Yes/No):

Yes¹ §23-505

¹The law has two provisions. The first, prohibits a driver or passenger from either breaking open or consuming alcoholic liquor (but not beer) while such beverage is being transported. The second provision prohibits a driver from drinking or possessing an open container of any type of alcoholic beverage while in "actual physical control of a motor vehicle". §§23-505 & 23-105 Note: A person is in "actual physical control" of a motor vehicle if they are seated in the driver's position either while the engine is running or while the vehicle is moving. §18-8004(6)

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STATE:

General Reference:

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West's Smith-Hurd Illinois Compiled Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC):

Types of Drugs/Drugs and Alcohol:

Other:

Under the influence of alcohol 625 ILCS 5/11-501(a)(2)

≥0.08^{1,2} or **Any Amount³ of Cannabis, Controlled Substance or Intoxicating Compound (Under the Use of Intoxicating Compounds Act⁴)** or 625 ILCS 5/11-501(a)(1) & (6)⁵
≥0.08 625 ILCS 5/11-501.2(b)(3)

Under the influence of (1) **Any Drug** (2) an Intoxicating Compound or (3) a Combination of **Any Drug, Intoxicating Compound³ and Alcohol** 625 ILCS 5/11-501(a)(3), (4) & (5)
For Commercial Motor Vehicle Operators, see p. 3-148.

See the Special Note below concerning snowmobiles and golf carts.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

Yes⁶ 625 ILCS 5/11-501.5

Important. See Injury/Death Related Implied Consent Law on p. 3-147 and School Bus Operators on p. 3-151.

Yes 625 ILCS 5/11-501.1

Yes⁷ 625 ILCS 5/11-501.1(a)

Yes (Criminal & Civil Cases) 625 ILCS 5/11-501.2(c)(1) & 11-501.6(f), *People v. Thomas*, 558 N.E.2d 656 (Ill.App. 2 Dist. 1990), and *People v. Garrion*, 625 N.E.2d 780 (Ill.App. 4 Dist. 1993)

If there is probable cause of "driving while under the influence" related to a death or injury to another person, the driver must

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more. 625 ILCS 5/11-501.2(a)(5)

²Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. 625 ILCS 5/11-501.2(a)(5)

³As found in the breath, blood or urine "resulting from unlawful use or consumption." 625 ILCS 5/11-501(a)(6)

⁴For a list of "intoxicating compounds", see 720 ILCS 690/1.

⁵The provision of the drunk driving law, that makes it an offense to operate a motor vehicle with any amount of cannabis or controlled substance in the body, was held to be constitutional under both the State and Federal constitutions. *People v. Fate*, 636 N.E.2d 549 (Ill. 1994), & *People v. Gassman*, 622 N.E.2d 845 (Ill.App. 2 Dist. 1993)

⁶Before a PBT can be administered, a law enforcement officer must have "reasonable suspicion" to believe that the driver has violated the DWI law. The test is given prior to an actual DWI arrest for the purpose of assisting the officer in determining whether to require a chemical (evidentiary) test under the implied consent law. The law allows a defendant to introduce PBT test results into evidence at a DWI trial. The State does not have this same right. *State v. Rose*, 643 N.E.2d 865 (Ill.App. 4 Dist. 1994)

⁷**Persons Under 21 Years Old.** Under a separate implied consent law, a law enforcement officer may request that a person, who is under 21 years old, submit to a chemical test of either their blood, breath or urine for alcohol concentration if there is "probable cause to believe" that such person has consumed any amount of alcohol. An actual DWI arrest is not required. 625 ILCS 5/11-501.8(a)

⁸In addition to statutory law, case law provides that for the purpose of determining blood alcohol concentration, a blood sample may be taken by force for a DWI offense (injury or non injury related) as long as the police have "probable cause" of such offense. *People v. Byrd*, 574 N.E.2d 1269 (Ill.App. 4 Dist. 1991), & *People v. Yant*, 570 N.E.2d 3 (Ill.App. 2 Dist. 1991)

Special Note: I. The State of Illinois has a separate provisions of law concerning the operation of snowmobiles by persons who are either (1) under the influence of alcohol or drugs or (2) have an alcohol concentration ≥0.10 (not 0.08) or any amount of a controlled substance or cannabis in their system. The details of these provisions are not reported in this Digest. For further information, see 625 ILCS 40/5-7 et seq. & 625 ILCS 10-1 et seq. II. In addition, all of the State's drunk driving law provisions (i.e., implied consent, admin. per se, et al.) and the "open container" law apply to the operation of golf carts on roadways. 625 ILCS 5/11-1428(f)

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Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information: (continued)

submit to chemical test of their blood, breath or urine for alcohol concentration or drug content.⁷ 625 ILCS 5/11-501.2(c)(2)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes 625 ILCS 5/11-501.1 & 5/11-501.8
Urine:	Yes 625 ILCS 5/11-501.1 & 5/11-501.8
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No ¹
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol or Drug Evaluation (screening required) 625 ILCS 5/11-501(e)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

See School Bus Operators on p. 3-151.

None

Important. See Persons Under 21 Years Old below.

1st refusal-Susp for 6 mos Note: A Judicial Driving Permit is available. See Footnote No. 2 (under Admin. per se) on p. 3-150 for details. Also, restricted driving privileges are available under 625 ILCS 5/6-206(c)(3); Subsequent refusals² (w/n 5 yrs)-Susp for 3 yrs (2 yrs mandatory) See Footnote No. 5 on p. 3-150. 625 ILCS 5/6-206(c)(3), 6-206.1, 6-208.1 & 11-501.1
See the Special Note on p. 3-150.

¹Note: A defendant cannot obtain deferred judgement and be placed on supervision if within the past 10 years they have either (1) been convicted of DWI, (2) pleaded guilty to or stipulated facts supporting the conviction of a DWI off charge or (3) received supervision for a prior DWI off. 730 ICLS 5/5-6-(c) & (d)

²Or a refusal where the person has had a previous DWI offense conviction or admin. per se violation (w/n 5 yrs). 625 ILCS 5/11-500 The mandatory license suspension provisions for subsequent refusals by a person >21 yrs old have been held constitutional on both equal protection and due process of law grounds. *People v. Fisher*, 705 N.E.2d 67 (Ill. 1998)

Persons Under 21 Years Old. See Footnote No. 6 on p. 3-145. Persons under 21 years old, who refuse to submit to a chemical test for alcohol concentration under 625 ILCS 5/11-501.8(a), are subject to the following sanctions: 1st refusal-Susp 6 mos (30 dys mand Restricted driving privileges may be issued after 30 dys.); Sub refusal (Or a refusal where the person under 21 years old has had a previous suspension under 625 ILCS 5/11-501.8 for driving with a BAC/BrAC >0.00 but <0.08.)-Susp 2 yrs (6 mos mand Restricted driving privileges may be issued after 6 mos.) 625 ILCS 5/6-208.2 See Footnote No. 8 on p. 3-150. **Important.** After a hearing, the State Secretary of State has the authority to "rescind" this licensing action. 625 ILCS 5/6-206(c)(3) & 6-208.2(a)

Sanctions for Refusal to Submit to a
Chemical Test: (continued)

Other:

Injury/Death Related Implied Consent Law. Under another separate and independent implied consent law, 625 ILCS 5/11-501.6 (See the Historical Note below), if a law enforcement officer has arrested a driver under any provision of the vehicle code and the driver has been involved in an accident that has resulted in either an injury or a fatality, the officer may request that the person submit to a chemical test of their blood, breath or urine for the purpose determining either the alcohol or drug content in such person's blood. Note: This law, like its predecessor, does not provide for individualized suspicion of impairment. If a driver refuses to submit to such a test, their driving privileges are suspended as follows: 1st Refusal-6 mos; a refusal where the driver has had a previous license suspension for either (1) a DWI offense conviction or (2) a refusal/admin. per se action under 625 ILCS 5/11-501.1-2 yrs. These suspensions, however, are not mandatory. If a driver requests a hearing, the State can modify the suspension order or issue a restricted license for employment, educational or medical purposes. 625 ILCS 5/6-208.1, 11-500 and 11-501.6(a), (c) & (e) Important. A person subject to this implied consent law is still subject to the provisions of 625 ILCS 5/11-501.1. I.e., the driver must comply with both implied consent laws. Note: This revised statute (625 ILCS 5/11-501.6) was held not to violate the unreasonable search and seizure provisions of either the Federal or State constitutions. *Fink v. Ryan*, 673 N.E.2d 281 (Ill. 1996)

Sanctions Following a Conviction for a DWI Offense:

See Double Jeopardy on p. 3-149.

Criminal Sanctions:
Imprisonment:

See the Special Note below and Footnote No. 2 on p. 3-153.
1st & 2nd offs (Class A misd)-Less than 1 yr; 3rd & subsequent offs¹ (Class 4 felony)-1 to 3 yrs 625 ILCS 5/11-501 and 730 ILCS 5/5-8-1(a)(7) & 5-8-3(a)(1)

¹This offense is defined as "Aggravated Driving Under the Influence of Alcohol or Drugs or a Combination of Both". 625 ILCS 5/11-501(d)

Special Note: Either (1) driving a school bus while DWI while the bus is occupied by school children or (2) causing a DWI related accident which results in either great bodily harm or permanent disability or disfigurement is a Class 4 Felony; imprisonment from 1 to 3 yrs and/or a fine of not more than \$10,000. As a condition of probation or conditional discharge an offender must serve either 48 con. hrs. in jail or 100 hrs of community service. Restitution may be required. 730 ILCS 5/5-8-1(a)(7), 5-9-1(a)(1) and 625 ILCS 5/11-501(a), (d)(2) & (d)(3). These offense are defined as "Aggravated Driving Under the Influence of Alcohol or Drugs or a Combination of Both". 625 ILCS 5/11-501(d)

Historical Note: In 1993, 625 ILCS 5/11-501.6 was amended to make the law constitutional and to provide for additional administrative bases for suspending a driver's license for drunk driving activities. As originally written, a law enforcement officer could request that a person, via "implied consent", submit to a chemical test of their blood, breath or urine for alcohol or drug content based only on "probable cause" that the person was responsible for an accident that resulted in either an injury or a death. There was neither a requirement that there be "probable cause" of an offense (e.g., DWI) nor a need for individualized suspicion of impairment. Because the statute provided for no probable cause of an offense, the Illinois Supreme Court declared 625 ILCS 5/11-501.6 unconstitutional under both the State and Federal constitutions on unreasonable seizure grounds. *King v. Ryan, Secretary of State*, 607 N.E.2d 154 (Ill. 1992)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term:

2nd off (w/n 5 yrs)-48 cons hrs; 3rd & subsequent off (w/n 5 yrs)-48 cons hrs (if probation or conditional discharge is granted) 625 ILCS 5/11-501(c), (d) & (h) and 730 ICLS 5/5-5-3(c)(3) & 5-6-1(d) See Community Service below.

Child Endangerment. Jail sanctions are enhanced as follows if the driver was transporting a person <16 years old: 1st off-2 dys; 2nd off-10 dys; 3rd off-30 dys; 4th or sub off-90 dys. These sanctions are in addition to any fine or community service for child endangerment. 625 ILCS 5/11-501(c-3)

Fine:

See the Special Note on p. 3-147.

Amount (\$ Range):

1st & 2nd offs-Not more than \$2,500; 3rd & subsequent offs¹-Not more than \$25,000 730 ICLS 5/5-9-1(a)(1) & (2)

Mandatory Minimum Fine (\$):

Child Endangerment. For a 1st or 2nd off (w/n 5 yrs), a \$500 fine is mand if the at the time of the offense the driver was transporting a person <16 years old. 625 ILCS 5/11-501(c)

Other Penalties:

Community Service:

I. 2nd off (w/n 5 yrs)-A minimum of 100 hrs¹ (Alternative to the term of 48 cons hrs of mandatory imprisonment) 625 ILCS 5/11-501(c) & (d) and 730 ICLS 5/5-5-3(c)(3)

II. For a 3rd or sub. off where the offender has been granted either probation or conditional discharge, they must be sentenced to serve a minimum (mand) term of either 30 dys of community service or 48 con hrs of imprisonment. 625 ILCS 5/11-501(h)

III. **Child Endangerment.** If the defendant was transporting a person <16 yrs old, they are subject to the following mand. periods of community service: 1st off-5 dys; 2nd off (w/n 5 yrs)-10 dys. 625 ILCS 5/11-501(c)

Restitution (eg Victim's Fund)

Yes For all offs Paid directly by a defendant to a victim. 730 ICLS 5/5-5-3(b)(7), 5-5-6 & 5-6-3.1(c)(9) There is also a victims' compensation fund. 740 ILCS 45/1 et seq.

Other:

Ignition Interlock. The State Secretary of State may grant relief (from a licensing action) to 2nd or subsequent offenders by allowing them to operate motor vehicles that are equipped with "ignition interlock" devices. 625 ILCS 5/6-205(h) & 5/11-501(i)

¹**Comment:** There is a conflict in the law. For the same offense, 730 ILCS 5/5-5-3(c)(3) provides for 10 dys of community service (instead of 100 hrs) in lieu of jail.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 12 mos (12 mos mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) have any amount of cannabis or a controlled substance in their blood, breath or urine resulting from the unlawful use of the substance, (3) are under the influence of alcohol or drugs or (4) refuse to submit to a chemical test or tests for alcohol or drug concentrations For either (1) a subsequent violation or (2) a combination of two violations of any of the above listed items, the "disqualification" is for life (10 yrs mand); however, there is a mandatory lifetime disqualification if, after the driver's CDL has been reinstated after the 10 yr mandatory period, they commit another violation as noted above. In addition, a CMV operator who has any amount of alcohol or other drug(s) in their system must be placed "out-of-service" for 24 hours. 625 ILCS 5/1-115.3, 6-500, 6-514, 6-515 & 6-517

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)

Visitation Program. DWI offenders, who are under 21 years old, may be ordered by the court to participate in a special visitation program. An offender may be required to visit either (1) a rehabilitation facility that cares for DWI victims, (2) a facility that cares for persons who are terminally ill from alcoholism, or (3) a morgue to observe persons who have been killed as a result of DWI related accidents. 625 ILCS 5/11-501.7

Additional Fees. I. A fee of up to \$30 may be assessed against DWI offenders for court costs. 55 ILCS 5/5-1101(a) II. 2nd or sub. DWI offenders must be assessed \$100 fee which is used to finance DWI education programs. 55 ILCS 5/5-1101(d)

Surcharge. Every offender is assessed a surcharge of \$4 for every \$40 (or fraction thereof) of a fine imposed. 730 ILCS 5/5-9-1(c) & 625 ILCS 5/16-104a

Special Restitution. A court may order a DWI offender to pay restitution to the Illinois Secretary of State for any costs incurred by that official's office in obtaining evidence associated with the DWI offense. 625 ILCS 5/2-115

Court Costs (Fees). I. For counties with a population < 180,000: DWI/Misd-\$25; felony-\$40 705 ILCS 105/27.1(c) II. For counties with a population > 180,000 but < 3,000,000: Misd-\$50; felony-\$80 705 ILCS 105/27.1a(w) & 27.2(w) III. For counties with a population > 3,000,000: Misd-\$75; felony-\$125 705 ILCS 105/27.2a(w)

EMS Cost. A DWI offender is liable for the cost of any appropriate emergency response. Such cost shall not exceed \$500 per public agency. 625 ILCS 5/11-501(f) & 730 ILCS 5/5-5-3

Trauma Center Fund. A convicted drunk driving law offender must pay a fee of \$25. This fee is deposited into the Trauma Center Fund and is used to pay for hospital trauma care. 705 ILCS 105/27.6(b) & 730 ILCS 5/5-9-1(c-5)

Crime Laboratory Costs. A convicted drunk driving law offender must be assessed a fee of \$150 to cover the cost of any chemical analysis that was performed on their blood or urine. 730 ILCS 5/5-9-1.9

Administrative Costs (Fee). A person, who either has been convicted of or has had their license suspended for a drunk driving offense, is assessed a \$25 fee to defray administrative costs. 730 ILCS 5/5-9-1(c-5)

Equipment Costs. In addition to any other sanctions, an offender must pay a \$100 fine which is used to purchase law enforcement equipment related to the "prevention of alcohol related criminal violence". 625 ILCS 5/11-501(j)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *People v. Dvorak*, 658 N.E.2d 869 (Ill.App. 2 Dist. 1995), *People v. Fasbinder*, 663 N.E.2d 1052 (Ill.App. 4 Dist. 1996), *People v. Eck*, 664 N.E.2d 1147 (Ill.App. 5 Dist. 1996), & *People v. Lopeman*, 665 N.E.2d 881 (Ill.App. 3 Dist. 1996) Note: The Illinois Supreme Court has held that a person is not subjected to double jeopardy if they are prosecuted for a drunk driving offense following a licensing action for a refusal to submit to a chemical test under the implied consent law. *People v. Lavariega*, 676 N.E.2d 643 (Ill. 1997)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Important. See the Special Administrative Per Se Law below and School Bus Operators on p. 3-151.

See Double Jeopardy on p. 3-149 and the Special Note below.

Yes ≥ 0.08 (BAC/BrAC See Footnote No. 2 on p. 3-145.) or **Any Amount¹ of Cannabis, Controlled Substance or Intoxicating Compound** 1st action-3 mos susp^{2,3} (not mand) subsequent action⁴ (w/n 5 yrs)⁵-**1 yr susp** (90 dys mand; a restricted lic. may be issued after this 90 dy period.⁶) 625 ILCS 5/6-206(a)(31), 6-206.1, 6-208.1(a) & (h) and 11-501.1

Persons Under 21 Years Old. Under a separate admin per se law, persons under 21 years old, who have BAC/BrAC > 0.00 but $< 0.08^{7,8}$ are subject to the following sanctions: 1st violation-Susp 3 mos (30 dys appears mand. Restricted driving privileges may be issued after 30 dys.); Sub violation-Susp 1 yr (90 dys appears mand. Restricted driving privileges may be issued after 90 dys.)⁹ 625 ILCS 5/6-208.2 & 5/11-501.8 Note: A Judicial Driving Permit (JDP) is not authorized by law. *People v. Schmit*, 676 N.E.2d 11 (Ill.App. 3 Dist. 1997)

Important. After a hearing, the State Secretary of State has the authority to "rescind" this licensing action. 625 ILCS 5/6-206(c)(3) & 6-208.2(a)

Special Administrative Per Se Law: Under another separate and independent admin. per se law, 625 ILCS 5/11-501.6, the State may susp a license where (1) a person has been arrested for any vehicle code violation, (2) there has been an accident that

¹As found in the breath, blood or urine "resulting from unlawful use or consumption." 625 ILCS 5/11-501.1

²A Judicial Driving Permit (JDP) may be issued after the first 30 days of the susp period have passed. However, the licensing agency, it appears, can issue a restricted lic. for any part or all of this susp period. A JDP may be issued following either an admin. per se law violation or an implied consent law chemical test refusal. The court may require a person to only operate motor vehicles that are equipped with ignition interlock devices as a condition for issuing a JDP. 625 ILCS 5/6-206.1(a) **Important:** A JDP cannot be issued to a person under 18 years old. 625 ILCS 5/6-206.1(a)(4)(iv)

³For a case concerning when a person is considered to be a first offender and eligible for Judicial Driving Permit, see *People v. Warner*, 586 N.E.2d 679 (Ill.App. 1 Dist. 1991).

⁴Or an admin. per se violation where the person has had a previous DWI conviction or refusal to submit to a chemical test (w/n 5 yrs). 625 ILCS 5/11-500

⁵If a person is found not guilty of a DWI offense associated with an admin. per se action (where the driver submitted to a chemical test and was found to have a BAC/BrAC ≥ 0.08), the admin. per se action cannot be considered a prior offense in determining enhanced licensing sanctions for implied consent law refusals or subsequent admin. per se actions/DWI offenses. 625 ILCS 5/11-500

⁶**Comment:** Given the language in 625 ILCS 5/6-208.1(h), this restricted lic. may only apply in situations where the driver was operating a vehicle with a BAC/BrAC ≥ 0.08 . I.e., such restricted driving privileges may not be available in situations where the driver has "unlawfully" used drugs.

⁷Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 625 ILCS 5/11-501.8(b)(v)

⁸A person under 21 years old is not subject to these licensing sanctions if the alcohol concentration was the result of alcohol consumed either as part of a religious service or as per prescribed medication. 625 ILCS 5/11-501.8(e)

⁹If a person under 21 years old is convicted of a drunk driving offense, any period of suspension imposed under 625 ILCS 5/6-208.2 for a refusal or admin per se action under 625 ILCS 5/11-501.8 is credited toward the minimum period of revocation imposed for the conviction. 625 ILCS 5/6-208.2(d)

Special Note: The administrative per se/implied consent law does not violate a person's constitutional rights to due process of law or equal protection of the laws. *People v. Esposito*, 521 N.E.2d 873 (Ill. 1988), *People v. Gerke*, 525 N.E.2d 68 (Ill. 1988), & *People v. Fisher*, 705 N.E.2d 67 (Ill. 1998)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Term of License Withdrawal

(Days, Months, Years, etc.):

Mandatory Minimum Term of

Withdrawal:

Special Administrative Per Se Law: (continued) resulted in either an injury or fatality and (3) the driver submits to a chemical test that indicates a BAC/BrAC ≥ 0.08 or the presence of any amount of cannabis/controlled substance resulting from unlaw use in their blood or urine. Driving privileges are suspended as follows: 1st Action-3 mos; an admin. per se action where the driver has had a previous license suspension for either (1) a DWI offense conviction or (2) a refusal/admin. per se action under 625 ILCS 5/11-501.1-1 yr. These suspensions, however, are not mandatory. If a driver requests a hearing, the State can modify the suspension order or issue a restricted license for employment, educational or medical purposes. 625 ILCS 5/6-208.1, 11-500 and 11-501.6(a), (c) & (e) Important. A person subject to this admin. per se law is still subject to the provisions of 625 ILCS 5/11-501.1. I.e., the driver is subject to license susp under both admin. per se laws.

I. Under 625 ILCS 5/6-206(a)(1) & 6-208, a person's license may be susp/rev for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). I.e., such action can occur prior to a conviction (see the case cited below) and may be taken without a preliminary hearing. A post action hearing is available. The law establishing this type of action has been held constitutional. *People Ex Rel Eppinga v. Edgar*, 492 N.E.2d 187 (Ill. 1986) (*cert. den.*, 479 U.S. 914 (1986))

II. Under 625 ILCS 5/6-301.3, the State may "invalidate" a driver's license based either on a certified court order or as per administrative rule.

School Bus Operators. A person's privilege to operate a school bus is canceled administratively for 3 yrs if, while operating such a vehicle, they either (1) refuse to submit to a chemical test for alcohol concentration following a traffic offense arrest or (2) submit to such a test which indicates they were driving with an alcohol concentration > 0.00 .¹ 625 ILCS 5/6-106.1a & 6-106.1b

Rev 625 ILCS 5/6-205, 6-208 & 11-501

1st off-1 yr; 2nd off (w/n 20 yrs)-5 yrs; 3rd off-10 yrs; sub off-Permanent² 625 ILCS 5/6-208(b)(1), (2), (3) & (4) Note: A hardship license may be issued. 625 ILCS 5/6-205(c)

A person, under 21 years old, who is convicted of a DWI offense, must have their license revoked for a mandatory period of 1 yr.³ 625 ILCS 5/6-205(d)

¹ This sanction does not apply if the alcohol concentration was the result of alcohol consumed as part of a religious service or ceremony.

² The law states that a "person may not make application for a license" if they have been convicted of a 4th or sub off. 625 ILCS 5/6-208(b)(4)

³ Note: After this 1 yr period, such a youthful offender must have their driving privileges restricted for at least 1 additional year. If the person is still under 21 year old after the expiration of the 1 yr restricted license, restricted driving privileges may be granted in 12 month intervals until the person reaches 21. 625 ILCS 5/6-205(d)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:
Rehabilitation:
Alcohol Education:

Note: Thirty dollars (\$30) of the \$60 license reinstatement fee following an admin. per se suspension is deposited into the Drunk and Drugged Driver Prevention Fund. This fund is used to provide "evaluation and remedial education programs" to indigent persons charged with DWI. 20 ILCS 305/4-102

Alcohol Treatment:
Vehicle Impoundment/Confiscation:

Forfeiture (Not Mandatory). A vehicle is subject to forfeiture if it is used with the knowledge and consent of the owner in either (1) a 3rd or sub DWI offense or (2) a 2nd DWI off where the offender has had a prior alcohol/drug related reckless homicide driving offense. 720 ILCS 5/36-1 (¶1) Based on a showing of "financial hardship", the vehicle will not be forfeited but its title must be transferred to either a spouse or other family member. 720 ILCS 5/36-1 (¶5)

Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

Limited Impoundment. I. Following a DWI arrest, a person's vehicle may be impounded for not more than 12 hrs by law enforcement officers if such officers "reasonably believe" that the arrested person, upon release, will commit another DWI offense. 625 ILCS 5/4-203(e) II. If the offender is the registered owner of the vehicle: 2nd off-Impoundment for 24 hrs; 3rd off-Impoundment for 48 hrs. However, with the owner's consent, the vehicle may be released sooner to a person who is a competent driver. 625 ILCS 5/4-203(e-5)

Miscellaneous Sanctions
Not Included Elsewhere:

Special Note: Under 730 ILCS 5/5-6-1 & 5-6-3.1, a DWI offender may be placed in a court supervised diversion program. However, an offender cannot be placed in such a program if they either have had a previous DWI conviction or have been in such a diversion program within 5 yrs of the charged off. As a supervision condition, they may be required to only operate motor vehicles that equipped with **ignition interlock** devices.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Reckless homicide (Death must be the result of reckless action of the accused driver.)-Cl 3 felony. However the offense is a Cl 2 felony^{1&2} if the defendant was under the influence of alcohol or drugs at the time of the offense 720 ILCS 5/9-3

¹The Class 2 Felony offense for DWI reckless homicide was held constitutional on "equal protection" grounds. *People v. Warwick*, 621 N.E.2d 282 (Ill.App. 2 Dist. 1993)

²Note: The law provides that being under the influence of alcohol or drugs (in the same manner as a DWI offense) at the time of the violation is presumed evidence of a reckless act. 720 ILCS 5/9-3(b)

Other Criminal Actions Related to DWI: (continued)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

CI 3 felony-2 to 5 yrs 730 ILCS 5/5-8-1(a)(6); CI 2 felony-3 to 14 yrs (if two or more person where killed, 6 to 28 yrs) 730 ILCS 5/9-3(e) & (e-5)

Mandatory Minimum Term:

None

Fine (\$ Range):

CI 3 & 2 felonies-Not more than \$25,000 730 ICLS 5/5-9-1(a)(1)

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev 625 ILCS 5/6-205(a)(1)

Length of Term of

Licensing Withdrawal:

1st off-2 yrs; 2nd off (w/n 20 yrs)-5 yrs; 3rd off-10 yrs; 4th and sub offs-Permanent (See Footnote No. 2 on p. 3-151.) 625 ILCS 5/6-208(b)(1), (2), (3) & (4)

Mandatory Action--Minimum

Length of License

Withdrawal:

None Under 625 ILCS 5/6-205(c), a restricted license may be issued.

Other:

See Court Costs (Fees) on p. 3-149.

Driving While License Suspended or RevokedWhere the Basis Was a DWI Offense:

See Footnote Nos. 1 & 2.

Sanction:

Criminal:

Imprisonment (Term):

1st off-CI A misd-Less than 1 yr; 730 ILCS 5/5-8-3(a)(1), & 625 ILCS 5/6-303(a); subsequent off-CI 4 felony-1-3 yrs 625 ILCS 5/6-303(d) & 730 ILCS 5/5-8-1(a)(7)

Mandatory Minimum Term
of Imprisonment:

7 cons dys-All offenses Note: Alternatively, the defendant may be sentenced to 30 dys of community service. 730 ICLS 5/5-5-3(c)(4) & 625 ILCS 5/6-303(c)

¹I. It is a CI A misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term of less than 1 yr and/or a fine of not more than \$1,000. II. Persons convicted of operating a CMV after disqualification are subject to a 1 yr license revocation. This revocation does not appear to be mandatory. III. A person who operates a CMV after they have been placed "out-of-service" is subject to the following CDL disqualification periods: 1st off-6 mos; 2nd off (w/n 10 yrs)-1 yr; 3rd or sub off (w/n 10 yrs)-3 yrs. If the offender was transporting passengers or hazardous materials, the disqualification periods are as follows: 1st off-1 yr; 2nd off (w/n 10 yrs)-3 yrs; 3rd or sub off (w/n 10 yrs)-5 yrs. 625 ILCS 5/6-205(12)(a) & (c), 5/6-208, 5/6-507(b), (d) & (e), 5/6-514(i) and 730 ILCS 5/5-8-3(a)(1) & 5/5-9-1(1)(2)

²DWI While Suspended or Revoked. A person, who commits a DWI offense while their driving privileges are still suspended or revoked for either a DWI offenses, implied consent law violation or vehicle homicide, is subject to the following sanctions: 1st or 2nd off (CI 4 felony)-Imprisonment from 1 to 3 yrs /fine of not more than \$25,000; 3rd off (CI 3 felony)-Imprisonment from 2 to 5 yrs/a fine of not more than \$25,000; and, 4th or sub off (CI 2 felony)-Imprisonment from 3 to 7 yrs/fine of not more than \$25,000. 625 ILCS 5/11-501(c-1), 730 ILCS 5/5-8-1(a)(5) & (6) and 730 ILCS 5/5-9-1(a)(1) Important. If a person commits a DWI offense while their driving privileges are still under either revocation or suspension for a previous DWI offense, they are subject to one of the following mandatory sanctions: (1) 30 con dys of imprisonment; (2) 40 dys of 24 hr periodic imprisonment; or, (3) 720 hrs of community service. 730 ILCS 5/5-5-3(c)(4.1) A vehicle is subject to forfeiture if it is used with the knowledge and consent of the owner in the above offenses. 720 ILCS 36-1 (¶1) Based on a showing of "financial hardship", the vehicle will not be forfeited to the State. However, its title must be transferred to a spouse or other family. 720 ILCS 36-1 (¶5)

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Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range):

1st off-Not more than **\$2,500**; Sub off not more than **\$25,000** 730
ICLS 5/5-9-1(a)(1) & (2) See Court Costs (Fees) on p. 3-149.
None

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp or rev 625 ILCS 5/6-303(b)

Length of Term of License

Withdrawal Action:

If the original charge is based on a susp, the susp is extended an additional period of time equal to that if the original susp. If the original charge is based on a rev, the rev is extended 1 yr. 625 ILCS 5/6-303(b)

Mandatory Term of License

Withdrawal Action:

Same as above.

Other:

Limited Impoundment. If the offender is the registered owner of the vehicle: 2nd off-Impoundment for **24 hrs**; 3rd off-Impoundment for **48 hrs**. However, with the owner's consent, the vehicle may be released sooner to a person who is a competent driver. 625 ILCS 5/4-203(e-5)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status:

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes 55 ILCS 5/3-3013

BAC Chemical Test Is Given to the

the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes (16 years old or older)

Other State Laws Related To Alcohol Use: (continued)Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1980) 235 ILCS 5/6-16 & 6-20

Minimum Age (Years) Possession:

21 There are exceptions for reasons of employment or by the order of a parent. 235 ILCS 5/6-16

Minimum Age (Years) Consumption:

21 There are exemptions for religious ceremonies and for home use. 235 ILCS 5/6-20

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes^{1/2} 235 ILCS 5/6-21

"Dram Shop Law" Concept Has Been

Adopted Via a Change to the Common

Law Rule by Action of the Highest

Court of Record in the State (Case

Citation):

No²

Dram Shop Actions-Social Hosts:

No² *Charles v. Seigfried*, 651 N.E.2d 154 (Ill. 1995)

Other:

None

Criminal Action Against Owner or Employeesof Establishments that Serve AlcoholicBeverages to Intoxicated Patrons:

Type of Criminal Action:

Cl A Misd 235 ILCS 5/6-16(a)

Term of Imprisonment:

Less than 1 yr 730 ICLS 5/5-8-3(a)(1)

Fine (\$ Range):

\$500 (mand) but not more than \$2,500 235 ILCS 5/6-16(a) & 730 ICLS 5/5-9-1(a)(2) See Court Costs (Fees) on p. 3-149.

Administrative Actions Against Owners ofEstablishments that Serve AlcoholicBeverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp/Rev 235 ILCS 5/3-12 (State licenses) and 235 ILCS 5/7-5 (local licenses) Mandatory rev. for a conviction for a "willful" violation of the law. 235 ILCS 5/7-12

Length of Term of License Withdrawal:

Not specified in the statute.^{3&4}¹Damages for personal injuries or to property are limited to \$30,000. Loss of means of support is limited to \$40,000.²In the *Seigfried* case as well as in previous decisions (e.g., *Cunningham v. Brown*, 174 N.E.2d 153 (Ill. 1961)), the Illinois Supreme Court has held that the Dram Shop Law is the exclusive remedy in all dram shop type liability situations.³Note: In lieu of either revoking or suspending a State license, the licensee may be allowed to pay an administrative fine of \$500 for each violation; however, the maximum or total fine amount that may be imposed for all violations during any licensing period is \$20,000. Also, in lieu of revoking/suspending a local license, the licensee may be allowed to pay an administrative fine of \$1,000 for each violation; however, the maximum or total fine amount that may be imposed during any licensing period is \$10,000. 235 ILCS 5/3-12 & 7-5⁴If a license has been revoked, the formally licensed premises cannot be re-licensed for 1 yr. 235 ILCS 5/7-13

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Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

CI A Misd 235 ILCS 5/6-16(a)

Less than 1 yr 730 ICLS 5/5-8-3(a)(1)

\$500 (mand) but not more than \$2,500 235 ILCS 5/6-16(a) &
730 ICLS 5/5-9-1(a)(2) See Court Costs (Fees) on p. 3-149.

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp/Rev 235 ILCS 5/3-12 (State licenses) and 235 ILCS
5/7-5 (local licenses) Mandatory rev. for a conviction for a
"willful" violation of the law. 235 ILCS 5/7-12
Not specified in the statute.^{1&2}

Length of Term License Withdrawal:

Anti-Happy Hour Laws/Regulations:

Yes 235 ILCS 5/6-28³

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes 625 ILCS 5/11-502

No Note: A person cannot consume alcoholic beverages while
operating a limousine. 625 ILCS 5/11-502(c)

¹Note: In lieu of either revoking or suspending a State license, the licensee may be allowed to pay an administrative fine of \$500 for each violation; however, the maximum or total fine amount that may be imposed for all violations during any licensing period is \$20,000. Also, in lieu of revoking/suspending a local license, the licensee may be allowed to pay an administrative fine of \$1,000 for each violation; however, the maximum or total fine amount that may be imposed during any licensing period is \$10,000. 235 ILCS 5/3-12 & 7-5

²If a license has been revoked, the formally licensed premises cannot be re-licensed for 1 yr. 235 ILCS 5/7-13

³Rollin Foods v. Village of Glendale Heights, 646 N.E.2d 12 (Ill.App. 2 Dist. 1995)

STATE:
General Reference:

INDIANA
Burn's Indiana Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense
Illegal Per Se Law (BAC/BrAC)

Operating a vehicle while intoxicated¹ (Cl A Misd) IC9-30-5-2
I. $\geq 0.10^2$ (after 7/1/2000, ≥ 0.10 but < 0.15) (Cl C Misd)
IC9-30-5-1(a) & 9-30-5-4(a)(1)

II. After 7/1/2000, ≥ 0.15 (Cl A Misd) IC9-30-5-1(b)

III. Any Amount of a Controlled Substance³ (Cl C Misd)
IC9-30-5-1(b)* & 9-30-5-4(a)(2)

Persons Under 21 Years Old, ≥ 0.02 but $< 0.10^3$ (Cl C
Infraction) IC9-30-5-8.5

Presumption (BAC/BrAC):

$\geq 0.10^{2,4}$ IC9-30-6-15(b)(2)

Persons Under 21 Years Old, $\geq 0.02^3$ is a presumption of a
violation of IC9-30-5-8.5. IC9-30-6-15(c)

Types of Drugs/Drugs and Alcohol:

Operating a vehicle while intoxicated (Cl A Misd) IC9-30-5-2 &
IC9-13-2-86 Important. See Footnote No. 1 for a definition of
the term "intoxicated".

Other:

A BAC/BrAC $\geq 0.10^2$ is also *prima facie* evidence of intoxication.
IC9-13-2-131

A BAC/BrAC ≥ 0.05 but < 0.10 is relevant evidence of
intoxication. IC 9-13-2-151

See School Bus Operators below.

For Commercial Motor Vehicle Operators, see p. 3-158.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

No PBT law, IC9-4-4.5-3, repealed by P.L. 143 (1983).

Implied Consent Law:

Arrest Required (Yes/No):

No An actual arrest is not required. Nevertheless, a request for
a test must still be based on probable cause. IC9-30-6-2 & *Clark*
v. State, 372 N.E.2d 185 (Ind. 1978)

Implied Consent Law Applies to
Drugs (Yes/No):

Yes IC9-30-6-2

¹The term "intoxicated" is defined as under the influence of alcohol, a controlled substance (as defined under IC 35-48-1), a drug other than alcohol or a controlled substance or a combination of alcohol, controlled substance or drugs so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties to an extent that endangers a person. IC9-13-2-86

²Standards: Grams of alcohol per either 100 milliliters of blood or 210 liters of breath. IC9-13-2-131, 9-13-2-151, 9-30-5-1(a), 9-30-5-4(a), 9-30-5-8.5, 9-30-6-15(b)(2) & 9-30-15-3

³This State's illegal per se law also makes it an offense (Cl C misd) for a person to operate a motor vehicle with any amount of a controlled substance in their blood. Exception: It is a defense to this offense if it is shown that the defendant was using a controlled substance via a valid prescription. IC9-30-5-1(c)* Note: Although the language of the statute clearly applies only to controlled substances in the blood, the Indiana Supreme Court has held that the State can present evidence of other bodily substances (e.g., urine) to establish this fact. *Rhodes v. State*, 675 N.E.2d 698 (Ind. 1997) Previous decisions by the Indiana Court of Appeals, which held that evidence of such drugs in a person's urine alone was not insufficient to prove the presence of these drugs in the blood, have been abrogated by the *Rhodes* case. *Moore v. State*, 645 N.E.2d 6 (Ind.App. 1 Dist. 1994), *Hoornaert v. State*, 652 N.E.2d 874 (Ind.App. 1995), & *Estes v. State*, 656 N.E.2d 528 (Ind.App. 1995)

⁴Under IC9-30-6-15(b)(2), a chemical test indicating a BAC ≥ 0.10 is to be taken as a presumption of such BAC.

School Bus Operators. It is a Class A Misd. to consume either alcohol or a controlled substance within six (6) hours of operating a school bus. IC20-9.1-3-1.6 Sanctions: Jail-not more than 1 yr; fine-not more than \$5,000. IC35-50-2-7 & IC35-50-3-1

*As of 7/1/2000, the present provisions of IC9-30-5-1(b) & (c) will be re-codified respectively as IC9-30-5-1(c) & (d).

INDIANA

Chemical Breath Tests for Alcohol Concentration: (continued)

Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

Yes (Criminal & Civil Cases) IC9-30-6-3(b)
In accidents where there has been either a fatality or a serious injury, a blood sample may be obtained via force from a driver suspected of any DWI offense. IC9-30-6-6(g) & (h)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:
Urine:
Other:

Yes¹
Yes¹
Any other bodily substance¹

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No
No
Yes Mandatory for sub alcohol driving offenses. IC9-30-5-15

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):
Other:

N/A
N/A
N/A

Refusal to Take Implied Consent
Chemical Test:
Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

Yes Limited²
1 yr susp^{2,3} May not be mandatory if there is a DWI conviction.³ IC9-30-6-9(a) See Footnote No. 2 on p. 3-161.

¹The implied consent law requires a driver to submit one or more "chemical tests". The substances that may be tested are breath, blood, urine or any other bodily substance. IC9-30-6-1 & IC9-30-6-6(a)

²Refusal to submit to a implied consent test, where there has been an accident in which there has been a death or a serious bodily injury likely to cause death, is a Cl C Infraction (a fine of not more than \$500). IC9-30-7-5 & IC34-4-32-4(c) In addition, the court may suspend a persons license for not more than 1 yr. IC9-30-7-5

³This susp. is consecutive to any susp. for a DWI offense. However, if a court finds in the sentence order for a DWI Conviction that it is in the best interest of society, it may terminate all or any part of this suspension. IC9-30-5-14(b)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥ 0.04 (For standards, see Footnote No. 1 on p. 3-157.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life. However, for a second violation only, the CDL may be reinstated after 10 yrs. It is a Cl C Infraction for a person to operate a CMV with a BAC ≥ 0.04 but < 0.10 . The sanction of this offense is a fine of not more than \$500. IC9-24-6-8 et seq. & IC34-4-32-4(c)

Sanctions for Refusal to Submit to a
Chemical Test: (continued)

Other:

Note: A driver's license may be reinstated if the DWI charges are dismissed. IC9-30-6-11(a)(1)
None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment:
Term (Day, Month, Years,
Etc.):

See Double Jeopardy below.

Mandatory Minimum Term:

1. Illegal per se (after 7/1/2000, Illegal per se BAC/BrAC ≥ 0.10 but < 0.15)-Cl C Misd-Not more than **60 dys** 2. Intoxicated off (after 7/1/2000, Intoxicated/Illegal per se BAC/BrAC ≥ 0.15 offenses)-Cl A Misd-Not more than **1 yr** 3. Either 1 or 2 above if there has been a previous conviction of either off (w/n 5 yrs)-Cl D felony¹-A fixed term of **1½ yrs** 4. A serious injury where a person has been operating a vehicle with a BAC/BrAC ≥ 0.10 , with a schedule I or II controlled substance or while intoxicated-1st off-Cl D felony¹-A fixed term of **2 yrs**; sub off² (w/n 5 yrs)-Cl C felony-A fixed term of **4 yrs** IC9-30-5-1, -2, -3 -4 & -5, IC35-50-2-6 & -7 and IC35-50-3-2, -4 & -5
Persons Under 21 Years Old, BAC/BrAC ≥ 0.02 but < 0.10 -Cl C Infraction²-None

Fine:
Amount (\$ Range):

1) A conviction for **ANY** alcohol related driving off, where there has been a **one** previous conviction for **ANY** type of alcohol driving off, **5 dys** (w/ 48 con hrs) 2) A conviction for **ANY** alcohol related driving off, where there has been **two or more** previous convictions for **ANY** type of alcohol driving off, **10 dys** (w/ 48 con hrs) IC9-13-2-130³ & IC9-30-5-15 See Community Service on p. 3-160 and Miscellaneous DWI Sanctions on p. 3-162.

1. Illegal per se off (after 7/1/2000, Illegal per se BAC/BrAC ≥ 0.10 but < 0.15)-Cl C Misd-Not more than **\$500** IC35-50-3-4; 2. Intoxicated off (after 7/1/2000, Intoxicated/Illegal per se BAC/BrAC ≥ 0.15 offenses)-Cl A Misd-Not more than **\$5,000** IC35-50-3-2 3. Either 1 or 2 above if there has been a previous intoxicated off (w/n 5 yrs)-Cl D felony-Not more than **\$10,000** IC35-50-2-6 4. A serious injury where a person has been operating a vehicle with a BAC/BrAC ≥ 0.10 , with a schedule I or II controlled substance or while intoxicated-1st or sub off (w/n 5 yrs)-Cl D or C felony respectively-Not more than **\$10,000** IC35-50-2-6 IC35-50-2-5 & -6

¹A person convicted of a Class D felony may, at the court's discretion, be sentenced as if they had been convicted of a Class A misdemeanor (Jail: Not more than 1 yr; fine: Not more than \$5,000) provided that this was the person's first felony conviction. IC35-50-2-7 & IC35-50-3-1

²A Class C infraction is a civil (not a criminal) violation.

³A prior conviction for "driving while intoxicated" is defined to mean a prior violation of IC9-30-5-1 thru IC 9-30-5-9. IC9-13-2-130 **Double Jeopardy**. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Schrefler v. State*, 660 N.E.2d 585 (Ind.App. 1996)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Min. Fine (\$):	<u>Persons Under 21 Years Old, BAC/BrAC ≥ 0.02 but < 0.10-CI C Infraction²</u> -Not more than \$500 IC9-30-5-8.5 & IC34-4-32-4(c) None
Other Penalties: Community Service:	For a <u>2nd alcohol off</u> , mandatory community service of 30 dys in lieu of imprisonment. For a <u>3rd or sub alcohol off</u> , mandatory community service of 60 dys in lieu of imprisonment. IC9-13-2-130 & IC9-30-5-15 See Footnote No. 3 on p. 3-159.
Restitution (eg Victim's Fund)	Yes The court may order a defendant to pay direct compensation to a victim of not more than \$1,000. IC9-30-5-17 & IC35-50-5-3 There is also a victims' compensation fund. IC16-7-3.6-1 et seq.
Other:	Ignition Interlock. As a condition of obtaining probationary driving privileges (1st off), the court may require a defendant to use only vehicles equipped with "ignition interlock" devices. IC9-30-5-16 Alcohol and Drug Countermeasures Fee. All DWI offenders are assessed a fee of \$200 for alcohol and drug countermeasures programs. IC33-19-6-10 Emergency Medical Services Fund. The court may order a defendant to make "restitution" of up to \$1,000 to the emergency medical services fund for any needed services provided by emergency services personnel as a result of their actions. IC9-30-5-17 Victim Impact Program. A defendant may be ordered by the court to participate in programs with DWI offense victims. IC9-30-14 Visitation Program. A defendant may be required to visit emergency care facilities, coroner facilities or alcoholism treatment centers. IC9-30-14-3(3)
Administrative Licensing Actions: <u>Pre-DWI Conviction Licensing Action:</u> Administrative Per Se Law:	See Double Jeopardy on p. 3-159 and the Special Note below. Yes¹ Based on BAC/BrAC <i>prima facie</i> evidence ≥ 0.10 <u>1st and sub offs</u> -susp up to 180 dys or until the DWI charges have been disposed of which ever occurs first. IC9-30-6-9(b) A person may be granted restricted driving privileges after 30 dys. IC9-30-6-9(e) Such privileges, however, cannot be granted if the person has been convicted of a serious injury/death related DWI off. or if they have been convicted of a previous DWI off.

¹If a defendant makes a request for an early trial and one is not held within 90 days of the initial hearing, the court may order the driver's license to be reinstated. Note: The reinstatement cannot take effect until 90 days after the initial hearing. IC9-30-6-11 & IC9-30-6-18

Special Note: The administrative per se law does not violate a person's constitutional right to due process of law. *Ruge v. Kovach*, 467 N.E.2d 673 (Ind. 1984)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

IC9-24-15-6.5 A person may also be issued a restricted license under IC9-30-5-11 et seq. if they have not been convicted of a DWI offense. IC9-24-15-9 If DWI charges are dismissed or the defendant is found not guilty of the DWI off, the court shall order the driver's license reinstated. IC9-30-6-11

Under IC9-30-6-8, the court may suspend a license at the initial hearing if there is probable cause to believe that the person was driving either while illegal per se or intoxicated. Note: The initial hearing must be held within 10 dys after the arrest. IC35-33-7-1(c)

Post DWI Conviction Licensing Action:

See **License Suspension and DWI Charge Deferral & License Suspension and Probation Following Conviction** on p. 3-162.

Type of Licensing Action

(Susp/Rev):

Susp All offs IC9-30-5-8.5 & IC9-30-5-10

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off (Illegal per se/Intoxicated)-90 dys to 2 yrs; 2nd or subsequent off (Illegal per se/Intoxicated) (w/n 10 yrs but more than 5 yrs from a first off)-180 dys to 2 yrs; 2nd or subsequent off (Illegal per se/Intoxicated) (w/n 5 yrs)-1 to 2 yrs; Injury Related off (where a person has been operating a vehicle with a BAC/BrAC ≥ 0.10 , with a schedule I or II controlled substance or while intoxicated)-2 to 5 yrs IC9-30-5-10¹
Persons Under 21 Years Old BAC/BrAC ≥ 0.02 but < 0.10 - Not more than 1 yr IC9-30-5-8.5

Mandatory Minimum Term of
Withdrawal:

1st off (Illegal per se/Intoxicated)-30 dys (90 dys)²; 2nd or subsequent off (Illegal per se/Intoxicated) (w/n 10 yrs but more than 5 yrs from a first off)-180 dys³; 2nd or subsequent off (Illegal per se/Intoxicated) (w/n 5 yrs)-1 yr³; Injury Related off (where a person has been operating a vehicle with a BAC/BrAC ≥ 0.10 , with a schedule I or II controlled substance or while intoxicated)-2 yrs³ IC9-24-15-9, IC9-30-5-10 & IC9-30-5-12
Persons Under 21 Years Old BAC/BrAC ≥ 0.02 but < 0.10 -None

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Yes⁴

Yes⁴

¹IC9-13-2-130 defines the phrase "previous conviction of operating while intoxicated" to include any DWI offense under IC9-30-5.

²A probationary (restricted) license may be issued for 180 dys. This restricted license does not take effect until a defendant's license has been suspended for 30 dys under the admin. per se law. IC9-30-5-11 & IC9-30-6-9 However, a 1st DWI offender who has refused to submit to a chemical test is not eligible for a probationary restricted license. Such a person is subject to a mandatory minimum license suspension of 90 dys. IC9-30-5-12

³A probationary (restricted) license may be issued for that portion of the suspension period that exceeds the mandatory minimum period. IC9-30-5-10(c) & 9-30-5-12(c)(2)

⁴IC9-30-5-15(a)(2) & (b)(2), 9-30-9-3, 9-30-9-6 and 12-23-14-1 See **License Suspension and DWI Charge Deferral & License Suspension and Probation Following Conviction** on p. 3-162.

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Sanctions Following a Conviction for a DWI Offense: (continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

No

Vehicle registration "certificates" shall be suspended/revoked for **6 mos** if the defendant was convicted of a felony while using a motor vehicle (e.g., subsequent DWI offenses). IC9-30-4-6(b)(3) & (d)(1)

Miscellaneous Sanctions Not
Included Elsewhere:

"Home detention" may be ordered in lieu of the minimum imprisonment sentence for certain offenses including DWI. "Home detention" may also be ordered as a part of probation. IC35-38-1-21, 35-38-2-2(a)(15), 35-38-2.5 & 35-38-3-5. It appears that this sanction, however, does not circumvent the mandatory jail/community service requirements for 2nd and sub. DWI offenders. IC35-38-3-5(a)(4)

Ignition Interlock. A person convicted of an illegal per se/intoxicated offense (w/n 5 yrs or w/n 10 yrs but more than 5 yrs of a previous conviction) may be granted probationary (restricted) driving privileges on the condition that they only operate vehicles that are equipped with ignition interlock devices. IC9-30-5-10(c) & (d)

Persons Under 21 Years Old. Under separate provisions of the law, the court may suspend the driving privileges of a person under 21 years if they have any "alcohol present in a bodily substance." IC9-24-18-12

Other Criminal Actions Related to DWI

Homicide by Vehicle:
State Has Such a Law:

Yes I. A death where a person has been operating a vehicle with a BAC/BrAC ≥ 0.10 (For standards, see Footnote No. 1 on p. 3-157.), with a schedule I or II controlled substance or while intoxicated - 1st off-CI C felony; sub off¹ (w/n 5 yrs)-CI B felony IC9-30-5-1, -2, -3 -4 & -5, IC35-50-2-5, 6 & -7 and IC35-50-3-2, -4 & -5

¹A previous offense includes any prior drunk driving offense conviction.

License Suspension and DWI Charge Deferral. For 1st offenders (except those offenses related to serious injury/death), the DWI charges may be deferred and dismissed. The law provides for two (2) different deferral schemes depending upon the court hearing the case. (1) Under IC9-25-6-10, 9-30-9-3 & 9-30-9-5, the charges may be deferred for up to 4 yrs. As part of the deferral, the court may suspend a defendant's license from 2 to 4 yrs. However, it appears that the court must suspend a defendant's license for 1 yr. The court may grant restricted driving privileges after this 1 yr period. In addition, the defendant may be required to participate in an alcohol treatment program. And, (2) DWI charges may be deferred under IC16-13-6.1-15.1(6). If deferral is made under this section, a driver's license is to be suspended for at least 90 dys but not more than 2 yrs. A 30 dy suspension is mandatory.

License Suspension and Probation Following Conviction. In certain circuit courts, persons convicted of a DWI offense may be placed on probation and referred to an alcohol abuse deterrent program. As part of the probation, the court may suspend a defendant's license from 90 dys to 4 yrs. However, it appears that a defendant's license must be suspended for 30 dys. After this 30 dy period, the court may grant probationary (restricted) driving privileges. IC9-30-9-3, 9-30-9-6 & 9-30-9-7

Other Criminal Actions Related to DWI: (continued)

Sanctions:	II. <u>Involuntary Manslaughter</u> where the death is related to vehicle operation and the defendant has committed or attempted to commit either a C1 C felony, C1 D felony or C1 A Misd (e.g., driving while intoxicated) that imposes a risk of serious bodily injury-C1 D felony IC35-42-1-4 & 35-50-2-7
Criminal Sanction:	III. <u>Involuntary Manslaughter</u> where the death is related to veh operation and the killing of a fetus-C1 D felony IC35-42-1-4
Imprisonment (Term):	C1 B felony-A fixed term of 10 yrs C1 C felony-A fixed term of 4 yrs C1 D felony-A fixed term of 1½ yrs See Mandatory Minimum Term on p. 3-159. C1 B, C or D felonies-Not more than \$10,000 None
Mandatory Minimum Term:	I. A death where a person has been operating a vehicle with a BAC ≥0.10, with a schedule I or II controlled substance or while intoxicated-Susp 9-30-5-8.5 & 9-30-5-10
Fine (\$ Range):	II. <u>Involuntary Manslaughter-Susp/Rev</u> ¹ IC9-24-15-1-2 & IC30-4-6(b)(1) & (d)(2)
Mandatory Minimum Fine:	I. A death where a person has been operating a vehicle with a BAC ≥0.10, with a schedule I or II controlled substance or while intoxicated-2 to 5 yrs
Administrative Licensing Action:	II. <u>Involuntary Manslaughter</u> -2 to 5 yrs
Licensing Authorized and Type of Action:	For either I or II above, there appears to be a mandatory licensing action for 2 yrs.
Length of Term of Licensing Withdrawal:	See Footnote No. 2.
Mandatory Action--Minimum Length of License Withdrawal:	C1 A Misd-60 dys to 1 yr IC9-24-18-5(b)
Other:	
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*</u> :	
Sanction:	
Criminal:	
Imprisonment (Term):	

¹Registration "certificates" may also be susp/rev for not less than two (2) but no more than five (5) years of any person who has been convicted of either "involuntary" manslaughter or "reckless homicide" resulting from the operation of a motor vehicle. This appears to be mandatory. IC9-24-15-1-2 & IC30-4-6(b)(1) & (d)(2)

²I. It is a C1 C misd to operate a CMV during a CDL disqualification. The sanctions for this offense are a jail term of not more than 60 dys and/or a fine of not more than \$500. IC9-24-6-16 & IC35-50-3-4 II. If a person operates a CMV during a Federal 24 hr out-of-service order under 49 CFR 392.5, which prohibits driving a CMV either while under the influence or with any "measured alcohol concentration", they are subject to the following sanctions. A CDL disqualification as follows: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. If the CMV operator was driving a CDL either containing hazardous materials or designed to carry more than 15 persons, the CDL disqualification periods are as follows: 1st violation-180 dys (mand) to 2 yrs; and, sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. For any violation, a civil fine of \$1,000. IC9-13-2-120.5, 9-24-6-10.5 & 9-24-6-19

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	60 dys IC9-24-18-5(b)
Fine (\$ Range)	Not more than \$500 IC35-50-3-2
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action: (Susp/Rev):	Susp IC9-24-18-5(c) & (d)
Length of Term of License With drawal Action:	90 dys to 2 yrs This suspension applies to convictions of driving while either suspended or revoked. IC9-24-18-5(c) & (d)
Mandatory Term of License Withdrawal Action:	90 dys IC9-24-18-5(c) & (d)
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes IC9-30-10-1 et seq.
Grounds for Being Declared an Habitual Offender:	I. 2 convictions (w/n 10 yrs) for traffic law violations related to death offs as listed in IC9-30-10-4(a) (e.g., DWI resulting in death) II. 3 convictions (w/n 10 yrs) for major offs as listed in IC9-30-10-4(b) (e.g., DWI & reckless driving) III. 10 convictions for any moving violations (w/n 10 yrs) IC9-30-10-4(c) However, one of these must have been a conviction for an off listed in either IC9-30-10-4(a) or IC9-30-10-4(b).
Term of License Rev While Under Habitual Offender Status:	I. For 2 traffic law violations related to death offs convictions under IC9-30-10-4(a)-10 yr Susp IC9-30-10-5(b)(1) II. For 3 major off convictions under IC9-30-10-4(b)-10 yr susp ^{1&2} IC9-30-10-5(b)(2) III. For 10 convictions of moving violations under IC9-30-10-4(c)-5 yr susp ^{2&3} IC9-30-10-5(b)(3) See Footnote No. 4.

¹After 5 yrs, a probationary restricted license may be issued provided that offender has not been convicted of a death related offense under IC9-30-10-4(a). In addition, if one of the offenses under IC9-30-10-4(b) was for a drunk driving offense, the offender must complete a rehabilitation program before such restricted license can be issued. IC9-30-10-9(b) See Footnote No. 2 for an additional basis for issuing probationary restricted licenses.

²After 3 yrs, a probationary restricted license may be issued the offender's status is based on a violation of IC9-30-10-4(b) & (c). In order to be eligible for such a license, the offender must establish, among other things, that (1) they have not been convicted of an offense death related offense as listed in IC9-30-10-4(a) and (2) they only have been convicted of either (1) driving without a license based on infractions or driving without a license for a subsequent time. IC9-30-10-9(d)

³A probationary restricted license may be issued at any time to an habitual offender who operates a vehicle for commercial or business purposes and where the habitual offender status is based on a violation of IC9-30-10-4(c). In order to be eligible for such driving privileges, the offender must establish, among other things, that they have not been convicted either (1) for death related offense listed in IC9-30-10-4(a) or (2) for three offenses listed in IC9-30-10-4(b). IC9-30-10-9(a) See Footnote No. 2 for an additional basis for issuing probationary restricted licenses.

⁴An habitual offender cannot obtain hardship driving privileges under IC9-24-15. IC9-24-15-9 & IC9-30-10-14(c)

Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status:

Cl D Felony IC9-30-10-16 At the court's discretion, a 1st offender may be sentenced for a Class A Misd. See Footnote No. 1 on p. 3-159.

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term):

Cl D Felony-1½ yrs; Cl A Misd-Not more than 1 yr
IC35-50-2-7 & IC35-50-3-1

Mandatory Minimum Term of

Imprisonment:

None

Fine (\$ Range):

Cl D Felony-Not more than \$10,000; Cl A Misd-Not more than \$5,000

Mandatory Minimum Fine:

None

Licensing Actions (Specify):

For a Cl D Felony conviction-Forfeiture of license for life¹
IC9-30-10-16(b)

Note: It is Cl C Felony for a person to operate a motor vehicle after their license has been suspended for life; sanctions: Jail-not more than 4 yrs; fine-not more than \$10,000. IC9-30-10-17 & 35-50-2-6 and *Austin v. State*, 700 N.E.2d 1191 (Ind.App. 1998)
For a Cl A Misd conviction-the court on its own discretion may add an additional susp period (time period to be set by the court) to any suspensions already imposed. IC9-30-10-16(b)

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes² IC9-27-5-4(a)

BAC Chemical Test Is Given to the

Following Persons:

Driver:

Yes² IC9-27-5-4(a)

Vehicle Passengers:

No

Pedestrian:

Yes for persons ≥ 15 yrs old² IC9-27-5-4(a)

¹After 10 yrs, a person may petition the court for reinstatement of their license. IC9-30-10-14(a)(1) However, under some circumstances, offender's license may be reinstated after only 3 yrs. For early reinstatement, the offender must not have been convicted of a death related offense listed in IC9-30-10-4(a) and the life time suspension must have based on traffic infractions. IC9-30-10-14(e)

²The State Department of Toxicology in conjunction with the Office of Highway Safety may require "appropriate agencies" to collect "necessary specimens" (w/n 4 hrs) from either drivers or pedestrians who are killed in traffic accidents. IC9-27-5-4(a)

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Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21¹ (Year Eff: 1934) IC7.1-1-3-25, 7.1-5-7-1, 7.1-5-7-8 & 7.1-5-10-22

Minimum Age (Years) Possession:

21 IC7.1-5-7-7(a)(1)

Minimum Age (Years) Consumption:

21 IC7.1-5-7-7(a)(2)

Dram Shop Laws and Related Legal Actions:

State has a Dram Shop Law (Yes/No):

Yes IC7.1-5-10-15.5^{2&3} **Comment:** This statute may have abrogated, at least in part, the case law noted below.

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

Yes³ *Picadilly, Inc. v. Colvin*, 519 N.E.2d 1217 (Ind. 1988)², *Elder v. Fisher*, 217 N.E.2d 847 (1966), & *Parrett v. Lebamoff, Inc.*, 408 N.E.2d 1344 (Ind. App. 1980)

Dram Shop Actions-Social Hosts:

Yes^{2&3} *Gariup Const. Co. v. Foster*, 519 N.E.2d 1224 (Ind. 1988)³, *Ashlock v. Norris*, 475 N.E.2d 1167 (Ind. App. 3 Dist., 1985)³, *Delta Tau Delta v. Johnson*, 712 N.E.2d 968 (Ind. 1999)⁴ & IC7.1-5-10-15.5^{2&3}

Other:

An alcoholic beverage licensee is liable for the injuries or death of an intoxicated patron, who is over 21 yrs old, if two conditions are proven. (1) The licensee knew that the patron was visibly intoxicated when they were served alcoholic beverages. And, (2) the furnishing of such beverages was the proximate cause of the injury or death. IC7.1-5-10-15.5(c).⁵

Criminal Action Against Owners or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Beverages to Intoxicated Patrons:

Type of Criminal Action:

CI B Misd IC7.1-5-1-8, 7.1-5-10-15, 7.1-5-10-22 and 35-50-3-3

Term of Imprisonment:

Not more than 180 dys IC7.1-3-23-3

¹It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to "misrepresent" their age in order to obtain alcoholic beverages. IC7.1-5-7-1

²Under IC7.1-5-10-15.5, a commercial server or a social host is not liable for the actions of intoxicated patrons or guests unless (1) the commercial server/social host had "actual knowledge" that the patron/guest was visibly intoxicated at the time alcoholic beverages were "furnished" and (2) the intoxicated person was the proximate cause of the injury or damage alleged. *Weida v. Dowden*, 664 N.E.2d 742 (Ind.App. 1996) Also under IC7.1-5-7-8(b), educational institutions, it appears, are not subject to civil liability unless they sell/furnish alcoholic beverages to a minor.

³**Historical Note:** After April 1, 1986, common law dram shop actions were restricted by IC7.1-5-10-15.5. The *Gariup Const. Co. & Ashlock* decisions were based on factual situations that occurred prior to this date.

⁴In the *Delta Tau Delta* case, a guest at a fraternity house was attacked by another guest who was intoxicated. The State supreme court held that the dram shop law did not apply in this social host liability situation since there was no indication to the social host (the fraternity) knew that the injury causing guest was visibly intoxicated. Note: The court, however, did find that the social host was liable under the common law for failure to maintain a safe place for guests.

⁵**Historical Note & Comment:** The dram shop law was amended in 1996 to limit the scope of liability in situations where an adult patron has been injured or killed as a result of their own (voluntary) intoxication. The legislature apparently felt that such an amendment was necessary in order to limit the holding in *National R.R. Passenger Corp. v. Evertson by Evertson*, 655 N.E.2d 360 (Ind.App. 1995)

Other State Laws Related To Alcohol Use: (continued)

Fine (\$ Range):

Not more than **\$1,000** Note: An administrative fine of not more than \$1,000 may also be imposed.Administrative Actions Against Owners or Establishments that Serve Alcoholic Beverages to Intoxicate Patrons:

License of Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes IC7.1-3-23-2, 7.1-3-23-5 and 7.1-5-10-22

For revs, no period is specified in the statute IC7.1-3-23-6 For susps, not more than 30 dys IC7.1-3-23-7

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

CI C Misd¹ IC7.1-5-7-8, 7.1-5-10-22 and 35-50-3-4

Not more than 60 dys

Not more than **\$500** Note: An administrative fine of not more than \$1,000 may also be imposed. IC7.1-3-23-3Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawn:

Yes IC7.1-3-23-2, 7.1-3-23-5, 7.1-3-23-26.1 and 7.1-5-10-22

For revs, no period is specified in the statute. IC7.1-3-23-6 For susps, not more than 30 dys. IC7.1-3-23-7

Anti-Happy Hour Laws/Regulations:

Yes IC7.1-5-10-20

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes However, the law only applies if the vehicle operator has a BAC/BrAC ≥ 0.04 (For standards, see Footnote No. 1 on p. 3-157.). The sanctions for this offense apply only to drivers. IC9-30-15-3

Anti-Consumption Law (Yes/No):

Yes Drivers only IC9-30-15-4

¹IC7.1-5-7-8(a) states that "[i]t is a Class C misdemeanor for a person to recklessly sell, barter, exchange, provide, or furnish an alcoholic beverage to a minor."

INDIANA

STATE:

General Reference:

IOWA

Iowa Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC):

Types of Drugs/Drugs and Alcohol:

Other:

Under the influence of an alcoholic beverage¹ §321J.2(1)(a)
≥0.10^{1,2&3} or **Any Amount of a Controlled Substance in the
Blood or Urine**⁴ §§321J.1(1) and 321J.2(1)(b) & (c)

None

Under the influence of (1) **Any Drug** or (2) Any Combination of
Drugs Including an Alcoholic Beverage¹ §321J.2(1)(a)
For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit a Chemical Test

Admitted into Evidence:

Other Information:

Yes §321J.5

No⁵ §321J.6(1)

Yes §321J.6

Yes (Criminal & Civil Cases) §321J.16

A person may be required to submit to a chemical test via a
search warrant issued pursuant to an investigation of involuntary
manslaughter (§707.5) where a traffic accident has resulted in a
death or in a personal injury likely to cause death and there is
evidence of a DWI off §321J.10

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:

Urine:

Other:

Yes §321J.6(2)

Yes §321J.6(2)

None

¹A drunk driving offense is described as "operating while intoxicated". However, "operating while intoxicated" is defined as operating a vehicle while under the influence of an alcoholic beverage or illegal per se. Note: Under §321J.1(2), "[a]lcoholic beverage includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption."

²This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of 0.10 or more or (2) a urine alcohol concentration of 0.10 or more.

³Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §§321.1(1) & 321J.1(1)

⁴There is an "affirmative defense" if the controlled substance was present because of a valid prescription. §321J.2(7) & (8)

⁵A request to submit to a test is based either on (1) reasonable grounds of either a drunk driving offense or a violation of §321J.2A (persons under 21 yrs old driving with a BAC/BrAC ≥0.02) and any one of the following: (a) An arrest; (b) an accident resulting in injury or death; (c) a PBT refusal; or, (d) a PBT BAC/BrAC reading of ≥0.10 (for CMV operators, PBT BAC/BrAC reading of ≥0.04 and for persons under 21 yrs old PBT BAC/BrAC reading of ≥0.02) or (2) on reasonable grounds that the driver was under the influence of drugs or a combination of drugs and alcohol but a PBT BAC/BrAC reading is <0.10. §321J.6(1)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (For standards, see Footnote No. 3 above.), (2) are under the influence of alcohol, other drug or a controlled substance or (3) refuse to submit to a chemical test for alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has violated 49 CFR 392.5 (e.g., consumed any alcohol within 4 hours of operating a CMV) must be placed "out-of-service" for 24 hours. §§321.1(1) & (11), 321.208, 321.208A, 321J.6 and 321J.8(3)

IOWA

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No¹
No

Yes An offender must, at their own expense, submit to a substance abuse evaluation. §§321J.2(3)(b), 321J.3 & 321J.17 Also, the court may order an evaluation if it thinks that the defendant "regularly abuses alcohol or other controlled substance". §901.4A

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):
Other:

None

None
None

Refusal to Take Implied Consent
Chemical Test:
Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

None

Rev 1st refusal-1 yr (90 dys mand); 2nd or subsequent refusal²⁻² yrs (1 yr mand) §§321J.9 & 321J.20 See Footnote No. 3 and the Special Note below. See Civil Penalty on p. 3-172.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment:
Term (Day, Month, Years,
Etc.):

See Double Jeopardy on p. 3-171.
See Alcohol Treatment on p. 3-173.

1st off (Serious misd)-**Not more than 1 yr**; 2nd off (w/n 12 yrs) (aggravated misd)-**Not more than 2 yrs**; 3rd and sub off (w/n 12 yrs) (Cl D felony)-**Not more than 5 yrs** (or up to 1 yr in the county jail §902.9); Serious Injury related to a drunk driving off (Class D felony)-**Not more than 5 yrs** (or up to 1 yr in the county jail) §§321.12(4), 321J.2(2) & (3), 707.6A(3), 902.9, 903.1 and 907.3(3)(c)

¹An offender is eligible for deferred judgement. §907.3 However, such persons are subject to a license revocation from 30 (mand) to 90 dys. A 90 dy revocation is mandatory if the offender refused to submit to a chemical test. §321J.4(2)

²A prior drunk driving offense conviction or a prior admin. per se violation is considered the same as a previous refusal for license sanction enhancement purposes. §321J.9(1) Note: These offenses stay on a person's driving record for 12 yrs. §321.12(4)

³If a defendant is under 18 years old, the period of revocation shall be either as indicated or until the person reaches 18 whichever is the longer revocation period. §321J.4(6)

Special Note: I. For either a 1st or subsequent refusal, a restricted license may be issued by the licensing agency provided the minimum period of license revocation has expired. A restricted license may only be used for education, treatment or employment purposes. §321J.20(1) However, a person must install an "ignition interlock" system on the vehicle(s) they operate as a condition for obtaining a restricted license. §§321J.9(2)(b) & 321J.20(6) Important. The court is prohibited from issuing a temporary restricted license for employment purposes to persons who refuse to submit to a chemical test and who are <21 yrs old. §321J.4(8)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:

1st off (Serious misd)-**48 hrs** (Limited Application)¹; 2nd off (w/n 12 yrs) (aggravated misd)-**7 con dys**^{2,3}; 3rd and sub offs (w/n 12 yrs) (Cl D felony)-**30 con dys**^{2,3}; Serious Injury related to a drunk driving off (Class D felony)-**None**

Fine:

Amount (\$ Range):

1st off (Serious misd)-**\$500/\$1,000**⁴; 2nd off (w/n 12 yrs) (Aggravated misd)- **\$1,500 to \$5,000**; 3rd and sub offs (w/n 12 yrs) (Cl D felony)-**\$2,500 to \$7,500**; Serious Injury related to a drunk driving off (Class D felony)-**\$750 to \$7,500** See Civil Penalty on p. 3-172.

Mandatory Min. Fine (\$):

1st off (serious misd)-**\$500/1,000**^{1&4} (Limited Application) (See community service below.); 2nd off (Aggravated misd)-**\$1,500**; 3rd and sub offs (Cl D felony)-**\$2,500**; Serious Injury related to a drunk driving off (Class D felony)-**\$750**

Other Penalties:

Community Service:

I. 1st off (serious misd)-Community service in lieu of part of or all of the fine. §321J.2(2)(a) II. Under separate provisions, the court may order either a 1st or sub offender to perform community service which is equivalent in value to any fine which has been imposed. The value of the community service to be performed is based on the Federal minimum wage. §909.3A

Restitution

(eg Victim's Fund)

Yes I. For any drunk driving offense, the court may order the defendant to make restitution for any damages resulting from the offense. §321J.2(8) Note: Court ordered restitution is possible under §910.1 et seq. II. In addition, a victim is eligible for restitution from the State's crime victim reparation fund. §912.1 et seq.

Other:

Special Note: Deferred judgment is allowed for a 1st DWI off. During such deferment their license is revoked 30 to 90 dys. The same mand lic rev periods and temporary restricted license provisions apply as for DWI. §§321J.4(2) & 907.3

¹For a 1st offense, there is a mandatory imprisonment sentence of 48 hrs and fine as indicated if the offender (1) had a BAC/BrAC > 0.15, (2) refused to submit to a chemical test under implied consent law or (3) committed a drunk driving offense that injured another person. §§321J.2(3)(a) & 907.3(2)

²This sentence may not be deferred or suspended. §321J.2(3)(a)

³For 2nd and subsequent offenders the 7 dy and 30 dy minimum jail sanctions respectively must be served consecutively. §321J.2(3)(d) However, if consecutive minimum jail terms would cause a hardship on the defendant or if there is insufficient jail space, the minimum terms may be served in segments of at least 48 hrs. If this is done, the defendant must perform community service. The period of community service is decided by the court and is based upon that which the court has "deemed appropriate". §321J.2(3)(d) See Alcohol Treatment on p. 3-173.

⁴If there is no personal injury or property damage, the fine may be reduced to a not less than \$500. §321J.2(2)(a)(2)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Kocher*, 542 N.W.2d 556 (Iowa 1996), & *State v. Krebs*, 562 N.W.2d 423 (Iowa 1997)

Historical Note: In 1998, §§321J.2 and 907.3(3)(c) were amended so as to clearly indicate that mandatory incarceration sanctions were to be imposed and other sanctions (e.g., fine or community service) were not to be suspended for drunk driving offenses.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)

Surcharges. A surcharge of 30% of the fine actually imposed is assessed against anyone convicted of a State criminal offense and a drug abuse resistance education surcharge of \$5. §911.2

Civil Penalty. A separate (i.e., additional) civil penalty of \$200 is assessed against a person who has had their license revoked as a result of either a DWI conviction, admin. per se violation or implied consent law refusal. Part of the money collected from this penalty is placed in a victim reparation fund. This penalty must be paid before restricted driving privileges can be granted. §321J.17(1)

Emergency Response Costs. The court may order an offender to pay the costs of an emergency response resulting from a drunk driving offense. The cost cannot exceed \$500 for each public agency for each response. §321J.2(8)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

See the Special Note below and Double Jeopardy on p. 3-171.
Yes (1) >0.10 (BAC/BrAC/UrAC See Footnote No. 3 on p. 3-169.) (2) **The Presence of a Controlled Substance or Other Drug**¹ (3) **A Combination of Alcohol and Another Drug in Violation of the DWI Law** (§321J.2) 1st violation-Rev 180 dys (30 dys mand; if the offender is <21 yrs old-60 dys); 2nd or sub violation² (w/n 12 yrs)-Rev 1 yr (mand) See Footnote No. 1 on p. 3-173. §§321J.12 & 321J.20 Important. If a defendant is under 18 years old, the period of revocation shall be either as indicated or until the person reaches 18 whichever is the longer revocation period. §321J.4(6)

Persons Under 21 Years Old->0.02 but <0.10 (BAC/BrAC/UrAC See Footnote No. 3 on p. 3-169.) 1st violation-Rev 60 dys³; 2nd or sub violation (w/n 12 yrs)-Rev 90 dys (mand) §§321J.2A & 321J.12(5) A restricted license is not available from either the licensing agency or the courts. §§321J.4(8) & 321J.20(2)

Other:

Under §§321.210 & 321.212, a person's license may be suspended for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

¹**Comment:** It would appear that, indirectly, the "affirmative defense" noted in Footnote No.4 on p. 3-169 would also apply to admin. actions. Under §321J.13(2)(c), evidence of this violation under the DWI law must be considered prior to an admin. licensing action. Thus, since the "affirmative action" would mitigate the DWI offense, it would also appear to mitigate the admin. action as well.

²A prior drunk driving offense conviction or a prior refusal to submit to a chemical test is considered the same as a previous admin. per se violation for license sanction enhancement purposes.

³A 1st offender may participate in a substance abuse awareness program. §321J.25(4)

Special Note: I. An admin. per se violator or DWI defendant, who is under 21 years old, is not eligible for restricted driving privileges. §321J.4(8) II. If an admin. per se violator or DWI defendant is under 18 years old, the period of revocation shall be either as indicated or until the person reaches 18 whichever is the longer revocation period. §321J.4(6)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

See the Special Note on p. 3-172.

1st off-Rev; 2nd off (w/n 12 yrs)-Rev; 3rd and sub. offs (w/n 12 yrs)-Rev; Any DWI off conviction where there has been a serious injury-Rev §§321.12, 321J.2(2)(a) & (3) and 321J.4

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-180 dys-1 yr; 2nd off (w/n 12 yrs)¹-2 yrs; 3rd and sub. offs (w/n 12 yrs)¹-6 yrs DWI off involving serious injury-1 yr² §§321J.2(2)(a) & 321J.4

Mandatory Minimum Term of
Withdrawal:

1st off-30 dys³/60 dys if the offender was <21 yrs old/90 dys if there was a chemical test refusal; 2nd off-1 yr³; 3rd and sub offs-1 yr³ §§321J.4 & 321J.20

Other:
Rehabilitation:
Alcohol Education:

Alcohol Treatment:

Yes 1st and sub §§321J.2(2)(a), 321J.3, 321J.17(2) & 321J.22
See Footnote No. 2 on p. 3-172.

Yes I. Based upon a substance abuse evaluation, a court may order a DWI offender to attend a treatment program. Such a program could include inpatient treatment. The time the offender spends in this inpatient treatment program is credited towards their sentence. §321J.3 II. Under separate provisions of law, the court may commit a subsequent offender, as a condition for suspending a sentence, to an inpatient treatment program for alcoholism or drug addiction. Again, the time the offender spends in this program is credited towards their sentence. §321J.3(2) III. In addition, under §901.5(8), the court may order a defendant to complete a treatment program pursuant to an evaluation for alcohol or drug abuse conducted under §901.4A.

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

No

Impoundment or Immobilization. For a 2nd or sub off, the vehicle owned and used by the defendant in the offense "is subject to either impounded or immobilized for either the period of the driver's license rev or for 180 dys whichever is longer."⁴ §321J.4B(2)(a), (5)(d), (7)(a) & (7)(b)

¹A previous off includes either an admin. per se action or an implied consent law violation. §321J.4(1)

²In addition to any other revocation or suspension.

³**Special Note:** For a drunk driving offense conviction (including injury related offenses) or for an admin. per se violation, the licensing agency may issue a person a restricted license after the minimum mandatory license revocation period has expired. The restricted license may only be used for education, treatment or employment purposes. Important. The court is prohibited from issuing a temporary restricted license for employment purposes to offenders or admin. per se violators who are <21 yrs old. §321J.4(8) Note: Such a license is not available via the licensing agency. §321J.20(2) See Ignition Interlock under Miscellaneous Sanctions on p. 3-174.

⁴Law enforcement authorities seize the vehicle's license plates (and, if the vehicle is in custody, its registration). New registration plates shall not be issued until the above period expires. However, either a non-resident co-owner or a family member (where the family has only one vehicle) may have this action rescinded provided an ignition interlock system is installed on the vehicle. §321J.4B(12)(c)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Miscellaneous Sanctions Not Included Elsewhere:

- I. **Ignition Interlock.** A 2nd or subsequent offender, after the mandatory license revocation period, may be granted restricted driving privileges provided they install ignition interlock devices on their vehicles. §321J.4 This device must be installed prior to the granting of restricted driving privileges. §321J.17(1)
- II. Persons sentenced to the county jail may be assigned to "home detention" instead of incarceration. §356.26
- III. A 2nd or sub offender is prohibited from either purchasing or registering a motor vehicle during a period of impoundment or immobilization or lic. rev. Also, during this period, the vehicle cannot be sold or have its title transferred. §321J.4B(1)(a)(1)(2)
- IV. Important. See the Special Note & Comment below.

Other Criminal Actions Related to DWI:

Homicide by Vehicle: State Has Such a Law:

Yes If death is unintentional and is related to drag racing-Class D felony If death is related to reckless driving-Class C felony If death is related to a drunk driving offense-Class B felony §707.6A

Sanctions: Criminal Sanction: Imprisonment (Term):

Class D felony-Not more than 5 yrs §902.9(4)
Class C felony-Not more than 10 yrs §902.9(3)
Class B felony-Not more than 25 yrs §902.9(1)
If death is related to reckless driving-10 yrs² §902.12
If death is related to drunk driving-25 yrs² §902.12
Class D felony-\$750 to \$7,500¹ §902.9(4)
Class C felony-\$1,000 to \$10,000¹ §902.9(3)
Class B felony-None

Mandatory Minimum Term:

Fine (\$ Range):

¹**Surcharge.** A surcharge of 30% of the fine actually imposed is assessed against any person who is convicted of a State criminal offense. §911.2

²A person is not eligible for parole or work release. However, their sentence may be reduced for "good conduct time". §902.12

Special Note & Comment (Child Endangerment): Iowa's criminal law provides for sanctions against persons who either abuse or neglect a child under their control. The criminal law defines a child as a person < 14 yrs old. §702.5 I. The Iowa Supreme Court has held that a parent can be charged with child neglect (recklessly exposing their child to a danger), a Class C felony, if, while transporting their child, they operate a motor vehicle in an intoxicated condition. §726.3 & *State v. Caskey*, 539 N.W.2d 176 (Iowa 1995) II. There is the possibility that general criminal law provisions concerning child endangerment may apply as well in such a situation. The child endangerment law makes it an offense to create a situation where a child is exposed to a "substantial risk". This offense is an aggravated misdemeanor unless the child is injured in which case it is a Class C felony. §726.6 However, 3 or more offenses within 12 months against the same child, where at least one of the offenses was an injury, is a Class B felony. §726.6A III. The sanctions for these offenses are as follows: Class B felony-incarceration for not more than 50 yrs (Note: Normally, for a Class B felony conviction, a person is subject to an imprisonment term of not more than 25 yrs. However, the law specifically doubles this term in the case of multiple child endangerment convictions where there has been an injury in at least one case.); Class C felony-incarceration for not more than 10 yrs and/or a fine of not more than \$10,000; and, aggravated misdemeanor-incarceration for not more than 2 yrs and/or a fine of not more than \$5,000 §§726.6, 902.9 & 903.3

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine:
 Administrative Licensing Action:
 Licensing Authorized and
 Type of Action:
 Length of Term of
 Licensing Withdrawal:

Class D Felony-\$750 C felony-\$1,000

Rev §§321.209(1), 321J.4(5) & 707.6A(1)(a)

1 yr §321.212(1)(a) 6 yrs if death was related to a drunk driving offense. §707.6A(1)

Mandatory Action--Minimum
 Length of License
 Withdrawal:

1 yr §321.212(1)(a) 2 yrs if death was related to a drunk driving offense. Restricted driving privileges are available after this 2 yr revocation period.¹ §§321J.4(5) & (8), 321J.20(2) & 707.6A(1)

Other:

I. **Civil Penalty.** There is a civil penalty of \$200 (if the offender is ≤ 19 yrs old, the civil penalty is \$50). §321.218A If the death was related to drunk driving offense, the civil penalty is \$200 (applies to all offenders regardless of age). §321J.17

II. If the death was related to drunk driving, the offender may be required attend either alcohol education or treatment programs. §707.6A

III. **Special License Suspension.** Prior to an adjudication of a person for vehicle homicide related to either reckless driving or drunk driving, their license is suspended until the completion of the judicial proceedings. If they are not convicted, their license is reinstated. §321.210C

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

See Footnote No. 1 and the Special Note below.

Sanction:
 Criminal:
 Imprisonment (Term):
 Mandatory Minimum Term
 of Imprisonment:
 Fine (\$ Range):

Serious misd-Not more than 1 yr §§321J.21 and 903.1(1)(b)

None

\$1,000 to \$1,500 §§321J.21 & 903.1(1)(b) See Footnote 1 on p. 3-174. There is also a Civil Penalty of \$200. §321J.17

Mandatory Minimum Fine:

\$1,000 §321J.21

¹I. It is a simple misd to operate a CMV during a CDL disqualification. The sanctions for this offense are a jail term of not more than 30 dys or a fine of \$50 (may be mand) to \$500 and an additional disqualification period which is to equal to the original. §§321.218(5) & (6) and 903.1(1)(a) II. A person, who operates a CMV while under a CDL out-of-service order, is subject to a "scheduled fine" of \$100 and to a CDL disqualification. The disqualification periods are as follows: 1st violation-90 dys; 2nd violation (w/n 10 yrs)-1 yr; 3rd and subsequent violation (w/n 10 yrs)-3 to 5 yrs. §§321.208, 321.208A & 805.8(2)(z)

²A restricted license may be issued by the court provided such a license is needed in order for the person to remain employed. §321J.4(8) Note: Such a license is not available via the licensing agency. §321J.20(2) An offender must install an "ignition interlock" system on the vehicle(s) they operate as a condition for obtaining a restricted license. This requirement must last for at least 1 yr unless a longer period is ordered by the court under §321J.4. §§321J.4(8) & 321J.20(6)

Impoundment & Forfeiture. A motor vehicle is subject to impoundment (but not immobilization) if it is driven by a person, whose license is still under revocation for a drunk driving offense. See Impoundment on p. 3-173 for details. However, 2nd or subsequent violation, the vehicle is subject to forfeiture. §321J.4(2) & (6)

Special Note: It is a serious misdemeanor for a person to operate a vehicle in violation of an impoundment or immobilization order. §321J.4B(12) The sanctions for this offense are an imprisonment term ≤ 1 yr and/or a fine of \$250 to \$1,500. §903.1 In addition, the vehicle used in the offense must be forfeited. §321J.4B(9)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp or rev §321J.21 See Impoundment and Forfeiture below.

Length of Term of License

Withdrawal Action:

Original Susp/Rev extended an additional like period §321J.21

Mandatory Term of License

Withdrawal Action:

None §321J.21 See Footnote No. 2 on p. 3-175.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes 321.555, 321.560 & 321.561

Grounds for Being Declared an

Habitual Offender:

3 or more serious offs (w/n 6 yrs) or 6 or more minor offs (w/n 2 yrs)

Term of License Rev While

Under Habitual Offender Status:

If based on serious offs-2 to 6 yrs¹; if based on minor offs-1 yr

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Aggravated misd §§321.561 & 903.1

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Not more than 2 yrs

Mandatory Minimum Term of

Imprisonment:

None

Fine (\$ Range):

\$500 to \$5,000² See Footnote No. 1 on p. 3-174.

Mandatory Minimum Fine (\$):

\$500 appears to be mand.

Licensing Actions (Specify):

Same as for driving while revoked.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No

BAC Chemical Test Is Given to the

the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Yr Eff: 1986) §§123.3(19), 123.47, 123.49(2)(h) & 123.59

¹I. If habitual offender status is based only on the operation of vehicles while license is either suspended, revoked or barred, a person is eligible for restricted driving privileges based on a showing of extreme hardship. II. If habitual offender status is based only on DWI offense convictions and the offender is not otherwise eligible for a restricted license, they may, nevertheless, receive such a license provided (1) such a license is needed in order for the person to remain employed, (2) the person installs an "ignition interlock" system in their vehicle(s) and (3) the minimum period of license revocation for the DWI offense has expired. §§321.215, 321.560 & §321J.4(8) This scheme was held constitutional. *Iowa Dept. of Transp. v. Pottawattamie Cty.*, 592 N.W.2d 41 (Iowa 1999)

²There is a civil penalty of \$200 (if the offender is ≤ 19 yrs old, the civil penalty is \$50). §321.218A

Other State Laws Related To Alcohol Use: (continued)

Minimum Age (Years) Possession:	21 There are exemptions for medical reasons, employment and home use with parental consent. §123.47
Minimum Age (Years) Consumption:	None
<u>Dram Shop Laws and Related Legal Actions:</u>	
State Has a Dram Shop Law (Yes/No):	Yes §123.92 ¹
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	Yes ¹ <i>Lewis v. State</i> , 256 N.W. 2d 181 (Iowa 1977), & <i>Haafke v. Mitchell</i> , 347 N.W.2d 381 (Iowa 1984)
Dram Shop Actions-Social Hosts:	Yes Limited Liability limited to injuries caused by minors (persons under the legal drinking age) who are knowingly served alcoholic beverages by social hosts. In order to be liable, the social host must "physically" serve alcoholic beverages to the minor. §§123.49(1) & 123.92 ²
Other:	None
<u>Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
Type of Criminal Action:	See the Special Note below.
Term of Imprisonment:	Simple misd §§123.49(1), 123.50(1) & 903.1(1)(a)
Fine (\$ Range):	Not more than 30 dys \$50 to \$500 ³ (A \$50 fine appears to be mand.)
<u>Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes Susp or rev ⁴ §§123.39, 123.40 & 123.50(2)

¹The dram shop law provides that alcoholic beverages be "sold and served" to a patron before a liability action can be maintained against a licensee. The term "served" has been judicially interpreted to mean immediate consumption. *Eddy v. Casey's General Store, Inc.*, 485 N.W.2d 633 (Iowa 1992), & *Paul v. Ron Moore Oil Company*, 487 N.W.2d 337 (Iowa 1992). Note: The dram shop law abolished "common law negligence actions" against persons who furnish alcoholic beverages to minors. *Hoth v. Meisner*, 548 N.W.2d 152 (Iowa 1996).

²In *Bauer v. Dann*, 428 N.W.2d 658 (1988), the Iowa Supreme Court held that §123.49(1) only abolished social host liability associated with the service of alcoholic beverages to intoxicated adult guests; i.e., previous case law, *Clark v. Mincks*, 364 N.W.2d 226 (Iowa 1985), establishing such liability was abrogated by this law. See also *Fullmer v. Tague*, 500 N.W.2d 432 (Iowa 1993). A business social host is not liable for the actions of an intoxicated adult employee in situations where the employer hosted an employee party where alcoholic beverages are served gratuitously. *Summerhays v. Clark*, 509 N.W.2d 748 (Iowa 1993).

³See Footnote No. 1 on p. 3-174.

⁴A conviction for a violation of the liquor control laws is not a prerequisite either to a license suspension/revocation or to a civil penalty (fine). §123.39(1)(c).

Special Note: I. Sec. 123.91 provides for additional sanctions for persons who violated the liquor laws. For a 2nd offense, a person commits a serious misdemeanor; the sanctions for this offense are jail term of not more than 1 yr and/or a fine of not more than \$1,000 (§903.1(1)(b)). For a subsequent offense, a person commits an aggravated misdemeanor; the sanctions for this offense are imprisonment for not more than 2 yrs and/or a fine of not more than \$5,000 (§903.1(2)).

II. Sec. §123.59 also make an offense to sell alcoholic beverages to persons under 21 years old. It is a serious misdemeanor (1st off) to violate §123.59 and the sanctions for this offense are jail term of not more than 1 yr and/or a fine of not more than \$1,000 (§903.1(1)(b)).

Other State Laws Related To Alcohol Use: (continued)

Length of Term of License Withdrawal:

Susp not more than 1 yr Rev 2 yrs

Civil Penalty (Fine): Not more than \$1,000 §123.39(1)(a)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:
Type of Criminal Action:

See the Special Note on p. 3-177.

Simple misd (a scheduled violation) §§123.3(19), 123.47, 123.49(2)(h), 123.50(1) & 805.8(10)(a)

None

Term of Imprisonment:
Fine (\$ Range):

Licensee (Permittee)-\$1,500¹ §805.8(10)(a)

Employee of Licensee (Permittee)-\$500¹ §805.8(10)(a)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:
License to Serve Alcoholic Beverages
Withdrawn (Yes/No):

Yes 1st off - None²; 2nd off (w/n 2 yrs) - Susp; 3rd off (w/n 3 yrs) - Susp; 4th off (w/n 3 yrs) - Rev §§123.39, 123.40 & 123.50(3) See Footnote No. 3.

1st off - None²; 2nd off (w/n 2 yrs) - 30 dys; 3rd off (w/n 3 yrs) - 60 dys; 4th off (w/n 3 yrs) - 2 yrs

Civil Penalty. 2nd off (w/n 2 yrs) or 3rd off (w/n 3 yrs)-\$1,500 §123.50(3)(b) & (c) **Comment:** This civil penalty appears to apply only to licensees (permittees).

Important. See Footnote No. 3.

Length of Term License Withdrawal:

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes Drivers and passengers §§321.284 & 321.284A There is an exception in the case of passengers who are riding either in vehicles for compensation or in the living quarters of either a motor home, mobile home, travel trailer or fifth-wheel travel trailer. §321.284A(2)

Anti-Consumption Law (Yes/No):

Yes Driver and passengers §123.46 The law states that "it is unlawful for any person to use or consume alcoholic liquors or beer upon the public streets or highways..."

¹See Footnote No. 1 on p. 3-174.

²For a 1st offense, the license is not suspended but the violator is assessed a "civil penalty" of \$500. If the violator does not pay this assessment, the license is suspended for 14 dys. §123.50(3)(a)

³It appears that the following administrative or civil sanctions could be imposed via separate statutory authority. Under §123.39(1)(a), it may also be possible to suspend a license for not more than 1 yr and/or impose a civil penalty of not more than \$1,000. Note: a conviction for a violation of the liquor control laws is not a prerequisite either to a license suspension/revocation or to a civil penalty. §123.39(1)(c)

STATE:
General Reference:

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Kansas Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle §8-1567(a)(3)

Illegal Per Se Law (BAC/BrAC):

≥0.08^{1,2} §8-1567(a)(1), (a)(2) & (q)(1)

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) **Any Drug** or (2) a Combination of Alcohol and Drugs §8-1567(a)(4) & (5)

Other:

A BAC/BrAC ≥0.08³ is *prima facie* evidence that the defendant was under the influence of alcohol. §8-1005(b)

No person, who is an habitual user of narcotics, shall operate or attempt to operate a motor vehicle. §8-1567(b)

For Commercial Motor Vehicle Operators, see p. 3-182.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes §8-1012

Implied Consent Law:

Arrest Required (Yes/No):

Yes³ §8-1001(b)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §8-1001(a)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) §8-1001(f) & *State v. Rubick*, 827 P.2d 780 (Kan.App. 1992)

Other Information:

A blood test may be administered without the driver's consent in situations where there is probable cause of any DWI offense and there was either a serious injury or the death of another person. §8-1001(f)(1)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:

Yes §8-1001(a)

Urine:

Yes §8-1001(a)

Other:

Other Bodily Substances §8-1001(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

Yes §8-1567(n) Certain diversion programs are excepted.⁴

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

Yes Alc. & Drug Evaluation Required §§8-1008(c) & (d) and 8-1567⁵

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

²Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §§8-1013(a)(1) & 8-1567(q)(1)

³No arrest is required if the person has been involved in a motor vehicle accident resulting in property damage, personal injury or death.

⁴A defendant is not eligible to enter a diversion program if: (1) They have previously participate in such a program; (2) they have been convicted of an alcohol related driving offense; (3) their alcohol concentration at the time of arrest was 0.20 or more; or (4) they were involved in an accident which has resulted in either a death or a bodily injury. §§12-4415(b) & 22-2908(2)(a) For a description of the diversion program, see §§12-4416 & 22-2909. Note: As part of a diversion program, a person may be required to operate motor vehicles equipped with "ignition interlock" devices.

⁵Note: General pre-sentence investigation requirements are codified under §§21-4603 and 21-4604.

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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):

Yes Infraction A fine of not more than \$500 §§21-3105(2) & 21-4503(4) Thirty dollars (\$30) if a person pleads guilty or no contest under the uniform fine schedule. §8-2118(c)

Administrative Licensing Action
(Susp/Rev):
Other:

None
None

Refusal to Take Implied Consent Chemical Test:
Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):
Other:

No

Susp 1 yr (Mandatory) §§8-255(b), §§8-256(a), 8-1001, 8-1002(a) & 8-1014(a)
None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment:

See Double Jeopardy below.

1st off (Cl B nonperson misd)-**48 con hrs to 6 mos¹**; 2nd off (w/n 5 yrs) (Cl A nonperson misd)-**90 dys to 1 yr**; 3rd and subsequent offs (w/n 5 yrs) (Nonperson Felony)-**90 dys to 1 yr²** §§8-1567(d), (e), (f) & (k)(3) and 21-4502(1)(a)

Important. For DWI sanctions related to the injury of a pregnant woman, see Miscellaneous Sanctions on p. 3-183.

Mandatory Minimum Term:

1st off-**48 con hrs¹**; 2nd off (w/n 5 yrs)-**5 con dys** (or 48 con hrs (mand) and "work release" while in jail for the remaining 3 dys of the mand jail sentence); 3rd and subsequent offs (w/n 5 yrs)-**90 dys** (or 48 con hrs (mand) and "work release" while in jail for the remaining 88 dys of the mand jail sentence)² §8-1567(f) Note: Under §8-1567(g), for 2nd or sub. DWI (regular) offs, a person, who is sentenced to "house arrest," must, nevertheless, serve at least 48 con hrs of imprisonment. See Miscellaneous Sanctions on p. 3-183.

Note: Under the DWI law, "imprisonment" includes "any restrained environment" under the control of a court and law enforcement agency. §8-1567(q)(2) However, incarceration for a felony DWI offense is not to be served in a facility operated by the State secretary of corrections. §21-4704(i)

¹Under §§12-4415, 12-4416 or 22-2906 et seq. a defendant may enter a diversion program for a 1st off and have the DWI criminal charges dismissed after the program has been successfully completed.

²**Special Note:** The DWI law provides for different sanctions for a nonperson felony offense than are provided for in the State's sentencing guidelines grid. See Sentencing Guidelines on p. 3-183. However, under §21-4704(i), the sanctions in the DWI law prevail over those in the grid.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Mertz*, 907 P.2d 847 (Kan. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine: Amount (\$ Range):	<u>1st off-\$200 to \$500; 2nd off (w/n 5 yrs)-\$500 to \$1,000; 3rd and subsequent offs (w/n 5 yrs)-\$1,000 to \$2,500¹</u> §8-1567(d), (e) & (f) See Footnote No. 2.
Mandatory Minimum Fine (\$):	<u>DWI Offenses-2nd off-\$500¹</u> §21-3405b(b)(1)
Other Penalties: Community Service:	<u>1st off-100 hrs (in lieu of imprisonment)</u> §8-1567(d); ; <u>2nd and subsequent offs (w/n 5 yrs)-May be ordered in lieu of fine.</u> A \$5 credit is allowed on the fine for every hr of community service. §8-1567(i)
Restitution (eg Victim's Fund)	<u>Yes</u> (1) Direct compensation by defendants to victims as a condition of probation/parole. §§8-1019(c), 21-4603(2)(c), (d) & (e), 21-4610(4)(a) and 22-3717(l). And, (2) victims may also receive restitution for damages from the State's crime victims' compensation fund. The maximum amount that can be received from this fund is \$25,000. §74-7301 et seq.
Other:	An "ignition interlock" device may be required. See Footnote No. 4 on p. 3-179 and Special Note Nos. 1 & 2 on p. 3-182. <u>Assessments.</u> I. Unless they are indigent, a defendant must pay an assessment of \$125. This assessment is deposited into an alcohol and drug safety fund. §8-1008(e) II. An offender is assessed \$7 in addition to any fine. This assessment is used to fund various law enforcement and crime victim activities. §§8-249(b) & 12-4117 and Kansas Administrative Regulations 92-52-9
Administrative Licensing Actions: <u>Pre-DWI Conviction</u> Licensing Action: Administrative Per Se Law:	See Double Jeopardy on p. 3-180. <u>Yes</u> ≥0.08 (BAC/BrAC See Footnote No. 2 on p. 3-179.) §§8-1013(a) & (h), 8-1014(b) and 8-1015(a) <u>1st occurrence</u> ⁴ -Susp 30 dys (Mandatory) and 330 dys restricted driving privileges (See Special Note Nos. 1 & 2 on p. 3-182.); <u>sub. occurrence</u> ⁴ -Susp 1 yr (Mandatory) §§8-1001, 8-1002 & 8-1014(b)
Other:	<u>Persons Under 21 Years Old.</u> ≥0.02 (BAC/BrAC See Footnote No. 2 on p. 3-179.) <u>1st or subsequent occurrence</u> -Susp 1 yr This suspension appears to be mandatory. §8-1567a None

¹**Special Note:** This fine sanction is listed in the DWI law. However, §21-4503a(a)(3) provides for a possible fine of up to \$100,000 for the conviction of a Severity Level 9 Felony offense.

²An "assessment" of \$110 is levied against persons who are either convicted of a DWI offense or who enter a DWI diversion program. The "assessment" funds are used to support community-based alcohol and drug safety action programs. §8-1008(e)

³*State v. Kitzman*, 727 P.2d 491 (Kan. 1986)

⁴An "occurrence" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction. §8-11013(e)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off (occurrence)¹-Susp/Restriction; sub. off (occurrence)¹-Susp §§8-254, 8-1014(b), 8-1567(i) & 21-3405b(b)(4)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off (occurrence)¹-30 dys susp and 330 dys restriction² See Special Note No. 1 below. sub off (occurrence)¹-1 yr See Special Note No. 2 below. §§8-1014(c)(1) & (2) and 8-1567(d), (e) & (f)

Mandatory Minimum Term of

Withdrawal:

1st off (occurrence)¹-30 dys; sub off (occurrence)¹-1 yr §8-255(b))

Special Note No. 1: (1) A person's driving privileges are restricted to operating a motor vehicle for educational, employment and medical purposes. (2) In lieu of restricted driving privileges, the court may require the person to operate only vehicles equipped with an "ignition interlock" device. §§8-292 & 8-1015

Special Note No. 2: For a 2nd or subsequent conviction where the offender had a BAC or BrAC ≥ 0.15 , a defendant must be restricted to only operating vehicles that are equipped with and "ignition interlock" device. §8-1015(c) **Comment:** This requirement would appear to follow the mandatory suspension period noted above. As such, the offender would be entitled to full driving privileges but with the condition that they only operate vehicles equipped with "ignition interlock" devices.

Other:

Rehabilitation:

Alcohol Education:

1st and sub. offs-As a condition of probation, parole, etc., a defendant must complete either an alcohol education or treatment program. §8-1567(c), (d), & (e) **Note:** Attendance at an alcohol education or treatment program could be a condition for issuing a restricted license. §8-1015

¹An "occurrence" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction. §8-1013(e)

²The license is suspended for 30 days and thereafter restricted driving privileges are granted for 330 days. §§8-1014(c)(1) & 8-1567(d)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of alcohol or any drug or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). A person, operating a CMV with either an alcohol concentration ≥ 0.04 or while under the influence of alcohol or drugs, in addition to being subject to the regular DWI criminal sanctions, is subject to the following "special" sanctions: Jail for 48 consecutive hours to 6 months and/or a fine of \$200 to \$500. **Note:** Such a person may not be subject to administrative actions against their normal driving privileges. Also, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§8-1002, 8-2, 128(b), 8-2, 128(f), 8-2, 128(h), 8-2, 128(i), 8, 128(s), 8-2, 136, 8-2, 137, 8-2, 142 & 8-2, 144

Sanctions Following a Conviction for a DWI Offense:
(continued)

Alcohol Treatment:
Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

See Alcohol Education above.

No

License Plate Revocation. For a 4th or subsequent DWI conviction, the license plate of the vehicle used in the offense may be revoked for 1 yr. §8-1567(p)

Miscellaneous Sanctions
Not Included Elsewhere:

Under §21-4603b, a defendant may be sentenced to "house arrest". The defendant may be required to use an electronic monitoring system while participating in a "house arrest" program. 2nd and sub DWI offenders must, nevertheless, serve at least 48 con hrs of imprisonment. §8-1567(g)

Injury to a Pregnant Woman. It is a Severity Level 5 Person Felony to injure a pregnant woman while violating the DWI law. The sanctions for this offense are an imprisonment term of 50 to 55 mos and/or a fine of not more than \$300,000. See Sentencing Guidelines below. §§21-3441, 21-4503a(a)(2) & 21-4704

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Involuntary Manslaughter-An unintentional death associated with a DWI or other driving offenses. Severity Level 4 Person Felony §21-3442

Vehicle Homicide-Death caused by the operation of a vehicle in a manner which causes unreasonable risk. Class A Person Misd §21-3405

Sanctions:
Criminal Sanction:
Imprisonment (Term):

Severity Level 4 Person Felony-62 to 69 mos¹ See Sentencing Guidelines below.

Class A Misd-Not more than 1 yr §§21-4502 & 21-4704
None

Mandatory Minimum Term:

¹For 2nd or 3rd convictions, the incarceration sanction may be increased by twice or three times these time periods respectively. §21-4504(a) & (b)

Sentencing Guidelines. Imprisonment sanctions for felony offenses are determined by a sentencing guidelines grid and supporting statutory provisions. For a Severity Level 9 Nonperson Felony, the grid provides for an imprisonment sanction of **7 to 9 mos but**, nevertheless, "presumes" that a non-incarceration sanction will be imposed. The imprisonment sanction can only be imposed if aggravating circumstances warrant. For a Severity Level 4 Person Felony, there is a "presumed" incarceration sanction of **62 to 69 mos**. These imprisonment periods, as listed in the grid, may be increased (by not more than twice the maximum sentence listed in the grid) depending upon the aggravating circumstances. However, if sufficient mitigating circumstances exist, the court may either decrease the imprisonment sentence or not impose an incarceration sanction. The grid also provides for increased incarceration periods for subsequent felony offenses. §§21-4704, 21-4716 & 21-4719

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Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range):	<u>Severity Level 4 Person Felony</u> -Not more than \$300,000 §21-4503a(a)(2) <u>Class A Misd</u> -Not more than \$2,500 §21-4503(b)(1) <u>None</u>
Mandatory Minimum Fine: Administrative Licensing Action: Licensing Authorized and Type of Action:	<u>DWI Related Involuntary Manslaughter-Susp¹</u> <u>Vehicle Homicide-Rev</u> §8-254
Length of Term of Licensing Withdrawal:	<u>DWI Related Involuntary Manslaughter</u> -Same as for DWI offenses. <u>Vehicle Homicide</u> -Not more than 1 yr §8-256
Mandatory Action--Minimum Length of License Withdrawal:	<u>DWI Related Involuntary Manslaughter</u> -Mandatory suspensions are the same as for DWI offenses. <u>Vehicle Homicide</u> -None Restricted driving privileges may be granted. §8-254(b)
Other:	<u>Assessment.</u> For the <u>Vehicle Homicide</u> offense (§21-3405), an offender is assessed \$7 in addition to any fine. This assessment is used to fund various law enforcement and crime victim activities. §§8-249(b) & 12-4117 and Kansas Administrative Regulations 92-52-9
<u>Driving While License Suspended or Revoked</u> <u>Where the Basis Was a DWI Offense*:</u> Sanction: Criminal: Imprisonment (Term):	See the Special Note below. <u>1st off</u> (Cl B Nonperson Misd)-Not more than 6 mos ; <u>2nd off</u> (Cl A Nonperson Misd)-Not more than 1 yr ; <u>3rd and subsequent off</u> (Severity Level 9 Nonperson Felony)- 7 to 9 mos² §§8-262, 21-4502 & 21-4704
Mandatory Minimum Term of Imprisonment:	<u>2nd and sub. off-5 dys^{3&4}</u> §8-262(a)(3)

¹Since this offense is DWI related, the suspensions are the same as for DWI offenses.

²See Sentencing Guidelines on p. 3-183.

³*State v. Harpool*, 788 P.2d 281 (Kan. 1990)

⁴A 90 dy jail term is mandatory if the person commits a DWI offense while driving on a suspended license where the suspension was for a previous DWI offense conviction. §8-262(a)(4) & Atty. Gen. Op 88-23 (Feb. 19, 1988)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: It is a Cl B misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term of not more than 6 mos and/or a fine of not more than \$1,000. §§8-2,132(b) & (c), 21-4502(1)(b) and 21-4503(b)(2) In addition, for a violation of a CDL out-of-service order, a person is disqualified from operating a CMV for the following periods: 1st violation-90 dys; 2nd violation-1 yr; and, 3rd or subsequent violation-3 yrs. These disqualifications appear to be mandatory. §8-2,136(c)

Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range):	<u>1st off</u> -Not more than \$1,000; <u>2nd off</u> -Not more than \$2,500; <u>3rd and subsequent off</u> -Not more than \$100,000 §21-4503a(a)(3) and (b)(1) & (2)
Mandatory Minimum Fine:	\$100 appears to be mand. §8-262(a)(3)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp or rev §8-262(b)
Length of Term of License Withdrawal Action:	The original suspension/revocation is extended for an additional period of 90 dys. §8-262(b)
Mandatory Term of License Withdrawal Action:	See above.
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes §§8-284 & 8-285
Grounds for Being Declared an Habitual Offender:	Three serious offs within 5 yrs
Term of License Rev While Under Habitual Offender Status:	3 yrs §§8-286 & 8-288
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	Severity Level 9 Nonperson Felony §8-287
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	7 to 9 mos ¹ §21-4704
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not more than \$100,000 ¹ §21-4503a(a)(3)
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	None

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):

Yes §22a-237 The tests' results may only be used for statistical purposes that do not reveal the identify of the deceased individuals. §22a-237(c) The law requires that the blood withdrawal occur w/n 8 hrs after arrest and that it be conducted on either an operator or "a person not a passenger". §22a-237(b)

BAC Chemical Test Is Given to the the Following Persons:

Driver:
Vehicle Passengers:
Pedestrian:

Yes
No

Yes Note: A test is not required for persons under 14 years old.

¹This sanction applies to offenses committed after 7/1/93. See Sentencing Guidelines on p. 3-183.

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Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1985) §§21-3610, 21-3610a, 41-102(p), 41-715, 41-727(a), 41-2701(h), & 41-2721(a)

Minimum Age (Years) Possession:

21¹ §§41-715, 41-727(a) & 41-2721(a) There is an employment exception.

Minimum Age (Years) Consumption:

21¹ §§41-727(a) & 41-2721(a)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

No

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

No Note: For recent cases denying liability, see *Ling v. Jan's Liquors*, 703 P.2d 731 (1985) & *Meyers v. Grubaugh*, 750 P.2d 1031 (Kan. 1988).

Dram Shop Actions-Social Hosts:
Other:

No *Thies v. Cooper*, 753 P.2d 1280 (Kan. 1988)²

A licensee is not liable for the injuries sustained by an intoxicated patron who was under the legal drinking age. *Mills v. City of Overland Park*, 837 P.2d 370 (Kan. 1992)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd §41-715³

Term of Imprisonment:

Not more than 30 dys³ §41-715

Fine (\$ Range):

\$100 to 250³ §41-715

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Rev⁴ §§41-314, 41-2611(f) & 41-2626

Length of Term of License Withdrawal:

Not specified in the statute

Civil Fine. A "civil fine" on not more than \$1,000 may also be imposed. §41-328(a)

¹Except for licensed establishments, persons under the legal drinking age for alcoholic beverages, containing 3.2% or less alcohol, may possess and consume such beverages if they have the consent of and are supervised by a parent or guardian. §§41-2704(e) & 41-2721

²This case concerned whether an employer was responsible for injuries caused by an employee who became intoxicated at a social event hosted by the employer. The court held that there was no liability.

³These sanctions, it appears, only apply to the service of alcoholic beverages containing more than 3.2% alcohol to intoxicated persons. §§41-102(b) & 41-715

⁴Appears only to apply to the service of alcoholic beverages containing more than 3.2% alcohol.

Other State Laws Related To Alcohol Use: (continued)Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:
Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:
License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

See the Special Note below.

CI B Person Misd (Furnishing alcoholic beverages to any person under 21 yrs of age) §§21-3610 & 21-3610a

Not more than 6 mos §21-4502(1)(b)

Not more than \$1,000¹ §21-4503(2)(b)

See the Special Note below.

Yes Susp or Rev §§41-2611(f), 41-2626 & 41-2708(a)

Not specified for alcoholic beverages with an alcoholic content of more than 3.2%. For cereal malt beverages (alcoholic beverages with an alcoholic content below 3.2%), license revocation for 6 mos.

Anti-Happy Hour Laws/Regulations:

Yes §§41-2640(a)(3) & 41-2722(a)(4)

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes §8-1599

Yes (Limited)² Driver and passengers §41-719(a)¹There is a mand. min. fine of \$200. §§21-3610 & 21-3610a(b)²The law only applies to the consumption of alcoholic beverages which have an alcoholic content >3.2% alcohol by wgt. I.e., the law does not prohibit the consumption of cereal malt beverages which have an alcoholic content ≤3.2% alcohol by wgt.

Special Note: It is a misdemeanor for a "liquor by the drink" licensee to allow a person under 21 years old to consume either alcoholic liquor or cereal malt beverages on the licensed premises. The sanctions for this offense are a jail term on not more than 30 dys, a fine of from \$100 to \$250, a "civil fine" of not more than \$1,000 and/or license suspension/revocation. §§41-2601(f), 41-2615, 41-2626 & 41-2633a(a)

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STATE:

General Reference:

KENTUCKY

Kentucky Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC):

Types of Drugs/Drugs and Alcohol:

Other:

Under the Influence of Alcohol §189A.010(1)(b)¹

≥0.10^{2&3} §§189A.010(1)(a)¹ & 189A.005(1)

Persons Under 21 Years Old ≥0.02 but <0.10³ §189A.010(1)(e)⁴ & (6)¹

None⁵

Under the influence of (1) **Any Substance** or (2) a combination of alcohol and any substance which may impair one's driving ability §189A.010(1)(c) & (d)¹

For Commercial Motor Vehicle Operators, see p. 3-193.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

Yes §§189A.100 & 281A.230 (Commercial Motor Vehicle Operators)

Yes §189A.103(1)

Yes §189A.103(1)

Yes (Criminal Cases) *Commonwealth v. Hager*, 702 S.W.2d 431 (Ky. 1986)

The law provides that no person shall be compelled to submit to a chemical test. However, if a person has been arrested for any DWI offense related to either a death or physical injury, the law allows a court to issue a search warrant requiring that either a blood or a urine sample be obtained for chemical testing. §189A.105 & *Combs v. Commonwealth*, 965 S.W.2d 161 (Ky. 1998)

Special Note: If a person has an alcohol concentration >0.15, they must be detained at least 4 hrs following their arrest. §189A.110

¹The DWI provisions of Chapter 189A apply only to the operation of "motor vehicles". For DWI offenses concerning the operation of certain vehicles that are "not motor vehicles", see §§186.010, 186.560(1)(b) & (5), 189.520 and 189.990(1).

²This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.

³Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §§189.005(1) & 189A.005(1)

⁴The law, that establishes a special offense against persons <21 yrs old, who operate a motor vehicle with BAC/BrAC ≥0.02 but <0.10, was held not to violate a persons's Federal or State constitutional rights to equal protection of the law. *Commonwealth v. Howard*, 969 S.W.2d 700 (Ky. 1998)

⁵Sec. 189.520(3)(c) establishes a statutory presumption of operating a vehicle that is "not a motor vehicle" while under the influence of alcohol if the operator has a BAC/BrAC ≥0.10 (See Footnote No. 3 above.).

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §189A.103(1)
Urine:	Yes §189A.103(1)
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes Plea bargaining is not allowed if either one of the three following conditions exist: (1) Either a defendant ≥21 yrs old a BAC/BrAC ≥0.10, (2) a defendant <21 yrs old a BAC/BrAC ≥0.02 or (3) a defendant refused to submit to a chemical test under the implied consent law. Does not apply if the State's witnesses are unavailable for trial or the chemical test results are in error. The court must record the reasons for any change in the original charges. §189A.120
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No Note: A DWI offender must undergo an alcohol assessment as part of their mandatory alcohol education or treatment program. §189A.040

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	<u>1st Refusal-Susp 6 mos; 2nd Refusal (w/n 5 yrs)-Susp 18 mos; 3rd Refusal (w/n 5 yrs)-Susp 36 mos; 4th and Sub. Refusals (w/n 5 yrs)-Susp 60 mos</u> These suspensions are mandatory . No hardship license can be issued by the court. §§189A.107 & 189A.410(2)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

See the Special Note below.

1st off (Cl B misd)-**48 hrs to 30 dys**¹; 2nd off (w/n 5 years) (Cl A misd)-**7 dys to 6 mos**¹; 3rd off (w/n 5 years) if **BAC <0.18** (Cl A misd)-**30 dys to 12 mos**; 3rd off (w/n 5 yrs) if **BAC ≥0.18** (Cl D Felony)-**1 to 5 yrs**; 4th and subsequent off (w/n 5 yrs) (Cl D Felony)-**1 to 5 yrs** §§189A.010(4), 532.020 & 532.060

Mandatory Minimum Term:

Persons Under 21 Years Old, **≥0.02 but <0.10**-None

1st off-**48 hrs/2 dys**^{1&2}; 2nd off (w/n 5 years)-**7 dys** (with 48 con hrs)¹; 3rd off (BAC <0.18)-**30 dys** (with 48 con hrs); 3rd off (BAC ≥0.18)-**1 yr**³ (with 48 con hrs); 4th and subsequent offs-**120 dys** (with 48 con hrs) §189A.010(4)(a), (5), (7) & (8)

Important. A person, who has been convicted of a misdemeanor, may be able to serve the mandatory jail sanction via "home incarceration". §532.210

Fine:

Amount (\$ Range):

1st off-**\$200 to \$500**²; 2nd off (w/n 5 years)-**\$350 to \$500**; 3rd off if **BAC <0.18**-**\$500 to \$1,000**; 3rd off if **BAC ≥0.18**-**\$1,000 to \$10,000**; 4th and subsequent offs-**\$1,000 to \$10,000** §§189A.010(4) & 534.030

Mandatory Minimum Fine (\$):

Persons Under 21 Years Old, **≥0.02 but <0.10**-**\$100 to \$500** §189A.010(5) See Community Service below.

Other Penalties:

Community Service:

1st off-**48 hrs to 30 dys**²; 2nd off (w/n 5 years)-**10 dys to 6 mos**; 3rd off (w/n 5 years) (**BAC <0.18**)-**10 dys to 12 mos** §189A.010(4)

Persons Under 21 Years Old, **≥0.02 but <0.10**-**20 hrs** in lieu of a fine §189A.010(5)

Restitution (eg Victim's Fund)

Yes §348.020 a victim's compensation board (See also §346.010 et seq.) Also, the court may order a defendant to pay restitution directly to a victim as a condition of probation. §533.030(3)

Other:

Service Fee. A DWI offender must pay a **\$150** service fee in addition to any other fine. §189A.050.

Assessment. In addition to any fine, an offender must pay a special assessment of **\$20** which is deposited into the Traumatic Brain Injury Trust Fund. §189A.101(10)

¹**Weekend Confinement.** For either a 1st or 2nd offense, a defendant, except for any mandatory 48 hr jail term that has to be served, may be allowed to serve their imprisonment term on weekends provided they spend at least 24 hrs in confinement. §189A.030.

²For a 1st off, a defendant must be sentenced to one of the following sanctions: (1) 48 hrs in jail; (2) a \$200 fine; or (3) 48 hrs of community service. For a 1st off, if the **BAC ≥0.18**, a defendant must be sentenced to **7 dys** in jail; however, 5 dys of this sentenced may be probated. §189A.010(4)(a) & (6)

³**Comment:** The drunk driving law does not specifically provide for this mand 1 yr sentence. However, it does provide, that for any 3rd off (w/n 5 yrs), the minimum sentence cannot be suspended, probated or conditionally discharged. The minimum sentence for a Cl D felony is not less than 1 yr. §§189A.010(7) & 532.060(2)(d)

Special Note: A person, who had been convicted of an illegal per se offense, can have their sanctions enhanced based on prior driving while under the influence offenses which were committed before the enactment of the illegal per se law. The Kentucky Supreme Court has held that the consideration of these prior driving under the influence offenses for the purpose of sanction enhancement does not violate the *ex post facto* provisions of either the Federal or State constitutions. *Botkin v. Commonwealth*, 890 S.W.2d 292 (Ky, 1994)

Historical Note: The above decision replaced a previous unpublished (not to be cited as precedent) opinion that had reached the opposite conclusion. *Botkin v. Commonwealth*, 1994 Ky. LEXIS 93

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other: (continued)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:
Other:

Crimes Victims' Fund. An offender must pay a cost of \$10 which is used to finance the Crimes Victims' Compensation Fund. §346.185
Incarceration Costs. An offender may be required to reimburse the State or local government for any incarceration costs. §532.352

See the Special Note below.

None

I. A court may suspend a driver's license from 14 to 60 dys following a DWI arrest but prior to adjudication of the DWI charges if there is probable cause that the defendant committed such off and any one of the following circumstances is present. (1) The driver has prior traffic violations (including DWI offs) which demonstrate a lack of regard for the safety of others or (2) there was an accident involving physical injury associated with the DWI charge. If the defendant is convicted of the DWI charge, any susp time is credited towards their license rev following such conviction. §189A.060

II. At arraignment, a court shall suspended the driver's license of (1) a person who has refused to submit to a chemical test or (2) an offender who has either a prior DWI offense conviction or a prior refusal. Except in cases of a refusal to submit to a chemical test, a driver's license is returned to an offender either after an acquittal of the DWI offense or, if the case has not been concluded, after a period of time that cannot exceed the period of time a person's license would have been revoked if they had been convicted of a DWI offense. This action appears to be mandatory. Any suspension period imposed under this procedure will be credited against any revocation imposed for a DWI offense conviction. §189A.200 & *Com. v. Raines*, 847 S.W.2d 724 (Ky. 1993) Note: This action does not apply to persons <21 yrs old who operate a motor vehicle with a BAC/BrAC of ≥ 0.02 but < 0.10 .

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

See the Special Note below.

1st and subsequent offs-Rev §189A.070(1) For persons under 18 years old, see Footnote No. 1.

Persons Under 21 Years Old. ≥ 0.02 but < 0.10 -Susp §189A.010(5)

¹Under §189A.070(4), a person, who is under 18 years old, has their license revoked until they are 18 or as otherwise provided under §189A.070 whichever sanction will result in the longer revocation period.

Special Note: Based upon the same factual situation, a person, who has been convicted of a drunk driving offense may also be subsequently subjected to a license revocation via administrative action by the Transportation Cabinet. The courts have held that such licensing action does not violate the constitutional prohibition against double jeopardy. See, for example, *Transportation Cabinet v. Feige*, 889 S.W.2d 52 (Ky.App. 1994). In addition, based upon the same factual situation, a person, who has been subjected to judicially ordered licensing prior to a DWI trial could also be subsequently prosecuted for a drunk driving offense without violating the constitutional prohibition against double jeopardy. *Hourigan v. Com.*, 962 S.W.2d 860 (Ky. 1998)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-90 dys; 2nd off-12 mos; 3rd off-24 mos; 4th and sub. off-60 mos §189A.070 See Habitual Traffic Offender Law on p. 3-195.
Persons Under 21 Years Old, ≥ 0.02 but < 0.10 -30 dys to 6 mos §189A.010(5)

Mandatory Minimum Term of
Withdrawal:

1st off-30 dys mand followed by 60 dys of restricted driving privileges (§189A.410); 2nd off-12 mos; 3rd off-24 mos; 4th and sub. off-60 mos §189A.070
Persons Under 21 Years Old, ≥ 0.02 but < 0.10 -30 dys¹ §189A.010(5)

Special Note: A driver's license cannot be reinstated following a revocation for a DWI offense until the defendant completes the required alcohol education or treatment program under §189A.040.

Other:
Rehabilitation:
Alcohol Education:

Yes 1st off-Participation in either an alcohol education or treatment program for 90 dys is mandatory. §189A.040(1)

Alcohol Treatment:

For subsequent DWI off convictions, the defendant must be sentenced to an alcohol or substance abuse treatment program for 1 yr. §189A.040(2) & (3)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:

No

¹**Comment:** This sanction appears to be mandatory but the law is not clear on this point.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) have refused to submit to a chemical test for either alcohol or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). A person, who operates a CMV with a BAC/BrAC ≥ 0.04 but ≤ 0.08 is subject to a fine of not less than \$20 and not more than \$50. However, if their BAC/BrAC is > 0.08 , they are subject to the same fines as for a regular drunk driving offense. In addition, a CMV operator who has any measurable (or detectable) amount of alcohol or controlled substance in their system must be placed "out-of-service" for 24 hours. If a CMV operator refuses to submit to a chemical test (for an alcohol concentration or for the presence of other drugs) under the CMV implied consent law provisions, the operators privilege to operate a CMV can be either suspended or revoked. For first refusal, the CMV privilege is suspended for one (1) year (mand) and, for a subsequent refusal, the privilege is suspended for life (mand). However, if the operator fails to appear at the implied consent hearing, which is automatically scheduled in refusal situations, the CMV privilege is revoked; the length of this revocation is not specified. Note: The pre-trial and implied consent provisions of Ch. 189A also apply to CMV operators (§281A.220(2)). §§281A.010(2), (8), (10) & (11), 281A.190, 281A.210, 281A.220 and 281A.2102

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:
Miscellaneous Sanctions
Not Included Elsewhere:

None

Reimbursement. If a person is placed on probation or given conditional release from incarceration, the court may require them to make payment to either an education or treatment program for drug or alcohol abuse. The amount of this payment is not to exceed the amount of any fine which could have been imposed for the offense. §§533.030(5)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

No

Special Note: "A person is guilty of manslaughter in the second degree when, including, but not limited to, the operation of a motor vehicle, he wantonly causes the death of another person." §507.040(1) Manslaughter in the second degree is a C1 C felony. §507.040(2) The sanctions for this felony are imprisonment from 5 to 10 yrs and/or a fine of \$1,000 to \$10,000. §§532.060(2)(c) & 534.030(1)

Sanctions:
Criminal Sanction:
Imprisonment (Term):
Mandatory Minimum Term:
Fine (\$ Range):
Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and
Type of Action:

Note: Even though this state does not have vehicle homicide statute, it, nevertheless provides for mandatory license rev for not less than 5 years for a conviction of manslaughter¹ resulting from the operation of a motor vehicle. §186.560(1)(a) & (4)

Length of Term of
Licensing Withdrawal:
Mandatory Action--Minimum
Length of License
Withdrawal:
Other:

¹This could include either (1) manslaughter in the second degree (§507.040) or reckless homicide (§507.050). Note "reckless homicide" is a C1 D felony. The sanctions for a C1 D felony are an imprisonment term of 1 to 5 yrs and a fine of \$1,000 to \$10,000. §§532.060(2)(d) & 534.030(1)

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term
of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

See the Special Note below.

1st off (CI B misd)-Not more than **90 dys**¹; 2nd off (CI A misd)-Not more than **12 mos**¹; 3rd and subsequent offs (CI D felony)-**1 to 5 yrs**¹ §§189A.090(2), 532.060 & 532.090

None

1st off-Not more than **\$250**; 2nd off-Not more than **\$500**; 3rd and subsequent offs-**\$1,000 to \$10,000** §§534.030 & 534.040

None

1st off-Rev; 2nd off-Rev; 3rd and subsequent offs-Rev §189A.090

The driver's license shall be revoked for twice the original period of rev §189A.090(3)

Yes As indicated above.

Yes §186.641 et seq.

3 or more serious offs (including DWI offs) or **15 moving violations** (including serious offenses) §§186.641 & 186.642

Rev-5 yrs if habitual offender status is related to 3 convictions of either DWI or vehicle manslaughter; **rev-2 yrs** if habitual offender status is based on other violations. §186.646

Misd §§186.992 & 431.060(2)

¹Under §500.095, a defendant can be assigned community service in lieu of incarceration.

Special Note: A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. §281A.090(2) However, neither this section nor any other provision of Chapter 281A provide a sanction for this prohibition. However, except as noted above for driving while suspended or revoked for a drunk driving offense, it is a CI B misd for a person to operate a motor vehicle while their license is either suspended, revoked or withdrawn; the sanctions for this offense are a jail term of not more than 90 dys and/or a fine of not more than \$250. §§186.620(2), 186.990(3), 532.090(2) & 534.040(2)(b)

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Other Criminal Actions Related to DWI: (continued)

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term):

Not to exceed 12 mos §186.992 See Footnote No. 1 on p. 3-195.

Mandatory Minimum Term of

Imprisonment:

None

Fine (\$ Range):

None

Mandatory Minimum Fine (\$):

N/A

Licensing Actions (Specify):

None

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Possible¹

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Possible

Vehicle Passengers:

Possible

Pedestrian:

Possible

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 §§244.080 & 244.085 (Year Eff: 1938)

Minimum Age (Years) Possession:

21 §244.085 There is a limited employment exemption. §244.087

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes² §413.241

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes *Pike v. George*, 434 S.W.2d 626 (Ky. 1968), *Grayson v. Frat.
Order of Eagles*, 736 S.W.2d 328 (Ky. 1987), & *Watts v. K, S & H*,
957 S.W.2d 233 (Ky. 1997)³

¹Language in §189.590 requiring coroners to report on the circumstances surrounding fatal accidents may impliedly require such tests. *Woosley v. Central Uniform Rental*, 463 S.W. 2d 345 (1971) An investigative officer or a coroner may direct the taking of blood samples from dead individuals if necessary. OAG 73-170 & OAG 73-196

²This law limits liability if the service of alcoholic beverages was to a person over the legal drinking age. A licensee or any employee thereof is not liable for the actions of a patron "unless a reasonable person under the same or similar circumstances should know that the person served is already intoxicated at the time of serving." The law does not appear to have abrogated the holding in the *Pike* case since it concerned the damages caused if the service of alcoholic beverages was to a minor.

³In *Watts*, the court held that a licensee may be held liable for the actions of a minor who consumed alcoholic beverages that were purchased by another under age person if it can be shown that it was reasonably foreseeable that such beverages would be consumed by the non purchasing minor who could become intoxicated and injure a third party.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:
Other:

No!
None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

1st off-Cl B Misd; 2nd and subsequent off-Cl A Misd §§241.010(2),
244.080(2) & 244.990(1)

Term of Imprisonment:

1st off-Not more than 90 dys; 2nd and subsequent off-Not more than 12
mos §532.090 See Footnote No. 1 on p. 3-195.

Fine (\$ Range):

1st off-Not more than \$250; 2nd and subsequent off-Not more than
\$500 §534.040

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or Rev² §§243.480, 243.490 & 243.500

Length of Term of License Withdrawal:

2 yrs §243.100(5)

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

1st off-Cl B Misd; 2nd and subsequent off-Cl A Misd §§241.010(2),
244.080(1) & 244.990(1)

Term of Imprisonment:

1st off-Not more than 90 dys; 2nd and subsequent off-Not more than 12
mos §532.090 See Footnote No. 1 on p. 3-195.

Fine (\$ Range):

1st off-Not more than \$250; 2nd and subsequent off-Not more than
\$500 §534.040

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or Rev² §§243.480, 243.490 & 243.500

Length of Term License Withdrawal:

2 yrs §243.100(5)

¹See the "caveat" in the *Grayson* case 736 S.W.2d at 335.

²Note: For a first violation, in lieu of revocation, the State may suspend a license. The licensee, however, as an alternative to this suspension, may at their discretion pay a fine. For retail "by the drink" and package liquor licensees, the fine is \$50 per day the license would have been suspended; for retail beer licensees, such fine is \$25 per day. §243.480(1) For a second violation (w/n 2 yrs), the license must be revoked or suspended. §243.500(4)

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Other State Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes Driver & passengers §222.202 The law states that no person
"...shall drink an alcoholic beverage in a public place or in or upon any
passenger coach, or other vehicle commonly used for the transportation
of passengers...."

STATE:

General Reference:

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West's Louisiana Statutes Annotated: Revised Statutes Note:
Citations are to the Revised Statutes unless otherwise stated.

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC):

Presumption (BAC):

Types of Drugs/Drugs and Alcohol:

Other:

Under the influence of alcoholic beverages¹ §14:98(A)(1)(a)

≥0.10^{1&2} §14:98(A)(1)(b)

For Persons Under 21 Years Old. ≥0.02^{2&3} §14:98.1(A)

≥0.10² §32:662(A)(1)(c)

For Persons Under 21 Years Old. ≥0.02² §32:662(A)(1)(d)

Under the influence of **Any Controlled Dangerous Substance**⁴
as set forth in schedules I thru V of §40:964. §14:98(A)(1)(c)

For Commercial Motor Vehicle Operators, see below.

See School Bus Operators below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

No

Yes §32:661

Yes §32:661(A)

Yes⁴ (Criminal cases only; prohibited in civil cases except
admin. lic. actions) §32:666(A)(3)

Under §32:666(A), a driver, who is under arrest for **any** DWI
offense, may not refuse to submit to a chemical test if they have
been involved in a traffic fatality or accident resulting in a
serious bodily injury. A law enforcement officer may direct that
a chemical test be performed (i.e., that a blood sample be
obtained). Such a test (or sample) may be performed (or
obtained) even without the consent of the driver. *State v.*
Hebert, 559 So.2d 821 (La.App. 3 Cir. 1990)

¹Note: All DWI offenses are classified as the crime of operating a vehicle while intoxicated.

²Standard: Percent by wgt. based on grams of alc. per 100 cubic centimeters of blood. §§14:98(A)(1)(b), 14:98.1(A) and 32:662(A)(2)

³This offense is defined as "[t]he crime of operating a motor vehicle while intoxicated is operating a motor vehicle ... when the operator's blood alcohol concentration is 0.02 percent or more by weight...." §14:98.1(A) Note: If the person's alcohol concentration is ≥0.10, they must be charged under the regular illegal per se law. §14:98.1(B)

⁴Refusal to submit to a field sobriety test can also be admitted into evidence a DWI trial. *State v. Washington*, 498 So.2d 136 (La.App. 5 Cir. 1986)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" form (i.e., their CDL is suspended, revoked or cancelled for) operating a CMV for minimum period of 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). It is a criminal offense (1) to operate a CMV with BAC/BrAC/UrAC ≥0.04 or while under the influence of alcohol/controlled substance or (2) to refuse to submit to a chemical test. The sanctions for this offense are a jail term of not more than 6 mos and a fine of \$10 to \$5,000; there is also a civil penalty of not more than \$2,500. In addition, a CMV operator, who has (1) any "measured amount of alcohol concentration" or (2) a "detected presence" of either alcohol or controlled substance their system, must be placed "out-of-service" for 24 hours. §§32:401(4) & (5), 32:414.2 & 32:427(A)(2)

School Bus Operators. A person, who either tests positive for the presence of marijuana, opioids, amphetamines, phencyclidine or other controlled dangerous substance per §40:961(7) or has an alcohol concentration ≥0.08, must be prohibited by public education authorities from operating a school bus. §17:491.2(A)

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §32:661
Urine:	Yes §32:661
Other:	Other bodily substance §32:661

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No ¹
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Optional §14:98(G) Persons <21 yrs old charged with driving with an alcohol concentration ≥0.02. §14:98.1(E)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent Chemical Test

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	

1st refusal-Susp 180 dys (90 dys mand except in situations where the use of an ignition interlock device has been authorized. Otherwise, a hardship license may be issued after the 90 dys mand period.); 2nd or sub refusal (w/n 5 yrs) or a any refusal related to either a fatality or serious bodily injury-Susp **545 dys** (mand except in situations where the use of an ignition interlock device has been authorized.) §§32:667(B)(2), 32:668(B)(1), (2), & (3) and 32:378.2(A)(2)(a)(iii) and *Dixon v. Department of Public Safety and Corrections*, 570 So.2d 130 (La.App. 3 Cir. 1990), *Schott v. Dept. of Public Safety*, 556 So.2d 999 (La.App. 3 Cir. 1990), & *Chalker v. Dept. of Public Safety & Corr.*, 593 So.2d 948 (La.App. 4 Cir. 1992)

Refusal by Persons Under 21 Years Old, Susp for **180 dys** (90 dys mand) §§32:667(B)(2) & 32:668(B)(1)(b) A person may be issued restricted driving privileges for **all** of the suspension period if their motor vehicles are equipped with "ignition interlock" devices. §32:378.2(A)(2)(a)(iii)

Other:	None

¹**Special Note and Comment:** Code of Criminal Procedure Article 892.1(C) & (E) allows a court to dismiss a misdemeanor traffic offense committed under Title 32, the traffic regulation code, provided the defendant has completed a driver improvement program and has not participated in such a program w/n 2 yrs. However, drunk driving offenses are placed in Title 14 which is the criminal law. As a result, it would appear that dismissal of a DWI charge is not authorized under this criminal procedure provision.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Notes, DWI Related Injury and Double Jeopardy below. <u>See Persons Under 21 Years Old on p. 3-203.</u>
Imprisonment: Term (Day, Month, Years, Etc.):	See Miscellaneous Sanctions on p. 3-204. <u>1st off-10 dys to 6 mos; 2nd off (w/n 10 yrs)-30 dys to 6 mos; 3rd off-misd/felony (w/n 10 yrs) (See Footnote No. 1 on p. 3-205.)-1 to 5 yrs (with or without hard labor); 4th off-felony (w/n 10 yrs)-10 to 30 yrs (w/hard labor) §14:98</u>
Mandatory Minimum Term:	<u>1st off-(10 dys)¹ BAC ≥0.15-48 hrs; 2nd off (w/n 10 yrs)-48 hrs/BAC ≥0.15-4 dys²; 3rd off-(w/n 10 yrs)-6 mos³; 4th off-(w/n 10 yrs)-2 yrs⁴ §14:98</u>
Fine: Amount (\$ Range):	<u>1st off-\$300 to \$1,000; 2nd off (w/n 10 yrs)-\$750 to \$1,000; 3rd off (w/n 10 yrs)-\$2,000; 4th off (w/n 10 yrs) felony-\$5,000 §14:98 See Footnote No. 5.</u>

¹If an offender is placed on probation, the following alternatives may be imposed in lieu of the mandatory sentence. (1) Serve a minimum of 2 dys in jail and participate in substance abuse and driver improvement programs or (2) perform at least four eight-hr dys of community service (half of which must be litter abatement or a collection program) and participate in substance abuse and driver improvement programs. Important. If BAC ≥0.15, mand 48 hrs of incarceration prior to the above probation alternatives. §14:98(B)

²Forty-Eight (48 hrs) (96 hrs if BAC ≥0.15) is "without benefit of parole, probation, or suspension of sentence." However, home incarceration is possible. The remainder of the sentence is subject to suspension with probation under the following conditions: (1) Serve a minimum of 15 dys in jail and participate in substance abuse and driver improvement programs or (2) perform at least 30 eight-hr dys of community service (half of which must be litter abatement or a collection program) and participate in substance abuse and driver improvement programs. §14:98(C)

³If probation is granted for part of the sentence, the defendant must participate in substance abuse and driver improvement programs. However, 6 mos of the sentence is mandatory. §14:98(D)

⁴Three (3) yrs mand. if the defendant has participated in either a substance abuse or driver improvement program for a 3rd offense. Two (2) yrs mand. if the defendant has participated in either a substance abuse or driver improvement program for a 1st or 2nd (but not a 3rd) offense. §14:98(E)

⁵Defendants must also pay a fee of not less than \$50 for felony convictions or one of \$7.50 for misdemeanor convictions, this fee is deposited in the State Treasury for the purpose of funding the crime victims reparations fund. §46:1816(D)(1)(a)

Special Note No. 1: For the purpose of sanction enhancement, a prior drunk driving offense includes drunk driving related injury and homicide offenses. §14:98(F)

Special Note No. 2: The time periods used to determine whether enhanced sanctions will be imposed on 2nd or subsequent offenders are not the same for criminal sanctions (jail or fine) and for administrative ones (license suspensions). In order to impose enhanced criminal sanctions based on prior DWI offenses, the prior offenses all must have occurred within 10 yrs of the present offense. In order to impose enhanced administrative sanctions based on prior DWI offenses, the prior offenses all must have occurred within 5 yrs of the present offense. Note: Enhanced licensing sanctions for subsequent administrative per se violations are also based whether the prior violations occurred within 5 yrs of the present violation.

DWI Related Injury. I. A person is guilty of "vehicular negligent injuring" if they injure another, while operating motor vehicle either while under the influence of an alcoholic beverage/controlled dangerous substance or with an alcohol concentration ≥0.01. The sanctions for this offense are imprisonment for not more than 6 mos and/or a fine of not more than \$1,000. §14:39.1 II. A person is guilty of "first degree vehicular negligent injuring" if they seriously injury another, while operating motor vehicle either while under the influence of an alcoholic beverage/controlled dangerous substance or with an alcohol concentration ≥0.08. The sanctions for this offense are imprisonment (with or without hard labor) for not more than 5 yrs and/or a fine of not more than \$2,000. §14:39.2

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the admin. per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Butler v. Department of Pub. Safety & Corrections*, 609 So.2d 790 (La. 1992), & *State v. Sonnier*, 679 So.2d 1011 (La.App. 3 Cir. 1996)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

Restitution

(e.g. Victim's Fund)

See Footnotes Nos. 1 & 2 on p. 3-201.

Other:

An offender must pay restitution to a victim where there is "actual pecuniary loss".¹ Code of Crim. Proc. Art. 883.2

Chemical Test Fee. A DWI offender must pay a fee of \$75 for the purpose of covering the costs of administering a BAC chemical test. They also must pay a fee of \$50 to defray the expenses of administering any conditions of probation or incarceration. Code of Criminal Procedure §887(C) & (D)

Child Endangerment. A DWI offender is subject to the following mandatory sanctions if a child 12 years old or younger was a passenger in a vehicle driven by the offender at the time of the offense: 1st off-10 dys jail/\$125 fine; 2nd off-30 dys jail/\$300 fine; 3rd off-6 mos jail; 4th off-2 yrs jail \$14:98(J)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Special Note No. 2 and Double Jeopardy on p. 3-201.

See the Special Note below.

Yes BAC ≥ 0.10 (≥ 0.02 For Persons under 21 Years Old) BAC is based upon percent by wgt. of alc. in the blood. 1st Off-Susp for 90 dys (30 dys mand², except in situations where the use of an ignition interlock device has been authorized, followed by 60 dys of restricted driving privileges.³); 2nd and sub offs (w/n 5 yrs)-Susp for 365 dys (mand except in situations where the use of an ignition interlock device has been authorized)⁴ §§32:667(B)(1) & (3), 32:668(B)(1)(c) & (3) and 32:378.2(2)(a)

Persons Under 21 Years Old. Susp for 90 dys/180 dys⁵ (30 dys mand) A person may issued restricted driving privileges without having to serve a mandatory period of license suspension if they agree to operate motor vehicles equipped with an **ignition interlock device**. §§32:667(B)(1) & (3), 32:668(B)(1)(b), (1)(c) & (3) and 32:378.2(2)(a)

¹A victim of a motor vehicle accident is not eligible for State compensation unless the crime, which caused either the injury or the death, was intentional. §46:1805(B)

²Thirty (30) mandatory except as per the *Noustens* case cited in Footnote No. 3. *Corley v. Dept. of Public Safety & Corr.*, 648 So.2d 936 (La.App. 1 Cir. 1995)

³When a person has been convicted of a 1st DWI off and is subject to the admin. per se law, a district court may issue a restricted hardship license for the entire 90 day period under §32:415.1 notwithstanding the provisions of the admin. per se law that require a 30 day mandatory suspension period. *Noustens v. State*, 524 So.2d 235 (La.App. 5 Cir. 1988) (cert./review denied by the Louisiana Supreme Court, 531 So.2d 476 (La. 1988)) However, with the exception of the use of an **ignition interlock device**, a person with 2 admin. per se violations w/n 5 yrs is generally ineligible for restricted driving privileges. *Hauck v. Dept. of Public Safety & Corr.*, 597 So.2d 493 (La.App. 1 Cir. 1992), & *McLean v. Dept. of Public Safety & Corr.*, 572 So.2d 1066 (La.App. 5 Cir. 1990)

⁴See *Murphy v. State Through DPS*, 640 So.2d 546 (La.App. 3 Cir. 1994).

⁵Apparently due to a legislative oversight, §32:667(B)(1) was amended to provide for 90 and 180 dy suspension periods. §3 of H.B. 520 and §1 on H.B. 521 enacted in 1997 Note: These were signed into by the governor on 7/15/97.

Special Note: The administrative per se law does not violate a person's constitutional right to due process of law. *Bulter v. Department of Pub. Safety & Corrections*, 609 So.2d 790 (La. 1992)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Under §32:414(E)(1) & (F)(2), a person's license may be susp, cancelled or revoked for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., 2nd off DWI). The law does not specifically state that licensing action can be taken without a preliminary hearing. However, other provisions would seem to indicate that a preliminary hearing is not required. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st & subsequent offs-Susp¹ §§32:401(18), 32:414 & 32:430

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off²-90 dys (hardship driving privileges are available) For Persons under 21 Years Old-180 dys (hardship driving privileges are available); 2nd off² (w/n 5 yrs)-12 mos; 3rd & or subsequent offs² (w/n 5 yrs)-24 mos §§32:414, 32:415 & 32:415.1 See Footnote No. 1.

Mandatory Minimum Term of
Withdrawal:

1st off²-None³ (hardship/restricted driving privileges are available); 2nd offs² (w/n 5 yrs)-12 mos (mand except in situations where the use of an ignition interlock device has been authorized³); 3rd and sub offs² (w/n 5 yrs)-24 mos (mand except in situations where the use of an ignition interlock device has been authorized³)

See Special Note No. 2 on p. 3-201.

¹I. Sec. 32:430(A)(1) & (C) provides for the following licensing actions for persons who are at least 13 but not more than 19 yrs old and who are convicted of any crime related to the possession, use or abuse of alcohol or a "controlled dangerous substance". For a 1st off, suspension from 90 dys up to 1 yr or until the person reaches 17 whichever is the longer suspension period; for a 2nd or subsequent offense, revocation for 1 yr or until the person reaches 19 whichever is the longer revocation period. For 1st offenders only, after the first 30 dys of the susp. period, restricted hardship driving privileges are available. §32:430(E), (F) & (G)

II. Sec. 32:430(A)(2) & (E) provides for the following licensing actions for persons who are 19 yrs old and who are convicted of any crime related to the possession, use or abuse of a "controlled dangerous substance" must have their license suspension from 90 dys to 1 yr. Again, as above, for 1st offenders only, after the first 30 dys of the susp. period, restricted hardship driving privileges are available. §32:430(E), (F) & (G)

Note: Sec. 32:401(20) defines "drug offense" to include driving while under the influence of a controlled substance.

Comment: The issuance of hardship driving privileges under this section appears to conflict with §32:415.1 which provides for no 30 dy waiting period.

²Includes vehicular negligent injuring under §14:32.1.

³Notwithstanding other provisions of law, restricted driving privileges are available at any time to offenders who have been placed on probation and agree to only operate motor vehicles equipped with ignition interlock devices. §§15:306(A), 32:378.2

Persons Under 21 Years Old. It is illegal for a person <21 yrs old to operate a motor vehicle with an alcohol concentration ≥ 0.02 . The sanctions for this are as follows: 1st offense-A fine of \$100 to \$200 and participation in a substance abuse and driver improvement program; and 2nd or subsequent offense-Imprisonment for 10 dys to 3 mos and a fine of \$150 to \$500. The sanctions for a 2nd or subsequent offender may be suspended if they (1) serve either 48 hrs in jail or perform community service for ten 8 hr dys and (2) participate in a substance and driver improvement program. §14:98.1(C) & (D) Note: There is no licensing sanction for a violation of this provision. However, licensing action is taken via the admin. per se; see p. 3-202.

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Rehabilitation:

Alcohol Education:

Yes §32:415.1(A)(2) Note: Judges are given the authority to refer first time offenders to education or rehabilitation programs. Restricted licenses are issued to facilitate attendance in driver improvement schools.

Alcohol Treatment:

Yes Sec. 14:98 (c) authorizes the court to order a DWI offender to undergo substance abuse treatment program in lieu of imprisonment. The court's action is based on medical evaluation and on recommendations that the convicted DWI offender will benefit from such treatment.

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Forfeiture. For a 3rd or sub off, the vehicle used by the offender, if owned by them, shall be forfeited. §14:98(D) & (E)

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

Home Incarceration. Provisions, relating to the sentencing of criminal law offenders either to community rehabilitation centers or "home incarceration," apply to persons convicted of DWI offenses. However, persons convicted of a 2nd or subsequent DWI offense (w/n 5 yrs) are not eligible for "home incarceration" until they serve a minimum of 48 con. hrs. of imprisonment. §15:1133 & Code of Criminal Procedure Art. 894.2(J)

Ignition Interlock. A DWI offender, who has been placed on probation, may be required to only operate motor vehicles that are equipped with ignition interlock devices. §§15:306 & 32:378.2

Incarceration Costs. An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure art. 890.2

Civil Liability. A person, who is operating a motor vehicle in violation of the drunk driving laws at the time of an accident caused by another driver, cannot recover damages for any injuries they sustain if they are more than 25% negligent in causing such accident. §9:2798.4

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes Felony/Misd¹ The law is restricted to death caused by

¹If the defendant is imprisoned with hard labor, the conviction is considered a felony; otherwise, it is a misdemeanor. §§14:2(4) & (6), 14:32.1(B), Code of Criminal Procedure Art. 933 and *State v. Lobb*, 450 So.2d 59 (La.App. 3 Cir. 1984)

Other Criminal Actions Related to DWI: (continued)

Sanctions:	operating a motor vehicle either (1) while under the influence of alcoholic beverages or a controlled substance or (2) with a BAC ≥ 0.08 (based on grams of alcohol per 100 cubic centimeters of blood). §14:32.1
Criminal Sanction:	
Imprisonment (Term):	2 to 20 yrs¹ §14:32.1(B)
Mandatory Minimum Term:	1 yr¹
Fine (\$ Range):	\$2,000 to \$15,000 §14:32.1(B)
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Rev §32:414
Length of Term of Licensing Withdrawal:	12 mos
Mandatory Action—Minimum Length of License Withdrawal:	12 mos
Other:	I. The offender may be required to participate in a substance abuse and/or driver improvement program. §14:32.1(B) II. Incarceration Costs. An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure Art. 890.2
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:</u>	See Footnote No. 2 and the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	Misd Not more than 6 mos If such violation was simultaneous with a second or subsequent DWI conviction— 7 dys to 6 mos. §32:415 See Footnote No. 2.
Mandatory Minimum Term of Imprisonment:	7 dys if such violation was simultaneous with a second or subsequent DWI offense conviction.

¹As an alternative to either jail or imprisonment, a defendant may be sentenced either to community rehabilitation (provided the defendant was sentenced to a term of imprisonment of not more than 5 yrs without hard labor) (§15:1133) or to "home incarceration". Code of Criminal Procedure Art. 894.2

²Code of Criminal Procedure Article 892.1(C) & (E) allows a court to dismiss a misdemeanor traffic offense committed under Title 32, the traffic regulation code, provided the defendant has completed a driver improvement program and has not participated in such a program w/n 2 yrs. **Comment:** Since this is a Title 32 offense, it would appear that dismissal of a charge per this criminal procedure provision is possible.

Special Note: I. A person is subject to the following sanctions if they operate a CMV while their CDL privileges have been suspended, revoked or cancelled: Imprisonment for not more than 1 yr, a fine of not more than \$5,000 and/or a civil penalty of not more than \$2,500 §32:415(C)(2) & (D)(2) II. A person who operates a CMV in violation of a CDL out-of-service order is subject to a civil penalty of \$1,000 to \$2,500 and the following CDL disqualification periods. For a 1st violation there is a disqualification from 90 dys to 1 yr (if transporting hazardous materials or operating a vehicle with 15 or more persons, the disqualification period is from 180 dys to 2 yrs). For a 2nd violation (w/n 10 yrs) there is a disqualification from 1 to 5 yrs (if transporting hazardous materials or operating a vehicle with 15 or more persons, the disqualification period is from 3 to 5 yrs). For a 3rd or subsequent violation (w/n 10 yrs) (including transporting hazardous materials or operating a vehicle with 15 or more persons) there is a disqualification from 3 to 5 yrs. §§32:414.2(B)(2) & 32:427(A)(3)

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Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range):	Not more than \$500 If such violation was simultaneous with a second or subsequent DWI conviction-\$300 to \$500 §32:415 Civil Penalty: An offender is also subject to a civil penalty of not more than \$1,250 §32:415(D)(1) None
Mandatory Minimum Fine:	
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp/Rev §32:415(B)
Length of Term of License Withdrawal Action:	Original susp/rev period extended for 1 yr §32:415(B)
Mandatory Term of License Withdrawal Action:	For 2nd and sub. offenses, original susp/rev period extended for 1 yr (mand except in situations where the use of an ignition interlock device has been authorized) Note: A hardship license is available for first offenders. §32:415.1 Special Note: A 1st or sub offender is eligible for restricted driving for the entire susp/rev period, if the equip their vehicles with "ignition interlock" devices. §32:378.2(A)(2)(ii) Incarceration Costs. An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure art. 890.2
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes §32:1472 et seq.
Grounds for Being Declared an Habitual Offender:	Convictions for 10 or more traffic law offs w/n a 3 yr period Applies to those offenses that are required to be reported to the Department of Public Safety and Corrections. §32:1472(A)
Term of License Rev While Under Habitual Offender Status:	Prohibition from operating a vehicle for 3 yrs §32:1479 Note: A 1st time habitual offender may apply for a hardship license under §32:1477(B) & (C)(3).
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine (\$ Range):	
Mandatory Minimum Fine (\$):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on
Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):

Yes §32:398(E) & (F) A report is made by the coroner.

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

Yes

Pedestrian:

Yes

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21^{1&2} §§14:93.11, 14:93.12, 26:90(A) & 26:286(A) (Year Eff:
1987)

Minimum Age (Years) Possession:

21^{1&2} §14:93.12

Minimum Age (Years) Consumption:

21^{1&2} §14:93.12 Note: The term "public possession" is defined
to include consumption. §14:93.10(2)Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

No Under §9:2800.1(B)³, a commercial server cannot be held
liable for the actions of an intoxicated patron who is over the
legal drinking age. *Bourgeois v. Puglisi*, 615 So.2d 1047
(La.App. 1 Cir. 1993) This statute does not provides immunity
to commercial servers with regards to the actions of intoxicated
minor patrons. *Godfrey v. Boston Old Colony Ins. Co.*, 718
So.2d 441 (La.App. 4 Cir. 1998)⁴"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):**Liability Limited.** I. The State supreme court has held that
there is no "absolute liability" against licensees with regard to
the actions of intoxicated patrons. *Thrasher v. Leggett*, 373
So.2d 494 (La. 1979) II. In situations involving minor patrons,
a licensee is liable to either an injured third party or an injured
patron only if the licensee (1) fails to act in a reasonable manner
and (2) commits an "affirmative act" towards the intoxication of
the patron. The mere serving of alcoholic beverages is not such
an "affirmative act" that increases the danger caused by the
intoxication. §9:2800.1, *Godfrey v. Boston Old Colony Ins.
Co.*, 718 So.2d 441 (La.App. 4 Cir. 1998)⁴, *Edson v. Walker*,
573 So.2d 545 (La.App. 1 Cir. 1991), & *Mills v. Harris*, 615
So.2d 533 (La.App. 3 Cir. 1993)¹The term "public possession" does not include the possession or consumption of alcoholic beverages either (1) for a religious purpose, (2) when the person is accompanied by a parent or legal custodian who is over 21 yrs old, (3) for medical purposes or (4) at a private residence. §14:93.10(2)²The Louisiana Supreme Court has held that the law, making it illegal (1) to sell alcoholic beverages to persons <21 yrs or (2) for these persons to purchase such beverages does not violated the State constitutional provision which prohibits age discrimination, Art. I, §3. *Manuel v. State*, 677 So.2d 116 (La. 1996)³This statute has been held constitutional. *Schulker v. Roberson*, 676 So.2d 684 (La.App. 3 Cir. 1996)⁴The *Godfrey* decision provides a complete history of dram shop liability actions in the State of Louisiana.

LOUISIANA

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:

Limited Liability. Sec. 9:2800.1(C) prohibits liability actions against social hosts for injuries sustained by or caused by an intoxicated guest over the legal drinking age. *Hollis v. City of Baton Rouge*, 593 So.2d 388 (La.App. 1 Cir. 1991). For situations involving minors, see *Garcia on behalf of Garcia v. Jennings*, 427 So.2d 1329 (La.App. 2 Cir. 1983)¹, & *Gresham v. Davenport*, 537 So.2d 1144 (La. 1989)². See Footnote No. 3.

Other:

Under §9:2800.1(B), a licensee is not liable for the injuries sustained by an intoxicated patron over the legal drinking age.

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

A. For alcoholic beverages with an alcohol content of 6% or above-Misd §26:2(1) & 26:90(A)(2) B. For alcoholic beverages with an alcohol content of ½ of 1% to 6%-Misd §26:241(1) & 26:286(A)(2)

Term of Imprisonment:

A. For alcoholic beverages with an alcohol content of 6% or above-30 dys-6 mos §26:171 B. For alcoholic beverages with an alcohol content of ½ of 1% to 6%-30 dys-6 mos §26:521

Fine (\$ Range):

A. For alcoholic beverages with an alcohol content of 6% or above-\$100 to \$500 (and/or the following administrative fines: 1st off-\$50 to \$500; 2nd off-(w/n 3 yrs)-\$250 to \$1,000 3rd off-(w/n 3 yrs)-\$500 to \$2,500 §26:96) B. For alcoholic beverages with an alcohol content of ½ of 1% to 6%-\$100 to \$500 §26:521 (and/or the following administrative fines: 1st off-\$50 to \$500; 2nd off (w/n 3 yrs)-\$250 to \$1,000; 3rd off-(w/n 3 yrs)-\$500 to \$2,500 §26:292)

Incarceration Costs. An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure art. 890.2

¹This case concerned the death of a minor who was given alcoholic beverages by adult guests in violation of a statute that prohibits adults from purchasing such beverages for minors. The adults were held liable. However, if no alcoholic beverages are provided by a social host to a minor guest, the host cannot be held liable for injuries caused by the minor guest who has procured and consumed alcoholic beverages obtained from another source. *Spears v. Bradford*, 652 So.2d 628 (La.App. 1 Cir. 1995)

²In this case, a minor social host served alcoholic beverages to a minor guest who became intoxicated. The intoxicated minor guest caused an automobile accident by grabbing the steering wheel of the motor vehicle he was riding in. Passengers riding in the rear seats of the vehicle were injured in the accident. These passengers were not able to maintain a common law dram shop action against the minor social host. The court again, as in *Thrasher v. Leggett*, 373 So.2d 494 (La. 1979), rejected "absolute liability" and felt that a "duty risk" analysis should be performed to determine liability. For cases similar to *Gresham*, see *Beil v. Whitten*, 722 So.2d 1057 (La.App. 1 Cir. 1998), and *Guy v. State Farm Mut. Inc. Co.*, 725 So.2d 39 (La.App. 3 Cir. 1998).

³A motel was held liable for the injuries sustained by a minor passenger in a traffic accident while riding in a motor vehicle driven by an intoxicated minor driver. Although the motel had not supplied alcoholic beverages to the minor driver, the motel's management had knowledge that such beverages were being consumed by the minor on the premises and ordered the minor to leave after they had become intoxicated. The court reasoned that the motel had a responsibility not to allow such a person to consume alcoholic beverages and then force them to leave in an intoxicated condition where such action could result in harm. *Kramer v. Continental Cas. Co.*, 641 So.2d 557 (La.App. 3 Cir. 1994)

Other State Laws Related To Alcohol Use: (continued)Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Rev or Susp¹ Not mandatory §§26:90(I) & 26:286(I)²
Not specifiedCriminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:
Type of Criminal Action:

See Footnote No. 3.

A. For alcoholic beverages with an alcoholic content of 6% or above - Misd §§ 26:2(1) & 26:90(A)(1) B. For alcoholic beverages with an alcoholic content of ½ of 1% to 6% - Misd §§26:241(1) & 26:286(A)(1)

Term of Imprisonment:

Same as for serving alcoholic beverages to an intoxicated person above.

Fine (\$ Range):

Same as for serving alcoholic beverages to an intoxicated person above.

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Rev or Susp¹ Not mandatory §§26:90(I) & 26:286(I)²
Not specifiedAnti-Happy Hour Laws/Regulations:

Yes §§26:90(A)(15) & 26:286(A)(15)

These sections prohibit the sale of alcoholic beverages "at a fixed price on an 'all you can drink' basis after" 10:00 pm.

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No

¹If a licensee has been certified as a "responsible vendor" of alcoholic beverages, their license is not suspended or revoked for a first offense. §26:905(B)(1)(a)²Under §§26:97 & 26:293, the liquor licensing authority may deny issuing a permit for a premises for one (1) year if such premises were the subject of a revoked license.³In addition to the sanctions provided in the alcoholic beverage control law, the following sanctions are available in the criminal law: An imprisonment term of not more than 6 mos and/or a fine of not more than \$100. §§14:93.11 & 14:93.14

LOUISIANA

STATE:
General Reference:

MAINE
Maine Revised Statutes Annotated (MRSA) & Code of Maine Rules (CMR)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicants ¹ 29-A MRSA §2411(1)(A)
Illegal Per Se Law (BAC):	≥0.08 ² 29-A MRSA §2411(1)(B)
Presumption (BAC):	No ³
Types of Drugs/Drugs and Alcohol:	Under the influence of intoxicants ¹ 29-A MRSA §2411(1)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No Note: A PBT may be conducted by law enforcement officers without legislative authority. <i>State v. Pinkham</i> , 586 A.2d 730 (Me. 1991)
Implied Consent Law:	
Arrest Required (Yes/No):	No An actual "arrest" is not required. However, the police must still have "probable cause" before a suspected drunk driver has to submit to a chemical test. 29-A MRSA §2521(1)
Implied Consent Law Applies to Drugs (Yes/No):	Yes 29-A MRSA §2521(1)
Refusal to Submit Chemical Test Admitted into Evidence:	Yes (Criminal Cases) 29-A MRSA §2521(3)(B) & <i>State v. Allen</i> , 485 A.2d 954 (Me. 1984)
Other Information:	I. A person shall be required to submit to a chemical test if they are involved in an accident that results or may result in death to any other person <u>and</u> there is probable cause to believe that they were operating a vehicle while DWI. 29-A MRSA §2522 II. There is case law that appears to hold that a "forced" test may be administered if there is probable cause to believe that a driver has committed a DWI offense and they have refused to submit to a chemical test. <i>State v. Baker</i> , 502 A.2d 489 (Me. 1985)

¹"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 "drugs" refers to either "scheduled drugs" (i.e., controlled substances) or to "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." 17-A MRSA §1101 and 29-A MRSA §2401(4) & (13)

²"Blood alcohol level" (blood alcohol concentration) is stated as percent by wgt. of alcohol in the blood. However, the law further defines this to mean grams of alcohol per 100 milliliters of blood. 29-A MRSA §2401(2)

³For purposes of evidence in proceedings other than those arising under 29-A MRSA §2411 (DWI offenses), it shall be presumed that a person was under the influence of intoxicants when they have a blood alcohol level ≥0.08. 29-A MRSA §2432(3)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Via regulations, a person's CDL is suspended if they operate a CMV and (1) they have a BAC ≥0.04 (Standard: Percent by weight of alcohol in the blood) or (2) they are under the influence of a controlled substance. If the person has neither a prior DWI offense conviction nor administrative license adjudication (e.g., driving with BAC ≥0.04) related to CMV operations, their CDL is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials). If they have either a prior DWI offense conviction or administrative license adjudication (e.g., driving with BAC ≥0.04) related to CMV operations, their CDL is permanently suspended (mand). Under statutory provisions, if a person refuses to submit to a chemical test to determine either alcohol level or drug concentration where there is probable cause to believe that they were operating a CMV with a BAC ≥0.04 or while under the influence of drugs, their privilege to operate a CMV is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) for a 1st refusal and permanently for a 2nd or subsequent refusal. 29-A MRSA §§101(17), 1253, 2458(2)(M) & 2523 and CMR 29-250-006 (§§3 & 4)

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes 29-A MRSA §2521(1) ¹
Urine:	Yes 29-A MRSA §2521(1) ¹
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	

I. 1st refusal-Susp-275 dys²; 2nd refusal-Susp-18 mos (mandatory); 3rd refusal-Susp-4 yrs (mandatory); 4th refusal-Susp-6 yrs (mandatory) 29-A MRSA §2521(6) For failure to submit to a mandatory chemical test-Susp-1 yr (mandatory) 29-A MRSA §2522 See Footnote No. 3. **Child Endangerment.** 1st or sub refusal, an additional 275 dy susp if the driver was carrying a passenger under 21 yrs old. This additional suspension appears to be mandatory. 29-A MRSA §2451(5)

II. Persons Under 21 Years Old. A person under 21 years old, who refuses to submit to a chemical test, where there is probable cause that they were driving with "any amount of alcohol in the blood", is subject to the following licensing action: 1st refusal-Susp-18 mos²; subsequent refusal-Susp-30 mos (mand). 29-A MRSA §2472(3-A) & (4) **Child Endangerment.** 1st or sub refusal, an additional 180 dy susp if the driver was carrying a passenger under 21 yrs old. This additional suspension appears to be mandatory. 29-A MRSA §2472(4)

Important. These licensing actions may not be mandatory in all situations; see the Special Note on p. 3-216.

A person can have their vehicle's registration/certificate of title suspended for a refusal. The law provides that the State has this authority if a person is subject to mandatory license suspension or revocation. 29-A MRSA §2458(2)(A)

Other:

¹A breath test is administered unless it is unreasonable to give such test. 29-A MRSA §2521(2)

²See Special License on p. 3-216.

³If negligence was involved in the related death as well as alc./drugs, the suspension for refusal is 3 consecutive yrs (mandatory) and is in addition to any other suspension that may be imposed for refusal to submit to a chemical test. 29-A MRSA §2456

Sanctions Following a Conviction for a DWI Offense:**Criminal Sanctions:****Imprisonment:**

Term (Day, Month, Years,

Etc.):

See Double Jeopardy below.

1st off, 2nd off (w/n 10 yrs) and 3rd off (w/n 10 yrs) CI D Crime-Less than 1 yr 17-A MRSA §1252 & 29-A MRSA §2411 4th or sub. off (w/n 10 yrs) CI C Crime-Not more than 5 yrs 17-A MRSA §1252 & 29-A MRSA §2411(5)(D) See the Special Note below.

Mandatory Minimum Term:

1st off-Not less than 48 hrs^{1a2} or 96 hrs² if the person refused to submit to a chemical test; 2nd off (w/n 10 yrs)-7 days¹ or 12 dys² if the person refused to submit to a chemical test; 3rd off (w/n 10 yrs)-30 dys² or 40 dys² if the person refused to submit to a chemical test; 4th or sub. off (w/n 10 yrs) or 6 mos² or 6 mos and 20 dys² if the person refused to submit to a chemical test 29-A MRSA §2411(5)

Fine:

Amount (\$ Range):

1st off, 2nd off (w/n 10 yrs) and 3rd off (w/n 10 yrs) CI D Crime-Not more than \$2,000 17-A MRSA §1301 4th or sub (w/n 10 yrs) CI C Crime-Not more than \$5,000 17-A MRSA §1301 & 29-A MRSA §2411(1)

Mandatory Min. Fine (\$):

1st off-\$400 or \$500 if the person refused to submit to a chemical test; 2nd off (w/n 10 yrs)-\$600 or \$800 if the person refused to submit to a chemical test; 3rd off (w/n 10 yrs)-\$1,000 or \$1,300 if the person refused to submit to a chemical test; 4th or sub. off (w/n 10 yrs)-\$2,000 or \$2,400 if the person refused to submit to a chemical test 29-A MRSA §2411(5)

Other Penalties:**Community Service:****Restitution**

(eg Victim's Fund)

Yes as a condition of probation 17-A MRSA §1204(2-A)(L)

Other:

Yes I. Compensation by the defendant to a victim either as a condition of probation or as part of the incarceration sanction. 17-A MRSA §§1204(2-A)(B), 1252 & 1321 et seq. **II.** A victims' compensation fund. Claims cannot exceed \$5,000. 5 MRSA §3360 et seq. **Surcharges.** **I.** A \$30 (\$125 if DWI drugs/alcohol & drugs) surcharge must be imposed and paid into the Highway Fund for to cover the administration and analysis costs of chemical tests. 29-A MRSA §2411(7)

II. 12% and 2% surcharges must be imposed on any fine for the respective purposes of funding jail/criminal operations and the Community Policing Institute. 4 MRSA §§1057 & 1057-A

¹This mandatory jail sanction applies only when at least one of the following conditions is satisfied. The defendant either (1) had a BAC ≥0.15, (2) was driving 30 MPH over the speed limit, (3) was eluding a police officer or (4) was operating a vehicle with a passenger under 21 years old (**child endangerment**).

²This jail term does not have to be consecutive. Under 17-A MRSA §1252(3-A), a county jail term of imprisonment may be served intermittently.

Special Note: It is a Class C Crime to cause serious bodily injury while operating a vehicle in violation of the DWI laws. Jail-Not more than 5 yrs; fine-not more than \$5,000; minimum period of license suspension is 18 mos. 17-A MRSA §§1252 & 1301 The following minimum mand sanctions apply: (1) Jail for 6 mos; (2) a \$2,000 fine; and, (3) 6 mos license susp. 29-A MRSA §2411(6)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Savard*, 659 A.2d 1265 (Me. 1995), & *Allen v. Attorney General of State of Maine*, 80 F.3d 569 (1st Cir. 1996)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Double Jeopardy on p. 3-213.

Yes BAC ≥ 0.08 ¹⁴² (See Footnote No. 2 on p. 3-211 and the Special Note on p. 3-215.) The periods of license susp and conditions for reinstatement for 1st and subsequent offs are the same as Post DWI Conviction Licensing Actions (below). However, unlike a 1st DWI offense conviction, there is **no** mand susp for a 1st admin. per se violation; a work restricted license is available.³ 29-A MRSA §§2453 & 2503

Other:

Under 29-A MRSA §2458(2)(A), a person's license (or certificate of registration/title) may be rev/susp if they have "committed" an off that usually requires license/registration susp or rev (e.g., DWI). Such action may be taken without a preliminary hearing. The time period for this rev/susp is not specified. **Comment:** Such action could occur prior to a conviction. See Footnote No. 4.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

See Footnote Nos. 1 and 5 below and the Special Note on p. 3-213.

For all offs-Susp See the Special Note on p. 3-213 concerning serious bodily injury DWI offenses.

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-90 dys⁶; 2nd off (w/n 10 yrs)-18 mos⁶; 3rd off (w/n 10 yrs)-4 yrs⁶; 4th or sub. off (w/n 10 yrs)-6 yrs⁶ 29-A MRSA §§2411(5) & 2451

¹**Persons Under 21 Years Old.** Under 29-A MRSA §2472(3), (3-A) & (6), a person, under 21 yrs old (a provisional licensee), who operates a motor vehicle either while in violation of the regular DWI law or with "any amount of alcohol in the blood" (See Footnote No. 2. on p. 3-211.), has their license suspended as follows: 1st offense-1 yr; and, 2nd offense-2 yrs (mand). For 1st offenders, (1) if the suspension is based on operating a motor vehicle with "any amount of alcohol in the blood", (2) there is no other alternative means of transportation and (3) the person does not have a previous DWI offense (w/n 10 yrs), a restricted license may be issued for either employment or educational purposes without a waiting period. 29-A MRSA §2503 First offenders are also eligible for license reinstatement after 6 mos if they complete an alcohol and drug program (See Special License on p. 3-216.). However, subsequent offenders are only eligible for license reinstatement after the completion of the full suspension period and the completion of an alcohol and drug program. For **child endangerment**, there is an additional suspension of **180 dys (mand)** if the driver was carrying a passenger under 21 yrs old. 29-A MRSA §2472(3-A) & (6) **Important.** These licensing actions may not be mandatory in all situations; see the Special Note on p. 3-216.

²The licensing agency may administratively suspend a driver's license for 3 yrs if the driver negligently causes a death while operating a motor vehicle either (1) while under the influence of intoxicants, (2) with a BAC ≥ 0.08 or fails to comply with the implied consent law (29-A MRSA §2521). For a failure to comply with the implied consent law, this suspension is consecutive to a refusal suspension. Also, any period of suspension served is "deducted" from any revocation period imposed under 29-A MRSA 2454 (See Homicide by Vehicle on p. 3-217.). 19-A MRSA §2456

³If there is no alternative means of transportation, a work restricted license may be issued provided that person either has not (1) been convicted of a DWI off (w/n 10) or (2) had a previous admin. per se suspension (w/n 10 yrs). 29-A MRSA §2503

⁴A person may be denied CDL privileges without a preliminary hearing if they were operating a operating CMV with a BAC ≥ 0.04 or were in violation of Federal law or regulation concerning CMV operations. 29-A MRSA §§1254(c) & 2458(2)(M)

⁵A person's endorsement to operate a school bus is permanently revoked if they drive such a vehicle while DWI. A person, who has a school bus endorsement and who commits a DWI offense while operating another type of vehicle, has their school bus endorsement suspended for 3 yrs (1 yr mand) for a 1st offense and for 6 yrs (mand) for a 2nd or subsequent offense (w/n 10 yrs). 29-A MRSA §2452

⁶A license suspension period for a drunk driving offense conviction is reduced by any suspension period that was imposed for an admin. per se violation. 29-A MRSA §2453(6)(c)

Sanctions Following a Conviction for a DWI Offense:
(continued)

**Mandatory Minimum Term of
Withdrawal:**

1st off-60 dys^{1&2}; 2nd off-18 mos¹; 3rd off-4 yrs¹; 4th or sub. off-6 yrs¹
These suspensions may be reduced if the offender participates the "ignition interlock" program; see Ignition Interlock on p. 3-216.
Important. These suspensions are not mandatory in all situations; see the Special Note on p. 3-216.

Child Endangerment. A person, who violates the drunk driving law while transporting a passenger under 21 year old, must have their license suspended for an additional 275 days. 29-A MRSA §§2411(5)(G) & 2451(5) **Important.** This licensing action may not be mandatory in all situations; see the Special Note on p. 3-216.

Special Note: The licensing agency has the authority to suspend a driver's license for a longer period of time than indicated above for either an admin. per se violation or a drunk driving offense conviction. 29-A MRSA §§2451(3) & 2453(6)(D)

Conditional License. Under 29-A MRSA §§2504 & 2506, upon issuing a license to a person who has either been convicted of a DWI offense or found to have violated the admin. per se law, the following conditions may be placed on the license: 1st conviction/admin. per se action-for a period of 1 yr from the date of reinstatement, the driver cannot operate a motor vehicle after having consumed any alcohol; and, 2nd and subsequent convictions/admin per se actions (w/n 10 yrs)-for a period of 10 yrs from the date of reinstatement, the driver cannot operate a motor vehicle after having consumed any alcohol.

Under 29-A MRSA §2457, unless longer periods are authorized by law, the following special licensing sanctions apply to persons who operate a motor vehicle in violation of the above conditions: (1) Revocation for a minimum period of 1 yr if they either (a) are convicted a DWI offense or (b) have operated a motor vehicle with any amount of alcohol in the blood. If licensing action is based on operating a motor vehicle with any amount of alcohol in the blood, a restricted license for employment or educational purposes be issued if there is no alternative means of transportation and is contingent upon completion of an alcohol treatment (rehabilitation) program. 29-A MRSA §2503 (2) For refusal to submit to a chemical test where there is probable cause to believe that the driver has any amount of alcohol in the blood, susp for not less than 2 yrs.

¹A license suspension period for a drunk driving offense conviction is reduced by any suspension period that was imposed for an admin. per se violation. 29-A MRSA §2453(6)(c)

²For 1st offenders, after 2/3 of license susp period has passed, a restricted license may be issued provided the offender has completed an alcohol education/treatment program. The licensee is restricted to operating motor vehicle only for the purpose of going either to and from employment or to and from an alcohol or drug program for a minimum of 90 dys after the original suspension date. 29-A MRSA §2501(1) & (2)

MAINE

Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

See the Special Note below.

I. 1st and subsequent offenders must participate in and complete an alcohol or drug program before their driving privileges can be restored. 29-A MRSA §§2411(5)(E) & 2504

II. 2nd and sub offenders must participate in an alcohol and drug treatment program. 29-A MRSA §2411(5)(F) These offenders may be required to attend a 22 hr Weekend Intervention Program consisting treatment and evaluation. 5 MRSA §20073-A(3)

Special License. 1st offenders may be issued a special license following alcohol/drug assessment and the completion of at least 3 treatment sessions. A 1st offender includes a first violator of the implied consent law, drunk driving law, administrative per se law and, for persons under 21 yrs old, operating a motor vehicle with any alcohol in their system. 29-A MRSA §2502

Special Note: In addition, a temporary restricted license may be issued to any offender for the purpose of allowing them to attend an alcohol education or treatment program notwithstanding any other provision of law. 29-A MRSA §2505

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

(1) For a sub off w/n 10 yrs, a defendant's vehicle registration (including the right to register a vehicle) and plates must be **suspended** for the same length of time as their license suspension.¹ 29-A MRSA §§2411(5)(B)(4), (5)(C)(4) & (5)(D)(4) and 2416 See Footnote No. 2.

(2) A person's (sole owner's) vehicle must be **forfeited** if they operate their vehicle in violation of the DWI laws and they are still under suspension/revocation of a previous DWI offense. 29-A MRSA §2421

(3) Temporary Impoundment. Following an arrest either (1) for a drunk driving offense or (2) for driving while on a suspended or revoked license, based on a drunk driving offense, the vehicle used in the offense may be seized. The vehicle may be released after 8 hrs. 29-A MRSA §2422

Terms Upon Which Vehicle

Will Be Released:

Other:

The State has the authority to suspend the registration/certificate of title of a person's vehicle if they are subject to mandatory license suspension or revocation. 29-A MRSA §2458(2)

¹Notwithstanding this requirement, such suspension will not be imposed if a spouse or other family member of the defendant can prove to the satisfaction of the court that a hardship will result.

²The State is given broad authority to suspend a person's vehicle's registration/certificate of title based on "any cause" which is deemed "sufficient". 29 MRSA §2241(1)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

Ignition Interlock. The mand susp periods may be reduced as follows, if the drunk driving offender installs an ignition interlock device on motor vehicles they operate: 2nd off-1 yr mand susp and ignition interlock use for 6 mos; 3rd off-2 yr mand susp and ignition interlock use for 2 yrs; and, 4th or sub. off-4 yr mand susp and ignition interlock use for 4 yrs. 29-A MRSA §§2401(5-A) & 2507

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes It is a Cl C Crime to cause a death while operating a vehicle in violation of the drunk driving laws.¹ 29-A MRSA §2411(6) See the Special Note below.

Sanctions:
Criminal Sanction:
Imprisonment (Term):
Mandatory Minimum Term:
Fine (\$ Range):
Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and
Type of Action:
Length of Term of
Licensing Withdrawal:
Mandatory Action--Minimum
Length of License
Withdrawal:
Other:

Not more than 5 yrs 17-A MRSA §1252
6 mos 29-A MRSA §2411(6)
Not more than \$5,000 17-A MRSA §1301
\$2,000 29-A MRSA §2411(6) See II under **Surcharges** on p. 3-213.

Susp² (court ordered) 29-A MRSA §2411(6)

6 yrs 29-A MRSA §2411(6)

6 yrs 29-A MRSA §2411(6)

I. Administrative Suspension: A person, who negligently causes the death of another, while driving either (1) while under the influence of intoxicants, (2) with a BAC ≥ 0.08 or (3) who fails to submit to a chemical test, has their license suspended for 3 yrs (mand) by the licensing agency. If the case of test refusal, the suspension is consecutive to the refusal susp. Otherwise, the this susp is deducted from the regular susp or rev period. 29-A MRSA §2456

II. Driver Education/Substance Abuse Program: If alcohol or drugs are involved in a criminal homicide caused by the operation of a motor vehicle, a defendant must complete a driver education program and, if needed, a substance abuse and/or a 2 yr. after care program prior to license restoration. 29-A MRSA §2455(3)

¹**Manslaughter Statutes.** It is a Cl A Crime to cause a death by criminal negligence or reckless conduct via a motor vehicle. The sanctions for a Cl A Crime are incarceration for not more than 40 yrs and/or a fine of not more than \$50,000. 17-A MRSA §§1252 & 1301 And, an offender's license is revoked for 5 yrs. 29-A MRSA §2454(1) See Footnote No. 2 and the Special Note below.

²**Death Related to Intoxication.** A defendant's license is permanently revoked if they were under the influence of an intoxicant at the time of the offense. However, a first offender may have their license reinstated after 10 yrs. 29-A MRSA §2454(2) & (5)

Special Note: The Maine Criminal Code (17-A MRSA) does not use the terms "misdemeanor" or "felony" to either describe or define crimes. The law describes the offense of vehicle homicide as a Class A crime without further defining it as either a misdemeanor or a felony. **Comment:** Most States would consider a Class A to be a felony.

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Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

See Footnote No. 1 and II under **Surcharges** on p. 3-213.

1st, 2nd & 3rd offs-Cl E crime-Not more than **6 mos**; sub off-Cl C crime-Not more than **5 yrs** 17-A MRSA §1252 & 29-A MRSA §2412-A See Temporary Impoundment under Vehicle Impoundment/Confiscation for a DWI offense on p. 3-216.

Mandatory Minimum Term of Imprisonment:

1st off-**7 con dys**; 2nd off (w/n 10 yrs)-**30 con dys**²; 3rd off (w/n 10 yrs)-**60 con dys**²; 4th or sub off (w/n 10 yrs)-**6 mos**² 29-A MRSA §2412-A(3)

Fine (\$ Range):

1st, 2nd & 3rd offs-Cl E crime-Not more than **\$1,000**; sub off-Cl C crime-Not more than **\$5,000** 17-A MRSA §1301, subs. 1-A

Mandatory Minimum Fine:

1st off-**\$500**; 2nd off (w/n 10 yrs)-**\$1,000**²; 3rd off (w/n 10 yrs)-**\$2,000**²; 4th or sub off (w/n 10 yrs)-**\$3,000**² 29-A MRSA §2412-A(3)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp 29-A MRSA §2412-A(3)

Length of Term of License

Withdrawal Action:

1 to 3 yrs Added to the original susp or rev.

Mandatory Term of License

Withdrawal Action:

1 yr Added to the original susp or rev.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes 29-A MRSA §2551 et seq.

Grounds for Being Declared an

Habitual Offender:

Convictions for 3 serious traffic offs. w/n 5 yrs (e.g. veh. homicide, DWI, reckless driving, etc.)³

Term of License Rev While

Under Habitual Offender Status:

Rev-Indefinite However, relief from such rev may be granted after **1 yr**⁴. 29-A MRSA §§2552 & 2554

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

1st off-Cl D crime; sub. off (w/n 10 yrs)-Cl C crime 29-A MRSA §2557(2)

¹The CMV law does not provide sanctions for operating CMV during either a CDL disqualification or a CDL out-of-service order. **Special Note:** Under 29-A MRSA §2458(2)(M), the licensing agency is authorized to suspend a CMV operators CDL if they violate Federal law or regulations (e.g., 49 USC §31301 et seq. and 49 CFR §§383.51, 383.53, 383.82, 391.15, 392.5, 392.13 & 49 CFR Part 386, Appendix A) pertaining to CMV operators. Therefore, any Federal law or regulation that makes it an offense to operate a CMV while either disqualified or under an out-of-service order, could result in a State authorized CDL suspension.

²For 2nd and sub offs, the mand sanctions are imposed only if mand sanctions were imposed for prior offs. 29-A MRSA §2412-A(3)
³Relief from habitual offender status shall not be granted for at least 3 yrs from the date the offender would have been eligible. 29-A MRSA §2557

⁴A work-restricted license is available at any time. 29-A MRSA §2556 However, a person is not eligible for this type of license, if either (1) one of the offenses used to determine habitual offender status was homicide related to motor vehicle operations, (2) they are convicted of operating a motor vehicle while on habitual offender status or (3), after having thier license restored, they are convicted w/n 5 yrs of an offense cited in the habitual offender law. In addition, a person is not eligible for this type of license, if one of the offenses used to determine habitual offender status was a DWI offense, until they complete (1) the required license suspension periods and (2) any alcohol or drug program. 29-A MRSA §2556(5)

Other Criminal Actions Related to DWI: (continued)

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term):

1st off-Less than 1 yr; sub. off (w/n 10 yrs)-Not more than 5 yrs 17-A
MRSA §1252

Mandatory Minimum Term of
Imprisonment:

None

Fine (\$ Range):

1st off-Not more than \$2,000; sub. off (w/n 10 yrs)-Not more than
\$5,000 17-A MRSA §1301 See II under Surcharges on p. 3-213.

Mandatory Minimum Fine (\$):

None

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1985) 28-A MRSA §§2(20) & 2051(1)(A) and citations
listed under criminal actions for selling alcohol to minors below.

Minimum Age (Years) Possession:

21 Home and employment exemption 28-A MRSA §§2(20) &
2501(1)(E)

Minimum Age (Years) Consumption:

21 Except at home in the presence of either parents or legal guardians
28-A MRSA §§2(20) & 2051(1)(B)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes 28-A MRSA §2501 et seq. Note: Except for medical expenses,
recovery under the dram shop act is limited to \$250,000 per single
accident or occurrence. 28-A MRSA §2509¹

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No²

Dram Shop Actions-Social Hosts:

Yes Liability is limited to situations where the social host served
alcoholic beverages (1) to a minor or (2) to a minor or a visibly
intoxicated person in a "reckless manner". 28-A MRSA §§2503(5),
2505(2), 2506(1) & 2507

¹This damage limitation provision has been held constitutional under both the Federal and State constitutions. *Peters v. Saff*, 597 A.2d 50 (Me. 1991)

²The dram shop law indirectly abrogated the holding in *Klingerman v. Sol Corporation of Maine*, 505 A.2d 474 (Me. 1986), that established dram shop liability via common law negligence actions. The dram shop law is the exclusive remedy for such actions. *Peters v. Saff*, 597 A.2d 50 (Me. 1991), & *Jackson v. Tedd-Lair Post No. 5*, 723 A.2d 1220 (Me. 1999)

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Other State Laws Related To Alcohol Use: (continued)

Other:

A licensee may be liable for the injuries sustained by an intoxicated patron. If the patron is less than 18 yrs old, liability may be based on negligent or reckless service of alc. bev. If the patron is at least 18 yrs old, liability is based on reckless service of alc. bev. 28-A MRSA §§2504 & 2507 and *Jackson v. Tedd-Lair Post No. 75*, 723 A.2d 1220 (Me. 1999)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

See II under Surcharges on p. 3-213.

Class E Crime 28-A MRSA §§1, 62(8), 354, 705(2)(A) & 705(3)(A)

Not more than 6 mos 17-A MRSA §1252(2)(E)

For a person, not more than \$1,000; for an organization, not more than \$10,000 17-A MRSA §1301(1)(C) & (3)(E)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Susp or rev 28-A MRSA §§801 & 803(5)

For susp-not specified in the statute; for rev-1 to 5 yrs¹

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

See II under Surcharges on p. 3-213.

Class E Crime 28-A MRSA §§1, 2(20), 62(8), 354, 705(2)(E), 705(3)(E), 1901 & 1902

Not more than 6 mos. 17-A MRSA §1252(2)(E)

For a person, not more than \$1,000; for an organization, not more than \$10,000 17-A MRSA §1301(1)(C) & (3)(E)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp or Rev 28-A MRSA §§801 & 803(5)

For susp-not specified in the statute; for rev-1 to 5 yrs^{1&2}

Anti-Happy Hour Laws/Regulations:

Yes 28-A MRSA §709

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes Applies drivers and passengers 29-A MRSA §2112-A

Yes Applies drivers and passengers 29-A MRSA §2112-A

¹An administrative fine of \$50-\$1,500 may be imposed instead of or in addition to any license suspension or revocation. 28-A MRSA §803(8)

²An agent of a licensee is subject to a civil forfeiture of not more than \$500 if they sell liquor to a minor. 28-A MRSA §2084

STATE:
General References:

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Annotated Code of Maryland Most references are either to (1) the Transportation Article (Tran.), (2) the Courts and Judicial Proceedings Article (C&JP) or (3) Art. 2B.

Basis for a DWI Charge:

Standard DWI Offense:

I. While intoxicated Tran. §21-902(a)(1)¹

II. Under the influence of alcohol Tran. §21-902(b) $\geq 0.10^{2&3}$ Tran. §§11-127.1 & 21-902(a)(2)

None

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC):

Types of Drugs/Drugs and Alcohol:

I. While Intoxicated Tran. §21-902(a)¹

II. Under the influence of (1) **Any Drug**, (2) Any Combination of Drugs, (3) a Combination of One or More Drugs and Alcohol and (4) Any Controlled Dangerous Substance Tran. §21-902(c)(1) & (d)

Other:

An alcohol concentration ≥ 0.07 but $< 0.10^3$ is *prima facie* evidence of driving while under the influence. C&JP §10-307(d) For Commercial Motor Vehicle Operators, see below.
For **Persons Under 21 Years Old**, see Footnote No. 4.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes Tran. §16-205.2

Implied Consent Law:

Arrest Required (Yes/No):

Yes The law uses the term "detained" instead of "arrest". Tran. §16-205.1

Implied Consent Law Applies to
Drugs (Yes/No):

Yes Tran. §16-205.1 See also C&JP §10-302 et seq.

Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes (Criminal Cases) C&JP §10-309(a) This evidence establishes no inference (presumption) of guilt or innocence of a drunk driving offense. Evidence of a refusal can only be admitted if it is "material and relevant" to collateral issues related to such offense. *Krauss v. State*, 587 A.2d 1102 (Md. 1991)

¹The law states that it is an offense to drive a vehicle while "intoxicated". The law does not specify any particular substance to be associated with such intoxication.

²The offense is defined as operating motor vehicle while "intoxicated per se". Tran. §21-902(a)(2) "Intoxicated per se" is defined as having a BAC/BrAC ≥ 0.10 at the time of testing. Tran. §11-127.1

³Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. C&JP §10-307(a)(2)(i) & (ii), Tran. §§11-103.2 & 11-127.1 and Art. 27, §§388A(a)(2)(I) & 388B(a)(2)(I)

⁴**Persons Under 21 Years Old.** A person < 21 yrs old must have a restriction placed on their license that prohibits them from operating a motor vehicle with an alcohol concentration ≥ 0.02 (For standards, see Footnote No. 3 above.). Such a BAC/BrAC is *prima facie* evidence of a violation of this prohibition. C&JP §10-307(e) & (f) and Tran. §16-113(b)(1)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥ 0.04 (See Footnote No. 3 above.), (2) have violated Tran. §21-902 or a similar Federal law or (3) refuse to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life. Note: The lifetime disqualification is mand unless a reduced period is provided by Federal regulations. A CMV operator is also subject to DWI criminal sanctions and administrative actions against their regular driving privileges. In addition, a CMV operator, who has any "detectable" amount of alcohol in their system, must be placed "out-of-service" for 24 hours. C&JP §10-307(a) and Tran. §§11-103.1, 11-103.2, 11-109, 11-109.1, 11-111.1, 16-205.1(b)(1)(iii), 16-208.1, 16-812 & 16-813

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Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information:

Special Note: If a driver is involved in either a driving while intoxicated or driving while under the influence offense which is related to an accident that resulted either in the death of or life threatening injury to another person, the driver shall be required to submit to a chemical test of their blood or breath. Tran. §16-205.1(c)(1) Except as noted above, a person cannot be compelled to submit to a chemical test. C&JP §10-309(a)(1)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:

Yes¹ Tran. §16-205.1 See also C&JP §10-302 et seq.

Urine:

No

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No See Footnote No. 1 on p. 3-223.

Anti-Plea Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No Note: A PSI is required for convictions of (1) either felony offenses or (2) misdemeanor offenses where there has been serious injury or death. Art. 41, §609(c)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

None

Administrative Licensing Action

(Susp/Rev):

None

Other:

None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

None

Administrative Licensing Action

(Susp/Rev):

1st refusal-Susp for 120 dys¹ ; 2nd and sub refusals-Susp for 1 yr¹ A suspension may be modified or a restricted license may be issued if an offender participates in the "ignition interlock" program for at least 1 yr. Tran. §16-205.1

Other:

None

¹Under C&JP §10-305(a), a test for alcoholic content via a 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. The Court of Appeals of Maryland has held that, under this statute, if a driver agrees to submit to a breath test and the equipment is available but not a qualified operator, the driver may refuse to submit to blood test without incurring licensing action. Under these circumstances, a refusal to submit to a blood test is not considered to be a refusal to submit to a chemical test under the implied consent law. *Hyle v. MVA*, 702 A.2d 760 (Md. 1997)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,

Etc.):

See Footnote No. 1 and Double Jeopardy below.

1) Driving while under the influence² (Misd): 1st off-Not more than 2 mos; Subsequent off³-Not more than 1 yr 2) Driving while intoxicated/≥0.10 (Misd): 1st off-Not more than 1 yr; 2nd off³-Not more than 2 yrs; 3rd & sub. off³-not more than 3 yrs Trans. §§21-902 & 27-101 3) A person <21 years old operating a vehicle in violation of the 0.02 BAC/BrAC license restriction (Misd)-None Tran. §§27-101(b) & 27-102

Mandatory Minimum Term:

For a subsequent Intoxicated/≥0.10 Off. conviction (w/n 3 yrs)-48 con hrs⁴ Tran. §27-101(j)

Fine:

Amount (\$ Range):

1) Driving while under the influence²: 1st off-Not more than \$500; Subsequent off³-Not more than \$500 2) Driving while intoxicated/≥0.10, 1st off-Not more than \$1,000, 2nd off-Not more than \$2,000; 3rd & sub. off-not more than \$3,000 3) A person <21 years old operating a vehicle in violation of the 0.02 BAC/BrAC license restriction (Misd)-Not more than \$500 Tran. §§27-101(b) & 27-102

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

For a subsequent Intoxicated/≥0.10 offense, conviction (w/n 3 yrs.) in lieu of the mandatory jail sentence-80 hrs. of community service. Tran. §27-101(j)

Restitution

(eg Victim's Fund)

(1) The court may order a defendant to pay restitution. Art. 27, §640 (2) Also, a victim may receive payments (≤\$45,000) under the Criminal Injuries Compensation Act. Art. 26A

Other:

Ignition Interlock. As a condition of probation, the court may order a defendant to only operate vehicles equipped with "ignition interlock" devices. Art 27, §641(a)(1)(ii)(2) and Tran. §§27-107 & 27-108 On p. 3-225, see Ignition Interlock and Alcohol Education.

¹Probation before judgment cannot be granted by a court for a sub. alc. driving offense (w/n 5 yrs). A prior offense includes offenses for which a person has received probation before judgment. Art. 27, §641(a)(2) & *State v. Shilling*, 540 A.2d 1184 (Md.App. 1988)
Note: The record of a person, who has been place on probation before judgement for an alcohol driving offense, cannot be expunged. Art. 27, §737(a)(3)

²Includes driving under the influence of drugs/alcohol and drugs/controlled substances. Tran. §§21-902(c) & (d) and 27-101(c) & (f)(1)

³A previous offense includes ANY prior alcohol driving offense. Tran. §27-101(f)(2), (3) & (4)

⁴Imprisonment includes confinement in an inpatient rehabilitation or treatment center. Tran. §27-101(j)

⁵Note: The law does not place a time for determining a 2nd or subsequent intoxicated/0.10 offense where the first offense was also an intoxicated/0.10 offense. However, for sentence enhancement purposes, a previous offense does include ANY prior driving while under the influence offense committed w/n 5 yrs of an intoxicated/0.10 offense. Tran. §27-101(k)(2)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Jones*, 666 A.2d 128 (Md. 1995)(cert. den., 516 U.S. 1173, 116 S.Ct. 1265, 134 L.Ed.2d 213 (1996)), & *Johnson v. State*, 622 A.2d 199 (Md.App. 1993)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Administrative Licensing Actions

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Double Jeopardy on p. 3-223.

Yes ≥ 0.10 (BAC/BrAC See Footnote No. 3 on p. 3-221.) 1st violation-Susp 45 dys; 2nd or sub. violation-susp 90 dys. These susp are not mandatory under the following conditions. I. A restricted hardship license can be issued,¹ if the licensee has (1) not had a previous admin. per se violation (w/n 5 yrs), (2) not had a prior alcohol offense² conviction (w/n 5 yrs) or (3) not refused to submit to a test under the implied consent law. II. A susp may be modified or a restricted license may be issued if an offender participates in the "ignition interlock" program for at least 1 yr. C&JP §10-307(a)(2) & Tran. §16-205.1

None

Other:

Post DWI Conviction Licensing Action:

See Point System and Ignition Interlock on p. 3-225 and License Restrictions below.

Type of Licensing Action (Susp/Rev):

I. Driving while under the influence (of alcohol or alcohol and drugs), 1st off-Susp; 2nd off (w/n 3 yrs)³-Susp; 3rd & sub. off (w/n 3 yrs)³-Rev

II. Driving while intoxicated/ ≥ 0.10 (or under the influence of a controlled dangerous substance)-Rev

III. A person <21 years old operating a vehicle in violation of the 0.02 BAC/BrAC license restriction-Susp or Rev Tran. §§16-205, 16-208 & 16-113(f)

IV. Persons <18 Years Old: (1) Driving while intoxicated, illegal per se or under the influence of a "controlled dangerous substance"-Rev (2) Driving while under the influence of alcohol or any other drug-Susp C&JP §3-824(4)(I)

Term of License Withdrawal (Days, Months, Years, etc.):

I. For Driving while under the influence, 1st off-Not more than 60 dys; 2nd off (w/n 3 yrs)-Not more than 120 dys

¹The licensee may be required to participate in the "ignition interlock" program as a condition of restricted driving privileges. Tran. §16-205.1(n)(2)

²A conviction (w/n 5 yrs) for either Driving While Intoxicated, driving with a BAC/BrAC ≥ 0.10 or Driving While Under the Influence.

³A previous offense includes a Intoxicated or Intoxicated Per Se Offenses. Tran. §16-205(a)(2) & (c)

License Restrictions. I. If a person has been convicted of any combination of two or more drunk driving offenses (w/n 5 yrs) (See Footnote No. 1 above.), the licensing agency must place a restriction on the person's license that prohibits them from operating a motor vehicle with any amount of alcohol in their blood for 3 yrs. Tran. §16-113(g)(1) II. The licensing agency shall, when directed to do so by a court, place a restriction on a person's license which prohibits them from operating a motor vehicle with any amount of alcohol in their blood. This restriction could apply to persons who have been convicted of any type of drunk driving offense (See Footnote No. 1 above.) for the first time. Tran. §16-113(g)(2) III. In addition, the licensing agency may, when issuing a license, place a restriction on a person's license which prohibits them from operating a motor vehicle with any amount of alcohol in their blood or prohibits them from driving a motor vehicle. This restriction may contain a requirement that the person participate in the "ignition interlock" program. Tran. §16-113(a)(1)(II) & (2) A BAC/BrAC ≥ 0.02 is *prima facie* evidence that the person was operating a motor vehicle with alcohol in their body. C&JP §10-307(f) The sanctions for violating a restriction on a driver's license are as follows: Jail-(1) violation of a licensing agency ordered restriction-None (2)-violation of a court ordered restriction-not more than 2 yrs; fine-Not more than \$500; licensing action-Susp or Rev-If suspension, not more than 1 yr; if revocation, the period is based on the **number of previous revocations** a person has regardless of the basis; the periods are as follows: 6 mos for a 1st rev; 1 yr for a 2nd rev; and, 18 mos for 3rd and subsequent revocations. Tran. §§16-113(f), 16-208, 27-101(b) & 27-102

Sanctions Following a Conviction for a DWI Offense:
(continued)

II. For Driving while under the influence 3rd & sub. off (w/n 3 yrs) and for all Driving while intoxicated ≥ 0.10 offs (or under the influence of a controlled dangerous substance), the period of rev is based on the **number of previous revs** a person has regardless of the basis¹; the periods are as follows: **6 mos** for a 1st rev; **1 yr** for a 2nd rev; **18 mos** for a 3rd revs²; **2 yrs** for 4th and sub. revs²

III. A person <21 yrs old operating a vehicle in violation of the 0.02 BAC/BrAC license restriction-Susp-Not more than **1 yr** or Rev-Based on the number of previous revocations; see II above.

IV. Persons <18 Years Old: (1) Driving while intoxicated, illegal per se or under the influence of a "controlled dangerous substance"-Rev in the same manner as an adult (2) Driving while under the influence of alcohol or any other drug-1st off-6 mon; 2nd or sub off-1 yr

¹I.e., the previous revocations do not have to be alcohol driving offense related.

²License reinstatement only after the licensing agency is satisfied that it is safe to take such action. Tran. §16-208(b)

Point System. A person who has been convicted of an alcohol driving offense can have their license either suspended or revoked either under Tran. §16-205 or under Tran. §16-401 et. seq. (the point system). Under the point system, a driver is assessed the following points for alcohol driving off convictions: Driving While Under the Influence (of alcohol, drugs or a combination of alcohol and drugs)-8 points and Driving While Intoxicated or Intoxicated Per Se (or under influence of a controlled dangerous substance)-12 points.

(1) Points assessed for any traffic law violation remain on a driver's record for two (2) yrs. A person who accumulates 8 points is subject to a license suspension and an accumulation of 12 points results in license revocation. The following suspensions may apply for point accumulations related to Driving While Under the Influence (of alcohol, drugs or a combination of alcohol and drugs): 1st off-susp not more than 6 mos; 2nd off (at least 5 yrs after 1st)-susp for not more than 9 mos; 2nd off (w/n 5 yrs) or 3rd off-susp for not more than 12 mos.; and 4th or sub off-susp for not more than 24 mos. Tran. §16-404(c)(2) A person, who has accumulated the requisite number of points is subject to the following revocation periods. These periods are based on the **number of previous revocations** a person has been subjected to regardless of their basis: **6 mos** for a 1st revocation; **1 yr** for a 2nd revocation; **18 mos** for a 3rd revocation; and, **2 yrs** for a 4th or subsequent revocation. Tran. §16-208(b) Important. See Ignition Interlock below.

Special Note: A person, who has been convicted of two Driving While Under the Influence (of alcohol or drugs and alcohol) offenses w/n 2 yrs, would accumulate 16 points on their driving record and be subject to license revocation instead of suspension. Persons <18 years Old. Susp for **6 mos** if they accumulate 6 points; susp for **1 yr** if they accumulate 2 additional points. Tran. §16-206(b) These suspensions may be modified (i.e., they are not mandatory). Tran. §16-206(c)(5)

Ignition Interlock. Under Tran. §16-404.1, the licensing agency may establish an ignition interlock program for persons who have been convicted of alcohol related driving offenses. Note: This program does not apply to persons who have been convicted of driving while under the influence of a controlled substance. A person, who is subject to license suspension for a conviction of Driving While Under the Influence (of alcohol, drugs or a combination of alcohol and drugs), may have their suspension periods reduced if they participate in the ignition interlock program. These reductions are as follows: 1st off-susp reduced up to 15 dys, if they participate in the program for 5 months; 2nd off (at least 5 yrs after 1st)-susp reduced up to 30 dys, if they participate in the program for 5 months; 2nd off (w/n 5 yrs) or 3rd off-susp reduced up to 45 dys, if they participate in the program for 12 months; and, 4th or sub off-susp reduced up to 6 mos, if they participate in the program for 24 months. Tran. §16-404(c)(3) A person, who is subject to license revocation following a conviction for either Driving While Under the Influence (of alcohol, drugs or a combination of alcohol and drugs) or for Driving While Intoxicated or Intoxicated Per Se, may have their license suspended in lieu of revocation if they participate in the ignition interlock program. The suspension periods imposed, including any reduced periods for ignition interlock use, are the same as for suspensions imposed for Driving While Under the Influence. Tran. §16-404.1(b)(4)(iii) Note: A court order requiring the use of an ignition interlock device is not affected by these provisions. Tran. §16-404.1(f) Persons Under 21 Years Old. A person under 21 years old, who is applying for a license following a conviction for any alcohol driving offense, may be required to participate in the "ignition interlock" program for not more than 3 yrs. Tran. §16-113(a)(4) Persons Who Have Violated the Admin. Per Se or Implied Consent Laws. These persons may obtain restricted driving privileges if they participate in the "ignition interlock" program for 1 yr. Tran. §16-205.1(n)(2), (3) & (4)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term of
Withdrawal:

None Tran. §§16-205, 16-206(5), 16-208, 16-404.1 & 16-405

Other:
Rehabilitation:
Alcohol Education:

Yes Alcohol education/treatment required as a condition of probation. Any offender may be required to attend a driver improvement or an alcohol education program as a condition or reinstatement of their driving privilege. Health-General §8-404, Tran. §16-212 and Art. 27, §§639(b) & 641(a)(1)(ii)(1)
Yes See Alcohol Education above.

Alcohol Treatment:
Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

No

See Footnote No. 1 on p. 3-228 concerning either (1) vehicle registration suspension/revocation or (2) vehicle impoundment/immobilization based on driving after a license has been suspended/revoked for a drunk driving offense.

Miscellaneous Sanctions
Not Included Elsewhere:

Child Endangerment. I. Driving while intoxicated/intoxicated per se¹ while transporting a "minor"²: 1st off-Jail not more than 2 yrs/fine-not more than \$2,000; 2nd off³-Jail not more than 3 yrs/fine-not more than \$3,000; 3rd and sub off³-Jail not more than 4 yrs/fine-not more than \$4,000. II. Driving while under the influence of alcohol, drugs or a controlled dangerous substance while transporting a "minor"²: 1st off-Jail not more than 6 mos/fine-not more than \$1,000; 2nd and sub off³-Jail not more than 1 yr/fine-not more than \$2,000. Tran. §27-101(q)
Negligent Related Drunk Driving Which Causes a Life Threatening Injury.⁴ While intoxicated/intoxicated per se¹-Misd-Jail not more than 3 yrs/fine-not more than \$5,000 II. While under the influence of alcohol-Misd-Jail not more than 2 yrs/fine-not more than \$3,000 III. While under the influence of drugs-Misd-Jail not more than 2 yrs/fine-not more than \$3,000. IV. While under the influence of a controlled dangerous substance-Misd-Jail not more than 2 yrs/fine-not more than \$3,000 Art. 27, §388B
Provisional Licensee. A provisional licensee is subject to the following **additional** sanctions, 1st alcohol driving off- "driver improvement program" (mand); 2nd alcohol driving off-Susp-not more than 30 dys; 3rd or sub alcohol driving off-Susp/Rev-not more than 180 dys This action is not mand. Tran. §16-213

¹"Intoxicated per se" is defined as a BAC/BrAC ≥ 0.10 at the time of testing. Art. 27, §§388A & 388B and Tran. §11-127.1 The offense involves operating motor vehicle while intoxicated per se. For standards, see Footnote No. 3 on p. 3-221.

²A "minor" is generally a person < 18 yrs old. Art. 1, §24(b)(2)

³A prior offense includes any type prior drunk driving offense whether or not related to child endangerment.

⁴For these offenses, 12 points are assessed and this results either in a 6 mo rev, if this is a 1st rev, 1 yr rev if this is a 2nd rev or 18 mo if this is a 3rd rev. These revocations are not mand. Tran. §§16-208(b), 16-402(a)(29), 16-404(a)(3)(ii) and 16-405(a) & (b)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes I. Death caused by driving a vehicle in a grossly negligent manner (felony) Art. 27, §388
II. Death caused by driving in a vehicle in a negligent manner either while intoxicated or intoxicated per se¹ (felony) Art. 27, §388A(b)
III. Death caused by driving in a vehicle in a negligent manner while under the influence of alcohol (felony) Art. 27, §388A(c)
IV. Death caused by driving in a vehicle in a negligent manner while under the influence of drugs (felony) Art. 27, §388A(d)
V. Death caused by driving in a vehicle in a negligent manner while under the influence of a controlled dangerous substance (felony) Art. 27, §388A(e)

Sanctions:
Criminal Sanction:
Imprisonment (Term):

I. Death caused by driving a vehicle in a grossly negligent manner-Not more than 10 yrs,
II. Death caused by driving in a vehicle in a negligent manner either while intoxicated or intoxicated per se¹-Not more than 5 yrs
III. Death caused by driving in a vehicle in a negligent manner while under the influence of alcohol-Not more than 3 yrs
IV. Death caused by driving in a vehicle in a negligent manner while under the influence of drugs-Not more than 3 yrs
V. Death caused by driving in a vehicle in a negligent manner while under the influence of a controlled dangerous substance-Not more than 3 yrs

Mandatory Minimum Term:
Fine (\$ Range):

None
I. Death caused by driving a vehicle in a grossly negligent manner-Not more than \$5,000
II. Death caused by driving in a vehicle in a negligent manner either while intoxicated or intoxicated per se¹-Not more than \$5,000
III. Death caused by driving in a vehicle in a negligent manner while under the influence of alcohol-Not more than \$5,000
IV. Death caused by driving in a vehicle in a negligent manner while under the influence of drugs-Not more than \$5,000
V. Death caused by driving in a vehicle in a negligent manner while under the influence of a controlled dangerous substance-Not more than \$5,000

Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and
Type of Action:

None

Rev via the point system Twelve (12) points are assessed for these offenses.² Tran. §§16-402(a)(29), 16-404(a)(3)(ii) & 16-405(b)

¹"Intoxicated per se" is defined as a BAC/BrAC ≥ 0.10 at the time of testing. Art. 27, §§388A & 388B and Tran. §11-127.1 The offense involves operating motor vehicle while intoxicated per se. For standards, see Footnote No. 3 on p. 3-221.

²Under the point system, an accumulation of 12 points results in license revocation. However, if a person needs to use a vehicle for employment reasons, they are allowed to accumulate 19 points before their license is revoked.

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Other Criminal Actions Related to DWI: (continued)

Length of Term of Licensing Withdrawal:	<u>6 mos rev, if this is a 1st rev; 1 yr rev, if this is a 2nd rev; 18 mos rev, if this is a 3rd rev; and, 2 yrs rev, if this is a 4th or sub rev.</u> Tran. §16-208(b)
Mandatory Action—Minimum Length of License Withdrawal:	None Note: A revocation may be denied, cancelled or modified if a defendant needs to operate a motor vehicle for employment purposes. Tran. §16-405(a)
Other:	None
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:</u>	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	Misd 1st off - Not more than 1 yr; 2nd and subsequent offs-Not more than 2 yrs Tran. §§16-303(c) & (d) & 27-101(h)
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	1st off-Not more than \$1,000; 2nd and subsequent offs-Not more than \$1,000 Tran. §27-101(h)
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	1st off-Rev; 2nd and subsequent offs-Rev via the point system Tran. §§16-303, 16-402(a)(26), 16-404 & 16-405(b) Twelve (12) points are assessed for this offense. See Footnote No. 1.
Length of Term of License Withdrawal Action:	<u>6 mos if a 1st rev; 1 yr if a 2nd rev; 18 mos if this is a 3rd rev; and, 2 yrs rev, if this is a 4th or sub rev.</u> Tran. §16-208(b)
Mandatory Term of License Withdrawal Action:	Note: Under Tran. §16-405(a), a rev may be denied, cancelled or modified if a person's employment or opportunity for employment would be adversely affected.

I. If a person drives a motor vehicle while their license is suspended or revoked for an alcohol off, the registration of the motor vehicle they were driving may be suspended for not more than 120 dys. Tran. §§13-705.1, 16-303 & 27-101

II. In addition, if a person drives a motor vehicle while their license is suspended or revoked for an alcohol off, the vehicle used in the offense may be either impounded or immobilized for not more than 180 dys. Tran. §27-111(d)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: 1. It is a misd to operate a CMV during a CDL disqualification. The sanction for this offense is a fine of not more than \$500. Tran. §§16-808(9) & 27-101(a) & (b) II. The following sanctions apply to persons who violate a CDL out-of-service order. Under Tran. §16-812, a violator is subject to a CMV disqualification for the periods specified under Federal Regulations (49 CFR 383.51(d)). These periods are as follows: 1st violation-not less than 90 dys; 2nd violation (w/n 10 yrs)-not less than 1 yr; and, 3rd or subsequent violation (w/n 10 yrs)-not less than 3 nor more than 5 yrs. If the transportation of either hazardous materials or passengers was involved in the violation, the disqualification is as follows: 1st violation-not less than 180 dys; and, a subsequent violation (w/n 10 yrs)-not less than 3 nor more than 5 yrs. In addition, under Tran. §27-101.1, a violator is subject to a civil penalty of not less than \$1,000 nor more than \$2,500 as specified under Federal Regulations (49 CFR 383.53(b)(1)).

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21¹ Art. 2B, §12-108(a) and Art. 27, §§400, 401A & 403 (Year
Eff: 1982)

Minimum Age (Years) Possession:

21 Art. 2B, §12-108(d)² & Art. 27, §400A There is an
employment exception. However, a person under 18 yrs old
"may not be engaged in the sale of alcoholic beverages." Art.
2B, §12-302(a)(1)

Minimum Age (Years) Consumption:

None^{2&3}

¹It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to "misrepresent" or make a "false statement" about their age in order to obtain alcoholic beverages. Art. 27, §400

²Article 2B, §12-108(d) provides that no licensee shall allow a person under 21 years old to either possess or consume alcoholic beverages on the licensed premises.

³Under Art. 27, §401A, no one may furnish alcoholic beverages to a person under 21 years old except in cases where either such beverages are served by members of the immediate family in a private residence or they are served as part of a religious ceremony.

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Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

No

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

No Note: For cases denying liability in this area, see *Felder v. Butler*, 438 A.2d 494 (1981), *Fisher v. O'Connor's, Inc.*, 452 A.2d 1313 (Md.App. 1982) (cert. den. by the Maryland Court of Appeals, 452 A.2d 1313) & *Moran v. Foodmaker*, 594 A.2d 587 (Md.App. 1991).

Dram Shop Actions-Social Hosts:

No *Kuykendall v. Top Notch Laminates, Inc.*, 520 A.2d 1115 (Md.App. 1987) (cert. den. by the Maryland Court of Appeals, 526 A.2d 954 (Md. 1987)) & *Hebb v. Walker*, 536 A.2d 113 (Md.App. 1988)

Other:

None

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd Art. 2B, §§10-401, 10-402, 12-108 & 16-503 See Footnote No. 1 below.

Term of Imprisonment:

Not more than 2 yrs

Fine (\$ Range):

Not more than \$1,000

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or rev Art. 2B, §10-401 Note: For licenses issued by the Comptroller a monetary compromise of not more than \$2,000 may be paid in lieu of a suspension. Art. 2B, §10-402 The law does not specify at term of susp. for licenses issued by the Comptroller. However, if a license is revoked by the Comptroller, it is for 6 mos. Note: The periods of license susp/rev may be longer for certain counties. Art. 2B, §10-404

Length of Term of License Withdrawal:

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misd Art. 2B §§10-401, 10-402, 12-108 & 16-503 See Footnote No. 1.

Term of Imprisonment:

Not more than 2 yrs

Fine (\$ Range):

Not more than \$1,000

¹In addition to these sanctions, Maryland law also provides for additional sanctions (jail terms, fines or administrative actions) in certain local jurisdictions. See Art. 2B, §16-507 for details.

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:
License to Serve Alcoholic Beverages
Withdrawn (Yes/No):

Length of Term License Withdrawal:

Anti-Happy Hour Laws/Regulations:

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes Susp or rev Art. 2B, §10-401 Note: For licenses issued by the Comptroller, a monetary compromise of not more than \$2,000 may be paid in lieu of a suspension. Art. 2B, §10-402 The law does not specify at term of susp. for licenses issued by the Comptroller. However, if a license is revoked by the Comptroller, it is for **6 mos.** Note: The periods of license susp/rev may be longer for certain counties. Art. 2B, §10-404

No

Yes¹ However, this law is limited to certain public parking areas. Art. 2B, §19-301 et seq.

Yes¹ Applies only to drivers Tran. §21-903

¹The Maryland Legislature has granted municipal corporations the authority to adopt either ordinances or resolutions "to regulate the possession or consumption of alcoholic beverages in public places located within the boundaries of the municipal corporation." Art. 2B, §19-104

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STATE:
General Reference:

MASSACHUSETTS
Massachusetts General Laws Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC):
Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Under the influence of intoxicating liquor¹ Ch. 90 §24(1)(a)(1)
None
≥0.08² The law's term is "permissible inference". Ch. 90 §24(1)(e)
Under the influence of (1) Marijuana, Narcotic Drugs, Depressants or
Stimulant Substances all as defined in Ch. 94C §1³ or (2) Vapors of
Glue Ch. 90 §24(1)(a)(1)
For Commercial Motor Vehicle Operators, see p. 3-236.

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:

No
Yes Ch. 90 §24(1)(f)

No

No Prohibited by statute in both criminal and civil cases. Ch. 90
§24(1)(e) Such evidence is also prohibited by the State's constitution.
Opinion of the Justices to the Senate, 591 N.E.2d 1073 (Mass. 1992)
A driver may not refuse to submit to field sobriety tests but such refusal
cannot constitutionally be admitted into evidence *Com. v. Blais*, 701
N.E.2d 314 (Mass. 1998), *Com. v. McGrail*, 647 N.E.2d 712 (Mass.
1995), & *Com. v. Grenier*, 695 N.E.2d 1075 (Mass.App.Ct. 1998)

Other Information:

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:
Urine:
Other:

None Unless the defendant is brought in for treatment. Ch. 90
§24(1)(f)
None
None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No
No
Yes Alc. Screening is required for a 1st off. Ch. 90 §24(1)(a)(4)

¹The term "intoxicating liquor" includes beer and other alcoholic beverages. *Commonwealth v. Bridges*, 189 N.E. 616 (Mass. 1934) cited in *Commonwealth v. Cass*, 467 N.E.2d 1324 (Mass. 1984)

²Standard: Percent by weight of alcohol in the blood. Ch. 90 §24(1)(e) "Percent by weight" has been judicially defined as the number of grams of alcohol per 100 milliliters (cubic centimeters) of blood. *Commonwealth v. Brooks*, 319 N.E.2d 901 (Mass. 1974), & *Commonwealth v. Bernier*, 322 N.E.2d 414 (Mass. 1975)

³Under Ch. 94C, §1, a "narcotic drug" means either opium, opiate, opium poppy, opium poppy straw, coca leaves (not containing cocaine or ecgonine) or any chemical compound derivative therefrom. In situations involving driving under the influence of either cocaine or heroin, the State must prove that these substances are derivatives of the ones listed above. *Com. v. Green*, 556 N.E.2d 387 (Mass. 1990), & *Com. v. Finegan*, 699 N.E.2d 1228 (Mass.App. 1998)

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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**

Administrative Licensing Action: See Persons Under 21 Years Old below.

(Susp/Rev): I. **Susp-120 dys (mand)** II. If the person has had a previous drunk driving off conviction w/n 10 yrs-**Susp-180 dys (mand)** III. If the person has had 2 or more drunk driving off convictions w/n 10 yrs-**Susp-1 yr (mand)** Ch. 90 §§24(1)(f) & 24N

Other: A person's driving privileges are restored either if the drunk driving charges are dismissed or if the person is found not guilty of such charges. Ch. 90 §§24(1)(f) & 24N

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Footnote No. 1 and Double Jeopardy below.

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off-Not more than **2½ yrs²**; 2nd off (w/n 10 yrs)-**60 dys to 2½ yrs**; 3rd off (w/n 10 yrs)-**180 dys to 2½ yrs** (or 2½ to 5 yrs in State prison) (felony); 4th off (w/n 10 yrs)-**2 to 2½ yrs** (or 2½ to 5 yrs in State prison) (felony); 5th and sub offs (w/n 10 yrs)-**2½ yrs** (or 2½ to 5 yrs in State prison) (felony) Ch. 90 §24(1)(a)(1) & Ch. 274 §1

Mandatory Minimum Term:

1st off-No; 2nd off-**30 dys³**; 3rd-**150 dys³**; 4th off-**12 mos³**; 5th and sub off-**24 mos³**

¹DWI serious bodily injury offs Ch. 90 §24L: Imprisonment-not more than **2½ yrs**; fine-not less than **\$3,000**. Ch. 90 §24L(2) If either **recklessness or negligence** is involved in the off (felony): Imprisonment-**2½ to 10 yrs or 6 mos to 2½ yrs** in a house of correction; fine-not more than **\$5,000**. A 6 mo imprisonment term appears to be mandatory but work release is available. Ch. 90 §24L(1) & Ch. 274 §1

²1st offenders may serve an imprisonment sentence on designated weekend, evenings or holidays. Ch. 90 §24(1)(a)(3)

³Work release is available for this period. See Rehabilitation on p. 3-236. Ch. 90 §24(1)(a)(1)

Persons Under 21 Years Old. I. For persons **<21 but ≥18 yrs old-Susp-180 dys** If a person does not have a previous drunk driving offense charge, the suspension may be waived if they participate in an alcohol education or treatment program. II. For persons **<18 yrs old-Susp-1 yr (mand)**. However, for a 1st refusal, there is only a 180 mand susp if the person participates in an alcohol education or treatment program. Ch 90 §24P(a)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Leduc v. Com.*, 657 N.E.2d 755 (Mass. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:	
Amount (\$ Range):	<u>1st off-\$500 to \$5,000; 2nd off-\$600 to \$10,000; 3rd off-\$1,000 to \$15,000; 4th off-\$15,000 to \$25,000; 5th and sub offs-\$2,000 to \$50,000 Ch. 90 §24(1)(a)(1)</u>
Mandatory Min. Fine (\$):	None
Other Penalties:	
Community Service:	For any off-30 hrs (minimum) via court order as a condition of probation Ch. 90 §24D
Restitution (eg Victim's Fund)	Yes (1) By a compensation fund Ch. 258A §1 et seq. or (2) by a defendant via probation Ch. 276 §92
Other:	None
Administrative Licensing Actions:	
<u>Pre-DWI Conviction</u> Licensing Action:	See Double Jeopardy on p. 3-234.
Administrative Per Se Law:	Yes BAC $\geq 0.08^1$ (Persons under 21 years old-BAC $\geq 0.02^1$)-Susp until the drunk driving charges are disposed of but not more than 90 dys (mand) Ch.90 §24(1)(f)(2) <u>Persons Under 21 Years Old.</u> The following susps apply notwithstanding the finding concerning any offense (e.g. drunk driving). I. <u>A person <21 but ≥ 18 yrs old</u> , who has a BAC $\geq 0.02^1$, has their license suspd for 180 dys. If the person does not have a previous drunk driving offense charge, the suspension may be waived if they participate in an alcohol education or treatment program. II. <u>A person <18 yrs old</u> , who has a BAC $\geq 0.02^1$, has their license susp for 1 yr (mand). However, for a 1st violation, there is only a 180 dy mand susp if the person participates in an alcohol education or treatment program. Ch. 90 §24P(a) I. If the law enforcement officer does not take action under the admim. per se law at the time of arrest, the court, at the time of arraignment shall suspend a defendant's license until the case is disposed of (but not more than 90 dys), provided the State establishes a <i>prima facie</i> showing that the defendant was operating a motor vehicle with a BAC ≥ 0.08 (persons under 21 yrs old BAC $\geq 0.02^1$). Ch. 90 §24N ² II. A person's license may be suspended without a hearing if they have "committed" a violation of the motor vehicle laws that "constitute an immediate threat to the public safety." Ch. 90 §22(a) ³
Other:	

¹Standard: Percent by wgt. of alcohol in the blood. See the *Brooks* and *Bernier* cases in Footnote No. 2 on p. 3-233.

²**Historical Note:** This section was amended by §10 of Chapter 25, Laws of 1994. A previous version of this provision was held to be constitutional on due process of law grounds. *Com. v. Crowell*, 529 N.E.2d 1339 (Mass. 1988)

³A person, who has been indicted for various traffic offenses, may be subject to licensing action under this statute. These actions do not violate the constitutional prohibition against double jeopardy. *Powers v. Com.*, 694 N.E.2d 324 (Mass. 1998)

MASSACHUSETTS

Sanctions Following a Conviction for a DWI Offense: (continued)

<u>Post DWI Conviction Licensing Action:</u>	See Persons Under 18 years old below.
Type of Licensing Action (Susp/Rev):	Rev for all offs Ch. 90 §24(1)(b) & (1)(c)
Term of License Withdrawal (Days, Months, Years, etc.):	<u>1st off-1 yr</u> ; <u>2nd off (w/n 10 yrs)-2 yrs</u> ; <u>3rd off (w/n 10 yrs)-8 yrs</u> ; <u>4th off (w/n 10 yrs)-10 yrs</u> ; <u>5th and sub offs (w/n 10 yrs)-Life</u>
Mandatory Minimum Term of Withdrawal:	<u>1st off-3 mos¹ (45 dys susp²</u> If the defendant is placed on probation and agrees to participate either in an alcohol education or, if necessary, in a treatment program. Ch. 90 §24D); <u>2nd Off-6 mos^{1&3}</u> ; <u>3rd off-2 yrs rev¹</u> ; <u>4th off-5 yrs rev¹</u> ; <u>5th and sub offs-Life</u>
Other:	
Rehabilitation:	
Alcohol Education:	Yes <u>1st off</u> -If the defendant consents, they may be placed on probation for not more than 2 yrs on the condition that they attend a residential alcohol treatment program for not less than 14 dys and participate in an out patient counseling program. Ch. 90 §§24(1)(a)(4) & 24D &; <u>2nd and sub offs</u> -In lieu of imprisonment, defendant may serve all or part of the mand imprisonment term in a residential alcohol treatment program. Ch. 90 §24 Yes See Alcohol Education above.
Alcohol Treatment:	
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	None
Miscellaneous Sanctions Not Included Elsewhere:	I. Special Surcharge. A defendant must pay a surcharge of \$100 for the purpose of funding head injury treatment services. Ch. 90 §24(1)(a)(1)

¹Hardship driving privileges may be granted after this mandatory revocation period.

²If the person is under 21 years old, the mandatory license suspension period is 210 dys.

³The person must complete a residential treatment program before hardship driving privileges can be granted.

Persons Under 18 Years Old. Persons < 18 yrs old, who have been convicted of any DWI offense or vehicle homicide and who have not had their license suspended for a 0.02 admin per se violation, are subject to a 180 dy mand license susp for a 1st offense and a 1 yr mand license susp for a 2nd or subsequent offense. Ch. 90 §24P(b)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Under Ch. 90F §9, a person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥ 0.04 (Note: Ch. 90F §9 does not appear to apply to alcohol concentrations in urine. See the standards below.) or (2) are under the influence of alcohol or a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). Under Ch. 90F §11, a person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) refuse to submit to a test to determine either alcohol concentration or the presence of other drugs or (2) submit to such a test which discloses a BAC/BrAC/UrAC ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.). For a two or more test refuses or "failures" or for a combination of two or more such violations, the "disqualified" is for life (mand). In addition, a CMV operator who has any alcohol in their system must be placed "out-of-service" for 24 hours. Ch. 90F §§1, 9, 10 & 11

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere: (continued)

II. Alcoholic Beverage Licensee Reporting. The court shall inquire of a drunk driving offender, prior to sentencing, as to whether they were served alcoholic beverages at a licensed establishment. Any information obtained is to be transmitted to law enforcement authorities. Ch. 90 §24J

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Misd A motor vehicle related death where there the offender was either under the influence of intoxicating substances or acted with either recklessness or negligence. See Footnote No.1. Ch. 90 §24G(b) & Ch. 274 §1

Sanctions:
Criminal Sanction:
Imprisonment (Term):
Mandatory Minimum Term:
Fine (\$ Range):
Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and
Type of Action:
Length of Term of
Licensing Withdrawal:
Mandatory Action--Minimum
Length of License
Withdrawal:
Other:

30 dys to 2½ yrs Ch. 90 §24G(b)
None
\$300 to \$3,000 Ch. 90 §24G(b)
None

Rev Ch. 90 §24G(c) See Persons Under 18 Years Old on p. 3-236.

1st off-10 yrs; subsequent off-life

1st off-10 yrs; subsequent off-life
None

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

See the Special Note below.

Sanction:
Criminal:
Imprisonment (Term):
Mandatory Minimum Term
of Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine:

Misd 60 dys to 2½ yrs Ch. 90 §23 & Ch. 274 §1

60 dys However, a work release program is available.
\$1,000 to \$10,000 Ch. 90 §23
None

¹Homicide by motor vehicle while under the influence of an intoxicating substance and where there is either recklessness or negligence (felony): Imprisonment-**2½ to 15 yrs** (mandatory imprisonment of **1 yr** However, work release is available); fine-not more than **\$5,000**. Ch. 90 §24G(a) & Ch. 274 §1

Special Note: A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. Ch. 90F, §5(8) However, Ch. 90F does not provide sanctions for such a prohibition. Note: Although the law is unclear, the general sanctions for driving while license is either suspended or revoked may apply to this prohibition. These sanctions are as follows: 1st offense, imprisonment for not more than 10 dys and/or a fine of \$500 but not more than \$1,000; and, subsequent offense, imprisonment for 60 dys but not more than 1 yr (There appears to be no fine sanction.). For either a 1st or subsequent offense, an additional period of license suspension or revocation of 60 dys. Ch. 90, §23

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

Susp/Rev¹ Ch. 90 §23

Length of Term of License

Withdrawal Action:

Susp/rev is extended for an additional period of 1 yr. Ch. 90 §23

Mandatory Term of License

Withdrawal Action:

Same as above.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes Ch. 90 §22F

Grounds for Being Declared an

Habitual Offender:

Any combination of three or more serious traffic offenses (e.g., DWI, reckless driving, ect.) (w/n 5 yrs) or 12 convictions (w/n 5 yrs) for traffic offs (including serious offs) for which a person may or must receive at a 30 dy license susp/rev.

Term of License Rev While

Under Habitual Offender Status:

4 yrs Note: If the defendant has a proven hardship, a license may be issued after 1 yr. Ch. 90 §22F

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Felony Ch. 274 §1

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Not more than 2 yrs Ch. 90 §23

Mandatory Minimum Term of

Imprisonment:

None

Fine (\$ Range):

\$500 to \$5,000 Ch. 90 §23

Mandatory Minimum Fine (\$):

None

Licensing Actions (Specify):

Rev¹ Rev is extended for an additional 60 dys. Ch. 90 §23

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes Limited² Ch. 38 §4A

BAC Chemical Test Is Given to the

the Following Persons:

Driver:

Yes The law requires medical examiners to submit to the police laboratory blood samples of drivers who die of injuries received in auto accidents within 4 hrs of an accident. However, the law only applies if, at the time of the accident, (1) the driver was the only occupant of the vehicle and (2) no other individuals were involved.

Vehicle Passengers:

No

Pedestrian:

No²

¹If the vehicle used in offense is not owned by the defendant, its registration shall be revoked for not more than 30 dys. Ch. 90 §23

²Historical Note: Ch. 38 §6A, which covered all deceased drivers and pedestrians in any type of traffic accident, was repealed.

Other State Laws Related To Alcohol Use: (continued)Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 Ch. 138 §§34 & 34A (Year Eff: 1985)

Minimum Age (Years) Possession:

21 Applies to the transportation of alcoholic beverages by an unattended person under 21. There is an exemption for persons 18 and 19 yrs old for employment purposes. Ch. 138 §34C

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

No

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes *Adamain v. Three Sons*, 233 N.E.2d 18 (Mass. 1967), *Cimino v. The Milford Keg, Inc.*, 431 N.E.2d 920 (Mass. 1982), & *Michnik-Zilberman v. Gordon's Liquor, Inc.*, 453 N.E.2d 430 (Mass. 1983)

Dram Shop Actions-Social Hosts:

Yes *McGuiggan v. New England Telephone Co.*, 496 N.E.2d 141 (Mass. 1986), & *Langemann v. Davis*, 495 N.E.2d 847 (Mass. 1986)
See Footnote Nos. 1 & 2. An employer is not liable as a social host for the injuries caused by an intoxicated employee, who storied and consumed alcoholic beverages at work with the employer's permission, so long as such beverages were not supplied by the employer. *Kelly v. Avon Tape, Inc.*, 631 N.E.2d 1013 (Mass. 1994)

Other:

A patron, who sustains injuries as a result of becoming intoxicated at a licensed establishment, may bring a negligence cause action for such injuries against the licensee. *O'Hanley v. Ninety-Nine, Inc.*, 421 N.E.2d 920 (1981) (modified by Ch. 231 §85T)³ Likewise, the estate of a patron who died in an automobile accident after becoming intoxicated at a licensed establishment may maintain a wrongful death cause of action against such licensee. The comparative negligence statute does not apply in these types of cases. *Zeroulis v. Hamilton American Legion*, 705 N.E.2d 1164 (Mass. App.Ct. 1999) However, a social host will not be liable for the injuries sustained by an intoxicated (adult) guest. *Manning v. Nobile*, 582 N.E.2d 942 (Mass. 1991), and Ch. 231 §85T. An adult is a person ≥19 years old. *Hamilton v. Garias*, 632 N.E.2d 407 (Mass. 1994)

¹However, no social host liability to a third part was found in situations where the host did not provide alcoholic beverages to the injury causing guest. *Alioto v. Marnell*, 520 N.E.2d 1284 (Mass. 1988), *Ulwick v. DeChristopher*, 582 N.E.2d 954 (Mass. 1991), *Wallace v. Wilson*, 575 N.E.2d 1134 (Mass. 1991), & *O'Flynn v. Powers*, 646 N.E.2d 1091 (Mass.App.Ct. 1995) This same holding also applies to business social hosts. *Mosko v. Raytheon Co.*, 622 N.E.2d 1066 (Mass. 1993)

²A social host, who serves alcoholic beverages to a guest while in a licensed establishment, may be held liable for injuries caused by the guest as the result of their intoxication caused by such service. Note: In the case decided by the court, the employees of the licensed establishment were unaware of the guest's (patron's) intoxication. As a result, the establishment was not liable for the injuries caused by the intoxicated individual. *Makynen v. Mustakangas*, 655 N.E.2d 1284 (Mass.App.Ct. 1995)

³This may included situations where the licensee does not actually serve alcoholic beverages to a patron. E.g., at a private party hosted on the licensee's premises where a minor became intoxicated and was subsequently struck and killed by a vehicle. *Tobin v. Norwood Country Club, Inc.*, 661 N.E.2d 627 (Mass. 1996)

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Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

See Footnote No. 1.

Misd Ch. 138 §§62 & 69

Not less than 1 mo and not more than 1 yr

Not less than \$50 and not more than \$500

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Susp, rev or cancellation Ch. 138 §64

If rev is imposed, a licensee is disqualified from receiving a license for 1 yr after the expiration of the term of the revoked license. Note: There is no established period for either a suspension or a cancellation.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd Ch. 138 §34

Not more than 6 mos

Not more than \$2,000

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp, rev or cancellation Ch. 138 §64

If rev is imposed, a licensee is disqualified from receiving a license for 1 yr after the expiration of the term of the revoked license. Note: There is no established period for either a suspension or a cancellation. Note: A licensee, who is convicted of a violation w/n 24 mos of a previous offense, may be required to obtain liquor liability insurance to a limit of not less than \$100,000 to any one person and \$200,000 to all persons. Ch. 136, §64A & Ch. 138, §67 (16)

Anti-Happy Hour Laws/Regulations:

Yes 204 CMR 4.00 (Regulation)

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

No

Yes This law applies only to drivers. Ch. 90 §24I

¹See II under Miscellaneous Sanctions for drunk driving offenses on p. 3-236.

STATE:
General Reference:

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Michigan Compiled Laws Annotated

Basis for a DWI Charge:

Standard DWI Offense:	1) Visibly impaired by intoxicating liquor §257.625(3) 2) Under the influence of intoxicating liquor §257.625(1)(a)
Illegal Per Se Law (BAC/BrAC):	≥0.10 ^{1&2} §257.625(1)(b) <u>Persons Under 21 Years Old. Any Bodily Alcohol Content</u> §257.625(6)
Presumption (BAC/BrAC):	A BAC/BrAC/UrAC >0.07 but <0.10 ^{1&2} is a presumption of impairment. A BAC/BrAC/UrAC ≥0.10 ^{1&2} is a presumption of driving while under the influence. §257.625a(9)(b) & (c)
Types of Drugs/Drugs and Alcohol:	Under the <u>influence</u> of or <u>visibly impaired</u> by (1) A Controlled Substance or (2) a Combination of Liquor and a Controlled Substance. §§257.625(1)(a) & (3)
Other:	For Commercial Motor Vehicle Operators, see p. 3-245.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	Yes §257.625a(2) For CMV operators, see §§257.319d & 257.625a(4).
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §257.625c(1)(a)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §257.625c(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes Limited (Criminal cases) In driving while under the influence/illegal per se cases, evidence of a refusal to submit to a chemical test may be admitted but <u>only</u> "for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant." §257.625a(10) Special Note: Following a refusal to submit to a chemical test under the implied consent law, a test (for alcohol concentration or controlled drugs) can be required via a court order. §§257.625a(6)(b)(iv) & <i>People v. Wurm</i> , 404 N.W.2d 235 (Mich.App. 1987)
Other Information:	

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §257.625c(1)
Urine:	Yes §257.625c(1)
Other:	None

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or urine alcohol concentration of 0.10 or more.

²Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §§257.625(1)(b) & (6)(a), 257.625a(9)(b) & (c) and 257.625g(4)

³The term "any bodily alcohol content" means either (1) a BAC/BrAC/UrAC of ≥0.02 but ≤0.07 (For Standards, see Footnote No. 2 above.) or (2) "[a]ny presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony." §257.625(6)(a) & (b)

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Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):

No

Limited A person under 21 years old, who is charged with either with driving while under the influence, driving while visibly impaired or illegal per se offenses under §257.625(1) & (3), cannot enter a plea of either guilty or *nolo contendere* to driving with "any bodily alcohol content" under §257.625(6). §257.625(15)

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes¹ Alcohol & Drug (Screening & Assessment Required) §257.625b(5)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

None

None However, if a person <21 yrs old refuses to submit to a PBT, 2 points are assigned to their driving record. §257.320a(1)(o) (After 10/1/2000, see §257.320a(I)(o).)

Other:

Civil infraction-Fine not more than **\$100** §§257.625a(2)(d), 257.741 et seq. & 257.907 Note: It is a misdemeanor for a CMV operator to refuse to submit to a PBT. See DWI Offenses and Commercial Motor Vehicles on p. 3-245. §§257.319d & 257.625a(4)

Refusal to Take Implied Consent
Chemical Test:
Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

None

1st refusal-6 mo susp Note: A restricted/hardship license may be issued. 2nd and subsequent refusals (w/n 7 yrs)-**1 yr susp** (mand) §§257.323c and 257.625f(1) & (4)
See "Other" under Pre-DWI Conviction Licensing Action on p. 3-244.

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment:
Term (Day, Month, Years,
Etc.):

See the Special Note below and Child Endangerment on p. 3-243.

1) Driving while visibly impaired: (1) 1st off (Misd)-Not more than **93 dys**; 2nd off (w/n 7 yrs) (Misd)-**5 dys to 1 yr**; 3rd or sub off (w/n 10 yrs) (felony)-**1 to 5 yrs**² §257.625(10)
2) Driving while under the influence/Illegal per se: 1st off (Misd)-Not more than **93 dys**; 2nd off (w/n 7 yrs) (Misd)-**5 dys to 1 yr**; 3rd and sub off (w/n 10 yrs) (felony)-**1 to 5 yrs**² §257.625(8)

¹For offenses where a defendant may be sentenced to prison for more than 1 yr or where an offense is a felony, a victim has a right to submit a statement and have it made a part of the pre-sentence investigation report. §§780.763 & 780.764

²A person, who commits a 2nd felony offense, is subject to the provisions of the general criminal habitual offender law. Under this law, such an offender's imprisonment sanction may be enhanced by not more than 1 ½ times the longest term prescribed for a 1st felony off. §769.10(1)(a) & *People v. Bewersdorf*, 475 N.W.2d 231 (Mich. 1991)

Special Note: For the purpose of sanction enhancement, a "prior offense" includes a prior conviction for any drunk driving offense and for a previous conviction for either negligent homicide, manslaughter or murder related to any drunk driving offense. §257.625(23)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:

- 3) Any DWI offense where there is a "serious impairment of a body function"¹-Felony-not more than 5 yrs² §257.625(5)
- 4) Persons Under 21 Years Old. Any Bodily Alcohol Content-2nd or sub off (w/n 7 yrs) (Misd)-93 dys §257.625(11)
- 1) Driving while visibly impaired: 1st off-None; 2nd off (w/n 7 yrs)-5 dys (w/48 con hrs)³; 3rd or sub off (w/n 10 yrs)-1 yr or 30 dys w/48 con hrs (if probation is granted)⁴ §257.625(10)
- 2) Driving while under the influence/illegal per se: 1st off-None; 2nd off (w/n 7 yrs)-5 dys (w/48 con hrs)³; 3rd or sub off (w/n 10 yrs)-1 yr or 30 dys w/48 con hrs (if probation is granted)⁴ §257.625(8)
- 3) Any DWI offense where there is a "serious impairment of a body function"-None
- 4) Persons Under 21 Years Old. Any Bodily Alcohol Content-None

Fine:
Amount (\$ Range):

- 1) Driving while visibly impaired-1st off-Not more than \$300; 2nd off (w/n 7 yrs)-\$200 to \$1,000; 3rd or sub off (w/n 10 yrs)-\$500 to \$5,000 §257.625(10)
- 2) Driving while under the influence/illegal per se: 1st off-\$100 to \$500; 2nd off (w/n 7 yrs)-\$200 to \$1,000; 3rd or sub off (w/n 10 yrs)-\$500 to \$5,000 §257.625(8)
- 3) Any DWI offense where there is a "serious impairment of a body function"-**\$1,000 to \$5,000** §257.625(5)
- 4) Persons Under 21 Years Old. Any Bodily Alcohol Content-1st off-Not more than \$250; 2nd and sub off (w/n 7 yrs)¹-Not more than \$500 §257.625(11)
- 1) Driving while visibly impaired-1st off-None; 2nd off (w/n 7 yrs)-\$200 (possible); 3rd or sub off (w/n 10 yrs)-\$500⁵ (possible)
- 2) Driving while under the influence/illegal per se: 1st off-\$100 (possible)⁵; 2nd off-\$200 (possible)⁵; 3rd off-\$500 (possible)⁵
- 3) Any DWI offense where there is a "serious impairment of a body function"-None
- 4) Persons Under 21 Years Old. Any Bodily Alcohol Content-None

Mandatory Min. Fine (\$):

Other Penalties:
Community Service:

- 1) Driving while visibly impaired-1st off (Misd)-Not more than 45 dys; 2nd off (w/n 7 yrs) (Misd)-30 dys (mand) to 90 dys in lieu of imprisonment; 3rd or sub off (w/n 10 yrs) (felony)-60 dys (mand) to 180 dys (Provided probation is granted. This sanction is in addition to

¹A "serious impairment of a body function" includes, but is not limited to, (1) the loss or use of a limb, eye, or ear, (2) loss or substantial impairment of a bodily function, (3) serious disfigurement, (4) a comatose state for more than 3 dys, (5) brain damage, (6) skull or other serious bone fracture or (7) subdural hemorrhage or hematoma. §257.625(5)

²A person, who commits a 2nd felony offense, is subject to the provisions of the general criminal habitual offender law. Under this law, such an offender's imprisonment sanction may be enhanced by not more than 1 1/2 times the longest term prescribed for a 1st felony off. §769.10(1)(a) & *People v. Bewersdorf*, 475 N.W.2d 231 (Mich. 1991)

³The law appears to authorize a sentence of community service in addition to or in lieu of imprisonment. §257.625(8)(b) & (10)(b)

⁴This sanction appears mandatory. The law provides that a term of imprisonment for this offense cannot be suspended. I.e., an offender cannot be sentenced to community service in lieu of imprisonment. §257.625(8)(d) & (10)(d)

⁵See *Wayne City Prosecutor v. Wayne Circuit Judge*, 397 N.W.2d 274 (Mich. App. 1986).

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Sanctions Following a Conviction for a DWI Offense: (continued)

Restitution
(eg Victim's Fund)
Other:

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:
Other:

the mand 30 dy jail sentence.)¹ §257.625(10)

2) Driving while under the influence/illegal per se 1st off-Not more than 45 dys; 2nd off-30 (mand) to 90 dys in lieu of imprisonment; 3rd or sub off-60 dys (mand) to 180 dys in addition to mand imprisonment (Provided probation is granted. This sanction is in addition to the mand 30 dy jail sentence.)¹ §257.625(8)

3) Any DWI offense where there is a "serious impairment of a body function"-None

4) Persons Under 21 Years Old. Any Bodily Alcohol Content-1st off-Not more than 45 dys; 2nd and sub off (w/n 7 yrs)-Not more than 60 dys §257.625(11) See the Special Note on p. 3-242.

Yes²

Assessments. A person convicted of a crime must pay the following assessments. For a felony, the assessment is \$60 and for a misdemeanor it is \$50. §780.905

Costs of Prosecution. For any drunk driving offense listed above, an offender may be required to pay the costs of prosecution. §§257.625(12) & 769.1f(1)

EMS Costs. For any drunk driving offense listed above, an offender may be required to pay the emergency response costs incurred by State or a local government as a result of such offense. §179.1f(1)

See Child Endangerment below.

None

Special Note: Under §257.625g, if a driver either refuses to submit to a chemical test or if they submit to such test which indicates an "unlawful alcohol content"³, their license is confiscated and destroyed by the police. A temporary license is issued and is valid until the conclusion of the DWI criminal proceedings.

¹**Comment:** In cases where probation is granted for a 3rd or subsequent offense, the law does not appear to allow for the substitution of community service for the minimum mandatory term of imprisonment.

²The State has a victims' compensation fund and, in addition, provides for direct compensation to victims by the defendant via court ordered restitution. §§18.351 et seq., 771.3(2)(d) and Act 341, Public Acts of 1993

³An "unlawful alcohol content" means either (1) a person under 21 yrs old was operating motor vehicle with a BAC/BrAC/UrAC ≥0.02, (2) a person with a CDL was operating a CMV with a BAC/BrAC/UrAC ≥0.04 or (3) a person was operating any motor vehicle with a BAC/BrAC/UrAC ≥0.10. For standards, see Footnote No. 2 on p. 3-241. §257.625g(4)

Child Endangerment. I. For any regular drunk driving off while carrying a passenger <16 yrs old. 1st off (misd)-Jail-5 yrs (with either 48 con hrs (mand) in jail or 30 (mand) to 90 dys community service) to 1 yr; fine-\$200 to \$1,000; and, lic susp-180 dys (90 dys mand); sub off (w/n 7 yrs)(felony)-Imprisonment-1 to 5 yrs or, w/probation, 30 dys (48 con hrs mand) to 1 yr in jail and community service for 60 to 180 dys; fine-\$500 to \$5,000 **II.** For a violation of the 0.02 law by a person <21 yrs while carrying a passenger <16 yrs old: 1st off-Jail-Not more than 93 dys; community service-not more than 60 dys; fine-not more than \$500; and, lic susp-180 dys (90 dys mand); sub off-Jail 5 dys (48 con hrs mand) to 1 yr; community service for 30 to 90 dys; fine-\$200 to \$1,000 **III.** For violations under I or II, either vehicle **forfeiture** or **immobilization** as if the offense was a drunk driving offense. See Vehicle Impoundment/Confiscation on p. 3-246 for further details. §§257.319(8)(e) & 257.625(7)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

See Footnote No. 1 and Child Endangerment on p. 3-243.

- 1) Driving while visibly impaired: 1st off-Susp; 2nd off (w/n 7 yrs)-Rev; 3rd off (w/n 10 yrs)-Rev
 - 2) Driving while under the influence/illegal per se: 1st off-Susp; 2nd off (w/n 7 yrs)-Rev; 3rd off (w/n 10 yrs)-Rev
 - 3) Any DWI offense where there is a "serious impairment of a body function"-Rev
 - 4) Persons Under 21 Years Old. Any Bodily Alcohol Content-1st off-Susp; a violation of this prohibition where there has been 2 violations of any other drunk driving law provision-Rev; in addition, for any offense where there has been a prior rev w/n 7 yrs-Rev
- Citations for the above actions: §§257.303(2) & (4) and 257.319(8)

Term of License Withdrawal
(Days, Months, Years, etc.):

- 1) Driving while visibly impaired: 1st off-90 dys (If the offense involved driving while impaired by a controlled substance or a controlled substance and alcohol-180 dys); 2nd off- not less than 1 yr; any subsequent offense where there has been a prior rev w/n 7 yrs-not less than 5 yrs §§257.303(2) & (4) and 257.319(8)
- 2) Driving while under the influence/illegal per se: 1st off-180 dys; 2nd off-not less than 1 yr; any subsequent offense where there has been a prior rev w/n 7 yrs-not less than 5 yrs §§257.303(2) & (4) and 257.319(8)
- 3) Any DWI offense where there is a "serious impairment of a body function"- 1st off-not less than 1 yr; any subsequent offense where there has been a prior rev w/n 7 yrs-not less than 5 yrs §§ 257.303(2) & (4)
- 4) Persons Under 21 Years Old. Any Bodily Alcohol Content-1st off-30; a violation of this prohibition where there has been 2 violations of any other drunk driving law provision-not less than 1 yr; for any offense where there has been a prior rev w/n 7 yrs-not less than 5 yrs §§257.303(2) & (4) and 257.319(8)

¹Licensing action under the point system. Vehicle manslaughter or driving while under the influence/illegal per se-6 points. Driving while impaired-4 points. Twelve (12) points in two (2) years may result in suspension/revocation. A susp cannot be longer than one (1) year. §§257.320(1)(d), (2) & (4) and 257.320a(1)(a), (b) & (f)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have violated the law that prohibits CMV operation with a BAC/BrAC/UrAC ≥ 0.04 , (2) have violated the provisions of the drunk driving law (§257.625(1), (3), (4), (5), (6) or (7)) or (3) have refused to submit to a chemical test for alcohol concentration or the presence of controlled substances. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, a revocation for not less than 10 yrs (10 yrs mand). A person who operates a CMV with a BAC/BrAC/UrAC ≥ 0.04 but < 0.07 commits a criminal offense: For a 1st off (Misd), the person is subject to imprisonment for not more than 93 days; a fine of not more than \$300; and license susp for 90 dys (a restricted license is available for all of this period); for a 2nd off (w/n 7 yrs) (Misd), a person is subject to imprisonment for not more than 1 yr and/or a fine of not more than \$1,000; and, for a 3rd off (w/n 10 yrs) (felony), a person is subject to either imprisonment from 1 to 5 yrs or county jail from 30 dys to 1 yr with 60 to 180 dys of community (the minimum imprisonment and/or community service are mand) a, a fine of \$500 to \$5,000. In addition, a CMV operator who has a BAC/BrAC/UrAC ≥ 0.015 must be placed "out-of-service" for 24 hours. Finally, it is a misdemeanor for a person to refuse to submit to a preliminary breath test (PBT) while operating a CMV; the sanctions for this offense are imprisonment for not more than 93 dys and/or a fine of not more than \$100. Note: The standards for BAC, BrAC and UrAC are respectively as follows: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §§257.1c, 257.4b, 257.7a, 257.312e, 257.319b, 257.319d, 257.625a(5) & 257.625m

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Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term of Withdrawal:

1) Driving while visibly impaired: 1st off-None (A restricted/hardship license may be issued.); 2nd off-1 yr; any subsequent offense where there has been a prior rev w/n 7 yrs-5 yrs §§257.303(2) & (4) and 257.319(8)

2) Driving while under the influence/illegal per se: 1st off-30 dys (A restricted hardship license may be issued after this period of time.); 2nd off-1 yr; any subsequent offense where there has been a prior rev w/n 7 yrs-5 yrs

3) Any DWI offense where there is a "serious impairment of a body function"-1st off-1 yr; any subsequent offense where there has been a prior rev w/n 7 yrs-5 yrs §§ 257.303(2) & (4)

4) Persons Under 21 Years Old. Any Bodily Alcohol Content-1st off-None (A person is eligible for restricted driving privileges.); a violation of this prohibition where there has been 2 violations of any other drunk driving law provision-1 yr; for any offense where there has been a prior rev w/n 7 yrs-5 yrs §§257.303(2) & (4) and 257.319(8)

Ignition Interlock. A person, who has had their license revoked for any drunk driving offense, may, after the mand rev period, be issued a restricted license instead of full driving privileges. If a restricted license is issued, the driver is limited to operating motor vehicles that are equipped with an "ignition interlock" device. The initial period for the use of such device is 1 yr. §257.322(6), (7), (8) & (9)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Yes §257.625b(5)

Yes §257.625b(5)

Driving While Impaired, Driving While Under the Influence or illegal Per Se: 2nd or sub off-Forfeiture (discretionary) §257.625(8) & (10) and 257.625n

Terms Upon Which Vehicle

Will Be Released:

Other:

Important. See Special Vehicle Sanctions below..

Special Vehicle Sanctions. Driving While Impaired, Driving While Under the Influence, Illegal Per Se, Death or Injury Drunk Driving Offense or Under Age 21 Drunk Driving Off (driving w/ any alcoholic bodily content): 1st off-Immobilization-Not more than 180 dys (discretionary/mand if death or serious injury offenses); 2nd off (w/n 7 yrs)-Immobilization (Note: If the veh is not forfeited for the above offs, this sanction applies.)-90 (mand) to 180 dys; 3rd or sub off (w/n 10 yrs)-Immobilization (Note: If the veh is not forfeited for above offs, this sanction applies.)-1 yr (mand) to 3 yrs §§257.625(8) & (10) and 257.904d **Special Note:** This sanction does not apply to rental vehicles or to vehicles that are registered in another State. §257.904d(7)(c) II. Driving While Impaired, Driving While Under the Influence, Illegal Per Se or Under Age 21 Offense Drunk Driving Off (driving w/ any alcoholic bodily content): 3rd or sub off-Where the offender's license is still suspended or revoked for these offenses-Offender shall be denied the right to either register a vehicle or to obtain a title of ownership to a vehicle. §257.219(1)(d) & (2)(d) III. A defendant, who is subject to vehicle immobilization, cannot purchase, lease or otherwise obtain a motor vehicle during the period of immobilization. §257.904e IV. When a law enforcement officer has detained a person for an offense which requires vehicle immobilization, the officer must (1) confiscate the vehicle's license plate and destroy it and (2) issue a temporary plate. The temporary plate is valid until either the charges are dismissed, there is a guilty or *nolo contendere* plea or there is a finding of guilt. §257.904c

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes Felony Any DWI offense related death §257.625(4)¹

Misd Death caused by driving at an immoderate rate of speed, in a careless, reckless, or negligent manner but not wilfully or wantonly. §750.324

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Felony-Not more than **15 yrs** §257.625(4)

Misd-Not more than **2 yrs** §750.324

None

Mandatory Minimum Term:

Fine (\$ Range):

Felony-**\$2,500 to \$10,000** §257.625(4)

Misd-Not more than **\$2,000** §750.324

None

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Felony-Rev §§257.625b(5)

Misd-Susp §257.319(1)(c) (6 points are also accumulated for each off §257.320a(1)(a))

Length of Term of

Licensing Withdrawal:

Felony-1st off-1 yr; 2nd or sub. off (w/n 7 yrs)-**5 yrs** §§257.52

Misd-**90 dys-2 yrs** §257.319(1)(a)

Mandatory Action--Minimum

Length of License

Withdrawal:

Felony-1st off-1 yr; 2nd or sub. off (w/n 7 yrs)-**5 yrs** §§257.52 & 257.625b(5)

Misd-**None**

Other:

See Assessments on p. 3-244.

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense*:

See the Special Note below.

Sanction:

Criminal:

Imprisonment (Term):

I. 1st off (Misd)-Not more than **93 dys; 2nd and sub offs (Misd)-Not more than **1 yr** §257.904(1) & (3) II. If the offense resulted in **death** of another person (felony)-Not more than **15 yrs** §257.904(4) III. If the offense resulted in **serious impairment of a body function** (See Footnote No. 1 on p. 3-243.) (felony)-Not more than **5 yrs** §257.904(5)**

¹The Michigan Supreme Court has held that §257.625(4) is constitutional. *People v. Lardie*, 551 N.W.2d 656 (Mich. 1996)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: A person, who operates a CMV while their CDL privilege is suspended, is subject to the sanctions given above for the offense of driving while suspended or revoked. §257.904 A person, who operates a CMV while under a CDL out-of-service order, commits a misd offense and is subject to an imprisonment term of not more than 90 dys and/or a fine of not more than \$100. §257.319d

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term
of Imprisonment:
Fine (\$ Range):

None

I. 1st off-Not more than \$500; 2nd and sub offs-Not more than \$1,000 §257.904(1) & (3) II. If the offense resulted in death of another person (felony)-\$2,500 to \$10,000 §257.904(4) III. If the offense resulted in serious impairment of a body function- \$1,000 to \$5,000 §257.904(5)

See Assessments on p. 3-244.

Mandatory Minimum Fine:

I. None II. If the offense resulted in death of another person (felony)-\$2,500 (appears to be mand) §257.904(4) III. If the offense resulted in serious impairment of a body function- \$1,000 (appears to be mand) §257.904(5)

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

For all of the above offenses-Susp or rev¹ §257.904(10)

Length of Term of License

Withdrawal Action:

The original license susp or rev is extended for a like period.

Mandatory Term of License

Withdrawal Action:

The original license susp or rev is extended a like period.

Other:

For offenses related to either death or serious impairment of a body function, either vehicle forfeiture or immobilization for not more than 180 dys. §§257.904(6) & 257.904d(2)(b)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §257.625a(6)(f)

¹For a 1st or subsequent offense, the registration plates of the vehicle involved in the offense shall also be "cancelled". §257.904(3)(a) & (b) Also, vehicle impoundment for not more than 120 dys. §257.904b

Other State Laws Related To Alcohol Use:

BAC Chemical Test Is Given to the
the Following Persons:

Driver: Yes §257.625a(6)(f)
Vehicle Passengers: No
Pedestrian: No

Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21 (Year Eff: 1978) §§436.1701(1), 436.1703(1) & 436.1801(2)
Minimum Age (Years) Possession: 21 Employment exemption §436.1703(9)
Minimum Age (Years) Consumption: 21¹ There is an exemption for religious services. §436.1703(10)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §436.1801(3) & (10)²

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

The Dram Shop Law is the exclusive remedy against licensees.
§436.1801(10)

Dram Shop Actions-Social Hosts:

Case Law abrogated by the Dram Shop Law²

Yes Limited to minors' actions *Longstreth v. Gensel*, 377 N.W.2d 804 (Mich. 1985), *Traylor v. Kopsky*, 384 N.W.2d 819 (Mich. App. 1986), & *Gardner v. Wood*, 414 N.W.2d 706 (Mich. 1987)^{3,4,5}

Other:

An intoxicated patron (or a person related to them) cannot maintain an action for damages against a licensee as a consequence of their intoxication. §436.1801(9)

Criminal Action Against Owner or Employees
of Establishments that Serve AlcoholicBeverages to Intoxicated Patrons:

Type of Criminal Action:

Misd §§436.1707, 436.1801(2), 436.1901 & 436.1909

Term of Imprisonment:

Not more than 6 mos⁶

Fine (\$ Range):

Not more than \$500⁶ See Assessments on p. 3-244.

¹A person <21 yrs old may consume an alcoholic beverages as part of a course at a post secondary educational institution. Also, such a person may purchase, possess or consume alcoholic beverages when participating in law enforcement operations designed to enforce the alcoholic beverage control law's provisions related to minors. §436.1703(9) & (11)

²The law applies (1) to damages/injuries caused by visibly intoxicated persons or those under 21 years old and (2) only to retail licensees not wholesalers. *Tennille v. Action Distributing*, 570 N.W.2d 130 (Mich.App. 1997) For abrogated common law cases, see *Jones v. Bourrie*, 120 N.W.2d 236 (Mich. 1963), & *Longstreth v. Fitzgibbon*, 335 N.W.2d 677 (Mich. App. 1983).

³Nevertheless, a social host is not liable for the injuries caused intoxicated minor guests who commit criminal acts. The court felt that there so no "foreseeability" that such minors would commit a crime and distinguished the *Longstreth* case which involved injuries related to the use of motor vehicles by intoxicated minor guests. *Rogalski v. Tavernier*, 527 N.W.2d 73 (Mich.App. 1995)

⁴However, the courts have found no liability to business social hosts who have furnished alcoholic beverages to injury causing adult business guests. *Leszczynski v. Johnson*, 399 N.W.2d 70 (Mich.App. 1986), *Millross v. Plum Hollow Golf Club*, 413 N.W.2d 17 (Mich. 1987), & *Kuehn v. Edward Rose & Sons*, 472 N.W.2d 59 (Mich.App. 1991)

⁵A law enforcement officer, who was injured by an intoxicated person while on duty, cannot maintain a dram shop action against the licensee who served alcoholic beverages to the person. *McCaw v. T&L Operations, Inc.*, 550 N.W.2d 852 (Mich.App. 1996)

⁶These sanctions appear to apply only to licensees but not to licensees' employees. For employees, a violation appears to be a misdemeanor with the following sanctions: Jail-not more than 90 days; fine-not more than \$100. §§436.1909 & 750.504

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Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Susp or Rev §§436.1903(1) & 436.1907(3)

Period of license susp is not specified in the statute; period of license revocation is 2 yrs Note: A civil fine of not more than \$300 may be assessed in addition to or in lieu of a susp or rev.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd¹ §§436.1701, 436.1801(2), 436.1901 & 436.1909(2)

Not more than 6 mos

Not more than \$500 See Assessments on p. 3-244.

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp or Rev² §§436.1903(1) & 436.1907(3)

Susp period is not specified; revocation is 2 yrs A civil fine of not more than \$1,000 may be assessed in addition to or in lieu of susp/rev.

Anti-Happy Hour Laws/Regulations:

Yes R 436.1438 (regulation)

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes §257.624a Does not apply to a State chartered vehicle

Yes Driver and passengers §436.1915(1) The law states that "[a]lcoholic liquor shall not be consumed on the public highways."

¹The State/local police cannot charge a licensee with violating the law prohibiting the sale of alcoholic beverages to persons under 21 years old, unless these law enforcement agencies also charge the minors involved in the offense (except minors being used as undercover agents) with violating the law prohibiting such persons from purchasing or attempting to purchase such beverages. §436.1701(4)

²The Liquor Control Commission cannot suspended or revoke a license or take other action against a licensee in situations where the State/local police, when enforcing the law prohibiting a licensee from selling alcoholic beverages to persons under 21 years old, have not charged the minors involved in the offense (except minors being used as undercover agents) with violating the law prohibiting these persons from purchasing or attempting to purchase such beverages. §436.1905(1)

STATE:
General Reference:

MINNESOTA
Minnesota Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense;
Illegal Per Se Law (BAC/BrAC):

Under the influence of alcohol §169.121, subd. 1(a)
≥0.10 but <0.20^{1&2} §169.121, subd. 1(e)
≥0.20^{1&2} §169.121, subd. 1(f)
Any Amount of a Controlled Substance in the Body³ §169.121, subd. 1(h)

Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

None
Under the influence of (1) **A Controlled Substance**, (2) A Listed Hazardous Substance or (3) a Combination of Alcohol, a Controlled Substance or a Listed Hazardous Substance §169.121, subd. 1(b), (c) & (g)

Other:

For Persons Under 21 Years Old, see p. 3-254.
For Comm. Motor Vehicle and School Bus Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Applied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes Note: Also applies to CMV operators. §169.121, subd. 6

No⁴

Yes controlled³ or hazardous substances §169.123, subd. 2(a)

Yes §169.121, subd 2, & *McConnell v. Com'r of Public Safety*, 473 N.W.2d 848 (Minn. 1988)

¹This State's illegal per se provisions also make it an offense to operate a motor vehicle with either a breath or a urine alcohol concentrations at or above these levels.

²Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §169.01, subd. 61

³Applies to controlled substances listed in Schedules I & II except marijuana or tetrahydrocannabinols. §169.121, subd 1(h) 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. §§169.121, subd. 2(e), 169.123, subds 2(b) & 4 and 609.21

⁴**Special Note:** A test can be requested if one of the following exists: (1) A person has been lawfully placed under arrest under §169.121; (2) a person has refused to take preliminary screening test; (3) a person refused to submit to a PBT or they submitted to such a test and the result indicated a BrAC ≥0.10; or, (4) a person is involved in an accident resulting in property damage, personal injury, or death. §169.123, subd. 2

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (See Footnote No. 2 above.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for the presence of alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for not less than 10 yrs (10 yrs mand). A CMV operator is placed "out-of-service" for 24 hrs if they have any alcohol in their system. It is a misdemeanor to operate a CMV with a BAC/BrAC/UrAC ≥0.04 but <0.20; the sanctions for this offense are jail for not more than 90 days and/or a fine of not more than \$700. It is a gross misdemeanor to operate a CMV with either a BAC/BrAC/UrAC ≥0.20 or with a BAC/BrAC/UrAC ≥0.04 but <0.20 w/n 5 yrs of a prior drunk driving offense or license revocation; the sanctions for this offense are jail for not more than 1 yr and/or a fine of not more than \$3,000. §§169.01, subds. 50, 61 & 75; 169.1211, subd. 1; 169.1215; 169.123, subds. 2 & 4; 171.01, subd. 22; 171.165, subds. 1, 2, 3(1) & 3(2); and, 609.03

School Bus Operators. It is misd to operate a school bus with any alcohol in the body-Jail for not more than 90 days and/or a fine of not more than \$700 The offense is a gross misdemeanor if it occurred w/n 5 yrs of a prior drunk driving offense or license revocation; the sanctions for this offense are jail for not more than 1 yr and/or a fine of not more than \$3,000. §§169.1211 & 609.03

Note: A PBT result may admitted into evidence to prove this offense. §169.121, subd. 6(b)(5)

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Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information:

I. Under §169.123, sub. 4, a driver may be required to submit to a chemical test if there is probable cause to believe that they have injured another person while violating §169.121.

II. In addition to the above statutory provision, a person may be administered a blood test without their consent if there is "probable cause" that they committed an offense where blood test results could be used as evidence of a crime. *State v. Lee*, 585 N.W.2d 378 (Minn. 1998)

III. See **Conditional Release** below.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:

Yes §169.123, subd. 2

Urine:

Yes §169.123, subd. 2¹ May be requested for the presence of either a controlled or hazardous substance. §169.123, subd. 2a
None

Other:

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes¹ §§169.124, 169.126 (alcohol assessment required), 260.015, subd 2 (chemical use assessment for persons < 18 yrs old), & 260.193, subd. 8(i)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):

None²

¹**Special Note:** If a person has had two or more implied consent tests showing an alcohol concentration ≥ 0.07 , the licensing agency may require them to submit to alcohol/drug assessment with appropriate treatment. If a person refuses to undergo assessment/treatment, their lic. may be denied for not more than 90 dys. §169.121, subd. 8

²A refusal to submit to a PBT will subject a person to the provisions of the implied consent law (§169.123). §169.121, subd. 6(d) Under a previous PBT law, which used similar language, the State supreme court held that a refusal to submit to a PBT would not result in licensing action. Only a refusal to submit to the implied consent would be grounds for such action. *State, Department of Public Safety v. Grovum*, 209 N.W.2d 788 (Minn. 1973) **Comment:** It appears reasonable to assume that this holding would also preclude the imposition of criminal sanctions for refusing to submit to PBT testing.

Conditional Release. I. Unless maximum bail is imposed, a person charged with a drunk driving or implied consent offense, where the offender either (1) has had 2 prior offense convictions w/n 5 yrs or 3 or more such convictions w/n 10 yrs, (2) was < 19 yrs old and this is their 2nd or subsequent charge for either a drunk driving offense or implied consent law violation, (3) has been charge with driving with an alcohol concentration ≥ 0.20 or (4) can be released from detention only if they agree to abstain form alcohol use and (2) to submit to daily monitoring of their alcohol level. §169.121, subd 1c(a) II. Unless maximum bail is imposed, a person charged with a drunk driving or implied consent offense, where the offender either (1) had three prior offense convictions w/n 10 yrs or (2) 4 such prior convictions w/n their lifetime, can only be released under the following conditions: (1) The impoundment of the registration plates of the vehicle used in offense; (2) the person must report weekly to a probation officer; (3) the person must abstain from the use of alc. or controlled substances; and, (4) the person must submit to weekly random testing for alc. §169.121, subd 1c(b)

Sanctions for Refusal to Submit to a
Chemical Test: (continued)

Administrative Licensing Action
(Susp/Rev):
Other:

None See Footnote No. 2 on p. 3-252.

Refusal to Take Implied Consent
Chemical Test:
Criminal Sanction (Fine/Jail):

See Vehicle Impoundment/Confiscation on pp. 3-257 & 3-258.
1st Refusal-misd: Jail-Not more than **90 dys**; fine-Not more than **\$700** Refusal-Either where there has been either (1) a previous drunk driving offense (any type)/license revocation either w/n 5 yrs or two or more previous drunk driving offenses (any type)/license revocations w/n 10 yrs-gross misd: Jail-Not more than **1 yr**¹; fine-Not more than **\$3,000** §§169.121, subds. 1a, 3 & 3(b) & (c) and 609.03(2) & (3)

Administrative Licensing Action
(Susp/Rev):

Revocation via a Conviction. 1st off-Rev-Not less than **90 dys** (15 dys mand² For persons < 18 yrs old-90 dys mand); 2nd off (w/n 5 yrs or 3rd or sub off on the record)-Rev-Not less than **1 yr** (180 dys mand² For persons < 18 yrs old-360 dys mand²) and treatment (rehabilitation) must be successfully completed under §169.126 before the license is reinstated; 3rd off (w/n 5 yrs)-Rev-Not less than **1 yr** (180 dys mand² For persons < 18 yrs old-360 dys mand); 4th and sub. off (on the record)-Rev-Not less than **2 yrs** (180 dys mand² For persons < 18 yrs old-360 dys mand²) If the offender is under 21 years old, rev either for 6 mos or for the rev periods above whichever is the greater rev period. §§169.121, subd. 4, and 171.30, subds. 2a & 2b

Admin. Revocations. 1st Refusal-Rev **1 yr** (15 dys mand² For persons < 18 yrs old-90 dys mand) (Note: Except for persons under 21 years old and provided the person does not have a prior offense w/n 10 yrs, persons, who are convicted of the above implied consent offenses, are subject to the licensing actions associated with the conviction.) §169.121, subd. 4(e). Sub. Refusal-Rev-**1 yr** (180 dys mand² For persons < 18 yrs old-360 dys mand) Note: A person is subject to rev. even if a test is taken via "force". §169.123, subd. 4

Other:

I. For a 2nd off w/n 5 yrs or 2 or more offs w/n 10 yrs, a person may be ordered by the court to participate in a chemical use dependency treatment program. §169.121, subd. 3b
II. Under §169.121, sub. 4(e), in **DWI Child Endangerment** situations where the driver has been convicted of a drunk driving offense and has also refused to submit to a chemical test, the mand licensing sanctions for refusal apply.

¹**Mandatory Sanctions.** For mandatory sanctioning purposes, a conviction for a refusal to submit to a chemical test is treated the same way as driving while under the influence of alcohol. §169.121, subd. 3d See Mandatory Minimum Term and Fine sanctions for drunk driving offenses on p. 3-255.

²A limited license may be issued after this mandatory revocation (or "waiting") period. §171.30, subds. 2a & 2b However, see Footnote No. 5 on p. 3-256.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Double Jeopardy on p. 3-256 and the Special Note below.

Important: See Alcohol Treatment on p. 3-257.

Misdemeanor: Driving while under the influence of alcohol/controlled substance or with an alcohol concentration ≥ 0.10 but < 0.20 §169.121, subd. 3(c)

Gross Misdemeanor: I. Driving (1) while under the influence of alcohol/controlled substance, (2) with an alcohol concentration ≥ 0.10 but < 0.20 or (3) with any amount of a controlled substance in the body either w/n 5 yrs of a prior offense (any type)¹ or w/n 10 yrs of two or more prior drunk driving offenses (any type)¹.

II. Driving with an alcohol concentration ≥ 0.20 .

III. **DWI Child Endangerment**².

IV. Driving while Illegally Crossing a Railroad Track While violating the DWI laws. §§169.121, subd. 3(c) & 609.03

¹A prior offense also includes convictions for either an implied consent law violation, DWI related injury or DWI related vehicle homicide. §169.121, subd. 3(a)

²Where a child under 16 years old was riding with a drunk driving law offender who was at least 36 months older than the child. §169.121, subd. 3(c)(4)

Persons Under 21 Years Old. It is a misdemeanor for these persons to "operate a motor vehicle while consuming alcoholic beverages, or after having consumed alcoholic beverages while there is physical evidence of the consumption present in the person's body." The sanctions for this offense are jail for not more than 90 dys, a fine of not more than \$700 (mand fine of \$210 or \$50 if there is undue hardship See the Special Note on p. 3-255.) and license suspension. For a 1st off, lic. susp. for 30 dys and, for a sub. off, lic. susp. for 180 dys. These suspensions appear to be mandatory. §§169.121 & 609.03 Note: A PBT result may admitted into evidence to prove this offense. §169.121, subd. 6(b)(4)

Special Note: I. In situations where a person has caused a "bodily harm" while operating a motor vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥ 0.10 , (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.), the following sanctions apply: Jail-not more than 1 yr; fine-not more than \$3,000 (mand fine of \$900 or \$50 if there is undue hardship See the Special Note on p. 3-255.); and, 1 yr mand lic revocation. For persons < 18 yrs old, a mandatory lic rev for 2 yrs. See Footnote No. 2 on p. 3-259. §§609.21, subd. 2b, 609.101, subds. 4 & 5 and 171.30, subds. 2a(4) & 2b

II. In situations where a person has caused a "great bodily injury" while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥ 0.10 , (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.), the following sanctions apply: Jail-not more than 5 yrs; fine-not more than \$10,000 (mand fine of \$3,000 or \$50 if there is undue hardship See the Special Note on p. 3-255.); and, 1 yr mand lic rev. For persons < 18 yrs old, a mandatory lic rev for 2 yrs. See Footnote No. 2 on p. 3-259. §§609.21, subd. 2, 609.101, subds. 4 & 5 and 171.30, subds. 2a(4) & 2b

III. In situations where the driver has caused a "substantial bodily injury" while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥ 0.10 , (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.), the following sanctions apply: Jail-not more than 3 yrs; fine-not more than \$10,000 (mand fine of \$3,000 or \$50 if there is undue hardship See the Special Note on p. 3-255.); and, 1 yr mand lic rev. For persons < 18 yrs old, a mandatory lic rev for 2 yrs. See Footnote No. 2 on p. 3-259. §§609.21, subd. 2a, 609.101, subds. 4 & 5 and 171.30, subds. 2a(4) & 2b

IV. In situations where the driver has caused an "injury to an unborn child" while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥ 0.10 , (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.), the following sanctions apply: Jail-not more than 5 yrs; fine-not more than \$10,000 (mand fine of \$3,000 or \$50 if there is undue hardship See the Special Note on p. 3-255.); and, 1 yr mand lic revocation. For persons < 18 yrs old, a mandatory lic rev for 2 yrs. See Footnote No. 2 on p. 3-259. §§609.21, subd. 4, 609.101, subds. 4 & 5 and 171.30, subds. 2a(4) & 2b

Sanctions Following a Conviction for a DWI Offense:
(continued)

Imprisonment:

Term (Day, Month, Years,
Etc.):

Mandatory Minimum Term:

Misdemeanor-Up to **90 dys** Gross Misdemeanor-Not more than **1 yr** §§169.121, subd. 3(c) & 609.03

Misdemeanor-None

Gross Misdemeanor-I. Within 5 yrs of a prior drunk driving off (any type)/license revocation-**30 dys** (48 con hrs mandatory)¹

II. Within 10 yrs of **two** prior drunk driving offs (any type)/license revocations-Either **90 dys** (30 con dys in a local correctional facility mand) or **6 con dys** in a local correctional facility under an intensive supervision program² (may also include not more than 60 dys home detention)

III. Within 10 yrs of **three** prior drunk driving offs (any type)/license revocations-Either **180 dys** (30 con dys in a local correctional facility mand) or **6 con dys** in a local correctional facility under an intensive supervision program² (may also include not more than 150 dys home detention)

IV. Within 10 yrs of **four or more** prior drunk driving offs (any type)/license revocations-Either **1 yr** (60 con dys in a local correctional facility mand) or **6 con dys** in a local correctional facility under an intensive supervision program² (The court may order that the remainder of the 1 yr incarceration sanction be served using either an electronic monitoring system or home detention.)

§§169.121, subd. 3d & 169.1265

Fine:

Amount (\$ Range):

Misdemeanor-Not more than **\$700** §§169.121, subd. 3(c) & 609.03

Gross Misdemeanor-Not more than **\$3,000** §§169.121, subd. 3(c) & 609.03

Mandatory Min. Fine (\$):

Misd Offs-**\$210**; Gross Misd Offs-**\$900** The law provides, that these mandatory fines may be reduced to \$50 based on undue hardship. §609.101, subds. 4 & 5 See the Special Note below.

Other Penalties:

Community Service:

Gross Misdemeanor-Under I above under Mandatory Minimum Term, in lieu of the 30 dys mand imprisonment, a person may be sentenced to serve 8 hrs of community service for each day not served in jail.¹ §169.121, subd. 3d(b)

¹Based on mitigating circumstances, the court may sentence a person without regard to the mandatory sanctions. However, any sanction that is imposed must include either 48 hrs of consecutive incarceration or 80 hrs of community service. §169.121, subd. 3d(b) & (f)

²**Intensive Probation (Supervision) Program** (Pilot Program). Counties may receive State grants to start "intensive probation" programs for repeat drunk driving law offenders. This program provides, for (1) chemical dependency assessment, (2) a period of incarceration (or detention), (3) home detention, (4) abstinence from the use of alcohol/drugs, (5) decreased levels of program contact over the period of probation and (6) the costs of the program to be paid in whole or in part by the defendant. §169.1265

Special Note: For felony offenses, mandatory fines are based on 30% of the maximum statutory fine. For either gross misdemeanor or misdemeanor offenses, mandatory fines are based either on 30% of the maximum statutory fine or on 30% the maximum fine for such offenses in the uniform fine schedule where the maximum fine in this schedule is lower than the statutory maximum. This schedule is established by the conference of chief judges by January 1 of each year. This schedule is not reported in this publication. §609.101, subd. 4(1) & (2)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Restitution
(eg Victim's Fund)

Yes Victim's Fund (§§611A.01 et seq.)¹ and also direct payment by the defendant to a victim (§§609.10 & 609.125(4))

Other:

See Footnote Nos. 2 & 3.

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

See Double Jeopardy and the Special Note below.

Yes **≥0.10** (BAC/BrAC/UrAC See Footnote No. 2 on p. 3-251) or **Any Amount of a Controlled Substance in the Body** (See Footnote No. 3 on p. 3-251.) 1st Violation-Rev-90 dys^{4,5&6} (15 dys mand⁶ For persons <18 yrs old-90 dys mand⁶); 2nd or Sub. Violation (w/n 5 yrs)-Rev-180 dys^{4&6} (90 dys mand⁶ For persons <18 yrs old-180 dys mand⁶) A limited license is available after the min. mandatory rev (or "waiting") period. §§169.123, subd 4, and 171.30, subd. 2a & 2b

Other:

Under §171.18, a person's license may be susp for not more than 1 yr if they have "committed" an off that requires mandatory license rev (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

See Persons Under 21 Years Old on p. 3-254.

All offs-Rev §§169.121, subd. 4, and 171.17

¹Payments to all claimants shall not exceed \$50,000 per victim. §611A.54

²**Assessments & Surcharges.** For alcohol screening, there is a surcharge of \$125 (\$130 if there has been a prior offense w/n 5 yrs). §169.121, subd. 5a Likewise, in addition to any other fine or assessment, a person, who has been convicted of driving with an alcohol concentration ≥0.20 under §169.121, subd 1(f), may be required to pay an assessment of up to **\$1,000**. §169.121, subd. 5b

³**Assessments for Police Officer Training.** An assessment of 15% of the fine is imposed for the purpose of funding the Police Officers Training Account. However, if the court does not impose a fine sanction, it must, nevertheless, impose an assessment ≥\$5 but ≤\$10 for a petty misdemeanor or ≥\$25 but ≤\$50 for either a misdemeanor, gross misdemeanor or felony. §626.861, subd. 1

⁴For persons less than 21 years old, the rev period is six (6) mos (12 mos if alcohol concentration ≥0.20). §169.123, subd. 4

⁵The admin. per se revocations do not apply if a person has been convicted of a 1st DWI off related to the same incident. §169.121, subd. 4(f)

⁶**Special Note:** If the persons's alcohol concentration was ≥0.20, the license revocation periods are **double** the ones given. §§169.123, subd. 4(e)(4) & 171.30, subd. 2c

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Hanson*, 543 N.W.2d 84 (Minn. 1996)

Special Note: The administrative per se law does not violate a person's constitutional right to due process of law. *Heddan v. Dirkswager*, 336 N.W.2d 54 (Minn. 1983)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-Not less than **30 dys**¹; 2nd off (w/n 5 yrs)-Not less than **180 dys**¹; 3rd off (w/n 5 yrs)-Not less than **1 yr**¹; 4th and subsequent offs-Not less than **2 yrs**¹ See Footnote No. 2. For persons under 21 yrs old, see Footnote No. 3.

Mandatory Minimum Term of
Withdrawal:

I. 1st off-**15 dys**^{1&4}; 2nd or sub off (where a person submits to a chemical test)-**90 dys**^{1&4}; 2nd or sub off (where a person refuses to submit to a chemical test)-**180 dys**^{1&4} §171.30, subd. 2a
II. For persons <18 yrs old-1st off-**90 dys**^{1&4}; 2nd or sub off (where a person submits to a chemical test)-**180 dys**^{1&4}; 2nd or sub off (where a person refuses to submit to a chemical test)-**360 dys**^{1&4} §171.30, subd. 2b

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Yes §169.126

Yes §169.126

Special Note: The court may stay imposition of fine or jail sentence but not license rev if defendant submits to treatment at an authorized dependency facility, as provided by §§169.121, subd. 5, and 609.135, subds. 1 & 2.

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Administrative Impoundment via Commissioner of Motor Vehicles. The registration plates of a vehicle **must** be impounded^{5,6&7} (1) if the vehicle operator w/n 5 yrs has been convicted of or had a license revocation either for driving while under the influence of alcohol or a controlled substance or with an alcohol concentration ≥ 0.10 but < 0.20 or for an implied consent law violation, (2) if such convictions or revocations are w/n 15 yrs of prior ones and are based on separate incidents (3) if the vehicle operator was driving with an alcohol concentration

¹**Special Note:** A person, who has been convicted of driving with an alcohol concentration ≥ 0.20 under §169.121, subd 1(f), must have their driving privileges **revoked for double** these periods. §§169.121, subd. 4(e) & 171.30, subd. 2c

²Note: Ninety (90) additional dys are added to the above rev base periods if the drunk driving offense involved either a death or an injury. §169.121, subd. 4(d)

³If the drunk driving law offender is under 21 yrs old, their license is revoked for 6 mos or for the normal period of time for drunk driving law violators whichever is the greater period. §169.121, subd. 4(b)

⁴Under §171.30, after the min. mandatory rev (or "waiting") period, a limited license may be issued (1) for employment purposes, (2) for attendance at an alcohol treatment program or (3) for the needs of a homemaker in order to prevent the substantial disruption of the educational, medical or nutritional needs of the family.

⁵Vehicle impoundment does not apply either to rental vehicles or to vehicles registered in other States. §168.042, subd. 2

⁶If the registered owner of a vehicle was not a passenger at the time of the offense, they may have the vehicle registration plates reissued. §169.042, subd. 8

⁷**Special Plates.** Special plates may be issued so that the vehicle may be operated by either a family member, who has a valid driver's license, or by the offender if they have a limited (restricted) license. §168.042, subd 12 A law enforcement officer is authorized to stop a vehicle bearing these plates in order to determine if the driver is lawfully authorized to operate a motor vehicle. §168.0422 However, a recent court decision held that a vehicle cannot be stopped simply because it bears these "special plates". Such suspicionless stops are unconstitutional. *State v. Grayeagle*, 541 N.W.2d 326 (Minn.App. 1995)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Administrative Impoundment via Commissioner of Motor Vehicles. (continued) ≥ 0.20 or (4) if the vehicle operator has been convicted of any drunk driving or implied consent offense while transporting a child under 16 yrs old where the driver was at least 36 months older than the child. New registration plates are issued when the driver's license revocation order is "rescinded". §168.042

Forfeiture (Administrative or Juridical).²⁴³ Via §169.1217, any motor vehicle used in the following offenses or violations is subject to forfeiture.

I. An admin. per se revocation w/n 5 yrs of either 2 prior license revocations, 2 prior drunk driving offense convictions or a combination thereof based on 2 separate incidents.

II. An admin. per se revocation w/n 15 yrs of either 3 or more prior license revocations, 3 or more prior drunk driving offense convictions or a combination thereof based on 3 or more separate incidents.

III. Excepted as noted in IV and V, a drunk driving or implied consent refusal offense w/n 5 yrs of either 2 prior drunk driving offenses, 2 prior license revocations or a combination thereof based on 2 separate incidents.

IV. Excepted as noted in IV and V, a drunk driving or implied consent refusal offense w/n 15 yrs of either 3 or more prior drunk driving offenses, 3 or more prior license revocations or a combination thereof based on 3 or more separate incidents.

V. Driving with an alcohol concentration ≥ 0.20 in violation of §169.121, subd. 1(f) or **DWI Child Endangerment** w/n 5 yrs of either a prior drunk driving offense or prior license revocation.

VI. Driving with an alcohol concentration ≥ 0.20 in violation of §169.121, subd. 1(f) or **DWI Child Endangerment** w/n 15 yrs of either a 2 or more prior drunk driving offenses or 2 or more prior license revocations.

Terms Upon Which Vehicle
Will Be Released:
Other:

See Impoundment above.

Special Note: A vehicle may be impounded following a DWI arrest. The vehicle may be released to the vehicle owner (or lien holder) upon proof of a valid driver's license and insurance. 169.1216

Miscellaneous Sanctions
Not Included Elsewhere:

None

¹Based upon the same factual situation, a person, who has been convicted of a certain drunk driving or license revocation offenses, is also subject to having their vehicle forfeited via a civil proceeding. Such subsequent civil proceeding does not violate the constitutional prohibition against double jeopardy. *City of New Hope v. 1986 Mazda 626*, 546 N.W.2d 300 (Minn.App. 1996)

²Forfeiture is mandatory. *Adkins v. 1979 Midas R.V.*, 546 N.W.2d 768 (Minn.App. 1996)

Other Criminal Actions Related to DWI:Homicide by Vehicle:

State Has Such a Law:

Yes Felony 1. Death as a result of operating a motor vehicle either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥ 0.10 , (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.) §609.21, subd. 1 **II. "Death to an unborn child"** while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration ≥ 0.10 , (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.) §609.21, subd. 3

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Not more than **10 yrs** §609.21, subds. 1 & 3**None**Not more than **\$20,000** §609.21, subds. 1 & 3

\$6,000 (\$50 if there is undue hardship) §609.101, subds. 4 & 5
See Footnote No. 3 on p. 3-256. See the Special Note on p. 3-255.

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Length of Term of

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

Rev §§169.11¹ & 171.17

See Footnote No. 2.

1 yr (For persons <18 yrs old, 2 yrs) §171.30 Note: A limited license may be issued after the 1 (or 2) yr minimum license rev period. §171.30, subd. 2a & 2b
None

Other:

Driving While License Suspended or RevokedWhere the Basis Was a DWI Offense*:

Sanction:

Criminal:

Imprisonment (Term):

On p. 3-260, see Footnote No. 1 and the Special Note.

Misd Not more than **90 dys** §§171.24³ & 609.03(3)

¹A defendant may also be required to surrender their vehicle's registration plates during the period of license revocation. §168.041, subds. 1, 3 & 4

²**Injury or Death Related DWI Offenses.** The maximum rev. length for these offenses is not specified by statute. However, the following provisions are applicable. (1) An offender cannot have their driving privileges restored until they have completed an examination by the licensing agency. §171.29, subd. 1 And, (2) if a court has denied an offender's petition for reinstatement of their license, the offender must wait 1 yr before they can petition the court again for such reinstatement. §171.19

³A violation of §171.24 shall result in a person having their motor veh registration plates impounded under §168.041, subds. 3 & 4.

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not more than \$700 609.03(3)
Mandatory Minimum Fine:	\$210 (\$50 if there is undue hardship) §609.101, subds. 4 & 5 See Footnote No. 3 on p. 3-256. See the Special Note on p. 3-255.
Administrative Licensing Actions:	See the Special Note and Vehicle Forfeiture below.
Type of Licensing Action (Susp/Rev):	Susp Applies only to 2nd or sub. offs. §168.041, subd. 2
Length of Term of License Withdrawal Action:	<u>2nd or sub. off.</u> Not more than 1 yr §168.041, subd. 2
Mandatory Term of License Withdrawal Action:	None
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	No
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine (\$ Range):	
Mandatory Minimum Fine (\$):	
Licensing Actions (Specify):	

¹Aggravated Violation. It is an aggravated violation for a person to commit a drunk driving offense while their license is still suspended or revoked for a previous alcohol related driving offense, implied consent law refusal, an admin. per se law violation or vehicle homicide offense. A violation is a gross misdemeanor with the following sanctions: Imprisonment for not more than 1 yr and/or a fine of not more than \$3,000 (mand fine of \$900 or \$50 if there is undue hardship See Special Note on p. 3-255.). However, a person, who violates this provision and who has been revoked two or more times for any of the above listed offenses w/n 10 yrs, is guilty of an enhanced gross misdemeanor with the following sanctions: Imprisonment for not more than 2 yrs and/or a fine of not more than \$3,000 (mand fine of \$900 or \$50 if there is undue hardship See the Special Note on p. 3-255.). §§169.129, 609.02 & 609.03(2) This sentence must be consecutive to one imposed for a drunk driving offense. §169.121, subd. 3(e)

Special Note: I. A person commits a misd if they operate a CMV during a CDL disqualification. The sanctions for this offense are imprisonment for not more than 90 dys and/or a fine of not more than \$700 (mand fine of \$210 or \$50 if there is undue hardship See the Special Note on p. 3-255.). §171.24, subd. 4 & 609.03 II. A person is subject to the following CDL disqualifications, if they operate a CMV during an out-of-service order: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. §171.165, subd. 4A III. A person is subject to an administrative "penalty" of not more than \$1,000, if they operate a CMV during an out-of-service order. §171.165, subd. 3(d)

Vehicle Forfeiture. A person's vehicle is subject to mandatory forfeiture, if they commit either a drunk driving or aggravated drunk driving offense after their driving privileges have been canceled the licensing agency on the grounds that their "operation of a motor vehicle on the highways ... would be inimical to public safety or welfare." §§169.1217, subd. 1(b)(3); 171.04, subd. 1(9); and, *Adkins v. 1979 Midas R.V.*, 546 N.W.2d 768 (Minn.App. 1996)

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on
Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):

Yes §169.09, subd. 11

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes age 16 or older

Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21¹ (Year Eff: 1986) §340A.503, subd. 2(1) & (2)

Minimum Age (Years) Possession:

21 There is an exemption for home possession. §340A.503,
subd. 3

Minimum Age (Years) Consumption:

21 There is an exemption for home consumption with parental
consent. §340A.503, subd. 1(2)Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes^{2&3} §340A.801"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Dram Shop Actions-Social Hosts:

Yes-Limited Social hosts are generally exempt from liability
even if they collect money from guests to purchase alcoholic
beverages but, via common law negligence, a host ≥21 yrs old,
may be held liable for the injuries caused by or to a guest <21
yrs old. §340A.801, subds.1 & 6 and *Vanwagner v. Mattison*,
533 S.W.2d 75 (Minn.App. 1995), & *Koehn v. Dufuor*, 590
N.W.2d 107 (Minn. 1999)

Other:

A licensee is not liable for the injuries sustained an intoxicated
patron. *Line Const. Ben. Fund (Lineco) v. Skeates*, 563 N.W.2d
757 (Minn.App. 1997), & *Empire Fire & Marine Insurance Co.*
v. Williams, 121 N.W.2d 580 (Minn. 1963)

¹A person under 21 yrs old may purchase alcoholic beverages if they are under the supervision of a person over 21 yrs old and the purpose of the purchase is for training, education or research purposes. The law further provides that "[p]rior notification of the licensing authority is required unless the supervised alcohol purchase attempt is for professional research conducted by post-secondary educational institutions or state, county, or local health departments." §340A.503, subd. 2

²A licensee who has a license to sell alcoholic beverages only on the premises may still be liable for the actions of patrons who procure such beverages from the license but consume them off the premises. *Englund, v. MN CA Partners*, 555 N.W.2d 328 (Minn.App. 1996) In addition, a licensee may be liable under the Dram Shop Act for damages caused by a driver, who consumed alcoholic beverages at the licensee's establishment, to vehicle passengers, who were injured in an automobile accident while riding with the intoxicated patron. *Lefto v. Hogsbreath Enterprises, Inc.*, 581 N.W.2d 855 (Minn. 1998)

³It is a felony for a person, who is not licensed to dispense alcoholic beverages, to either sell, barter, furnish or give such beverages to a person <21 yrs old "if that person becomes intoxicated and causes or suffers death or great bodily injury as a result of the intoxication." The sanctions for this felony are a prison term of not more than 5 yrs and/or a fine of not more than \$10,000. However, unless an offender's criminal history would indicated a greater sanction via the sentencing guidelines, the presumptive sentence is a stay of execution with 90 dys incarceration and probation. §§340A.701, subds. 1(4) & 2 and 609.03(1)

MINNESOTA

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Gross Misd §§340A.502, 340A.702(7) & 609.03

Up to 1 yr

Not more than \$3,000 (a mandatory fine of \$900 or \$50 if there is undue hardship §609.101, subds. 4 & 5) (An admin. fine of up to \$2,000 may also be imposed. §340A.415) See Footnote Nos. 2 & 3 on p. 3-256. See the Special Note on p. 3-255.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes §340A.415

Suspended for up to 60 days or revoked for an unspecified period of time.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Gross Misd §§340A.503, subd. 2(1), & 340A.702(8) & 609.03

Up to 1 yr¹

Not more than \$3,000 (a mandatory fine of \$900 or \$50 if there is undue hardship §609.101, subds. 4 & 5) (An admin. fine of up to \$2,000 may also be imposed. §340A.415)¹ See Footnote Nos. 2 & 3 on p. 3-256. See the Special Note on p. 3-255.

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes §340A.415

Suspended for up to 60 days or revoked for an unspecified period of time.

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes §169.122(2) & (3)

Yes Driver and passengers §169.122(1)

¹In *State v. Gurniga*, 395 N.W.2d 344 (Minn. 1986), the Minnesota Supreme Court held that criminal sanctions cannot be imposed on employers for the illegal actions of their employees who sell/serve alcoholic beverages to persons under the legal drinking age. Note: See §340A.501 which also eliminates the possibility of such vicarious criminal liability.

STATE:
General Reference:

MISSISSIPPI
Mississippi Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Under the influence of intoxicating liquor §63-11-30(1)
≥0.10^{1&2} §63-11-30(1)
Persons Under 21 Years Old-≥0.02^{1&2} §63-11-30(1)
None
Under the influence of (1) **Any Substance** or (2) Any Drug or
Controlled Substance the possession of which is illegal
§63-11-30(1)
For Commercial Motor Vehicle Operators, see p. 3-264.

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):

Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

Yes §63-11-5

No However, a request to submit to a test is based on reasonable
grounds and probable cause of DWI. §63-11-5(1)

No §63-11-5

Yes (Criminal Cases)³ §63-11-41
I. A driver, who is involved in traffic accident resulting in a
fatality, cannot refuse to submit to a blood test for alcohol or
drug content. §63-11-8
II. If a driver has been legally arrested for an offense where
BAC evidence is relevant, a blood sample may be obtained in
order to determine such BAC without the consent of the driver.
Gregg v. State, 374 So.2d 1301 (Miss. 1979)

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:
Urine:
Other:

Yes §63-11-5
Yes §63-11-5
None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No⁴
Yes A DWI charge cannot be reduced §63-11-39

Yes Limited §63-11-30(2)(d)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath or alcohol concentration of 0.10 (0.02 for persons <21 yrs old) or more.

²Standard: Alcohol concentration is expressed as "percent" which is defined as milligrams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§63-11-3(e), 63-11-23(2) & 63-11-30(1)

³Refusal to submit a chemical test cannot be admitted into evidence in a civil action. §63-1-43

⁴However, a drunk driving offense cannot be dismissed upon the completion of court imposed conditions. §99-15-26(1) & A.G.Op. #93-0889, January 12, 1994, 1994 Miss. AG LEXIS 56

MISSISSIPPI

Sanctions for Refusal to Submit to a Chemical Test

Refusal to Take Implied Consent Chemical Test:

Refusal to Take Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

None

Administrative Licensing Action

(Susp/Rev):

None

Other:

None

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):

None

Administrative Licensing Action

(Susp/Rev):

Susp for 90 dys (mand) if there has been no previous conviction for a DWI off (§63-11-30). Susp for 1 yr (mand) if there has been a previous conviction for a DWI off (§63-11-30) §§63-11-5 & 63-11-23

Other:

Special Note: A *de novo* court trial may be held following administrative hearings on these susps. §63-11-25

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Important. See Double Jeopardy and the Special Note below.

Imprisonment:

Term (Day, Month, Years,

Etc.):

DWI off-Misd (3rd and sub. off-Felony) 1st Off-Not more than 48 hrs¹ (See Victim Impact Panel on p. 3-265.); 2nd Off (w/n 5 yrs)-10 dys^{1&2}-1 yr; 3rd & Sub. Off (w/n 5 yrs)-1 to 5 yrs¹ (State Penitentiary) Conviction for a DWI off where there has been negligence resulting in disfigurement, disability, etc., (felony)-Not more than 25 yrs §63-11-30(2)(a), (b) & (c) and (5) No¹

Mandatory Minimum Term:

¹The DWI law does not specifically prohibit suspending or placing persons on probation for the minimum imprisonment term. In fact, the law allows a court to suspended sentences for misdemeanor offenses. Furthermore, persons convicted of a first felony offense may be placed on probation and have their sentence suspended. §§21-23-7(5), 47-7-33 (¶1) & 99-19-25 and A.G.Op. #95-0105, February 23, 1995, 1995 Miss. AG LEXIS 67

²See Community Service on p. 3-265.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Keyes v. State*, 708 So.2d 540 (Miss. 1998)

Special Note: For persons <21 yrs old, the sanctions for a normal drunk driving offenses apply if their BAC/BrAC ≥0.08. However, different sanctions apply if their BAC/BrAC is ≥0.02 but <0.08; see **Persons Under 21 Years Old** on p. 3-265. §63-11-30(3)(a)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is "suspended" for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical (breath) test for alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "suspension" is for life (or a lesser period as established by Federal law). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. A person commits a drunk driving offense if they operate a CMV with a BAC/BrAC ≥0.04. §§63-1-75(b), 63-1-82(3), 63-1-83, 63-1-84 & 63-11-30(1)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine: Amount (\$ Range):	<u>1st Off-\$250 to \$1,000; 2nd Off (w/n 5 yrs)-\$600 to \$1,500; 3rd & Sub. Off (w/n 5 yrs)-\$2,000 to \$5,000</u> Conviction for a DWI off where there has been negligence resulting in disfigurement, disability, etc. (felony) - Not more than \$10,000 §§47-5-3, §63-11-30(2)(a), (b) & (c) & (5) and 99-19-32
Mandatory Min. Fine (\$):	<u>1st off-\$250; 2nd off (w/n 5 yrs)-\$600; 3rd & sub. off (w/n 5 yrs)-\$2,000</u> §99-19-25
Other Penalties:	
Community Service:	Yes <u>2nd off</u> -Community service from 10 dys to 1 yr <u>in addition</u> to imprisonment. §63-11-30(2)(b)
Restitution (eg Victim's Fund)	Yes ¹ I. A defendant may be ordered by the court to make direct restitution to a victim. §99-39-1 et seq. II. A victim may also obtain limited compensation from the State Crimes Victims' Compensation Fund. §99-41-5 et seq.
Other:	
Administrative Licensing Actions:	
<u>Pre-DWI Conviction</u> Licensing Action:	See Double Jeopardy on p. 3-264.
Administrative Per Se Law:	Yes This law encourages DWI offenders, who have a BAC/BrAC ≥ 0.10 (for persons < 21 yrs old ≥ 0.02) (See Footnote No. 2 on p. 3-263.), to request a trial w/n 30 dys after arrest. If the chemical test indicates one of the above BAC/BrAC levels, the driver's license is seized by the police and sent the licensing agency. The driver is issued a receipt for such license. This receipt may be used as a temporary permit for 30 dys. If a trial is requested w/n 30 dys after arrest but cannot be held, a person is allowed to drive for not more than 90 dys after arrest. Important: If temporary driving privileges expire without a trial having been requested by the offender, the license susp periods for implied consent violations apply. §63-11-23(2)
Other:	A person's license may be susp if they have "committed" an off that usually requires license rev (e.g., vehicle homicide) ² . Such action may be taken <u>without</u> a preliminary hearing. The time period for this susp is not specified. §63-1-53(1)(a) Comment: Such action could occur prior to a conviction.

¹Some victims of criminal activity may receive compensation from a special crime victims' escrow account. Funds for this account are provided via monies received by accused or convicted persons from the news, publicity or entertainment media for the purpose of reenacting the criminal event. A victim, however, must first have a money judgment against a defendant for the injury caused by a criminal action before they can receive funds from the escrow account. §99-38-1 et seq.

²Note: A DWI offense results in license suspension not revocation.

Persons Under 21 Years Old. The following sanctions apply to persons, who are < 21 yrs old and who drive with a BAC/BrAC ≥ 0.02 but < 0.08 . 1st offense-A fine of \$250, license susp-90 dys (30 dys mand. A hardship lic may be issued after the 30 dy period for purposes of either employment, education or medical needs.), and complete an alcohol education program; 2nd offense (w/n 5 yrs)-A fine of not more than \$500 and license susp-1 yr (6 mos mand); and, 3rd or sub offense (w/n 5 yrs)-A fine of not more than \$1,000 and license susp until they reach 21 or for 2 yrs whichever is the longer susp period (6 mos mand). For either a 2nd or sub offense, driving privileges may be reinstated after 6 mos if the person receives a "diagnostic assessment" and completes any needed alcohol treatment program. §63-11-30(3)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Term of License Withdrawal

(Days, Months, Years, etc.):

Mandatory Minimum Term of

Withdrawal:

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Alcohol Education/

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

Important. See the Special Note on p. 3-264 and Persons Under 21 Years Old on p. 3-265.

Susp All offs §63-11-30

1st off-90 dys to 1 yr^{1,4,2}; 2nd off (w/n 5 yrs)-2 yrs¹; 3rd or sub. off (w/n 5 yrs)-5 yrs¹

1st off-30 dys³; 2nd off (w/n 5 yrs)-1 yr⁴; 3rd & sub. off (w/n 5 yrs)-3 yrs² See Footnote No. 6.

Special Note: I. Notwithstanding §63-11-30, a person, who has been convicted of operating a motor vehicle while under the influence of a controlled substance, must have their driving privileges forfeited for not less than 6 mos. §63-1-71(1)

II. If a person is convicted of a DWI offense where there has been a chemical test refusal, the licensing sanctions for the DWI conviction are in addition to those imposed under the implied consent law. §63-11-30(4)

Yes 1st off - Required before license can be reinstated. §§63-11-30(2)(a) & 63-11-32

Yes 2nd and 3rd offs §63-11-30(2)(e) & (f)

Forfeiture. For a 3rd or sub. offense (w/n 5 yrs), the vehicle used in the offense may be forfeited. However, the vehicle owner's spouse may obtain possession of the vehicle if they can demonstrate that the vehicle is their only means of transportation. §§63-11-30(2)(c) & 63-11-49

None

¹Judicial review is not allowed for these susp actions by the licensing agency. §63-11-26

²The law requires that a 1st offender complete an alcohol education program before they can have their license reinstated. However, in no event can a license suspension exceed 1 yr.

³The county circuit court may reduce the suspension period to 30 days provided the defendant demonstrates that they need their license (1) to continue employment or education, (2) to obtain medical care (3) to attend driver improvement, alcohol or drug education programs or (4) to attend court ordered counseling. §63-11-30(2)(a)

⁴For a 2nd conviction, the suspension period may be reduced to 1 yr provided the defendant is (1) diagnosed as needing alcohol/drug abuse treatment and (2) such person successfully completes such treatment. §63-11-30(2)(d)

⁵For a third or subsequent conviction, a defendant's license may be reinstated after three (3) years provided they successfully complete an alcohol/drug abuse treatment program. §63-11-30(2)(e)

⁶The suspensions for DWI convictions are consecutive to those for refusal in those situations where a person has refused to submit to such a test but is, nevertheless, convicted of a DWI offense. §63-11-30(3) & (9)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

- I. **Mand. State Assessment: \$150** §99-19-73(2) & (7)
 II. **Victim Impact Panel.** 1st off-Attendance at a victim impact panel in lieu of 48 hrs in jail. §63-11-30(2)(a)
 III. **Bus Drivers & Operators of Vehicles for Hire.** The privilege to operate a bus/veh. for hire may be susp/rev if a person drives such a vehicle while intoxicated or noticeable under the influence of intoxicating liquor. §§21-27-137 & 21-27-155
 IV. **Community Work Center.** Unless the drunk driving offense involved either death or injury, an offender may be assigned to a community work center. §47-5-110(1)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Felony Where death is a result of a DWI violation and negligent action by the driver. §63-11-30(4)

Sanctions:
 Criminal Sanction:
 Imprisonment (Term):
 Mandatory Minimum Term:
 Fine (\$ Range):
 Mandatory Minimum Fine:
 Administrative Licensing Action:
 Licensing Authorized and
 Type of Action:
 Length of Term of
 Licensing Withdrawal:
 Mandatory Action--Minimum
 Length of License
 Withdrawal:
 Other:

Not more than 25 yrs §63-11-30(4)
 None
 Not more than \$10,000 §§47-5-3 & 99-19-32(1)
 None¹

 Rev §63-1-51(1)(a)
 1 yr §63-1-51(1)(a)

 1 yr §63-1-51(1)
 None

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

See Footnote No. 2.

Sanction:
 Criminal:
 Imprisonment (Term):
 Mandatory Minimum Term
 of Imprisonment:
 Fine (\$ Range):
 Mandatory Minimum Fine:
 Administrative Licensing Actions:
 Type of Licensing Action
 (Susp/Rev):

Misd 48 hrs-6 mos §63-11-40

 None §99-19-25
 \$200 to \$500¹ §63-11-40
 \$200¹ §99-19-25

 Susp

¹There is a mand. State assessment of \$150. §99-19-73(2) & (7)

²It is a misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are imprisonment from 1 to 6 yrs, a fine of \$5 to \$250 and an assessment of \$17. §§63-1-69, 63-1-77(2) & (3) and 99-19-73(1)

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Other Criminal Actions Related to DWI: (continued)

Length of Term of License Withdrawal Action:	6-mo susp added to the original susp period §63-11-40
Mandatory Term of License Withdrawal Action:	6-mo susp added to the original susp period §63-11-40
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	No
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine (\$ Range):	
Mandatory Minimum Fine (\$):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	Yes §63-11-7
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes
Vehicle Passengers:	No
Pedestrian:	No

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1986) §§67-1-81, 67-3-53(b) & 67-3-70(1)
Minimum Age (Years) Possession:	21 There is an employment exemption. §§67-1-81 & 67-3-54
Minimum Age (Years) Consumption:	None ¹

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	Yes §67-3-73(2) & (4) Note: Licensees are liable only for the actions of minors or "visibly intoxicated" persons.

¹Note: Persons under 21 years old may consume light wine and beer in the presence of a parent or legal guardian. §67-3-54(1)

Other State Laws Related To Alcohol Use: (continued)

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes *Munford, Inc. v. Peterson*, 368 So. 2d 213 (Miss. 1979), &
Bryant v. Alpha Entertainment Corp., 508 So.2d 1094 (Miss.
1987)¹

Dram Shop Actions-Social Hosts:

Yes Limited A social host cannot be held liable if they provide
alcoholic beverages to a person who may lawfully consume such
beverages. §67-3-73 & *Boutwell v. Sullivan*, 469 So.2d 526
(Miss. 1985)

Other:

None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd §§67-1-83, 67-3-53(b) & 67-3-69(1) See the Special Note
below.

Term of Imprisonment:

Not more than **6 mos**

Fine (\$ Range):

Not more than **\$500**²

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Rev For Alc. bev. 4% or more alc. by wgt. §67-1-83(4); *Rev*
For wine and beer not more than 4% alc. by wgt. §67-3-29

Length of Term of License Withdrawal:

(1) For alc. bev. of 4% or more, no period of license susp/rev is
specified. (2) For licensees holding light wine & beer (alc.
content of not more than 4% alc. by wgt.) permit, their permit
may be revoked for 2 yrs for willful neglect or refusal to comply
with the alc. bev. control laws. §67-3-29(2) Also, under §67-3-
69(1), a permittee, who is convicted of an offense must have their
license voided at the time of the conviction. A new license
cannot be issued for 1 yr.

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

(1) Selling alcoholic beverages (4% or more alc. by wgt.) to
those under 21 yrs old: *1st off-Misd*; *2nd and subsequent
offs-Misd* (2) Selling to a person under 21 yrs old beer and wine
not more than 4% alcohol by weight-*Misd* §§67-1-81 & 67-3-53
See the Special Note below.

¹These cases appear to have been abrogated by §67-3-73.

²There is also a mand. State assessment of \$47. §99-19-73(5) & (7)

Special Note: Under a separate provision, the law makes it illegal to sell alcoholic beverages of 4% or more except as authorized by law. The sanctions for violating this provisions are as follows: 1st off-1 week to 3 mos in jail and/or a fine of \$100 to \$500; 2nd off-60 dys to 6 mos in jail and/or a fine of \$100 to \$5,000; and, 3rd off-1 to 5 yrs in the State Penitentiary and/or a fine of \$100 to \$5,000 §67-1-9(1) & (2)

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Other State Laws Related To Alcohol Use: (continued)

Term of Imprisonment:

(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: 1st off-None; 2nd and subsequent offs-Not more than 1 yr (2) Selling to a person under 21 yrs old beer and wine not more than 4% alcohol by weight-Not more than 6 mos §§67-1-81, 67-3-53 & 67-3-69

Fine (\$ Range):

(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: 1st off-\$500-1,000^{1&2}; 2nd and subsequent offs-\$1,000-2,000^{1&2} (2) Selling to a person under 21 yrs old beer and wine not more than 4% alcohol by weight-Not more than \$500^{1&2} §§67-1-81, 67-3-53 & 67-3-69

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:
License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: 1st Off-Rev³ §67-1-71; 2nd and subsequent Off-Automatic Rev §67-1-81 (2) Selling to a person under 21 yrs old beer and wine (not more than 4% alcohol by weight)-Rev/Susp^{2&3}

Length of Term License Withdrawal:

(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: 1st off-Rev. length not specified §67-1-71; 2nd and subsequent offs-Permanently rev. §67-1-81 (2) Selling to a person under 21 yrs old beer and wine (not more than 4% alcohol by weight)-Rev. length not specified. However, persons who have had any alc. beverage license revoked may not apply for a license to sell light wine and beer (not more than 4% alc. by wgt.) for 2 yrs. §67-3-19(b)²

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No

¹There is also a mand. State assessment of \$47. §99-19-73(5) & (7)

²The following additional sanctions may also apply to licensees who sell beer and light wine (not more than 4% alcohol by weight) to persons under 21 yrs old: 1st Off-A fine of not more than \$500 and lic. susp. for 3 months; 2nd Off-(w/n 12 mos)-A fine of not more than \$1,000 and lic. susp. for 6 mos; and, 3rd & Subsequent Off-(w/n 12 mos)-A fine of not more than \$500 and a lic. susp. for 1 yr. §67-3-69(3)

³A limited susp may be imposed in lieu of rev.

STATE:

General Reference:

MISSOURI

Vernon's Annotated Missouri Statutes

Basis for a DWI Charge:

Standard DWI Offense:

Driving while intoxicated (while in an intoxicated or drugged condition)¹ §§577.001.2, & 577.010

Illegal Per Se Law (BAC/BrAC):

>0.10² §577.012

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

Drugged Condition¹ §577.010

Other:

A BAC/BrAC ≥0.10 is *prima facie* evidence of intoxication.² §577.037
For Commercial Motor Vehicle Operators, see p. 3-275.Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes §577.021 & *Justice v. Director of Revenue*, 890 S.W.2d 728 (Mo.App. 1995)

Implied Consent Law:

Arrest Required (Yes/No):

Yes §577.020.1

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §577.020.1

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes §577.041.1 (Criminal & Possibly Civil Cases), *State v. Berry*, 803 S.W.2d 37 (Mo.App. 1990), *State v. McCarty*, 875 S.W.2d 622 (Mo.App. S.D. 1994), & *State v. Myers*, 940 S.W.2d 64 (Mo.App. S.D. 1997)

Other Information:

Under "exigent circumstances", a blood sample may be withdrawn from a driver without their consent but prior to a DWI arrest if there is "probable cause" of such offense. *State v. Lerette*, 858 S.W.2d 816 (Mo.App. W.D. 1993)Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:

Yes §577.020.1

Urine:

Yes §577.020.1

Other:

Saliva §577.020.1

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

No

¹The term "intoxicated condition" means "under the influence of alcohol, a controlled substance, or drug, or any combination thereof." §577.001.2²The illegal per se law provides that no one shall operate a motor vehicle with a 0.10 or more percent by weight of alcohol in the blood. Percent by weight of alcohol is defined as grams of alcohol per either 100 milliliters of blood or 210 liters of breath. §577.012.1 & .2 See §577.037 which concerns the admissibility of chemical test evidence to prove either an intoxicated or illegal per se offense and also defines "percent by weight of alcohol in the blood" to mean grams of alcohol per either 100 milliliters of blood or 210 liters of breath.

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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical Test:	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	

Other:

1st Refusal-Rev-1 yr (90 dys mand) (A limited hardship license may be issued by the court after the 90 dy period.); 2nd or sub refusal (w/n 5 yrs)-Rev-1 yr (Mand) §§302.309.3(5)(e) & (f), and 577.041

A person must complete a substance abuse program before their license can be reinstated. §577.041.7

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	Intoxicated off, <u>1st off</u> Cl B Misd-not more than 6 mos; Per se off, <u>1st off</u> Cl C Misd-not more than 15 dys; Intoxicated/illegal per se offs; " <u>prior offender</u> " ¹ -Cl A Misd-not more than 1 yr; " <u>persistent offender</u> " ² -Cl D Felony-Not more than 5 yrs §§577.010, 577.012, 577.023, 558.011, 560.011 & 560.016
Mandatory Minimum Term:	"Prior" and "Persistent" Intoxicated/illegal per se offs-48 cons hrs §577.023.4 See Footnote No. 3.
Fine:	
Amount (\$ Range):	Intoxicated off, <u>1st off</u> -Not more than \$500; Per se off, <u>1st off</u> -Not more than \$300; Intoxicated/illegal per se off, " <u>prior offender</u> " ¹ -Not more than \$1,000; " <u>persistent offender</u> " ² -Not more than \$5,000
Mandatory Min. Fine (\$):	None

¹A "prior offender" is a person who has had one previous alcohol related driving offense conviction w/n 5 years of the presently charged offense. §577.023 See the Historical Note below.

²A "persistent offender" is a person who has had two (2) or more previous alcohol related driving offense convictions w/n 10 years of the presently charged offense. §577.023 See the Historical Note below.

³For a "prior" or a "persistent" offender, except for community service, a court shall neither suspend the imposition of sentence nor allow the payment of a fine in lieu of imprisonment. §577.023.4

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Mayo*, 915 S.W.2d 758 (Mo.banc 1996)(cert. den., 519 U.S. 813, 117 S.Ct. 61, 136 L.Ed.2d 23 (1996))

Historical Note: In 1993, the Missouri Legislature amended §577.023 in order to clarify the meanings of the terms "prior offender" and "persistent offender". This action abrogated a Missouri Supreme Court decision which had interpreted these terms contrary to legislative intent. *State v. Stewart*, 832 S.W.2d 911 (Mo.banc 1992)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:

Community Service:

In lieu of imprisonment, persons convicted of "Prior" and "Persistent" Intoxicated or Illegal per se offs must perform at least 10 dys of community service. §577.023.4

Restitution

(eg Victim's Fund)

(1) Victim's compensation fund. §§595.010 et seq. (2) The court may also order direct compensation by defendants to victims. §§595.200 & 595.203

Other:

For a 1st intoxicated off., the sentence may be suspended provided the defendant is placed on probation for a minimum of 2 yrs. §577.010.2
Assault. A person, who injures another while driving either while intoxicated or illegal per se, commits assault in the second degree which is a Class C felony. The sanctions for this offense are imprisonment for not more than 7 yrs and a fine of not more than \$5,000. §§558.011, 560.011 & 565.060

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Double Jeopardy on p. 3-272 and the Special Note Nos. 1 below.
Yes ≥ 0.10 BAC/BrAC¹ For Persons Under 21 Years Old (See Special Note No. 2 below.) ≥ 0.02 BAC/BrAC¹ §§302.309.3(5)(i) & 302.500 et seq. 1st Violation-Susp-30 dys^{2,3} (mand) with a limited license for an additional 160 dys (provided there has been no prior "alcohol related enforcement contact"⁴ w/n 5 yrs) §§302.309.3(5)(h) & 302.525.2(1); Subsequent Violation-Rev-1 yr^{2,5} (mand) (if there has been an "alcohol related enforcement contact"³ w/n 5 yrs) (Restricted driving privileges may be granted pending the outcome of a trial de novo in the courts on an admin. per se action. §302.535) See the Special Note on p. 3-276.
None

Other:

¹Standard: Percent by wgt. of alcohol in the blood. However, this concentration is defined to mean grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§302.500(1), 302.505.1 & 577.037.2

²Any period of admin. per se license suspension/revocation shall be credited against any period of time a person's license is suspended/revoked for a DWI offense conviction (§§577.010 & 577.012 offenses). The total license suspension/revocation period shall not exceed the longer of the two periods. §302.525.4

³*Barnes v. Director of Revenue*, 856 S.W.2d 108 (Mo.App. W.D. 1993), *Richard v. Director of Revenue*, 869 S.W.2d 913 (Mo.App. E.D. 1994), *State Ex Rel. Dir. of Revenue v. McHenry*, 861 S.W.2d 562 (Mo.banc 1993), and *Director of Revenue v. Pennoyer*, 944 S.W.2d 265 (Mo.App. E.D. 1997)

⁴The term "alcohol related enforcement contact" means either (1) an admin. per se action, (2) a refusal to submit to a chemical test under the implied consent law, or (3) a conviction for the offense of driving with an excessive alcohol concentration. The term may not include the offense of driving while intoxicated (§577.010 offenses). §302.525.3

⁵*Shelton v. Director of Revenue*, 861 S.W.2d 213 (Mo.App. W.D. 1993) & *Frieden v. Director of Revenue*, 864 S.W.2d 27 (Mo.App. S.D. 1993)

Special Note No. 1: The administrative per se law does not violate a person's constitutional right to equal protection of the laws. *Collins v. Director of Revenue*, 691 S.W.2d 246 (Mo.banc 1985)

Special Note No. 2: For administrative licensing action against a person <21 yrs old, who was operating a motor vehicle with a BAC/BrAC ≥ 0.02 , it must be established that the original stop by law enforcement officers was base on "probable cause" that the drivers committed a drunk driving offense under either §§577.010 (driving while intoxicated) or 577.012 (illegal per se BAC/BrAC ≥ 0.10).

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Sanctions Following a Conviction for a DWI Offense: (continued)

Post DWI Conviction Licensing Action: Type of Licensing Action (Susp/Rev):

Intoxicated off, 1st off-8 points¹; Per se off, 1st off-6 points^{1&2}; Intoxicated off where there was a prior Illegal Per Se off or an Illegal Per Se offense where there was a prior Intoxicated off³-Rev (12 points); 2nd off (w/n 5 yrs) of violating the laws related to driving while intoxicated-Rev (Lic. Denial) (12 points); 3rd and subsequent offs of violating the laws related to driving while intoxicated/illegal per se-Rev (Lic. Denial) (12 points). §§302.302.1 (7), (8) & (9) and 302.060(9) & (10) For persons under 21 who are convicted of any DWI offense-1st off Susp; 2nd or sub. off-Rev §577.500 et seq.

Term of License Withdrawal (Days, Months, Years, etc.):

Intoxicated off, 1st off-30 dys (plus 60 dys restricted driving privileges)⁵ §302.304.4; Per se off, 1st off-30 dys (plus 60 dys restricted driving privileges)^{2&5} §302.304.4; Intoxicated off where there was a prior Illegal Per Se off or an Illegal Per Se offense where there was a prior Intoxicated off⁶-1 yr; 2nd off (w/n 5 yrs) of violating the laws related to driving while intoxicated⁴-5 yrs §302.060(10); 3rd and subsequent offs of violating the laws related to driving while intoxicated⁴-10 yrs/Permanent⁶ §302.060(9). For persons under 21 who are convicted of any DWI offense-1st off-Susp 90 dys; 2nd or sub. off-Rev 1 yr §577.500.5, & 577.510

¹**Point System:** Under the point system, 8 points equals a suspension and 12 points equals a rev for 1 yr. §§302.302.1 and 302.304.2, .3, .4 & .5 Note: Under §302.304.3 & .4, different license suspension periods apply in the case of DWI offenders as opposed to other offenders who have accumulated points under §302.302. Sec IV under the Special Note on p. 3-276.

²License susp action would occur only if the defendant had at least 2 more points on his/her record from some other driving offense. I.e., a first illegal per se off conviction alone would not result in a license susp action. §§302.302, 302 and 302.304.4 However, if the defendant has accumulated sufficient points together with an illegal per se conviction, their license is suspended by the licensing agency for a mandatory 30 dy period which may be followed by restricted hardship driving privileges for 60 dys. §302.304.4

³I.e., a 1st Intoxicated Offense where the driver has had a previous conviction for an Illegal Per Se offense or a 1st Illegal Per Se offense where the driver has had a previous conviction for an Intoxicated Offense.

⁴**Special Note:** Sec. 302.060(9) provides that a person, who has been convicted "more than twice" of an offense "relating to driving while intoxicated", is subject to a denial of driving privileges for at least 10 yrs. The term "relating to driving while intoxicated" has been interpreted to include illegal per se offenses. *Wilson v. Director of Revenue*, 873 S.W.2d 328 (Mo.App. E.D. 1994)

⁵Under §302.304.4, the licensing agency may grant restricted driving privileges for 60 dys following the 30 dy mand. period for the purpose of employment or for attending an alcohol education/treatment program. Also, under §302.309.3(5)(a), a court or the licensing agency may grant limited driving privileges for employment, educational or medical reasons after the 30 dy mandatory period.

⁶*Appleby v. Director of Revenue*, 851 S.W.2d 540 (Mo.App. W.D. 1993)

Sanctions Following a Conviction for a DWI Offense:
(continued)

**Mandatory Minimum Term of
Withdrawal:**

1st off Intoxicated off-30 dys See Footnote No. 5 on p. 3-274. 1st Per Se off-None See Footnote Nos. 2 & 5 on p. 3-274. Intoxicated off where there was a prior Illegal Per Se off or an Illegal Per Se offense where there was a prior Intoxicated off-1 yr See Footnote No. 3 on p. 3-274. 2nd off (w/n 5 yrs) of violating the laws related to driving while intoxicated-2 yrs See Footnote No. 4 on p. 3-274. After 2 yrs, restricted driving privileges may be granted. After 5 yrs, driving privileges may be fully restored. 3rd and sub. off-3yrs/10yrs/Permanent After 3 yrs hardship driving privileges may be granted. **Important.** See the Special Note below. After 10 yrs of the revocation period have passed, a court may order the licensing agency to issued an offender a license provided the offender is no longer a threat to the public safety. Such an order can only be issued once. See the Comment below. See Footnote No. 4 on p. 3-274. §§302.060(9) & (10), 302.304, sub. 6 and 302.309, sub. 3(6). A person under 21 yrs old, who is convicted of a DWI offense, has their driver's license suspended for 90 dys for a 1st off and revoked for 1 yr for a 2nd or sub. off. A restricted lic. is available via §302.309. See the Note below. §§577.500 & 577.510

Note: I. A limited license via either a court order or licensing agency is available for employment, educational or medical purposes. Such a license cannot be issued to a person who has been convicted of a 2nd or subsequent Intoxicated offense. §302.309.3(5)(c)

II. No limited driving privileges of any type may be granted to a person who has been convicted of operating a motor vehicle while under the influence of either narcotic drugs or a controlled substance. §302.309.3(5)(d)

Comment: Even though the law is not perfectly clear, it would appear that, if a person cannot obtain a license (full driving privileges after 10 yrs via court order), they are ineligible for hardship driving privileges.

Special Note: The Missouri Supreme Court has held that a person, who has been convicted of a felony drunk driving offense, is ineligible for hardship driving privileges. Under §302.309.3(6)(a), a person may be granted such privileges unless they are "otherwise ineligible". An ineligible person, under §302.309.3(5)(b), includes a person, who has been convicted of a felony in which a motor vehicle was used. The court interpreted the term "felony" in §302.309.3(5)(b) to include any person who has been convicted of a felony drunk driving offense. As a result, hardship driving privileges cannot be granted to such a person. *Hagan v. Director of Revenue*, 968 S.W.2d 704 (Mo.banc 1998)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or drugs or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any "measurable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Finally, it is a Class B misd to drive A CMV with either BAC/BrAC/UrAC ≥ 0.04 or while under the influence of either alcohol or a controlled substance. Note: The term "controlled substance" may not apply to all drugs. §302.780(1)(3) The sanctions for this offense are imprisonment for not more than 6 mos and/or a fine of not more than \$500. §§302.309.3(5)(g), 302.700.2(2), (6), (10), (13) & (14), 302.745, 302.750, 302.755 and 302.780

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Rehabilitation:

Alcohol Education:

Intoxicated off, 1st off-Yes; Per se off-1st off-Yes Required for persons under 21 years old who have committed an alcohol offense. §577.525 See the Special Note below.

Alcohol Treatment:

Intoxicated off, 1st off-Yes; Per se off, 1st off-Yes See the Special Note below.

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Impoundment/Forfeiture. Under §82.1000, certain cities with populations over 100,000 may enact motor vehicle impoundment or forfeiture ordinances. I. A motor vehicle is subject to such action if (1) the driver has had one or more intoxicated related traffic offense convictions (including illegal per se) and (2) they are operating the vehicle while their license is in a suspended or revoked status either for an intoxicated related traffic offense or for involuntary manslaughter related to intoxicated driving. II. A motor vehicle is subject to such action if the driver has had two or more intoxicated related traffic offense convictions (including illegal per se) and they either have a BAC/BaAC ≥ 0.10 (≥ 0.02 if < 21 yrs old) or they refuse to submit to chemical test under the implied consent law. **Important:** The above actions apply to the vehicle operated by the offender irrespective of its ownership.

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

DWI Enforcement Cost. A court may require a person convicted of a DWI offense to "reimburse" either the State or local governments for the costs "associated" with the person's DWI arrest. §577.048

Ignition Interlock.¹ I. In addition to any other sanctions for either an intoxicated or illegal per se drunk driving offense, the court as a condition of probation may, in the case of a 1st offender, and must, in the case of a 2nd offender², require such a person to only operate motor vehicles that are equipped with an ignition interlock device. II. Such a requirement may also be imposed as a condition for granting limited (hardship) driving privileges under §302.309. §577.600

¹A court cannot order the use of an ignition interlock device if the cost of installing, calibrating or servicing the device would impose an "undue hardship" on the defendant. §577.602

²In the case of 2nd offenders, the court is not required to mandate the use of these devices as a condition for obtaining limited (hardship) driving privileges if the device cannot be installed within 50 miles of the county seat of the defendant's residence. §577.602(1)

Special Note: I. For either a 1st or subsequent intoxicated/illegal per se conviction, the court must order a defendant to successfully completed an alcohol or drug education or rehabilitation program. §577.049 II. For persons who have violated the administrative per se law, driving privileges cannot be restored until they have successfully completed an alcohol or drug education or rehabilitation program. §302.540.1 III. Persons < 21 yrs old, who have been convicted of any DWI offense, cannot have their driving privileges restored until they successfully complete an alcohol or drug education program. §577.520.1 IV. If a driver's license has been either suspended or revoked under the point system for a drunk driving offense, such license cannot be reinstated until the driver completes a substance abuse program. §302.302.13

Other Criminal Actions Related to DWI:

<u>Homicide by Vehicle:</u>	See Second Degree Murder below.
<u>State Has Such a Law:</u>	Yes (Cl C felony) Involuntary Manslaughter where death is caused by operating a motor vehicle while in an intoxicated condition and with criminal negligence. §565.024
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than 7 yrs §558.011
Mandatory Minimum Term:	None
Fine (\$ Range):	Not more than \$5,000 §560.011
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and	
Type of Action:	Rev (License Denial) §302.060(10)
Length of Term of	
Licensing Withdrawal:	5 yrs §302.060(10)
Mandatory Action--Minimum	
Length of License	
Withdrawal:	5 yrs §302.060(10)
Other:	Victim's compensation fund §595.010 et seq.
<u>Driving While License Suspended or Revoked</u>	
<u>Where the Basis Was a DWI Offense*:</u>	See Footnote Nos. 1 & 2.
Sanction:	
Criminal:	
Imprisonment (Term):	Not more than 1 yr (Cl A misd) §§302.302, 302.321 & 558.011
Mandatory Minimum Term	
of Imprisonment:	48 cons hrs (In lieu of imprisonment, the defendant may perform at least 10 dys (involving at least 40 hrs) of community service.) §302.321
Fine (\$ Range):	Not more than \$1,000 §560.016
Mandatory Minimum Fine:	None

¹An offender must act "with criminal negligence with respect to knowledge of the fact that his driving privilege has been canceled, suspended or revoked." §302.321.1

²I. It is a Cl A misd to operate a CMV during a CDL disqualification. The sanctions for this offense are imprisonment for not more than 1 yr, a fine of not more than \$1,000 and CDL license revocation for 2 yrs. An offender must serve either 48 con hrs of confinement or 10 dys (involving at least 40 hrs) of community service. §§302.725, 558.011.1(5) & 560.016.1(1) II. It is also a Cl A misd to operate a CMV while under a CDL out-of-service order. Again, the sanctions for this offense are imprisonment for not more than 1 yr, a fine of not more than \$1,000. However, a violator is also subject to a civil penalty of \$1,000 and the following CDL disqualification periods: 1st off-90 dys; 2nd off (w/n 10 yrs)-1 yr; and 3rd and sub off (w/n 10 yrs)-3 yrs. §§302.755, 302.756.1 558.011.1(5) & 560.016.1(1)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Second Degree Murder. A person, who causes a death while committing a drunk driving offense as a "persistent offender" (a felony offense), may be charged with and convicted of second degree felony murder. *State v. Pembleton*, 978 S.W.2d 352 (Mo.App. E.D. 1998)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Rev Under the point system-12 points §302.302.1(5)

Length of Term of License

Withdrawal Action:

1 yr §302.304.6

Mandatory Term of License

Withdrawal Action:

None Restricted hardship driving privileges may be granted. This privilege, however, may only be granted once in 5 yrs. §302.309.3(5)
Special Note: See Vehicle Impoundment/Confiscation under Sanctions Following a Conviction for a DWI Offense on p. 3-276.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §§58.445, 58.447 & 58.449

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

Yes

Pedestrian:

Yes

Other State Laws Related To Alcohol Use: (continued)Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1945) §§311.310, 311.325, 312.400 & 312.407

Minimum Age (Years) Possession:

21¹ §§311.325 & 312.407

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §537.053² A cause of action for personal injuries or death may only be brought against a liquor by the drink licensee who has been convicted of the offense of selling alcoholic beverages by the drink either to a person under 21 years old or to an obviously intoxicated individual provided such sale was the proximate cause of the injury or death. *Childress v. Sams*, 736 S.W.2d 48 (Mo.banc 1987)

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Dram Shop Actions-Social Hosts:

No Note: Prior case law has been abrogated via statute. §537.053
No *Childress v. Sams*, 736 S.W.2d 48 (Mo.banc 1987), *Andres v. Alpha Kappa Lambda Fraternity*, 730 S.W.2d 547 (Mo.banc 1987), *Stottle v. Brown Group, Inc.*, 801 S.W.2d 479 (Mo.App. S.D. 1990), & *Shelter Mut. Ins. Co. v. White*, 930 S.W.2d 1 (Mo.App. W.D. 1996)
An injured intoxicated patron may bring a cause of action for damages under the dram shop act (§537.053). Of course, the same pre-condition (i.e., a licensee's conviction for a liquor law violation) still applies. *Von Ruecker v. Holiday Inns, Inc.*, 775 S.W.2d 295 (Mo.App. E.D. 1989), cert. den. 493 U.S. 1075

Other:

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd §§311.310, 311.720, 311.880, 312.400, 312.500 & 312.510

Term of Imprisonment:

Not more than 1 yr

Fine (\$ Range):

\$50 to \$1,000

¹The appellate courts have held that, if the State charges a minor with the offense of possessing "intoxicating liquor," it must establish, that the alcoholic content of the beverage in question satisfies the definition for this beverage. *State v. Perkins*, 773 S.W.2d 237 (Mo.App. S.D. 1989), & *State v. Christ*, 975 S.W.2d 945 (Mo.App. W.D. 1998) The courts' reasons are based on the fact that there are two separate statutory provisions (with accompanying definitions) related to the possession of alcoholic beverages by person <21 yrs old. Secs. 311.325 and 312.407 respectively prohibit such persons from possession "intoxicating liquor" and "nonintoxicating beer." Sec. 311.020 defines "intoxicating liquor" as a beverage with an alcoholic content of >0.5% alcohol by volume not including "nonintoxicating beer." Sec. 312.010(2) defines "nonintoxicating beer" as beer with an alcoholic content >0.5% by volume but ≤3.2% by weight.

²Section 537.053 was held to be constitutional under both State and Federal constitutions. *Simpson v. Kilcher*, 749 S.W.2d 386 (Mo.banc 1988)

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Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Rev §§311.720 & 312.510

For licensees who sell alc. bev. over 3.2% alc. by wgt.-Length of rev. is not specified in the statute; for licensees who sell non-intoxicating beer (over 0.5% but not more than 3.2% alc. by wgt.)-1 yr rev

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd §§311.310, 311.880, 312.400, 312.500 & 312.510

Not more than 1 yr

\$50 to \$1,000

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Rev §§311.720 & 312.510

For licensees who sell alc. bev. over 3.2% alc. by wgt.-Length of rev. is not specified in the statute; for licensees who sell non-intoxicating beer (over 0.5% but not more than 3.2% alc. by wgt.)-1 yr rev

Anti-Happy Hour Law/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

No

Yes Applies to persons while they are operating a vehicle. §577.017

STATE:
General Reference:

MONTANA
Montana Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):
Types of Drugs/Drugs and Alcohol:

Under the influence of alcohol §61-8-401(1)(a)
≥0.10^{1,2} §61-8-406
Persons Under 21 Years Old ≥0.02 §61-8-410
≥0.10² §61-8-401(4)(c)³
Under the influence of (1) **Any Drug**, (2) a Dangerous Drug or
(3) Alcohol and Any Dangerous or Other Drug §61-8-401(b), (c)
& (d).
For Commercial Motor Vehicle Operators, see p. 3-286.

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

Yes⁴ §§61-8-409 & 61-8-806(1) (CMV operators)
Yes §61-8-402(1)⁵
Yes §61-8-402(1)
Yes (Criminal Cases) §61-8-404(2)⁶
None

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:
Urine:
Other:

Yes §61-8-402(1)
No
None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):

No⁷
No

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of 0.10 or more or (2) a urine alcohol concentration of 0.10 or more.

²The standards for "alcohol concentration" are (1) grams of alc. per 100 milliliters of blood or (2) grams of alc. per 210 liters of breath. §61-8-407

³The law uses the term "inferred" instead of "presumed". This "inference" is rebuttable. **Historical Note:** The State legislature amended the law in 1991 to substitute the term "inferred" for that of "presumed". This change was made to "correct" what the Montana Supreme Court apparently felt was an unconstitutional provision. In *State v. Levenen*, 799 P.2d 119 (Mont. 1990), the State supreme court held that a jury instruction, associated with the previous statutory language, created a "mandatory presumption" that unconstitutionally shifted the burden of proof of a driving while under the influence offense to the defendant.

⁴The results of a PBT test may be used as evidence in a drunk driving offense trial. §61-8-404

⁵**Special Note:** The implied consent law does not make reference to the illegal per se law (§61-8-406).

⁶This provision was held constitutional on both Federal and State grounds. *State v. Jackson*, 672 P.2d 255 (Mont. 1983)

⁷A DWI offender is not eligible for pretrial diversion. §46-16-130(3)

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Adjudication of DWI Charges:

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes Alcohol Screening §61-8-732(2)^{1&2}

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):
Other:

None

Same as for implied consent. §61-8-409(4)

None

Refusal to Take Implied Consent
Chemical Test:
Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

None

1st Refusal-Susp-6 mos (mand); 2nd or subsequent refusals (w/n 5 yrs)-Rev-1 yr (mand) No restricted probationary license can be issued. A peace officer shall seize the defendant's license and forward it to the driver licensing agency. §61-8-402³

None

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See the Special Note on p. 3-283.

Important. For offenders under 21 years old, see p. 3-285.

Imprisonment:
See the Special Note below.
Term (Day, Month, Years,
Etc.):

I. Driving While Under the Influence Offs (misd)^{4&5}: 1st Off-24 cons hrs to 6 mos; 2nd Off (w/n 5 yrs)-7 dys to 6 mos; 3rd Off (w/n 5 yrs)-30 dys to 1 yr; 4th or Sub Off (w/n 5 yrs) (felony)-6 to 13 mos §§61-8-401, 61-8-711(1), 61-8-714, 61-8-731 & 61-8-734

II. Illegal Per Se Offs (misd)⁵: 1st Off-Not more than 10 dys; 2nd Off (w/n 5 yrs)-48 cons hrs to 30 dys; 3rd Off (w/n 5 yrs)-48 cons hrs to 6 mos; 4th or Sub Off (w/n 5 yrs) (felony)-6 to 13 mos §§61-8-406, 61-8-711(1), 61-8-722, 61-8-731 & 61-8-734

Special Note: For sentence enhancement purposes, a subsequent offense under either I or II above includes a prior offense of the other. §61-8-734(1)(c)

¹A "chemical dependency assessment" is mandatory for any person convicted (1st or subsequent offense) of either driving under the influence of alcohol under §61-8-401 or illegal per se (BAC/BrAC ≥0.10) under §61-8-406.

²Note: A PSI is given if the crime carries a prison sentence of 1 yr or more. §46-18-111

³Comment: Sec. 61-8-402 clearly provides that no restricted probationary license can be issued following susp/rev for an implied consent law violation. However, it may be possible to "stay" any licensing action if the person participates in a driver rehab/improvement program. §61-2-302 See Footnote No. 2 on p. 3-285.

⁴Driving While Under the Influence (alcohol or drugs) offenses except illegal per se (BAC/BrAC ≥0.10).

⁵Imprisonment term can be served in a "facility" other than a jail. §61-8-734(2)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:

III. Neg. Veh. Assault (misd)¹-Not more than 1 yr §§45-2-101(41) and 45-5-205(1) & (2)

IV. Neg. Veh. Assault (felony)²-Not more than 5 yrs §§45-2-101(22) & 45-5-205(3)

I. Driving While Under the Influence Offs:³ 1st Off-24 cons hrs⁴ must be served in the county jail and cannot be served as "home arrest" (may only be suspended for the defendant's physical and mental well-being); 2nd Off-3 dys,⁴ 48 con hrs must be served in the county jail and cannot be served as "home arrest" (may not be suspended except for the defendant's physical or mental well-being); 3rd Off-10 dys,⁴ 48 hrs must be served in the county jail and cannot be served as "home arrest"; 4th or Sub Off (felony)-6 mos §§61-8-714, 61-8-731 & 61-8-734

II. Illegal per se offs³: 1st Off-None; 2nd & 3rd Offs-48 con hrs must be served in the county jail and cannot be served as "home arrest"; 4th or Sub Off (felony)-6 mos §§61-8-722, 61-8-731 & 61-8-734

III. Neg. Veh. Assault (misd)-None

IV. Neg. Veh. Assault (felony)-None

Fine:

Amount (\$ Range):

I. Driving While Under the Influence Offs: 1st Off-\$100 to \$500; 2nd Off (w/n 5 yrs)-\$300 to \$500; 3rd Off (w/n 5 yrs)-\$500 to \$1,000; 4th or Sub. Off (w/n 5 yrs) (felony)-\$1,000 to \$10,000 §§61-8-401, 61-8-711(1), 61-8-714, 61-8-731 & 61-8-734

II. Illegal Per Se Off: 1st Off-\$100 to \$500; 2nd Off (w/n 5 yrs)-\$300 to \$500; 3rd Off (w/n 5 yrs)-\$500 to \$1,000; 4th or Sub. Off (w/n 5 yrs) (felony)-\$1,000 to \$10,000 §§61-8-711(1), 61-8-722, 61-8-731 & 61-8-734

III. Neg. Veh. Assault (misd)-Not more than \$1,000 §45-5-205(2)

IV. Neg. Veh. Assault (felony)-Not more than \$10,000 §45-5-205(3)(a)

None

Mandatory Min. Fine (\$):

¹Negligent Vehicle Assault-A person commits a misd if they cause body injury to another person while driving while under the influence of alcohol, a dangerous drug, any drug or any combination of these.

²Negligent Vehicle Assault-A person commits a felony if they cause serious body injury to another person while driving while under the influence of alcohol, a dangerous drug, any drug or any combination of these.

³See Home Detention under Miscellaneous Sanctions on p. 3-286.

⁴The incarceration sanction may be extended up to the maximum allowable for this offense pending the successful completion of a chemical dependency assessment, education or treatment program. §61-8-714(1), (2) & (3)

Special Note: For sanction enhancement purposes for either driving while under the influence or illegal per se, a prior offense includes a conviction for either offense. §61-8-734

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other Penalties:

Community Service:

Yes Imposed as part of deferred sentencing. §46-18-201(1)(a)(ix). Even though §46-18-201(1)(a) provides for community service as part of deferred sentencing, this section also provides that the court is not to defer the imposition of the of sanctions (e.g., mand imprisonment) for drunk driving offenses.

Restitution

(eg Victim's Fund)

Yes (1) If a person has suffered a pecuniary loss as a result of the defendant's illegal actions, the court must order the defendant pay restitution to such person. A defendant may be ordered to participate in community service if they are financially unable to pay restitution. §46-18-241 (2) A victim can also receive compensation from the State's Victims' Compensation Fund. §53-9-101 et seq. (3) Persons convicted of serious bodily negligent vehicle assault shall be ordered to pay restitution. §34-5-205(3)(b)

Other:

Fourth or Subsequent Offense Probation. A person, who has been convicted a fourth or subsequent time for any drunk driving offense, must be placed on probation for not less than 1 yr nor more than 4 yrs. §61-8-731(1)(b)

Surcharges. The following surcharges are imposed: For any misd offense-\$15; for any felony offense, \$20 or 10% of the fine imposed whichever is greater; and, in addition, for any drunk driving offense conviction under either §61-8-401 (the regular DWI offense) or §61-8-406(the illegal per se offense at 0.10), \$10. These surcharges are in addition to any fine sanction. §46-18-236(1)(a), (b) & (c) and (3)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

None

Under §§61-5-206 & 61-5-208, a person's license can be susp for not more than 1 yr if they are involved in an accident resulting in either a death, personal injury or serious property damage. Such action may be taken without a preliminary hearing.

Post DWI Conviction Licensing Action:

Important. I. For Persons Under 21 and 18 Years Old, see p. 3-285. II. See **Ignition Interlock** under Miscellaneous Sanctions on p. 3-286.

Type of Licensing Action

(Susp/Rev):

All Drunk Driving Offs^{1&2}: 1st Off-Susp; 2nd off (w/n 5 yrs)-Rev; 3rd and subsequent off (w/n 5 yrs)-Rev Neg. Veh. Assault-Rev §§61-5-205(2) & (7) and 61-5-208

Term of License Withdrawal

(Days, Months, Years, etc.):

All Drunk Driving Offs¹: 1st Off-6 mos; 2nd off (w/n 5 yrs)-1 yr; 3rd and subsequent off (w/n 5 yrs)-1 yr Neg. Veh. Assault-1 yr §§61-5-205(2) & (7) and 61-5-208

¹Includes illegal per se offs.

²Under §61-11-203(2)(d), a person receives 10 points on their driving record for either a regular DWI or an illegal per se off conviction.

Sanctions Following a Conviction for a DWI Offense:
(continued)

**Mandatory Minimum Term of
Withdrawal:**

All Drunk Driving Offs¹: 1st Off-None^{3,4}; 2nd and subsequent off (w/n 5 yrs)-See Footnote Nos. 2 & 3 and the Special Note under Alcohol Education below. Neg. Veh. Assault-See Footnote Nos. 2 & 3.
Important! See **Ignition Interlock** on p. 3-286.

**Other:
Rehabilitation:
Alcohol Education:**

Yes 1st and sub offs^{4,5}Mandatory chemical education dependency course §61-8-732

Special Note: Under §61-5-208(2), for 2nd and sub. offs (w/n 5 yrs), a person's license is rev for 1 yr or until they complete an alcohol education/treatment program whichever is longer.

Alcohol Treatment:

Yes 1st off^{4,5}-If an assessment indicates the need, an offender must be ordered to take a chemical dependency treatment program. 2nd or sub offs^{4,5}-A chemical dependency treatment program is mandatory §61-8-732

**Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:**

Vehicle Forfeiture. For a 3rd or subsequent driving while under the influence offense or illegal per se offense (w/n 5 yrs), the driver's vehicle must be forfeited. §61-8-733

¹Includes illegal per se offs.

²A person, who has had their driving privileges susp or rev, may be issued a restricted probationary license and have such the susp/rev action stayed, if they participate in a driver rehabilitation or improvement program. A person is eligible to participate in such a program if they meet the following conditions. (1) They are subject to susp/rev because of a violation of the traffic laws or (2) they have (i) completed 3 mos of a 1 yr rev or (ii), for a 2nd or subsequent drunk driving offense (any type), are in "compliance with the **ignition interlock**" restrictions or (3) have completed 1 yr of a 3 yr rev. In addition, they must otherwise met the requirements for "reobtaining" a driver's license. §61-2-302 and Administrative Rules of Montana 23.3.231

³A court may recommend that a restricted probationary license be issued in lieu of a susp on the condition that the person attends, if available, an alcohol treatment program. §61-11-101(2) & Administrative Rules of Montana 23.3.231

⁴Driving while under the influence and illegal per se offenses.

⁵For driving while under the influence and illegal per se offenses, a restricted license may be issued on condition that the offender participates in an alcohol education or treatment program. §61-11-101(2) See Footnote No. 2 above.

Sanctions Against Persons Under 21 Years Old Who are Operating a Motor Vehicle with a BAC/BrAC ≥ 0.02 . 1st offense-A fine of not less than \$100 nor more than \$500 and license suspension for 90 dys (30 dys mand if the offender is < 18 yrs old). 2nd offense-A fine of not less than \$200 nor more than \$500; license suspension for 6 mos (30 dys mand if the offender was < 18 yrs old); and, if the offender was > 18 yrs old, an incarceration term of not more than 10 dys. 3rd or subsequent offense-A fine of not less than \$300 nor more than \$500; license suspension for 1 yr (30 dys mand if the offender was < 18 yrs old); and, if the offender was > 18 yrs old, an incarceration term of not less than 24 con hrs nor more than 60 dys. In addition to these sanctions, an offender must comply with the chemical dependency education and chemical dependency treatment provisions of §61-8-732. §61-8-410 **Comment:** Offenders < 18 years old, who have a BAC/BrAC ≥ 0.10 , could also be subject to the sanctions below.

Sanctions Against Persons Under 18 Years Old Who Violate Either the Driving Under the Influence or Illegal Per Se Laws. Under separate provisions of law, offenders < 18 yrs old are subject to the following sanctions if the operate a motor vehicle either while under the influence of alcohol or drugs or with BAC/BrAC ≥ 0.10 (illegal per se). (1) A fine may be imposed; this fine cannot exceed that which could be imposed on an adult. (2) Their license may be susp/rev; the period of susp/rev is set by the court. And, (3) The vehicle owned by or used by the minor may be impounded for 60 days. An offender < 18 yr old cannot be incarcerated for these offenses. §61-8-723

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Sanctions Following a Conviction for a DWI Offense: (continued)

Terms Upon Which Vehicle
Will Be Released:
Other:

Miscellaneous Sanctions
Not Included Elsewhere:

Home Detention. Except for the initial 24 hrs of a 1st off¹ or the initial 48 hrs of a 2nd or sub. off², an offender may be allowed to serve their incarceration term under "home arrest". §61-8-734(3)

Incarceration Costs. A defendant may be allowed to serve a term of imprisonment in a non-jail facility such as a prerelease center. Except for 4th or subsequent offenses, an offender, if financially able, must pay the expenses for such alternative incarceration. §61-8-734(2)

Ignition Interlock. I. **Discretionary Action.** For a 1st offense, via an order, a court may restrict an offender to only operate motor vehicles that are equipped with "ignition interlock devices" provided the defendant had a blood alcohol concentration ≥ 0.18 . II. **Mandatory Action.** For either a 2nd or subsequent offense, a defendant, who is issued a "probationary license", is restricted to operating motor vehicles that equipped with "ignition interlock devices". §61-5-208(2)

III. **Important.** Licensing action against a person for a drunk driving offense is stayed while they are participating in the "ignition interlock" program. §61-5-208(3) The duration of this restriction is equal to the period of license suspension or revocation. §61-8-442

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

No See Footnote No. 3.

¹Driving while under the influence offenses.

²Includes all drunk driving offenses

³Even though this State does not have a vehicle homicide statute, it nevertheless, provides for a 1 yr license rev following a conviction for manslaughter resulting from the operation of a motor vehicle. §61-5-205(1) There is a mandatory revocation period of 3 mos. After this 3 months, a probationary restricted license may be issued for the remaining portion of the revocation period if a person complies with the terms of a driver improvement program. §61-2-302(9)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "suspended" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they either (1) have an "alcohol concentration" ≥ 0.04 (Note: See Footnote No. 2 on p. 3-281.), (2) are convicted of violating the drunk driving laws (§§61-8-401 or 61-8-406) or (3) refuse to submit to a chemical test for an alcohol concentration. For a subsequent violation of operating a CMV with an "alcohol concentration" ≥ 0.04 , the "suspension" is for life with 10 yrs mand as may be allowed by Federal regulations. For a subsequent refusal to submit to a chemical test, the "suspension" is for life with 10 yrs mand as may be allowed by Federal regulations. For a second drunk driving offense conviction associated with operating a CMV, the "suspension" is for life except as allowed by Federal regulations. For a third drunk driving offense conviction associated with operating a CMV, the "suspension" is for life (mand). A person who operates a CMV with "any measurable amount or detected presence of alcohol" must be placed "out-of-service" for 24 hours. §§61-1-134, 61-5-208(6), 61-8-805, 61-8-806 & 61-8-811.

Other Criminal Actions Related to DWI: (continued)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Length of Term of

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

Other:

Driving While License Suspended or RevokedWhere the Basis Was a DWI Offense*:

Sanction:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term

of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared an

Habitual Offender:

See Footnote Nos. 1 & 2.

Misd 2 dys to 6 mos §61-5-212**2 dys****Not more than \$500 §61-5-212**

A surcharge of \$15 is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1)(a) & (3)

None**Susp or rev §61-5-212**

The period of such susp or rev is extended for an additional like period. §61-5-212

Note: There appears to be no mandatory licensing action. A restricted license may be issued. §61-2-302(9)

Yes §61-11-201 et seq.

Accumulation of 30 points in a 3 yr period Note: A DWI offense = 10 points. §61-11-203(2)

¹**CMV Operators.** I. The sanctions given for driving while suspended or revoked also apply to CDL operators who drive a CMV while their privileges to operate such a vehicle are suspended. §61-5-212(1) II. A CMV operator, who violates an out-of-service order is subject to the following CDL suspensions: 1st off-6 mon (mand); 2nd off (w/n 10 yrs)-1 yr (mand); 2nd off (w/n 10 yrs) while transporting hazardous materials or more than 15 passengers-3 yrs (mand); and, 3rd off (w/n 10 yrs)-3 yrs mand. §61-8-812

²A first offender, who had their license suspended or revoked for any drunk driving related offense, must have the vehicle owned and operated by them seized or rendered inoperable for 30 dys.

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

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Other Criminal Actions Related to DWI: (continued)

Term of License Rev While Under Habitual Offender Status:	Rev 3 yrs If a driver participates in a driver rehabilitation and improvement program, a restricted probationary license may be issued after 1 yr of the revocation period has passed. §§61-2-302(2)(a)(ii) & (9), 61-11-211 and 61-11-212
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Misd §§61-11-201 & 61-11-213
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not less than 14 dys nor more than 1 yr
Mandatory Minimum Term of Imprisonment:	14 dys ¹
Fine (\$ Range):	Not more than \$1,000 A surcharge of \$15 is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1)(a) & (3)
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	Yes License revocation is extended for an additional period of 1 yr. §61-11-213

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21² (Year Eff: 1987) §§16-3-301(3)(a) & (4) & 16-6-305(b)

Minimum Age (Years) Possession:

21³ §45-5-624(1)(b) There is an employment exemption.

Minimum Age (Years) Consumption:

21³

¹A 14 dy jail sanction appears to be mandatory. However, the law is not specific on this point.

²The law does not make it illegal for a person under 21 years old to purchase alcoholic beverages. However, it is illegal for such a person to knowingly attempt to purchase an "intoxicating substance". §45-5-624(3) Note: It is also a crime for a minor to "misrepresent" their age in order to obtain alcoholic beverages. §16-3-301(4)

³The law makes it an offense for certain persons to have in their possession an "intoxicating substance". For persons under 21 years old, this includes alcoholic beverages. Indirectly, the law appears to provide that the offense of possession of an alcoholic beverage includes consumption. First, under §45-5-624(1)(a), a person under 19 years old commits the "offense of possession of an intoxicating substance" if they either possess or consume such substance. Second, under §45-5-624(1)(b), a person under 21 years old commits the "offense of possession of an intoxicating substance" if they possess an alcoholic beverage. However, subsection (1)(b) does not restate the provisions of subsection (1)(a) by clearly providing that possession also includes consumption. Instead, subsection (1)(b) states that "a person does not commit the offense if the person consumes or gains possession of the beverage" in a lawful manner. Accordingly, the law appears to only indirectly make consumption of an alcoholic beverage by a person under 21 years old illegal.

Other Criminal Actions Related to DWI: (continued)Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §27-1-710^{1,2&3} Note: The case law indicated below may have been abrogated by this statute.

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes *Hehring v. La Counte*, 712 P.2d 1329 (Mont. 1986), &
Bissett v. DMI, Inc., 717 P.2d 545 (Mont. 1986) Note: These
cases may have been indirectly abrogated by §27-1-710.

Dram Shop Actions-Social Hosts:
Other:

Yes **Limited** §27-1-710 See Footnote No. 2.
None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd §§16-3-301(3)(b), 16-6-304, 16-6-314 & 46-18-212(3)(b)
Not more than 6 mos

Term of Imprisonment:

Not more than \$500⁴ Note: A civil fine may be assessed by the
licensing agency and such fine is not to exceed \$1,500.
§16-4-406

Fine (\$ Range):

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes **Susp or rev** §16-4-406

Length of Term of License Withdrawal:

Not be more than 3 mos, the period of rev is not specified in the
statute

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misd 16-3-301(3)(a), 16-6-305, 16-6-314 & 46-18-212

Term of Imprisonment:

Not more than 6 mos

Fine (\$ Range):

Not more than \$500⁴ Note: A civil fine may be assessed by the
licensing agency and such fine is not to exceed \$1,500.
§16-4-406

¹Licenses are liable for the injuries caused by patrons who are either under the legal drinking age (i.e., <21 yrs old) or "visibly intoxicated". Note: The dram shop law also applies to innkeepers. §70-6-513

²Under §§16-6-305(1)(b) and 27-1-710, a person over 21 can be held liable for the tortious actions of a minor if such person sold/gave alcoholic beverages to the minor in an "intoxicating quantity." An "intoxicating quantity" is an amount of alcohol that could produce either (1) a BAC of 0.05 or more or (2) substantial, visible mental or physical impairment. §16-6-305(1)(c)

³*Jevning v. Skyline Bar*, 726 P.2d 326 (Mont. 1986)

⁴A surcharge of \$15 is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1)(a) & (3)

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Other Criminal Actions Related to DWI: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Anti-Happy Hour Laws/Regulations:

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes Susp or rev §16-4-406

The period of susp may not be more than 3 mos; The period of rev. is not be specified in the statute.

No

Limited¹ §16-3-106(2)

Limited¹ Driver and passengers §16-3-106(2)

¹The law states that "no common carrier or any other person shall open, break, or allow to be opened or broken any package or vessel containing liquor or drink or allow to be drunk or used any liquor there from while being carried or conveyed." **Comment:** Because this language appears in the alcoholic beverage control provisions of the Montana Code, this law may be limited only to persons who are operating "common carriers".

STATE:

General References:

NEBRASKA

Revised Statutes of Nebraska &
Nebraska Administrative Code (NAC)

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Under the influence of alcoholic liquor §60-6,196(1)(a)
≥0.10^{1&2} §60-6,196(1)(b) & (c)
Persons Under 21 Years Old-BAC/BrAC ≥0.02 but <0.10²
Traffic Infraction (Civil Offense) §§60-6,211.01 & 60-672

Presumption (BAC):
Types of Drugs/Drugs and Alcohol:
Other:

None
Under the influence of **Any Drug** §60-6,196(1)(a)
For Commercial Motor Vehicle Operators, see p. 3-295.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes §§60-6,197(3) & 60-6,211.02(2)

Yes³ §60-6,197(2)

Yes §60-6,197(1)

Yes §60-6,197(11) (Criminal Cases) & *State v. Romell*, 204 N.W.2d 573 (1973)

A driver, who has been involved in an accident and where there is reasonable grounds that the driver is DWI, may be required to submit to a chemical test to determine if they have either alcohol or drugs in their system. Injury or death is not a prerequisite for this requirement.⁴ §60-6,197(9)

Other Information:

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:
Urine:
Other:

Yes §60-6,197(1)

Yes §60-6,197(1)

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No Pretrial diversion of DWI cases is prohibited. §29-3604
No

Yes⁵ Alcohol screening is required for either a 1st or subsequent offender. §60-6,196(8)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.

²Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §§60-6,196(1) & 60-6,211.01

³Probable cause (not an arrest) is need to prior to requesting a person under 21 yrs old to submit to a test for evidence related to a violation of §60-6,211.01 (driving with a BAC/BrAC ≥0.02). §60-6,211.02(2)

⁴A surviving driver (or pedestrian) 16 years old or older, who is involved in an accident where there has been a fatality, shall be required to submit to a chemical test of their blood, breath or urine in order to determine the amount of alcohol or drugs in their body. The tests' results and the identity of the persons tested are considered public records and are subject to being disclosed. §§60-6,103 & 60-6,104

⁵"A court may order a presentence investigation in any case." §29-2261(2) & (3)

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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):

Administrative Licensing Action
(Susp/Rev):
Other:

Class V misd **\$100 fine**, no imprisonment §§28-106 & 60-6,197(3)

None

Persons Under 21 Years Old. A person under 21 yrs old, who refuses to submit to a preliminary breath test to determine if they were driving with a BAC/BrAC ≥ 0.02 , may be arrested for a violation of §60-6,211.01. §60-6,211.02(2)

Refusal to Take Implied Consent
Chemical Test:
Criminal Sanction (Fine/Jail):

Important: See Persons Under 21 Years Old on p. 3-293.

1st off (Cl W misd)-Not more than **\$500/60 dys**; 2nd off (w/n 12 yrs)(Cl W misd)-Not more than **\$500/90 dys**; 3rd off (w/n 12 yrs)(Cl W misd)-Not more than **\$600/1 yr**; 4th or sub. off (w/n 12 yrs)(Cl IV felony)-Not more than **\$10,000/5 yrs** See Footnote No. 1 on p. 3-293. §§28-105, 28-106 & 60-6,197

Mandatory Sanctions:

I. If probation is not granted: 1st off-**\$400/7 dys**¹; 2nd off (w/n 12 yrs)-**\$500/30 dys**¹; 3rd off (w/n 12 yrs)-**\$600/90 dys**¹; 4th or sub. off (w/n 12 yrs)-**10 dys** §§28-106 & 60-6,197(4)

II. If probation is granted: 1st off-**\$400**; 2nd off (w/n 12 yrs)-**\$500/5 dys or 240 hrs of community service**¹; 3rd off (w/n 12 yrs)-**\$600/10 dys or 480 hrs community service**¹; 4th or sub off (w/n 12 yrs)-**\$1,000/10 dys or 480 hrs community service**¹ §§28-106 and 60-6,197(4) See the Comment on p. 3-293.

Administrative Licensing Action
(Susp/Rev):

I. The following revocations are mandatory if probation is not granted:³ 1st off-**Rev 6 mos**; 2nd off-**Rev 1 yr**; 3rd and sub. off-**Rev 15 yrs**² §§28-106 & 60-6,197

II. If probation is granted, the following mandatory revocations must be imposed:³ 1st off-**Rev 60 dys**; 2nd off-**Rev 1 yr**; 3rd and sub. off-**Rev 1 yr** §§28-106 & 60-6,197

III. Administrative action⁴: 1st and sub. refusals-**Rev 1 yr** (mand) A person is not eligible to operate a motor vehicle equipped with an **ignition interlock device** until this revocation period is completed. §60-6,206 & 247 NAC §026

Important. See Immobilization and Ignition Interlock on p. 3-296.

¹See Footnote No. 1 on p. 3-293 concerning whether minimum mandatory sentences must be served consecutively.

²Reduced to 7 yrs provided the person (1) has completed a chemical dependency program, (2) has not been convicted of either a DWI or implied consent offense, (3) has abstained from the excessive consumption of alcoholic beverages and (4) is not under suspension or revocation for any other reason. §60-6,209

³These revocations are based upon a conviction under §60-6,197. Revocations cannot run concurrently with jail sanctions. §60-6,197(4)(a)(¶1), (4)(b)(¶1), (4)(c)(¶1) & (4)(d)(¶1)

⁴This action by the licensing agency is independent of any licensing action that may be taken by the courts. A person, who is subject to this administrative action, is not eligible for employment (hardship) driving privileges under §60-4,130.

Sanctions for Refusal to Take Implied Consent
Chemical Test: (continued)

Other:

Persons Under 21 Years Old. A person under 21 yrs old, who refuses to submit to a chemical test to determine if they have BAC/BrAC ≥ 0.02 but < 0.10 , commits a Traffic Infraction. Sanctions: Jail-None; fine-1st off Not more than \$100, 2nd off (w/n 1 yr) not more than \$200, 3rd and sub off (w/n 1 yr) not more than \$300. Admin. Action. For either a 1st or sub offense-90 dys license "impoundment" Restricted driving privileges for employment are available. §§60-672, 60-689, 60-6,211.02 & 60-6,211.03 The driver licensing record for this admin. action must be expunged after 120 dys. §60-6,211.06(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

See the Comment below and Double Jeopardy on p. 3-294.

1st off (Cl W misd)-Not more than 60 dys; 2nd off (w/n 12 yrs)(Cl W misd)-Not more than 90 dys; 3rd off (w/n 12 yrs)(Cl W misd)-Not more than 1 yr; 4th and sub. offs (w/n 12 yrs)(Cl IV felony)-Not more than 5 yrs §§28-105, 28-106 & 60-6,196 DWI w/serious bodily injury-Cl IV Felony-Not more than 5 yrs §§28-105 & 60-6,198

Mandatory Minimum Term:

Persons Under 21 Years Old (≥ 0.02 but < 0.10)-None

I. If probation is not granted: 1st off-7 dys¹; 2nd off (w/n 12 yrs)-30 dys¹; 3rd off (w/n 12 yrs)-90 dys¹; 4th or sub. off (w/n 12 yrs)-10 dys¹ §§28-106 and 60-6,196(2)

II. If probation is granted: 1st off-None; 2nd off (w/n 12 yrs)-5 dys¹; 3rd or sub. off (w/n 12 yrs)-10 dys¹ §§28-106 & 60-6,196(2) DWI w/serious bodily injury-None

Fine:

Amount (\$ Range):

1st off-\$500; 2nd off (w/n 12 yrs)-\$500; 3rd off (w/n 12 yrs)-\$600; 4th and subsequent offs (w/n 12 yrs)-\$10,000; DWI w/serious bodily injury-Cl IV Felony-Not more than \$10,000 §§28-105 & 60-6,198

Persons Under 21 Years Old (≥ 0.02 but < 0.10)-1st off-Not more than \$100, 2nd off (w/n 1 yr)-Not more than \$200, 3rd and sub. off (w/n 1 yr)-Not more than \$300 §60-689

¹If an offender is not placed on probation, the mand. min. period of incarceration would be "straight" or consecutive jail time. There is no statutory authority for the court to order "intermittent incarceration". However, if the offender is placed on probation, the court does have the statutory authority to grant such intermittent sentence. Thus, the minimum mandatory sentence under probation may not have to be served consecutively. *State v. Salyers*, 480 N.W.2d 173 (Neb. 1992), *State v. Peters*, 435 N.W.2d 675 (Neb. 1989), & *State v. Texel*, 433 N.W.2d 541 (Neb. 1989)

Comment: The court does not have to exercise its discretion to suspend a sentence and grant probation in either DWI or implied consent refusal criminal cases. If the court does not exercise this discretion, it must impose the minimum mandatory sanctions in §§28-106. Of course, if this discretion is exercised, §28-106 mandatory sanctions do not have to be imposed. However, the court is required to impose the minimum mandatory sanctions associated with the granting of probation in §§60-6,196 & 60-6,197. *State v. Soe*, 366 N.W.2d 439 (Neb. 1985), *State v. Schutz*, 378 N.W. 165 (Neb. 1985), & *State v. Stasmy*, 395 N.W.2d 492 (Neb. 1986)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Min. Fine (\$):

I. If probation is not granted: 1st off-\$400; 2nd off (w/n 12 yrs)-\$500; 3rd off (w/n 12 yrs)-\$600; 4th or sub. off (w/n 12 yrs)-None §§28-106 and 60-6,196

II. If probation is granted: 1st off-\$400; 2nd off-\$500; 3rd off-\$600; 4th or sub off-\$1,000 §§28-106 & 60-6,196(2)

DWI w/serious bodily injury-None

Other Penalties:

Community Service:

Yes I. As an alternative to incarceration if probation is granted, an offender is required to perform the following periods of community service: 2nd off (w/n 12 yrs)-Not less than 240 hrs (mand); 3rd or sub off (w/n 12 yrs)-Not less than 480 hrs (mand) §60-196(2)

II. A criminal law violator may be sentence to perform community service. However, community service cannot be used either as a substitute for mand jail or fine or in cases where there is serious bodily injury. §29-2278 See §29-2279 for the length of community service.

Restitution

(eg Victim's Fund)

I. A defendant may be ordered to pay restitution to a victim. §29-2280 II. Victims' compensation fund §81-1801 et seq.

Other:

Driver Education Program. Persons must attend and successfully complete a driver's education program of at least 8 hrs duration. §60-4,183

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Double Jeopardy below.

Yes ≥0.10 (BAC/BrAC See Footnote No. 2 on p. 3-291.) §§60-6,205 & 60-6,206 1st violation-Rev 90 dys (30 dys mand¹) A person is eligible for employment (hardship) driving privileges after the 30 dy mand period (but not for the operation of a CMV). Sub. violation (w/n 12 yrs)-Rev 1 yr¹ (mand) 247 NAC §026²

If DWI charges are not filed or if the driver is found not guilty of such charges, the admin. per se proceeding is either dismissed or if the proceeding has resulted in revocation, the revocation is cancelled and the license is reinstated. §60-6,206(4)

Other:

None

¹Following the 30 dy mand rev period, either employment driving privileges may be granted or driving privileges may be granted with the condition that the offender only operate motor vehicles that are equipped with an "ignition interlock" device. For subsequent violators, the entire 1 yr revocation period is mandatory. §§60-4,118(3)(a) & 60-6,206(2)

²Regulation 247 NAC §026 also provides that a person is ineligible for a restricted (hardship) license if they are a subsequent violator.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Hansen*, 542 N.W.2d 424 (Neb. 1996), & *State v. Young*, 530 N.W.2d 269 (Neb.App. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

Rev^{1&2} §§60-424 & 60-6,196 Persons Under 21 Years Old
≥0.02 but <0.10-Impoundment §60-6,211.02(3)

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-6 mos; 2nd off (w/n 12 yrs)-1 yr; 3rd & sub. off (w/n 12 yrs)-15 yrs³ §60-6,196 DWI w/serious bodily injury-Cl. IV
Felony-15 yrs §60-6,198(1) Persons Under 21 Years Old ≥0.02
but <0.10-30 dys⁴ (Driving privileges are available for
employment.) §§60-6,211.02(3) & 60-6,211.03(2)

Mandatory Minimum Term of
Withdrawal:

If probation is not granted: 1st off-6 mos; 2nd off (w/n 12 yrs)-1 yr; 3rd & sub. off (w/n 12 yrs)-7 yrs³ §60-6,196
If probation is granted: 1st off-60 dys; 2nd off (w/n 12 yrs)-1 yr; 3rd & sub. off (w/n 12 yrs)-1 yr §60-6,196 & *State v. Matthews*, 465 N.W.2d 763 (Neb. 1991) However, see the Comment below for possible exemptions. DWI w/serious bodily injury-Cl. IV Felony-60 dys §60-6,198(1)
Special Note: Any period of rev. imposed for DWI off. conviction shall be reduced by any rev. period imposed for an admin. per se action. §60-6,196(5)

¹License revocation under the point system: 1st & 2nd DWI off-6 points; 3rd DWI off-12 points. Twelve (12) or more points w/n a 2 yr period from all traffic offenses requires revocation for at least 6 mos (or longer as the court may direct). A person is eligible for employment or medical hardship driving privileges for the entire rev. period. §§60-4,129, 60-4,182 & 60-4,183

²Revocations cannot run concurrently with jail sanctions.

³Reduced to 7 yrs provided the person (1) has completed a chemical dependency program, (2) has not been convicted of either a DWI or implied consent offense, (3) has abstained from the excessive consumption of alcoholic beverages and (4) is not under suspension or revocation for other reasons. §60-6,209

⁴The driver licensing record for this offense must be expunged after 90 dys. §22(1) of Legislative Bill 309 enacted in 1998.

Comment: Secs. 60-6,196(5) & 60-6,206(2) appear to give certain persons, who have been convicted of two or more DWI offenses, a chance to obtain employment (hardship) driving privileges. These sections provide that a person, who is a 1st admin. per se law violator, is eligible for an employment driving permit after a 30 day revocation period. This privilege appears to be available to a 1st admin. per se law violator notwithstanding the fact that they may have been convicted of a 2nd or subsequent DWI offense. Read carefully the language in the second sentence of §60-6,196(5). Such convictions would normally subject a person to mand lic rev periods far longer than 30 days.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 100 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§60-4,138, 60-4,163, 60-4,164 & 60-4,168 **Historical Note:** The law requiring CDL operators to submit to a urine test for alcohol concentration via implied consent was repealed. §60-4,164(1) as amended by §6 of Legislative Bill 323 enacted in 1996

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Rehabilitation:

Alcohol Education:

Yes In addition to any other sanction, a DWI offender may be required to attend an alcoholism or drug treatment program as a condition of probation. §60-6,196(8)

Yes See Alcohol Education above.

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

No

Immobilization. See Ignition Interlock below. A person, who has been convicted of either a 2nd or subsequent drunk driving/implied consent refusal offense (w/n 12 yrs), must have all of the motor vehicles they own "immobilized" for not less than **5 dys nor more than 8 mos.** However, a co-owner of the vehicle may have the vehicle release to them if there is either a need to use such vehicle to continue employment or for the well-being of the co-owner's children or parents. §60-6,197.01(1)(a) & (1)(b)(i)

Miscellaneous Sanctions

Not Included Elsewhere:

Ignition Interlock.¹ The court may order a person, who has been convicted of either a 2nd or subsequent drunk driving/implied consent refusal offense (w/n 12 yrs), as an alternative to vehicle immobilization, to have all of the vehicles owned by them equipped with ignition interlock devices. This requirement must last for not less than **6 mos** starting at the end of any license revocation period. One yr of the license revocation period must be completed before any ignition interlock devices can be installed. §60-6,197.01(2)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes (1) CI I Misd (unintentional death caused while operating a motor veh in violation of law except as noted); (2) CI IV Felony (if homicide was the result of DWI, reckless driving or willful reckless driving); (3) CI III Felony (death as a result of DWI where the defendant has had a prior DWI offense conviction) §§28-105, 28-106, & 28-306

Sanctions:

Criminal Sanction:

Imprisonment (Term):

CI I Misd-not more than **1 yr**; CI IV Felony-not more than **5 yrs**;
CI III Felony-not more than **20 yrs**

CI III Felony-**1 yr**

Mandatory Minimum Term:

Fine (\$ Range):

CI I Misd-not more than **\$1,000**; CI IV Felony-not more than **\$10,000**; CI III Felony-not more than **\$25,000**

Mandatory Minimum Fine:

None

¹Under §60-6,211.05, a DWI or implied consent law offender, who has been placed on probation, may be ordered to only operate motor vehicles that are equipped with "ignition interlock" devices.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:
Licensing Authorized and
Type of Action:

CI I Misd-Rev¹; CI IV Felony-Rev; CI III Felony-Rev (A person must also attend and successfully complete a driver's education course of at least 8 hrs duration. §60-4,183) §§28-306(3)(b) & (c), 60-424, 60-4,182 and 60-4,183

Length of Term of
Licensing Withdrawal:

(1) CI I Misd Offense-6 mos from the date of revocation or after the date of release from confinement whichever is later.¹ (2) CI IV Felony Offense-15 yrs The rev. shall not run concurrently with any jail term. (3) CI III Felony Offense-60 dys to 15 yrs The rev. shall not run concurrently with any jail term.

Mandatory Action--Minimum
Length of License
Withdrawal:

(1) CI I Misd Offense-None An employment driving permit may be issued. §§60-4,129 & 60-4,183 (2) CI IV Felony Offense-60 dys and the rev. shall not run concurrently with any jail term. §28-306(3)(b) (3) CI III Felony Offense-60 dys and the rev. shall not run concurrently with any jail term. §28-306(3)(c)

Other:

None

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense*:

See Footnote Nos 2 & 3 and the Special Note below.

Sanction:

Criminal:

Imprisonment (Term):

1st & sub. offs-CI III Misd-Not more than 3 mos §§28-106 & 60-4,108

Mandatory Minimum Term
of Imprisonment:

None

Fine (\$ Range):

1st & sub. offs-CI III Misd-Not more than \$500 §28-106

¹This revocation period is via the point system. A vehicle homicide offense results in an assessment of 12 points. An accumulation of 12 or more points w/n a 2 yr period results in a 6 mo. revocation. §§60-4,182 & 60-4,183

²A person commits a felony if they operate a motor vehicle while their license is revoked if the basis for the revocation was three or more DWI/implied consent offense convictions. 1st offense (CI IV felony)-Imprisonment for not more than 5 yrs and/or a fine-not more than \$10,000. Subsequent offense (CI III felony)-Imprisonment for not more than 20 yrs (1 yr minimum) and/or a fine-not more than \$25,000. §§28-105, 60-6,196(6) & 60-197(7)

³Sanctions for driving while revoked under the point system. Criminal sanctions-Class III Misd: Jail-not more than 3 mos; fine-not more than \$500. Admin. Actions: (1) The license revocation as given under the point system must remain in effect for 1 yr. (2) However, if the license revocation as given under the point system was a person's second revocation under such system w/n a 5 year period, such revocation must remain in effect for 3 years. These revocation periods are not mandatory. A person is eligible for employment driving privileges. §§28-106, 60-4,129 & 60-4,186

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: It is a CI III misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 3 mos and/or a fine of not more than \$500. §§28-106 & 60-4,141.01 If a person is convicted of violating an out-of-service order, they are subject to the following disqualification periods: 1st offense-90 dys (mand); 2nd offense (w/n 10 yrs)-1 yr (mand); and, 3rd or sub offense (w/n 10 yrs)-3 yrs (mand). If the CMV operator was driving a CDL either containing hazardous materials or designed to carry 15 or more persons, the CDL disqualification periods are as follows: 1st offense-180 dys (mand); and, sub offense (w/n 10 yrs)-3 yrs (mand). §5 of Legislative Bill 323 enacted in 1996

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine:
Administrative Licensing Actions:
Type of Licensing Action
(Susp/Rev):

None

1st & sub offs-Driver ordered not to operate a vehicle §60-4,108
Special Note: Under §60-4,110, a motor vehicle, operated by any person whose license has either been revoked or suspended for any drunk driving or any implied consent conviction, must be impounded for not less than 10 nor more than 30 dys.

Length of Term of License
Withdrawal Action:
Mandatory Term of License
Withdrawal Action:

1st off-1 yr¹; sub. off-2 yrs¹ §60-4,108

1st off-1 yr¹; sub. off-2 yrs¹ §60-4,108

Habitual Traffic Offender Law:
State Has Such a Law (Yes/No):
Grounds for Being Declared an
Habitual Offender:
Term of License Rev While
Under Habitual Offender Status:
Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status
Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:
Imprisonment (Term):
Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

No

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:

Yes §60-6,102

Driver:
Vehicle Passenger:
Pedestrian:

Yes If dead within 4 hrs of the accident.

No

Yes If at least 16 yrs old and died within 4 hrs of the accident.

¹Licensing action is not to run concurrently with any term of imprisonment. §60-4,108

Other State Laws Related To Alcohol Use: (continued)Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1985) §§53-103(23), 53-180 & 53-180.01

Minimum Age (Years) Possession:

21 There are exemptions for possession in a "permanent place of residence" and for certain employment purposes by those ≥ 19 yrs old. §§53-103(23), 53-168.06 & 53-180.02

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

No

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No Note: For cases denying liability, see *Holmes v. Circo*, 244 N.W.2d 65 (1976), *Arant v. G.H., Inc.*, 428 N.W.2d 631 (Neb. 1988), and *Schroer v. Synowiecke*, 435 N.W.2d. 875 (Neb. 1989).

Dram Shop Actions-Social Hosts:

No (No Cases)

Other:

A licensee cannot be held liable for injuries sustained by an intoxicated minor patron. *Pelzek v. American Legion*, 463 N.W.2d 321 (Neb. 1990)

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Cl I Misd §§53-180, 53-180.05 & 28-106

Term of Imprisonment:

Not more than 1 yr

Fine (\$ Range):

Not more than \$1,000

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp/Rev¹ §§53-116.2, 53-128 & 53-1,104

Length of Term of License Withdrawal:

Not specified in the statute.

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Cl I Misd §§53-180, 53-180.05 & 28-106

Term of Imprisonment:

Not more than 1 yr

Fine (\$ Range):

Not more than \$1,000

¹In lieu of a suspension, the licensee may pay a "cash penalty" for each day of the suspension. For a 1st offense, the "cash penalty" is \$50 per day and for a 2nd or subsequent offense (w/n 4 yrs), the "cash penalty" is \$100 per day. §53-140.01

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Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Anti-Happy Hour Laws/Regulations:

Yes Susp/Rev¹ §§53-116.2, 53-128 & 53-1,104

Not specified in the statute.

Yes Regulation 237-6.019.01U

This regulation does not regulate the price of "single" drinks. It does, however, prohibit the selling of an unlimited quantity of drinks at one price or two or more drinks at the same price.

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes Driver and passengers §60-6,211.08

Yes Driver and passengers §60-6,211.08 See §53-186 where the State or a local government may provide for certain exceptions on public property.

¹In lieu of a suspension, the licensee may pay a "cash penalty" for each day of the suspension. For a 1st offense, the "cash penalty" is \$50 per day and for a 2nd or subsequent offense (w/n 4 yrs), the "cash penalty" is \$100 per day. §53-140.01

STATE:
General Reference:

NEVADA
Nevada Revised Statutes and Nevada Administrative Code (NAC)

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Under the influence of intoxicating liquor §484.379(1)(a)
I. ≥ 0.10 ^{1,42} §§484.0135 & 484.379(1)(b) & (c)
II. **Certain Amounts of Prohibited Substances**³ in the Blood or Urine §484.379(3)

Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

None Presumption law, §484.381, repealed. §3 Ch. 249 (1993)
I. Under the influence of (1) **A Controlled Substance** or (2) a Combination of Intoxicating Liquor and a Controlled Substance §484.379(2)
II. Any Person Who Inhales, Ingests, Applies or Otherwise Uses any Chemical, Poison, Organic Solvent and Any Compound or a Combination of These to a Degree which Renders Him Incapable of Safely Driving. §484.379(2)
For Commercial Motor Vehicle Operators, see p. 4-304
For Taxicab Drivers, see p. 3-304.

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

Yes⁴ §484.382

No⁴ §484.383(1)

Yes §484.383(1)

Yes (Criminal Cases) §484.389

If a person fails to submit to a test, a blood sample may be obtained without consent (i.e., via force) if there is "reasonable grounds to believe" that the driver has been driving under the influence of alcohol or a controlled substance.⁵ §484.383(7)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more. §484.0135

²Standards: "Concentration of alcohol" is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§483.025, 484.0135 & 484.379(1)(a)

³The "prohibited substances" and the amounts prohibited are as follows: "[A]n amount of prohibited substance in his blood or urine that is equal to or greater than: Prohibited substance urine blood nanograms per nanograms per milliliter 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) marihuana 10 2 (h) marihuana metabolite 15 5 (i) methamphetamine 500 100 (j) phencyclidine 25 10." §§484.379(3) & 484.____ (§20 of Chapter 622, Session Laws of 1999)

⁴A law enforcement officer only needs "reasonable grounds to believe" that a drunk driving offense was committed before they can request a driver to submit to blood, breath or urine tests under the implied consent law. This same standard also applies to requests concerning preliminary breath tests.

⁵See Footnote No. 1 on p. 3-302.

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes ¹ §484.383(1)
Urine:	Yes-Limited ² §484.383(1)
Other:	Or other unspecified bodily substances §484.383(1)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes Note: A DWI charge cannot be exchanged for a lesser charge unless there is no evidence to support such a DWI charge. §484.3792(3)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes I. An alcohol or drug evaluation must be administered to 3rd or sub. offenders and to offenders who have caused either an injury or death. §§176.135, 484.3792(1)(c) & 484.3796 II. Either a 1st offender, who registers a BAC/BrAC ≥ 0.18 , or any 2nd offender (w/n 7 yrs) must be administered an evaluation to determine if they are an abuser of alcohol or drugs. §484.37943(1) III. A 1st offender, who is <21 yrs old, or a 1st or sub offender, who is <18 yrs old, must be administered an evaluation to determine if they are an abuser of alcohol or drugs. §§62.020(1), 62.2275(1) & 484.37943(2) IV. The above offenders must be examined by individuals who have been certified or approved to make alcohol and drug evaluations. The finding of this evaluation must be reported to the court. §484.37943(1)(a)(3)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	None
Criminal Sanctions (Fine/Jail):	
Administrative Licensing Action (Susp/Rev):	None ³
Other:	If a person refuses to submit to a preliminary breath test where there is "reasonable grounds to believe" that they have committed a drunk driving offense, the law enforcement officer requesting such a test must seize the person's license and arrest them for such offense. §484.382(2)

¹A person may be directed to submit to blood test for controlled substances. §484.383(5) In addition, a law enforcement officer may "direct" a person to submit to blood test if there is "reasonable grounds to believe" the person, while operating a vehicle, either (1) caused either death or serious injury while under the influence intoxicating liquore or a controlled substance or (2) has been stopped for a subsequent drunk driving offense w/n 7 yrs. §484.383(4)(c)

²A urine test can only be requested under two conditions. (1) A driver has 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 has been stopped for driving under the influence of a controlled substance. §484.383(3), (5) & (6)

³Historical Note: The administrative licensing sanction (i.e., a 90 dy revocation) for a refusal to submit to a preliminary breath test was repealed. Sec. 484.384 as amended by §4 of Chapter 546, Laws of 1995

Sanctions for Refusal to Submit to a
Chemical Test: (continued)

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

None

Administrative Licensing Action

(Susp/Rev):

None See the Historical Note below.

Other:

None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Double Jeopardy on p. 3-305.

Imprisonment:

Term (Day, Month, Years,

Etc.):

1st & 2nd DWI offs are misds; 3rd DWI or sub offs are Category B felonies §§193.120 & 484.3792 **Special Note:** If there is substantial bodily harm related to a DWI offense, the sanctions imposed are the same as for DWI vehicle homicide. §484.3795 See Homicide by Vehicle on p. 3-307.

1st off-2 dys to 6 mos; 2nd off (w/n 7 yrs)-10 dys to 6 mos (or residential confinement with electronic monitoring in a treatment facility-10 dys to 6 mos); 3rd and subsequent off (w/n 7 yrs)-1 to 6 yrs (State prison) §§484.379 & 484.3792

Mandatory Minimum Term:

1st off-2 dys Important: See the Special Note below. 2nd off (w/n 7 yrs)-10 dys (with at least 48 con hrs §484.3792(4)) Important: See the Special Note below. 3rd and subsequent off (w/n 7 yrs)-1 yr (with at least 48 con hrs §484.3792(4))

Fine:

Amount (\$ Range):

1st off-\$400 to \$1,000; 2nd off (w/n 7 yrs)-\$750 to \$1,000; 3rd and subsequent off (w/n 7 yrs)-\$2,000 to \$5,000 Special Note: 1st off and 2nd off (w/n 7 yrs)-If rehabilitation is taken, the fine can be no more than the minimum fine indicated.

Mandatory Min. Fine (\$):

1st off-\$400; 2nd off-\$750 3rd and sub. off-\$2,000 §§484.3792(3) & 484.3974(4)(c)(3)

Other Penalties:

Community Service:

1st off-96 hrs (alternative to imprisonment) or, if rehabilitation is taken, 48 hrs §§484.3792(1)(a)(2) & 484.3794(1)(c)(1) 2nd off (w/n 7 yrs)-Unless extenuating circumstances exist, 100 (mand) to 200 hrs (in addition to imprisonment) or, if rehabilitation is taken, 50 (mand) to 100 hrs §§484.3792(1)(b)(3) & 484.3794(1)(c)(2) Important: See the Special Note below.

Special Note: Either a 1st or 2nd offender (w/n 7 yrs), who has been classified as an alcohol/drug abuser, may have their sentence suspended if they agree to participate in an alcohol or drug treatment program. A 1st offender must be placed in this program for 6 mos and must serve 1 dy in jail or perform 48 hrs of community service. A 2nd offender (w/n 7 yrs) must be placed in the program for 1 yr and must serve 5 dys in jail and perform not less than 50 (mand) nor more than 100 hrs of community service. In addition, offenders must agree to pay any treatment program costs. A person is not eligible for this program if they have been convicted of a drunk driving offense related either to injury or death. §§484.37937 & 484.3794

Historical Note: The administrative licensing sanctions for a refusal to submit test under the implied consent law (i.e., 1st refusal-rev 1 yr (mand); 2nd or sub refusal (w/n 7 yrs)-rev 3 yrs (mand)) were repealed. §§484.384 & 484.385 as amended by §§4 & 5 of Chapter 546, Laws of 1995

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Sanctions Following a Conviction for a DWI Offense: (continued)

Community Service: (continued)

Offenders <18 yrs old may be required to perform community service. §62.2275(3)(c)(2)

Restitution
(eg Victim's Fund)

Yes (1) As a condition for a suspended sentence, the court may order a defendant to pay compensation to a victim §§4.373 & 5.055 and (2) via a victims' compensation fund §217.010 et seq. **Residential Confinement.** The court may order that the defendant be confined to his/her home for a conviction of a misd. off. This sentence may be supervised by means of electronic devices. §§4.430, 4.440, 5.053 & 5.054

Other:

A Civil Fine of \$35 must be imposed. This fine is paid into a victims' compensation fund. §484.3791

Chemical Test Fee. In addition to any fine, a defendant must pay a fee of \$60 for any chemical analysis that was performed to determine alcohol concentration or the presence of a controlled substance in the blood, breath or urine. §484.3798

Administrative Assessment. DWI misdemeanor offenders are subject to administrative assessments in addition to any fine this is imposed. These assessments may range from \$10 to \$100 depending upon the size of the fine that is imposed. §176.059(1)

Evaluation Assessment Fee. An offender, who has been ordered to submit to alcohol or drug evaluation, must pay a fee of not more than \$100. §484.3794(6)

Impact Meeting. An offender shall be ordered to attend a meeting (if available) with victims of DWI offenses in order to discuss the impact of the offense on such victims. §484.3797

Taxicab Drivers: It is illegal for a person to "drive a taxicab or go on duty while under the influence of , or impaired by, any controlled substance, dangerous drug, or intoxicating liquor or drinking liquor while on duty." §706.8849(1)(g) A person, who violates this provision, is subject to the following sanctions: 1st offense-A fine of not more than \$100 and/or driver's license suspension from 1 to 5 dys; 2nd offense-A fine of not more than \$300 and/or driver's license suspension from 6 to 20 dys; and, 3rd offense-A fine of not more than \$500. In addition to these sanctions, a driver's license may be revoked. §706.8849(2) Note: The law does not state a revocation period.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): The State's Public Service Commission and Department of Motor Vehicles and Public Safety have promulgated regulations that adopt by reference 49 CFR Parts 383 and 392. Under 49 CFR §383.51, a person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 or (2) are under the influence of alcohol or a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). Note: If there is "reasonable grounds to believe" that a CMV operator (1) is under the influence of intoxicating liquor or a controlled substance or (2) has violated any provision of the drunk driving or DWI vehicle homicide laws, a law enforcement officer must administer either a blood, breath or urine test to such driver in order to determine either the alcoholic content or the presence of a controlled substance in the operator's system. **Comment:** It would appear that the law allows law enforcement officers to obtain samples of bodily substances (e.g., of blood) for testing via "force". Under 49 CFR §392.5, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. It is misdemeanor to violate a State regulation. The sanctions for this offense are a jail term of not more than 6 mos and/or a fine of at least \$100 (mand) but not more than \$1,000. In addition, a person, who violates a State regulation, may also be liable for a civil penalty which is not to exceed \$10,000. §§483.904, 483.908, 483.922, 706.173, 706.756 & 706.771, NAC §706.247 and 49 USC 31301 et seq.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Double Jeopardy below.

See the Special Note on p. 3-306.

Yes ≥ 0.10 (BAC/BrAC)¹ See Footnote No. 2 on p. 3-301.) or a **Detectable Amount of a Prohibited Substance** in the Blood or Urine (Amphetamine, cocaine, cocaine metabolite, heroin or heroin metabolite (morphine/6-monoacetyl morphine), lysergic acid diethylamide, marihuana, marihuana metabolite or methamphetamine)-Rev 90 dys (mand)² §§484.383, 484.384, 484.385 & 484.____ (§20 of Chapter 622, Session Laws of 1999) **Persons Under 21 Years Old**- ≥ 0.02 but < 0.10 (BAC/BrAC) (See Footnote No. 2 on p. 3-301.) **Susp 90 dys** (45 dys mand A restricted license may be issued after this mand period.) §§483.461, 483.462 & 483.464

Other:

Under §§483.473(1)(a) & 483.490(1), a person's license may be susp for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:

On p. 3-306, see the Special Note and **Persons Under 18 Years Old**.

Type of Licensing Action
(Susp/Rev):

1st off-Rev; 2nd off (w/n 7 yrs)-Rev; 3rd and subsequent offs (w/n 7 yrs)-Rev §483.460. See Footnote No. 1.

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-90 dys³; 2nd off (w/n 7 yrs)-1 yr; 3rd and subsequent off (w/n 7 yrs)-3 yrs³ (For a 3rd or subsequent offense, the license revocation period does not "run" while the offender is under jail or residential confinement.) §483.460

Mandatory Minimum Term of
Withdrawal:

1st off-45 dys³; 2nd off (w/n 7 yrs)-1 yr (After a 90 dy mand rev a restricted license may be issued if the person is allowed to use an ignition interlock. Repealed 10/1/2000); 3rd and subsequent offs (w/n 7 yrs)-1 1/2 yrs³ (After a 180 dy mand rev (Eff: 10/1/2000, after a 1 yr mand rev) a restricted license may be issued if the person is allowed to use an ignition interlock.) §§483.460(1)(b)(5) & 483.490(2)

¹An admin. per se licensing action can be based either on the result of an implied consent test or a preliminary breath test. §484.384(1)

²**Comment:** Sec. 484.385 authorizes admin. licensing action via a revocation against a person who operates a motor vehicle with a BAC/BrAC ≥ 0.10 or a detectable amount of a "prohibited substance" their blood or urine. However, this section does not provide for a specific revocation period. Sec. 484.384(1) provides for a 90 dy rev if the driver has a BAC/BrAC ≥ 0.10 but does it not provided for a revocation period if the driver has a detectable amount of a "prohibited substance".

³After half of the rev period has passed and the DWI offender has completed treatment a treatment program, a restricted license may be issued. §§483.460(3) & 483.490(2) For a 1st offender, after 45 dys a restricted license may be issued if they have been allowed to participate in the ignition interlock program. §483.490(2)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Lomas*, 955 P.2d 678 (Nev. 1998)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

Ignition Interlock. The court may require a defendant to install an "ignition interlock" device on their vehicle. The court can require a defendant to install this device either as a condition to suspend a sentence or to reinstate a license. §§484.3941 and 484.3943(1) & (2) If the court orders the use of such device, it must be installed and used for the following periods: 1st offense- 3 to 6 mos; 2nd offense-6 to 12 mos (Repealed 10/1/2000); and, 3rd and subsequent off-12 to 36 mos. §484.3943(1)

Yes A temporary alcohol education program may be established. §5 of Ch. 583 of the laws of 1987

Yes! For 1st & 2nd non-death/non-injury related offs² §§209.425 et seq. & 484.3794 **Important:** See the Special Note on p. 3-303. Note: Under §209.425, an alcohol treatment program is available for incarcerated DWI offenders. Persons <18 yrs old may also be required to participate in a treatment program. §62.2275(3)(c)

No

Vehicle Registration Suspension (Eff: 10/1/2000). For a 2nd or sub drunk driving (§484.379)/drunk driving related vehicle homicide (§484.3795) off (w/n 7 yrs), the registrations of all of the vehicles owned by the offender must be **suspended for 5 dys.** There is an exception in the case of a non-offender family member who needs to use a vehicle for employment purposes, medical reasons, school or other necessities. §§482.____ & 484.____ (§§2 & 7 of Chapter 459, Session Laws of 1999)

Child Endangerment. If a child less than 15 yrs old was a passenger in the vehicle at the time of the offense, such fact shall be considered an aggravating factor when determining sentence. §484.3792(7)

¹**Persons Under 18 Years Old:** I. Under separate provisions of law, a drunk driving offender, who is under 18 yrs old, is subject to a license revocation of 90 dys. However, this licensing action is not mandatory. A restricted license is available either (1) for either going to and from or for use during employment or (2) for medical care. §§62.227 & 483.490 II. Under general provisions of the law governing juvenile offenders (offenders <18 yrs old), a court has the authority to suspended such a person's license for 90 dys to 2 yrs as a sanction for most criminal acts. Restricted driving privileges are available either (1) for going to and from employment or (2) for use during employment. §§62.020(1), 62.040, 62.211(1)(h) & 483.490(2) II. Such an offender must complete an alcohol/drug treatment program if a alcohol/drug evaluation indicates that such treatment is needed. §62.2275

²An offender may be placed under "clinical supervision" for not less than 30 dys but no more than 6 mos. Such "supervision" may or may not include confinement in a treatment facility. §484.37945

Special Note: If a license rev for a DWI off conviction follows one for an admin. per se action, the admin. per se rev is cancelled. The driver shall be given credit towards any DWI off conviction rev period for any time he/she was not eligible for a license under the admin. per se rev. Also, following the cancellation of the administrative per se rev, the legal provisions, concerning min. mandatory terms of license withdrawal and issuance of restricted licenses after a DWI off conviction, would apply.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes (1) Death caused by reckless driving where there is wanton disregard for the safety of others-Category B felony and (2) death caused by a DWI¹ off-Category B felony §§484.377 & 484.3795
See Vehicle Registration Suspension above.

Sanctions:
Criminal Sanction:
Imprisonment (Term):

1 to 6 yrs-Reckless driving; 2 to 20 yrs²-DWI related offs.³
§§484.377 & 484.3795

Mandatory Minimum Term:
Fine (\$ Range):

For a DWI related death-2 yrs^{2&4}
Not more than \$5,000-reckless driving; \$2,000 to \$5,000²-DWI related offs.

Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and
Type of Action:

For a DWI related death-\$2,000^{2&4}

Rev §483.460 (Applies to either reckless driving or DWI related deaths.) See Ignition Interlock below.
For offenders <18 yrs old, see II under Footnote No. 1 on p. 3-306.

Length of Term of
Licensing Withdrawal:

For a DWI related death, 3 yrs The license revocation period does not "run" while the offender is under jail or residential confinement. §483.460(1)(a)(3) Note: For any non-alcohol related death or other manslaughter off. not noted above caused by veh operations, the driver's license is revoked for 1 yr. §483.460(1)(b)(1)

Mandatory Action--Minimum
Length of License
Withdrawal:

1½ yrs (Death related DWI offs.); 6 mos (Non-alcohol related death offs.) §§483.460(1) and 483.490(1) & (2)

Other:

1) A person, who has been convicted of DWI related vehicle homicide, may be required to serve a ten (10) period of probation. §484.3795(3)(b)
2) A person must be evaluated for an alcohol or drug abuse problem. If a person has such a problem, they are assigned to a treatment program. §§484.3796 & 209.425 et seq.

¹The sanctions for this offense also apply to DWI injury related offenses. §484.3795

²This sanction also applies to a person who causes substantial bodily harm as a result of a DWI offense. §484.3795(1)

³For DWI related vehicle homicide, the prosecuting attorney may not dismiss that charge unless such charge cannot either be supported by probable cause or proved at the time of trial. §484.3795(2)

⁴This minimum sanction may not be suspended nor may probation be granted. §484.3795(2)

Ignition Interlock. I. Effective 10/1/2000, a person who has been convicted of a vehicle homicide based on recklessness (not drunk driving) may be required to install and use an ignition interlock device on the vehicles they operate and, as a condition for using such a device they are eligible to obtain restricted driving after a 180 dy revocation period. II. A person who has been convicted of a vehicle homicide based on drunk driving must install and use an ignition interlock devices on the vehicles they operate for 12 to 36 mos. Such a person, is eligible for restricted driving privileges after a 180 dy revocation period (Eff. 10/1/2000, after a 1 yr revocation period). §§483.490(2), 484.3941 & 484.3943(1)

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Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term
of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

See the Special Note below.

Misd 30 dys to 6 mos^{1&2} §483.560(2)

30 dys^{1,2&3}

\$500 to \$1,000^{1&2}

\$500^{1&2}

For driving on a suspended license-Susp For driving on a
revoked license-Rev §483.560(5) For persons < 18 yrs old, see
II under Footnote No. 1 on p. 3-306.

Length of Term of License

Withdrawal Action:

The original susp period extended a like period The original rev
extended 1 yr §483.560(5)

Mandatory Term of License

Withdrawal Action:

See above. Note: The restricted license provisions of
§483.490(2) may apply. See Footnote No. 2 on p. 3-305.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

No

¹These sanctions do not apply if a person operates a motor vehicle after the suspension or revocation has expired but before they have their license reinstated.

²**Alternative Sanctions:** Residential confinement from 60 dys (mand) to not more than 6 mos and a fine of \$500 (mand) to not more than \$1,000. §483.560(2)

³Under §483.560(3), any segment of imprisonment must consist of at least 24 hrs.

Special Note: The CMV law prohibits the operation of a CMV during either a CDL disqualification or a CDL out-of-service order. However, this law does not appear to provide specified sanctions for this prohibition. §483.924(2) It is not clear whether the law that prohibits the illegal use of a license applies. If it does, the following sanctions could be imposed: Imprisonment for not more than 6 mos and/or a fine of not more than \$1,000. Community service may be imposed in lieu of these sanctions. §§193.150, 483.530(7) & 483.620

Other State Laws Related To Alcohol:Laws Requiring BAC Chemical Tests on
Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):

Yes §484.394

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

Yes

Pedestrian:

Yes

Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1933) §§202.020 & 202.055

Minimum Age (Years) Possession:

21 Applies only to possession in a public place. §202.020

Minimum Age (Years) Consumption:

21 Applies to any place where alcoholic beverages are sold.
§202.020Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

No §41.1305¹"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):No Note: For cases denying liability, see *Hamm v. Carson City
Nugget*, 450 P.2d 358 (Nev. 1969), *Yoscovitch v. Wasson*, 645
P.2d 975 (Nev. 1982), and *Hinegardner v. Marcor Resorts*, 844
P.2d 800 (Nev. 1992).

Dram Shop Actions-Social Hosts:

No² §41.1305¹

Other:

A minor decedent's estate has no cause of action in negligence
against a licensee who served alcoholic beverages to the minor
even though the consumption of such beverages was a factor in
the minor's death. *Snyder v. Viani*, 885 P.2d 610 (Nev. 1994)Criminal Action Against Owner or Employees
of Establishments that Serve AlcoholicBeverages to Intoxicated Patrons:

Type of Criminal Action:

No Comment: The State grants local governments broad power
to license and regulate liquor retail establishments. Therefore,
local laws may have been enacted to control the sale of alcoholic
beverages to intoxicated persons.

Term of Imprisonment:

N/A

Fine (\$ Range):

N/A

¹The law provides that, persons, who serve or sell alcoholic beverages, are not liable either (1) for the injuries caused by the individuals, who consumed such beverages, or (2) for the injuries sustained by such individuals. **Comment:** The law appears to apply to both alcoholic beverage licensees and social hosts.

²In *Bell v. Alpha Tau Omega Fraternity*, 642 P.2d 161 (Nev. 1982), the court held that there was no social host liability in a situation where a minor guest was injured after consuming alcoholic beverages at a party given by the host.

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Other State Laws Related To Alcohol: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

N/A

Length of Term of License Withdrawal:

N/A

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misd §§193.150 & 202.055

Term of Imprisonment:

Not more than 6 mos¹

Fine (\$ Range):

Not more than \$1,000¹

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Note: Controlled by local law.

Length of Term License Withdrawal:

Note: Controlled by local law.

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes §484.448(2)

Anti-Consumption Law (Yes/No):

Yes Driver only §484.448(1) Note: The law states that "it is unlawful for any person to drink any intoxicating liquor in a motor vehicle while such person is driving such motor vehicle upon a highway."

¹A person may be allowed to perform community service in lieu of all or part of the jail/fine sentence. §193.150

STATE:
General Reference:

NEW HAMPSHIRE
New Hampshire Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Under the influence of intoxicating liquor¹ §§265:82, I(a)
≥0.08^{2&3} §265:82, I(b)
Persons Under 21 Years Old-≥0.02^{3&4} §265:82, I(b)
None
Under the influence of (1) **Any Controlled Drug** and (2) any
Combination of Intoxicating Liquor and Controlled Drugs
§265:82(I)(a)
I. An alcohol concentration ≥0.08³ is *prima facie* evidence of
intoxication. §265:89
II. **Aggravated Driving While Intoxicated Offense.** (1) Either
driving while under the influence of intoxicating liquor or any
controlled drug or any combination of intoxicating liquor and a
controlled drug or with a BAC/BrAC ≥0.08 and one of the
following: Exceeding the *prima facie* speed limit by more than
30 MPH; causing a collision that results in a serious bodily injury
to another person; or, attempting to elude a law enforcement
officer. (2) Driving with a BAC/BrAC ≥0.16. §265:82-a
III. For Commercial Motor Vehicle Operators, see p. 3-315.

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes §§215-A:11 & 265:92-a

Yes §265:84

Yes §265:84

Yes (Criminal & Civil Cases) §265:88-a & *State v. Parker*, 902
A.2d 306 (N.H. 1997)

Other Information:

I. If there is probable cause of DWI, a driver, involved in a
collision resulting in a death or serious injury, shall be tested for
evidence of alcohol or controlled drugs. §265:93

II. Under the implied consent law (§265:84), in addition to
chemical tests, a person is deemed to have consented to "physical
tests and examinations". A person, who refuses to submit to
these tests or examinations, is subject to the same licensing action
as for a refusal to submit to a chemical test.

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:
Urine:
Other:

Yes §265:84

Yes §265:84

None

¹The term "intoxicating liquor" is defined to include all alcohol beverages containing more than one per cent alcohol by volume. §21:33

²This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or a urine alcohol concentration of 0.08 or more. §259:3-b

³The term "alcohol concentration" is defined as grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine. §259:3-b

⁴The sanctions for this offense (criminal and administrative) are the same as for any other drunk driving offense.

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Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea Bargaining Statute (Yes/No):

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No

No Note: The law requires the filing of reports on plea bargaining agreements. Since these reports are public records, they are available for public inspection. §265:82-c

Yes (Limited) 3rd and sub offs (w/n 7 yrs) §265:82-b, II(b)((2)
Note: Under §651:4, a pre-sentence investigation is not normally required in misdemeanor cases.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

Administrative Licensing Action

(Susp/Rev):

Other:

None

None

None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

Administrative Licensing Action

(Susp/Rev):

None

1st refusal where there has been no previous DWI off-Susp for 180 dys (mand); 2nd refusal or a 1st refusal where there has been a previous DWI off-Susp for 2 yrs (mand) §§265:91-a, II(a) & 265:92 These revocations are not to run concurrently with any other suspension or revocation. §265:92, II
See Footnote No. 1.

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,

Etc.):

1st off-Violation-No term of imprisonment; 1st off-Aggravated Driving While Intoxicated Offense (except bodily injury offenses) Misd²-Not more than 1 yr; 2nd offs (all offenses including Aggravated DWI) (w/n 7 yrs)-Misd²-Not more than 1 yr³; 3rd off (all offenses including Aggravated DWI) (w/n 7 yrs)-Misd²-Not more than 1 yr³; 4th or sub offs (all offenses including Aggravated DWI)(w/n 7 yrs)-Misd²-Not more than 1 yr; 3rd or sub offs (all offenses including Aggravated DWI) (w/n 7 yrs) where there was a prior motor vehicle related negligent homicide offense-Misd¹-Not more than 1 yr

¹A person holding an "at risk" probationary license whom police have reasonable cause to believe is driving with a BAC/BrAC ≥ 0.03 and who refuses to take a chemical test shall have their license suspended for 90 days. §263:14-a(III). See Miscellaneous Sanctions on p. 3-316.

²The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

³For a 2nd or 3rd Aggravated DWI offense, a defendant may receive an extended term of imprisonment of from 2 to 5 yrs. §651:6(I)(I) & (m) and (II)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:

Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-Cl B Felony-Not more than 7 yrs² §§265:9, IV(A); 265:82; 265:82-a; 265:82-b, I(b) & II and 651:2, I(c)
Special Note: In order for a defendant to receive enhanced sanctions for a subsequent DWI offense conviction, the DWI complaint must allege the prior convictions. §265:82-b, I(b)(1) 2nd and sub. off (all offenses including Aggravated (DWT)(w/n 7 yrs)-Misd-10 cons dys The 10 con dys are to be served as follows: 3 con 24 hour periods in the county house of corrections and 7 con 24 hour periods in a State operated 7-dy multiple DWI offender intervention detention center. Important. See **Special Sanctions for Certain Multiple Offenders** on p. 3-314. §265:82-b, II(a)(3), (b), (c) & (d) **Aggravated DWI-Serious Bodily Injury-None**

Fine:
Amount (\$ Range):

1st off-\$350 to \$1,000; 1st off-Aggravated Driving While Intoxicated Offense (except bodily injury offenses)-\$500 to \$2,000; 2nd off² (w/n 7 yrs)-\$500 to \$2,000; 3rd off² (w/n 7 yrs)-\$500 to \$2,000; 4th or sub offs³ (w/n 7 yrs)-\$500 to \$2,000; 3rd or sub offs³ (w/n 7 yrs) where there was a prior motor vehicle related negligent homicide offense-Misd-\$500 to \$2,000 **Aggravated Driving While Intoxicated Offense with Serious Bodily Injury**-\$1,000 to \$4,000 §§265:82-b, I & II and 651:2, VI(a)

Mandatory Min. Fine (\$):

1st off-\$350; 1st off-Aggravated DWI-\$500; 2nd off² (w/n 7 yrs)-\$500; 3rd off² (w/n 7 yrs)-\$500; 4th or sub offs³ (w/n 7 yrs)-\$500; 3rd or sub offs³ (w/n 7 yrs) where there was a prior motor vehicle related negligent homicide offense-\$500 **Aggravated Driving While Intoxicated Offense with Serious Bodily Injury**-\$1,000 §265:82-b, I & II

Other Penalties:
Community Service:

Yes For a felony or class A misd, a defendant may receive conditional discharge which may include not more than 50 hrs of community service. §651:2, VI

Restitution
(eg Victim's Fund)

I. Payment by the defendant to the victim.⁴ §651:62 et seq.
II. A victim may receive compensation for damages from a State fund. §21-M:8-g et seq.

¹The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

²For a 2nd or 3rd offense (Aggravated DWI-Serious Bodily Injury offense), a defendant may receive an extended term of imprisonment of from 10 to 30 yrs. §651:6(I)(l) & (m) and (II)

³All offenses including Aggravated DWI.

⁴The offender may be ordered to pay restitution to the victims' compensation fund. Such payments are used to reimburse the fund for any amounts that were awarded to victims of the offense. §21-M:8-l

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Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Penalty Assessment. An offender must pay an assessment of either \$2 or 20% of the fine imposed. This assessment is used to fund police training and victim assistance programs. §188-F:31

Liability for Response. A DWI offender may be liable to reimburse a public agency for up to \$10,000 (or up to 500 hrs of community service) of the cost incurred in responding to an incident involving the negligent use of a vehicle while under the influence of alcohol. §§151-B:17 & 151-B:22

Special Sanctions for Certain Multiple Offenders. Any person who has completed a multiple DWI offender intervention program and who is subsequently convicted of a DWI offense shall be imprisoned for 30 con. 24 hour periods. In addition, they must complete, at their own expense, either a 28 day residential treatment program or "an intensive course of substance abuse treatment" before their license can be restored. §265:82-b, II-a

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Yes ≥0.08 BAC/BrAC/UrAC (≥0.02 for persons under 21 years old) See Footnote No. 3 on p. 3-311. 1st violation-Susp-6 mos (appears mand); sub. violation-Susp-2 yrs (appears mand) A subsequent admin. per se violation also includes a prior refusal or DWI offense. §265:91-a et seq.

Special Note: If a person is subject to both an admin. per se suspension and a license revocation based on a DWI conviction as a result of the same occurrence, the total license suspension/revocation time cannot exceed the longer of the two periods. §265:91-c

Other:

Under §§263:56(I)(a) & 263:56(III), a person's license may be susp/rev for not more than 1 yr if they have "committed" an off that requires mandatory license rev (e.g., DWI). A preliminary hearing is required before such action can be taken. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

1st off-Rev; 1st off-Aggravated Driving While Intoxicated Offense (except bodily injury offenses)-Rev; 2nd off¹ (w/n 7 yrs)-Rev; 3rd off¹ (w/n 7 yrs)-Rev; 4th or sub offs¹ (w/n 7 yrs)-Rev; 3rd or sub offs¹ (w/n 7 yrs) where there was a prior motor vehicle related negligent homicide offense-Rev

Aggravated Driving While Intoxicated Offenses with Serious Bodily Injury-Rev See Rehabilitation on p. 3-315. §§263:65, 263.66 & 265:82-b

See the Special Note above.

¹All offenses including Aggravated DWI.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-90 dys to 2 yrs; 1st off-Aggravated Driving While Intoxicated Offense (except bodily injury offenses)-1 to 2 yrs; 2nd off¹ (w/n 7 yrs)-Not less than 3 yrs; 3rd off¹ (w/n 7 yrs)-For at least 5 yrs; 4th or sub offs¹ (w/n 7 yrs)-Indefinitely; 3rd or sub offs¹ (w/n 7 yrs) where there was a prior motor vehicle related negligent homicide offense-Indefinitely
Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-1 to 2 yrs See Footnotes Nos. 2 & 3.

Mandatory Minimum Term of
Withdrawal:

1st off-90 dys; 1st off-Aggravated Driving While Intoxicated Offense (except bodily injury offenses)-1 yr; 2nd off¹ (w/n 7 yrs)-3 yrs; 3rd off¹ (w/n 7 yrs)-5 yrs; 4th or sub offs¹ (w/n 7 yrs)-7 yrs; 3rd or sub offs¹ (w/n 7 yrs) where there was a prior motor vehicle related negligent homicide offense-10 yrs
Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-1 yr 265:82-b, II See Footnotes Nos. 1 & 2.
Child Endangerment. If the DWI offender was transporting a person under 16 yrs old at the time of the offense, the offender must have their driving privileges revoked for the maximum time period provided by law.⁴ §265:82-b, VIII

Other:
Rehabilitation:
Alcohol Education:

Yes For any alcohol related driving off, a defendant must be complete an impaired driver intervention program before their license can be restored. §263:65a

Alcohol Treatment:
Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:

None

¹All offenses including Aggravated DWI.

²If a 2nd or subsequent offense (w/n 7 yrs) is not alleged in the complaint but such is found to be the case, the defendant's license is suspended from 180 dys to 3 yrs. The minimum 180 dys appears to be mandatory. §265:82-b, III

³A 2nd or subsequent offender (w/n 7 yrs) must successfully complete a 7 dy residential intervention program before their license can be reinstated. §336:4, VI

⁴Before an offender's license can be restored, they must complete either a 7 dy State operated multiple DWI offender program or a 7 dy alcohol and drug residential intervention program. §§172-B:2-b & 265:82-b, VIII

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is suspended for at least 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) are under the influence of alcohol with an alcohol concentration (BAC/BrAC/UrAC) ≥ 0.04 (See Footnote No. 3 on p. 3-311.) or (2) are under the influence of a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the suspension is for life (10 yrs mand). If a person refuses to submit to a chemical test under the implied consent law while operation a CMV, their CDL is "revoked" for a 1st refusal for not less than 1 yr (1 yr mand) and for a 2nd or subsequent refusal for not less than 10 yrs (10 yrs mand). In addition, a CMV operator who has any alcohol in their system must be placed "out-of-service" for 24 hours. §§259:3-b, 259:12-e, 259:14, 259:20-a, 263:94, 263:95 & 263:96

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Vehicle Registration Revocation.¹ For either (1) a 2nd or subsequent DWI offense conviction or (2) an **Aggravated Driving While Intoxicated** offense conviction, the driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. §261:180, III

Miscellaneous Sanctions
Not Included Elsewhere:

At Risk Driver (Probationary License). Any person who shall apply for reissuance of their license following an drunk driving offense conviction is an "at risk" driver and their license shall be probationary for 3 yrs. Such probationary license may be suspended from **90 to 180 days** if the driver operates a motor vehicle with a BAC/BrAC ≥ 0.03 . §263:14a(I) & (II) Note: This suspension may not be mandatory.

Liquor Forfeiture. Except for liquor intended for sale, any liquor on the defendant's person at the time the defendant is taken into custody is forfeited to the State. §179:4

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes Negligent Homicide-CI A felony-if death results from the operation of a motor vehicle while DWI §630:3, II

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than **15 yrs**² §651:2, II(a)

Mandatory Minimum Term:

None

Fine (\$ Range):

Not more than **\$2,000** §651:2, IV(a)

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Rev³ §630:3, III

Type of Action:

Length of Term of

Up to **7 yrs**³ §630:3, III

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

None

Other:

Vehicle Registration Revocation.¹ The driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. §261:180, III
See **Penalty Assessment** on p. 3-314.

¹Under §261:180, IV, hardship registrations for the vehicles involved are available. In order to obtain such registrations, it must be shown that either a spouse or another individual must operate the vehicle or vehicles in order to avoid a hardship to either a family or an individual. N.H. Admin. Rules Saf-C 3001.01, 3003.01, 3003.03 & 3003.16

²For either a 2nd or 3rd offense, a defendant may be sentenced from 10 to 30 yrs. 651:6(I)(I) & (m) and (II)

³A driver's license can be either suspended or revoked for not more than 7 yrs if they operate a vehicle in a reckless or unlawful manner and cause an accident which results in either death or injury to another person. §263:56, I(g) & III(a)

Other Criminal Actions Related to DWI: (continued)Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term
of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

See the Special Note below.

Misd (classified as a CI A misd)- Not more than 1 yr §§625:9,
IV(a)(2), 263:64 & 651:2, II(c)7 con 24 hrs periods §263:64, IV
Not more than \$1,000 §263:64, IV
See Penalty Assessment on p. 3-314.
None

Rev §263:64, IV

An additional 1 yr

An additional 1 yr

Yes §§259:39 & 262:18 et seq.

3 serious offs. (w/n 5 yrs), 12 moving violations (w/n 5 yrs) or
1 serious off. and 8 moving violations (w/n 5 yrs)Rev 1 to 4 yrs 262:19, III An habitual offender may have to
successfully complete a "Driver Attitude Program" before their
license can be reinstated. §263:56-eNote: Type of off is not specified in the statute. It is probably a
CI B felony with modifications in the penalty as provided in the
habitual offender law. §625:9, III(a)(2)Felony 1 to 5 yrs §§262:23, I & 625:9, III A person may also
be sentenced to home confinement as a condition of probation.
§651:2, V(b)

Special Note: I. It appears to be a violation of the general provisions of the law, which prohibit the operation a motor vehicle while suspended or revoked, to operate a CMV during a CDL suspension. A person convicted of this offense is subject to probation, conditional or unconditional discharge or a fine of not more than \$1,000. §§263:64, I & VII and 651:2, III & IV(a)

II. A person, who operates a motor vehicle while their license is either suspended or revoked, commits a CI B felony (misd if they are <20 yrs old) if, as a result of a collision, they cause either the death or serious bodily injury to another person. "Evidence the driver violated any of the rule of the road shall be *prima facie* evidence that the driver caused or materially contributed to the collision." §263:64, V-a(a) & (b) The sanctions for a CI B felony are imprisonment for not more than 7 yrs and a fine of not more than \$4,000. The sanctions for a misdemeanor (CI A misd) are incarceration for not more than 1 yr and a fine of not more than \$1,200. §§625, IV(a)(2) and 651:2, II(b), II(c) & IV(a)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of
Imprisonment:

1 yr if the person has been convicted of a misd. or felony traffic offense convictions. §262:23, III

Fine (\$ Range):

Possible fine of not more than \$4,000 No fine is stated in §262:23. However, §651:2, IV(a) provides that a person convicted of a felony may be subject to a fine of not more than \$4,000. See **Penalty Assessment** on p. 3-314.

Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

None
None

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:

Yes (Required) §§262-A:69-1 & 265:93

Driver:
Vehicle Passengers:
Pedestrian:

Yes
Yes
Yes

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:
Minimum Age (Years) Possession:
Minimum Age (Years) Consumption:

21¹ (Year Eff: 1985) §§175:1, 179:5 & 179:6
21 There are employment exemptions. §§179:10 & 179:23
None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §507-F:1 et seq.² This statute appears to have abrogated previous case law concerning dram shop liability. §507-F:8

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No The following case law appears to have been abrogated by §507-F:1 et seq. See *Burns v. Bradley*, 419 A.2d 1069 (1980), which held that New Hampshire permits a plaintiff to maintain a common law (negligence) cause of action against a liquor licensee for injuries received as a result of being served additional liquor while in an intoxicated state. See also *Ramsey v. Anctil*, 211 A.2d 900 (N.H. 1965).

Dram Shop Actions-Social Hosts:

Yes *Hickingbotham v. Burke*, 662 A.2d 297 (N.H. 1995),³ & *MacLeod v. Ball*, 663 A.2d 632 (N.H. 1995)

¹It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to "misrepresent" their age in order to obtain alcoholic beverages. §179:9(I)

²New Hampshire's Dram Shop Law is similar to the Model Alcoholic Beverage Retail Licensee Liability Act of 1985. This model law was developed via a grant for the National Institute on Alcohol Abuse and Alcoholism.

³The court based its decision on whether there was negligence based upon the reckless service of alcoholic beverages by the social host. The case concerned an injured intoxicated minor guest. **Comment:** Language in the case would seem to indicate that either an injured adult guest or a third party, who has been injured by an intoxicated guest, could also recover damages against a social host.

Other State Laws Related To Alcohol Use: (continued)

Other:

Under §507-F:5, a licensee may be held liable for the injuries sustained by an intoxicated patron if the serve of alcoholic beverages was reckless.

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd¹ (For corporations-Felony) §§179:5 & 179:58(I)

Not more than 1 yr §651:2(I)(c)

Not more than \$2,000 §651:2(IV)(a) (For corporations-not more than \$100,000) §651:2(IV)(b))

See Penalty Assessment on p. 3-314.

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Susp/Rev §179:57

Time period is not specified in the statute for either susp or rev.
Administrative fine of \$100 to \$5,000 in lieu of a susp/rev.
§179:57

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd¹ (For corporations-Felony) §§179:5, 179:6 & 179:58(I)

Not more than 1 yr §651:2(I)(c)

Not more than \$2,000 §651:2(IV)(a) (For corporations-not more than \$100,000 §651:2(IV)(b))

See Penalty Assessment on p. 3-314.

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp/Rev §179:57

Time period is not specified in the statute for either susp or rev.
Administrative fine of \$100 to \$5,000 in lieu of a susp/rev.
§179:57

Anti-Happy Hour Laws/Regulations:No²

¹The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

²However, the service of "free drinks" is prohibited except for wine tasting purposes. §179:44

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Other State Laws Related To Alcohol Use: (continued)

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Yes §§179:27-a(II) & 265:81

Anti-Consumption Law (Yes/No):

No

STATE:
General Reference:

NEW JERSEY
New Jersey Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §39:4-50(a) See the Special Note below.
Illegal Per Se Law (BAC/BrAC):	≥0.10 ^{1,2&3} §39:4-50(a) <u>Persons Under 21 Years Old-≥0.01 but <0.10^{1,2&4}</u> §39:4-50.14
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) A Narcotic (2) A Hallucinogenic Drug or (3) A Habit-Producing Drug §39:4-50(a)
Other:	For Commercial Motor Vehicle Operators, see p. 3-324.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Probably Yes Under §39:4-50.2(a) only "reasonable grounds" seems to be required. However, under §39:4-50.4a, a driver's license can only be revoked when the refusal is based on an arrest.
Implied Consent Law Applies to Drugs (Yes/No):	No
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) <i>State v. Stever</i> , 527 A.2d 408 (N.J. 1987)
Other Information:	(1) An "involuntary" blood (not breath) sample may be obtained from a person who has been arrested for a DWI offense; i.e., a blood sample may be taken by "force". <i>State v. Dyerl</i> , 478 A.2d 390 (N.J. 1984), & <i>State v. Woomer</i> , 483 A.2d 837 (N.J. Super. A.D. 1984) (2) Tests for alcohol shall be made on automobile drivers who survive traffic accidents fatal to others. §§2A:84A-22.5, 26:2B-24 & <i>State v. Figueroa</i> , 515 A.2d 242 (N.J. Super. A.D. 1986), certif. den. 526 A.2d 204

¹Standard: Percent by weight of alcohol in the blood. §§39:4-50(a) & 39:4-50.14

²In *State v. Downie*, 569 A.2d 242 (N.J. 1990), the New Jersey Supreme Court held that breathalyzer results must be given "judicial notice". The court felt that this was in keeping with the legislature's policy of measuring alcohol in the brain for the purpose of determining whether a person was DWI. **Comment:** The practical end result of this decision was to in effect create a "judicial" illegal per se law based on BrAC. See the dissenting opinion in the *Downie* case.

³*State v. Lentini*, 573 A.2d 464 (N.J. Super. A.D. 1990)

⁴The only sanctions for this offense are community service and forfeiture of driving privileges. These sanctions are in addition to any other penalties provided by law for a DWI offense. §39:4-50.14

Special Note: Under separate statutory provisions, it is illegal for a person to operate a motor vehicle while under the influence of intoxicating liquor, any narcotic or any habit forming drug (1) on highways operated by the Port Authority of New York and New Jersey, (2) on any "project" of the New Jersey Highway Authority, (3) on any "project" of the New Jersey Turnpike Authority or (4) on any "project" of the South Jersey Transportation Authority. §§27:12B-18, 27:23-26, 27:23-32, 27:25A-21, 32:1-154.3, 32:1-154.9, 32:1-154.10, 32:1-154.14, 32:1-154.18(2) & 32:1-154.19 It is illegal to operate a motorized bicycle while under the influence of intoxicating liquor, any narcotic drug or any habit forming drug. §39:4-14.3g The law provides that a violation of these provisions results in the same sanctions as for violating the regular DWI law (§39:4-50).

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Chemical Tests for Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	No
Urine:	No
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (Alcohol Screening Required) §39:4-50(b)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	
Administrative Licensing Action (Susp/Rev):	

See School Property/Crossing below.
Fine \$250 to \$500 §39:4-50.4a

1st Refusal-Rev 6 mos¹ (Mand); 2nd refusal-Rev 2 yrs¹ (Mand); sub refusal-Rev 10 yrs¹ (Mand) §§39:4-50.2 & 39:4-50.4a(a) See Footnote No. 2.

Other:	Surcharge. A surcharge of \$100 §39:4-50.8

Sanctions Following a Conviction for a DWI Offense:

See School Property/Crossing on p. 3-324.

Criminal Sanctions:

Special Note: A drunk driving offense is not a "crime".² *Stare v. Hamm*, 577 A.2d 1259 (N.J. 1990)

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off-Not more than 30 dys; 2nd off (w/n 10 yrs of a first off)-48 cons hrs-90 dys; 3rd and subsequent offs (w/n 10 yrs of a second off)-Not less than 180 dys §39:4-50

¹Under separate statutory provisions, a person, who refuses to submit to a chemical test, after being charged with operating a CMV either with a BAC ≥ 0.04 or while under the influence of a controlled substance, is subject (1) to a fine of \$250 to \$500 and (2), for a 1st refusal, mand license revocation (i.e., a loss of all driving privileges) for a for 6 mos or, where there has been either a prior refusal or a prior drunk driving offense under any provisions of law mand license revocation for 2 yrs. §§39:3-10.13 & 39:3-10.24(f)

²However, a traffic law violation, including a violation of the implied consent law, is considered "quasi-criminal" in nature. See for example, *State v. Widmaier*, 724 A.2d 241 (N.J. 1999).

School Property/Crossing. If the refusal occurred either (1) on property owned by or w/n 1,000 ft. of an elementary/secondary school, (2) while driving through a designed school crossing zone or (3) while driving through a non-designed school crossing zone when juveniles are present, the following sanctions apply: For either a 1st or sub off-a fine of \$500 to \$1,000; for a 1st off-lic. susp for 1 yr (mand); for a 2nd off-lic. susp for 4 yrs (mand); and, for a 3rd or sub off-lic. susp for 20 yrs (mand). §39:4-50.4a(b)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:	<u>1st off-No^{1&2}; 2nd off-48 con hrs^{1&2}; 3rd and sub offs-90 dys^{1,2&3}</u>
Fine:	
Amount (\$ Range):	<u>1st off-\$250 to 400⁴; 2nd off (w/n 10 yrs of a first off)-\$500 to 1,000⁴; 3rd and subsequent offs (w/n 10 yrs of a second off)-\$1,000⁴ §39:4-50</u>
Mandatory Min. Fine (\$):	<u>1st off-\$250⁴; 2nd off (w/n 10 yrs of a first off)-\$500⁴; 3rd and subsequent offs (w/n 10 yrs of a second off)-\$1,000⁴ §39:4-50, <i>State v. Laurick</i>, 4 575 A.2d 1340 (N.J. 1990), & <i>State v. Hamm</i>, 577 A.2d 1259 (N.J. 1990)</u>
Other Penalties:	
Community Service:	<u>2nd off-30 dys⁵; 3rd and subsequent off-Not more than 90 dys as an alternative to imprisonment; i.e. not more than 90 dys of the 180 dy sentence may be served performing community service.</u> <u>Persons Under 21 Years Old-BAC ≥0.01 but <0.10-15 to 30 dys community service.⁶ §39:4-50.14</u>
Restitution (eg Victim's Fund)	<u>Yes (1) Paid by the defendant to a victim §2C:1-5(b), 2C:43-2, 2C:43-3 & 2C:44-2 (2) A victim is also eligible to receive payment from the State's Violent Crimes Compensation Board. §52:4B-11</u>
Other:	<u>None</u>
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	<u>None</u>
Other:	For an "alleged" DWI related injury or death (as well as for other serious driving offenses), the licensing agency may issue a preliminary suspension <u>without</u> a hearing. When the agency notifies the driver of the preliminary action, it also advises them of any final licensing action that is to be taken. The driver can, of course, request a hearing prior to the final action being taken. §39:5-30(e) & 39:5-31
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	<u>Rev (probably) The statute uses the terminology "forfeit his right to operate a motor vehicle." §39:4-50 & 39:4-50.14</u> <u>Special Note: Under separate statutory authority, the licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30(a)</u>

¹See Rehabilitation on p. 3-324.

²**Work Release.** At the court's discretion, a defendant may be allowed to participate in a work release program. §39:4-51 **Comment:** The law does not require that a minimum period of incarceration be served prior to participating in this program.

³The law provides that the court may substitute no more than 90 dys of the 180 dy jail term for community service on a day-for-day basis. Consequently, a 3rd or subsequent DWI offender would still be subject to a mandatory jail term of at least 90 dys. §39:4-50(a)(3) and *State v. Laurick*, 575 A.2d 1340 (N.J. 1990) The law requires some type of confinement for at least 90 dys. *State v. George*, 608 A.2d 957 (N.J. Super. A.D. 1992)

⁴**Additional Fees & Surcharges.** A \$100 fee is imposed for the Alcohol Education and Enforcement Fund (§39:4-50(b)) and a \$100 surcharge is imposed for the Drunk Driving Enforcement Fund (§39:4-50.8). One dollar (\$1) is add to any fine for the Body Armor Replacement Fund and \$1 is also added for the N.J. Spinal Cord Research Fund. §39:5-41(d) & (e)

⁵May be mandatory and in addition to the minimum term of imprisonment.

⁶The community service and driver licensing sanctions against a person under 21 yrs old for operating a motor vehicle with a BAC ≥0.01 but <0.10 are in addition to any other penalties that may be imposed for a violation of any other DWI related law. §39:4-50.14

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Sanctions Following a Conviction for a DWI Offense: (continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-6 mos to 1 yr¹; 2nd off-2 yrs¹; 3rd and subsequent offs¹-10 yrs
Persons Under 21 Years Old-BAC ≥ 0.01 but < 0.10 -30 to 90 dys See
Footnote No. 6 on p. 3-323.

Special Note: For discretionary licensing actions under §39:5-30, the
law does not specify the periods of license suspension or revocation.

Mandatory Minimum Term of
Withdrawal:

1st off-6 mos; 2nd off-2 yrs; 3rd and subsequent offs-10 yrs See the
Special Note below.

Persons Under 21 Years Old-BAC ≥ 0.01 but < 0.10 -30 dys See
Footnote No. 6 on p. 3-323.

Other:

Rehabilitation:

See the Special Note below.

Alcohol Education:

Yes

Persons Under 21 Years Old-BAC ≥ 0.01 but < 0.10 -Yes §39:4-50.14

Alcohol Treatment:

1st Off-Yes²; 2nd Off-Yes³; 3rd and subsequent offs-Yes⁴ §39:4-50

Persons Under 21 Years Old-BAC ≥ 0.01 but < 0.10 -Yes §39:4-50.14

¹For offenders < 17 yrs old, license forfeiture through their 17th birthday plus the regular forfeiture period. §39:4-50

²There appears to be a mandatory treatment of from 12 to 48 hrs (spent during two consecutive days of not less than six hours each day) which is to be spent in an intoxicated driver resource center.

³The imprisonment term may be served in an intoxicated driver resource center.

⁴The imprisonment term may be served in an inpatient rehabilitation facility but not an intoxicated driver resource center.

Special Note: A person convicted of a DWI offense must satisfy the requirements of a program of alcohol education and rehabilitation approved by the Director of the Division of Motor Vehicles. Failure to satisfy such requirements shall result in a driver's license rev or susp or continuation of rev or susp until such requirements are satisfied (unless stayed by court order in accordance with Rule 7:8-2 of the N.J. Court Rules, or §39:5-22). §39:4-50(b)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is "suspended" for not less than 1 yr (1 yr mand) nor more than 3 yrs (3 yrs (mand) if transporting hazardous materials) if, while operating a CMV, they (1) have a BAC/BrAC ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of intoxicating liquor or a controlled substance, (3) violate the drunk driving law (§39:4-50), (3) refuse to submit to a chemical test for an alcohol concentration or (4) their CDL is either suspended, revoked, disqualified or under an out-of-service order. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the privilege to operate a CMV is "revoked" is for life (10 yrs mand). A CMV operator, who refuses to submit to a chemical test, is subject to a fine of not less than \$250 nor more than \$500. §39:3-10.9 et seq. See Footnote No. 1 on p. 3-322.

School Property/Crossing. I. If the drunk driving offense occurred either (1) on property owned by or w/n 1,000 ft. of an elementary/secondary school, (2) while driving through a designed school crossing zone or (3) while driving through a non-designed school crossing zone when juveniles are present, the following sanctions apply: 1st off-Jail-Not more than 60 dys, fine \$500 (mand)-\$800 and lic susp-1 yr (mand)-2yrs; 2nd off-Jail-Not more than 180 dys (w/96 con hrs mand), fine \$1,000 (mand)-\$2,000, community service-60 dys (mand) and lic susp-not less than 4 yrs (mand); and, 3rd off-Jail-180 dys (mand), fine \$2,000 (mand) and lic susp-20 yrs (mand). Note: The license suspension period begins after the completion of any incarceration sanction. §39:4-50(g)

II. A person commits assault by auto, a 2nd Degree crime, if they cause a serious bodily injury while violating the drunk driving laws and the offense occurred either (1) on property owned by or w/n 1,000 ft. of an elementary/secondary school, (2) while driving through a designed school crossing zone or (3) while driving through a non-designed school crossing zone when juveniles are present. The following sanctions apply: Imprisonment-5 to 10 yrs; and, a fine-not more than \$150,000. §2C:12-1(c)(3), 2C:43-3(a)(2) & 2C:43-6(a)(2)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

No

Under §39:5-30(a), the licensing agency has the discretionary authority to suspend or revoke the vehicle registration certificates of a person for any violation of the traffic laws or on "other reasonable grounds".

Miscellaneous Sanctions
Not Included Elsewhere:

Special Assessment. A defendant shall be assessed a penalty of \$50 which is to be paid into a fund administered by the Violent Crimes Compensation Board. §2C:43-3.1(c)

Insurance Surcharges. A DWI offender must pay the following insurance surcharges: 1st & 2nd offs-\$1,000 per yr for 3 yrs for a total surcharge of \$3,000 for each conviction; and, 3rd off (w/n 3 yrs)-\$1,500 per yr for 3 yrs for a total surcharge of \$4,500. §17:29A-35(b)(2)

Per Diem Fees. DWI offenders, who are incarcerated in an Intoxicated Driver Resource Center, must pay the following *per diem* fees: 1st Off-\$75; 2nd Off-\$100. Note: These fees may be increased via regulations promulgated by the Commissioner of Health after consulting with the Governor's Council on Alcoholism and Drug Abuse. §39:4-50(f)

Assault by Auto. I. A person commits assault by auto, a crime of the 4th Degree, if they violate the drunk driving laws and cause a bodily injury. The following sanctions apply: Imprisonment-not more than 18 mos; and, a fine-not more than \$10,000. II. A person commits assault by auto, a crime of the 3rd Degree, if they violate the drunk driving laws and cause a serious bodily injury. The following sanctions apply: Imprisonment-3 to 5 yrs; and, a fine-not more than \$15,000. §2C:12-1(c)(2), 2C:43-3(b)(1) & (2) and 2C:43-6(a)(3) & (4)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Crime of the third degree¹ Death must have resulted from the reckless operation of a vehicle. "Death by auto" §2C:11-5

Sanctions:
Criminal Sanction:
Imprisonment (Term):
Mandatory Minimum Term:

3 to 5 yrs §2C:43-6(a)(3)
If the offense was DWI related-270 dys²

¹This offense is not specifically classified as either a "felony" or a "misdemeanor." I.e., the criminal code (Title 2C) does not define these terms. To cope with this lack of definitions, the N.J. Supreme Court has held that a crime can be considered "equatable" to a "common law felony" if a defendant can be sentenced to the State prison for more than 1 yr. *State v. Doyle*, 200 A.2d 606 (N.J. 1964), & *Kaplowitz v. State Farm Mutual Auto. Ins. Co.*, 493 A.2d 637 (N.J. Super. L. 1985). **Comment:** However, §2C:43-1(b) provides that any crime, not listed in Title 2C and classified as a "high misdemeanor," is considered to be a Crime of the Third Degree. As a result, a conflict appears to exist in the law.

²Alternative-270 dys of community service. A combination of 270 dys of community service and jail can also be imposed. §2C:11-5 and *State v. Pineda*, 546 A.2d 578 (N.J. Super. A. D. 1988)

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Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range):	Not more than \$15,000 §2C:43-3(b)(1) See Footnote No. 1 on p. 3-327.
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	The licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30(a) <u>Important:</u> See "Other" under Pre-DWI Conviction Licensing Action on p. 3-323.
Length of Term of Licensing Withdrawal:	For discretionary licensing actions under §39:5-30, the law does not specify the periods of license suspension or revocation.
Mandatory Action--Minimum Length of License Withdrawal:	
Other:	I. Restitution by the defendant (§2C:43-3) or via the Violent Crimes Compensation Board (§52:4B-1 et seq.) II. School Property/Crossing. It is a 1st Degree crime to commit vehicle homicide if the offense occurred either (1) on property owned by or w/n 1,000 ft. of an elementary/secondary school, (2) while driving through a designed school crossing zone or (3) while driving through a non-designed school crossing zone when juveniles are present. The following sanctions apply: Imprisonment-10 to 20 yrs; fine-Not more than \$200,000; and, unless the offender's family would be subject to a serious hardship, the vehicle used in the offense <u>must</u> be forfeited. §§2C:11-5(b)(3) & (e), 2C:43-3(a)(1) and 2C:43-6(a)(1)
<u>Driving While License Suspended or Revoked</u> <u>Where the Basis Was a DWI Offense:</u>	
Sanction:	See the Special Note and School Property/Crossing on p. 3-327.
Criminal:	
Imprisonment (Term):	10 to 90 dys §39:3-40(f)(2)
Mandatory Minimum Term of Imprisonment:	10 dys may be mandatory §39:3-40(f)(2)
Fine (\$ Range):	\$500 ¹ §39:3-40(a) & (f)(2) See Footnote No. 1 on p. 3-327.
Mandatory Minimum Fine:	\$500 ¹ may be mandatory §39:3-40(f)(2)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp §39:3-40(f) Special Note: Under separate law, the licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30(a)
Length of Term of License Withdrawal Action:	An additional period of not less than 1 yr nor more than 2 yrs ² §39:3-40(f)(2) Special Note: For discretionary licensing actions under §39:5-30, the law does not specify the periods of susp/rev.

¹**Comment.** Although the law is not specific, the following fines, which could be mandatory, may apply for subsequent offenses related to driving after license has been suspended for a drunk driving offense: 2nd offense-\$750; and, or subsequent offense-\$1,000. §39-3-40(b) & (c)

²**Vehicle Registration Revocation.** For either a 1st or subsequent offense (w/n 5 yrs), the registration of the offender's vehicle may be revoked for the same period of time as the license suspension. However, temporary registration and tags may be issued so that other persons can use the vehicle for employment, educational, health or medical purposes. §§39:3-40(a), (b) & (c) and 39:3-40.1 et seq.

Other Criminal Actions Related to DWI: (continued)

Mandatory Term of License Withdrawal Action:	1 yr
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	Yes §39:5-30a
Grounds for Being Declared an Habitual Offender:	3 license susps for traffic offenses w/n 3 yrs §39:5-30a
Term of License Rev While Under Habitual Offender Status:	Susp for not more than 3 yrs §39:5-30b Type of Criminal Offense if This susp is not to run concurrently with any other susp. §39:5-30d
Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	30 dys or 45 dys if the offense resulted in bodily injury §39:5-30e
Mandatory Minimum Term of Imprisonment:	45 dys if the offense resulted in bodily injury §39:5-30e
Fine (\$ Range):	\$1,000 ¹ §39:5-30e
Mandatory Minimum Fine (\$):	\$1,000 §39:5-30e This fine appears to be mandatory.
Licensing Actions (Specify):	The licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30(a) The law does not specify the periods of license suspension or revocation.

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests onPersons Killed in TrafficAccidents:

State Has Such a Law (Yes/No): Yes §26:2B-24

BAC Chemical Test Is Given to the
the Following Persons:

Driver:	Yes
Vehicle Passengers:	No
Pedestrian:	Yes

¹One dollar (\$1) is add to any fine for the Body Armor Replacement Fund and \$1 is also added for the N.J. Spinal Cord Research Fund. §39:5-41(d) & (e)

Special Note: If a person operates a CMV during either a CDL suspension/revocation or a CDL out-of-service order, they are subject to an imprisonment term of not more than 90 dys and/or a fine of not more than \$5,000. In addition, an offender is subject to an additional CDL suspension/revocation as noted under DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL) on p. 3-324. If an offender injures another person as a result of such illegal operation, they appear to be subject to a mandatory 90 dy jail sentence and a \$5,000 fine. §39:3-10.18(b)

School Property/Crossing. If the offense occurred either (1) on property owned by or w/n 1,000 ft. of an elementary/secondary school, (2) while driving through a designed school crossing zone or (3) while driving through a non-designed school crossing zone when juveniles are present. The following sanctions apply: Imprisonment-1st off-60 dys (may be mandatory) to 90 dys; 2nd off-120 dys (may be mandatory) to 150 dys; and, 3rd off-180 dys (may be mandatory); fine-1st and sub offs-\$500 (may be mandatory); and, an additional licc susp-1 yr (appears mandatory) to 2 yrs. Note: The license suspension period begins after the completion of any incarceration sanction. §39:3-40(f)(3)

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Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

Minimum Age (Years) Possession:

Minimum Age (Years) Consumption:

21 §§33:1-77 & 33:1-81 (Year Eff: 1983)

21¹ §2C:33-15 There is an exemption for employment.

21¹ §2C:33-15, 9:17B-1 & 33:1-81(b)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes² §2A:22A-1 et seq. In order to be held liable, it must be shown that the licensee served alcoholic beverages to either a "minor" or a "visibly intoxicated" person.

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No³ Note: Previous case law (e.g., *Rappaport v. Nichols*, 156 A.2d 1 (N.J. 1959)) has been abrogated by the above dram shop statute.

Dram Shop Actions-Social Hosts:

Yes §2A:15-5.5 et seq. These provisions provide the exclusive remedy against a social host who has "provided" alcoholic beverages to an injury causing guest where (1) the guest is over the legal drinking age and is visibly intoxicated and (2) the injuries are the result of negligent operation of a vehicle by the guest (§2A:15-5.6). The courts have held that the term "provided" includes "self service" by guests as well as the "direct" service of alcoholic beverages by the host on the social host's premises. The "provided" alcoholic beverages includes those alcoholic beverages that may have been brought by other guests. *Dower v. Gamba*, 677 A.2d 1364 (N.J. Super. A.D. 1994) Previous case law concerning "adult" guests appears to have been abrogated by these sections. *Kelly v. Gwinell*, 476 A.2d 1219 (N.J. 1984)

Other:

However, common law liability against social hosts who serve alcoholic beverages to persons under the legal drinking age does not appear to have been affected by the above sections. *Linn v. Rand*, 356 A.2d 15 (N.J. Super. A.D. 1976), & *Thomas v. Romeis*, 560 A.2d 1267 (N.J. Super. A.D. 1989) Parents may be held liable for the injuries sustained by an intoxicated minor guest, who consumed alcoholic beverages at an unsupervised party hosted by the parents' child. *Winter v. Leo*, 635 A.2d 580 (N.J. Super. A.D. 1994)

Under §2A:22A-5, a licensee may be held liable for the injuries sustained by an intoxicated patron. Likewise, a social host is not liable for the injuries sustained by an adult social host where such injuries were the result of the negligent service of alcoholic beverages to such guest. §2A:15-5.7 and *Kollar v. Lozier*, 669 A.2d 845 (N.J. Super. A.D. 1996)

¹Possession or consumption in a public place.

²Under a New Jersey regulation, NJAC 13:2-23-1, a bartender can be held liable for the injuries of either an intoxicated patron or a person the patron injured if the bartender continued to serve alcoholic beverages to the patron when it should have been known that the patron was intoxicated.

³A Federal appellate court has held that, under New Jersey law, a gambling patron does not have a common law cause of action against a casino for gambling losses which might have been incurred as a result of the patron's intoxication. *Hakimoglu v. Trump Taj Mahal Associates*, 70 F.3d 291 (3rd Cir. 1995)

Other State Laws Related To Alcohol Use: (continued)Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Probably a petty disorderly persons offense¹ See Regulation NJAC 13:2-23.1 which was promulgated under §33:1-39 and the Special Note below.

Term of Imprisonment:

Not more than 30 days under §33:1-92; None under §33:1-12.37

Fine (\$ Range):

Not more than \$500 under §33:1-92; \$50-250 under §33:1-12.37

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp/Rev §33:1-31

Length of Term of License Withdrawal:

Susp-Length of suspension is not specified in the statute; Rev-1st off-2 yrs; sub. off-Permanent revocation Note: A compromise sum of money may be paid in lieu of a suspension.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Disorderly Person Off §§2C:33-17, 2C:43-3(c), 2C:43-8, and 33:1-77

Term of Imprisonment:

Not more than 6 mos

Fine (\$ Range):

Not more than \$1,000

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp/Rev §33:1-31

Length of Term License Withdrawal:

Susp-Length of suspension is not specified in the statute; Rev-1st off-2 yrs; sub. off-Permanent revocation Note: A compromise sum of money may be paid in lieu of a suspension.

Anti-Happy Hour Laws/Regulations:

Yes NJAC 13:2-23.16 (regulation) Note: This regulation does not per se regulate the price of "single" drinks. It does, however, prohibit the selling of an unlimited quantity of drinks at one price or the charging of one price for two or more drinks.

¹ §§2C:1-4, 2C:1-5b, 2C:43-1, 2C:43-3 & 2C:43-8

Special Note: Sec. 33:1-92 gives the sanctions for a "violation of this act" (i.e., the Alcoholic Beverage Control (ABC) Law. Sec. 33:1-12.37 gives a fine sanction for "violating any provision of this act (i.e., the ABC Law) or of any rule or regulation issued pursuant to this act." However, this section does not preclude the imposition of the sanctions under §33:1-92.

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Other State Laws Related To Alcohol Use: (continued)

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

No¹

Yes Drivers and passengers The law prohibits the consumption of alcoholic beverages by either a driver or passenger while the veh is being operated. There are exceptions for certain vehicles for hire. §39:4-51a

¹Under §39:4-51a(b), a person is presumed to have violated the anti-consumption law (§39:4-51a(a)) if (1) a partially filled "unsealed" container of an alcoholic beverage is found in a vehicle's passenger compartment and (2) the appearance of either the driver or passenger(s) indicates that they have consumed alcoholic beverages. *State v. Moore*, 588 A.2d 889 (N.J.Super.A.D. 1991)

STATE:
General Reference:

NEW MEXICO
New Mexico Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):
Presumption (BAC):
Types of Drugs/Drugs and Alcohol:
Other:

Under the influence of intoxicating liquor §66-8-102(A)
≥0.08^{1&2} §§66-8-102(C) & 66-8-110(E)
None
Under the influence of **Any Drug** §66-8-102(B)
Aggravated DWI Offense: Either (1) driving with a BAC/BrAC
≥0.16², (2) causing bodily injury (an injury which is not likely
to cause death or great bodily harm) while under the influence of
alcohol or drugs or (3) refusing to submit to a chemical test and
driving while under the influence of intoxicating liquor or drugs.
§66-8-102(D) & (L)(1)
For Commercial Motor Vehicle Operators, see p. 3-334.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:

No
Yes §66-8-107
Yes §66-8-107

Other Information:

Yes³ (Criminal & Possibly Civil Cases) *McKay v. Davis*, 653
P.2d 860 (N.M. 1982)
A driver may be required to submit to a chemical test based on
a search warrant issued by a court upon probable cause that the
driver has killed or greatly injured another person while operating
a motor veh or where there is probable cause to believe that the
driver committed a felony while under the influence of alcohol or
a "controlled substance". §66-8-111(A)

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:
Urine:
Other:

Yes §66-8-107
No
None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No⁴ **Special Note:** A driver must be charged with a DWI
offense if they have an alcohol concentration ≥0.08.
§66-8-110(C)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.
²Alcohol concentration is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §66-8-110(E)
³Refusal to perform field sobriety tests can also be admitted into evidence. *State v. Wright*, 867 P.2d 1214 (N.M.App. 1993)
⁴A DWI offender is not eligible for conditional discharge where the court, without entering an order of adjudication of guilt, places the offender on probation. §31-20-13

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Adjudication of DWI Charges: (continued)

Anti-Plea Bargaining Statute (Yes/No):

Yes (Limited) §§66-8-102.1 If a guilty plea is entered, it must be to one of subsections of the DWI statute when alcohol concentration is ≥ 0.08 .

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes DWI-PSI screening is required. §66-8-102(E) & (H)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

N/A

Administrative Licensing Action

(Susp/Rev):

N/A

Other:

N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

None

Administrative Licensing Action

(Susp/Rev):

Rev 1 yr (Mand) §§66-5-35(A)(1) & 66-8-111(B)

Other:

None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See the Special Note and Double Jeopardy below.

Imprisonment:

Term (Day, Month, Years,

Etc.):

DWI/Aggravated DWI Offenses: 1st off-Not more than 90 dys (For a 1st off, where there has been a dismissal of the charges, see Rehabilitation on p. 3-334.); 2nd and 3rd offs-Not more than 364 dys; 4th & sub. off (4th Degree Felony)-18 mos §§31-18-15 & 66-8-102 Great bodily injury where the driver was under the influence of intoxicating liquor or drugs (3rd Degree Felony)-3 yrs^{1&2} §§31-18-15 & 66-8-101 See Footnote No. 3.

¹For any noncapital felony offense, the sentence may be altered by as much as one third by the court depending upon the aggravating or mitigating circumstances. §31-18-15.1

²For each prior DWI offense conviction (w/n 10 yrs), the basic imprisonment sanction is increased by an additional 2 yrs.

³A person, who operates a motor vehicle either while under the influence of alcohol/drugs or while violating §66-8-113 and who causes injuries to a pregnant woman, is guilty of a third degree felony. §§66-8-101.1 & 31-18-15 The sentence is increased by 2 yrs if there is an injury to a person 60 yrs old or older or to a handicapped person. §31-18-16.1

Special Note: For the purposes of determining whether a person is a subsequent offender, a 1st offender includes persons who have had DWI charges dismissed via a deferred sentence. As of February 25, 1994, deferred sentencing is prohibited for DWI offenses. §§31-20-13(C), 66-1-4.6(C), 66-1-4.16(Q) & 66-8-102(E)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State ex rel. Schwartz v. Kennedy*, 904 P.2d 1044 (N.M. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:

DWI Offenses: 1st off-No¹; 2nd off-72 cons hrs; 3rd off-30 con dys; 4th & sub. off-6 mos Aggravated DWI Offenses: 1st off-48 con hrs; 2nd off-96 cons hrs; 3rd off-60 con dys; 4th & sub. off-6 mos §66-8-102 Great bodily injury where the driver was under influence of intoxicating liquor or drugs-3rd Degree Felony-2 yrs See Footnote No. 1 on p. 3-332.

Fine:
Amount (\$ Range):

DWI/Aggravated DWI Offenses: 1st off-Not more than \$500²; 2nd and 3rd offs-Not more than \$1,000; 4th & sub. off-Not more than \$5,000 §§31-18-15 & 66-8-102 Great bodily injury where the driver was under influence of intoxicating liquor or drugs-3rd Degree Felony-Not more than \$5,000 §31-18-15

Mandatory Min. Fine (\$):

DWI/DWI Aggravated Offenses: 1st off-None; 2nd off-\$500; 3rd off-\$750; 4th & sub. off-None Great bodily injury where the driver was intoxicated-No

Other Penalties:
Community Service:

DWI/Aggravated DWI Offs: 1st off-48 hrs (or a \$300 fine)³; 2nd off-48 hrs (mand) §66-8-102

Restitution
(eg Victim's Fund)
Other:

Yes §31-17-1 Restitution is to be paid by the defendant.³
BAC Test Fee. A fee of \$65 is assessed against each defendant to defray the costs of chemical tests for DWI. §31-12-7(A)
DWI Program Fee. A fee of \$75 is assessed to fund comprehensive DWI community programs. §31-12-7(B)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

See Double Jeopardy on p. 3-332.

Other:

1st Admin. Per Se Action-(1) For persons ≥21 yrs old who have a BAC/BrAC ≥0.08⁴-Rev 90 dys (30 dys mand followed by restricted driving privileges⁵) and (2) For persons <21 yrs of age who have a BAC/BrAC ≥0.02⁴-Rev 6 mos (30 dys mand followed by restricted driving privileges⁵); Subsequent Admin Per Se Action (all persons)-Rev 1 yr (30 dys mand)^{2&6} §§66-5-35(B), 66-8-110(D), 66-8-111(C)(1), (2) & (3) and (D)
Under §§66-5-29, 66-5-30(A)(1) & 66-5-32(A), for certain 1st DWI offs and all sub. ones, a person's license may be susp for not more than 1 yr if they have been convicted of an off. that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

¹The only mandatory sanctions are either a fine or community service.

²As an alternative, an offender may be sentenced either to serve 48 hrs of community service or pay a \$300 fine. §66-8-102(E)

³Restitution appears to be required if a sentence is either suspended or deferred. §§31-17-1B & 31-20-6

⁴See Footnote No. 2 on p. 3-331.

⁵Restricted driving privileges are allowed for either employment or education purposes provided the driver is enrolled in a drunk driving school and alcohol screening program. §66-5-35(B)

⁶For subsequent admin. actions, a restricted license may be issued after 30 dys provided the licensee operates motor vehicles that are equipped with ignition interlock devices. §66-5-35(B)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

DWI/DWI Aggravated Offenses¹: 1st off-Rev; 2nd off-Rev §§66-5-29 & 66-5-32(B); 3rd off (w/n 10 yrs)-Rev §66-5-5(D)

Term of License Withdrawal

(Days, Months, Years, etc.):

DWI/DWI Aggravated Offenses: 1st off-1 yr; 2nd off-1 yr; 3rd off (w/n 10 yrs)-**10 yrs**

Mandatory Minimum Term of

Withdrawal:

DWI/DWI Aggravated Offenses: 1st off-See the Special Note below. 2nd off-30 dys²; 3rd off-30 dys² §66-5-35(A)(3) & (C)

Other:

Rehabilitation:

Alcohol Education:

Yes DWI/DWI Aggravated Offenses: For 1st offenders, the court either (1) shall order the defendant to attend a "DWI school" or other "rehabilitative services" or (2), in its discretion, may defer the DWI charges and place a defendant on probation on condition that they attended alc. education or rehabilitation. After the probation period, the court dismisses the DWI charges. §§31-20-9 and 66-8-102(D), (E), (G) & (H)

Alcohol Treatment:

See Alcohol Education above. For subsequent DWI offenders, the court may order a defendant to complete an alcohol treatment program. §66-8-102(G)

Vehicle Impoundment/Confiscation:

None See the Historical Note below.

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

Ignition Interlock.² Persons, who have been convicted of a subsequent misdemeanor drunk driving offense prior to July 1, 2003, as a condition of probation, may be required to only operate motor vehicles that are equipped with ignition interlock devices. §66-8-102(I)

¹For DWI great bodily injury offs, there appears to be a mand 1 yr lic rev based on felony offenses committed while operating a motor vehicle. No restricted license is available to persons convicted of this offense. §§66-5-29(A)(4) & (B) and 66-5-35(A)(4)

²For subsequent offenses, a restricted license may be issued after a mand. 30 dy rev period provided the offender is enrolled in a DWI school, an alc. screening program and operates vehicles that are equipped with ignition interlock devices. §66-5-35(A)(3), (C) & (D)
DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they either (1) have a BAC ≥ 0.04 but < 0.08 (Standard: Percent by wgt. of alcohol in the blood), (2) are convicted of a drunk driving offense (§66-8-102) while operating a CMV or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). §§66-5-54, 66-5-68 & 66-5-68.1

Special Note: It appears that, if a person has been convicted of a 1st DWI/DWI Aggravated off but they are not subject to the mandatory license revocation provisions of the admin per se law, they may be able to obtain a restricted license. §66-5-35(A)

Historical Note: In 1993, legislation repealed provisions that provided for vehicle impoundment for drunk driving offenses. §7 of Act 66, Laws 1993 Prior law (formally §66-8-102(I)) provided for the following impoundment actions: 1st off-None; 2nd off-30 dys; 3rd off-60 dys As an alternative, the vehicle could be "immobilized" for the periods indicated. This action was held not to be mandatory. *State v. Barber*, 778 P.2d 456 (N.M.App. 1989), cert. den. by the State supreme court, 778 P.2d 911 (N.M. 1989)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

Driving Safety Course. A DWI offender may be required to take a driving safety course. §66-10-11

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Misd §66-8-7(A) However, if the driver was intoxicated-**3rd Degree Felony** §66-8-101(C), (D) & (F)

Sanctions:
Criminal Sanction:
Imprisonment (Term):

Misd-Not more than **90 dys**; 3rd Degree Felony-3 yrs¹
§§31-18-15 & 66-8-7B

Mandatory Minimum Term:
Fine (\$ Range):

3rd Degree Felony-2 yrs See Footnote No. 1 on p. 3-332.

Misd-Not more than **\$100**; 3rd Degree Felony-Not more than **\$5,000**

Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and
Type of Action:

None
See the Special Note below.

Length of Term of
Licensing Withdrawal:
Mandatory Action--Minimum
Length of License
Withdrawal:

Misd-Susp; 3rd Degree Felony-Susp/Rev §§66-5-29 & 66-5-30(A)(2)

Misd-1 yr; 3rd Degree Felony-1 yr

Other:

3rd Degree Felony-1 yr No restricted driving privileges may be granted. §66-5-35(A)(4)

Misd-Restitution; 3rd Degree Felony-Restitution Victim restitution is either via the offender or via a State reparations fund. §§31-17-1 & 31-22-1 et seq.

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

See Footnote Nos. 2, 3, 4 & 5.

Sanction:
Criminal:
Imprisonment (Term):

Misd Less than 1 yr §§31-19-1(A) & 66-5-39(A)

¹For each prior DWI offense conviction (w/n 10 yrs), the basic imprisonment sanction is increased by an additional 2 yrs.

²Plea bargaining is not allowed to another offense. §66-5-39(A)

³The motor vehicle used in the offense shall be immobilized for 30 dys. However, such action is not taken if it would impose imminent danger to the health, safety or employment of the vehicle owner's or offender's family. §66-5-39(B)

⁴It is a misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term for not more than 90 dys and/or a fine of not more than \$300. §§66-5-59(B) & 66-8-7

⁵A person, who operates a CMV in violation of an out-of-service order, is subject to the following sanctions: (1) A civil penalty of not less than \$10 nor more than \$25 and (2) is disqualified from operating a CMV as follows: 1st violation-a disqualification for not less than 90 dys (mand) not more than 1 yr; 2nd violation (w/n 10 yrs)-not less than 1 (mand) nor more than 5 yrs; and, 3rd or subsequent violation (w/n 10 yrs)-not less than 3 (mand) nor more than 5 yrs. §66-5-71

Special Note: I. The licensing agency has the authority to suspend a person's license for not more than 1 yr, if they have been convicted of an offense related a motor vehicle accident in which there was a death (or a personal injury). §§66-5-30(A)(2) & 66-5-32(A) II. In addition, such agency must revoke a person's license for 1 yr if they are convicted of either "manslaughter" or "negligent homicide" while operating a motor vehicle. §66-5-29(A)(1) & (B) III. Unless a death is related to a drunk driving offense per §66-8-101, it may be possible for persons, who have been convicted of these offenses, to obtain restricted driving privileges. §66-5-35(A)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	7 con dys §66-5-39(A)
Fine (\$ Range):	\$300 to \$1,000 §66-5-39(A)
Mandatory Minimum Fine:	\$300 §66-5-39(A)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp/Rev §66-5-39(C)
Length of Term of License Withdrawal Action:	For driving while suspended - an additional suspension period equal to the original period. For driving while revoked - an additional revocation period of one (1) year. §66-5-39(C)
Mandatory Term of License Withdrawal Action:	The above suspension/revocation periods appear to be mandatory.
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	No
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine (\$ Range):	
Mandatory Minimum Fine (\$):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

<u>Laws Requiring BAC Chemical Tests on Persons Killed in Traffic</u>	
<u>Accidents:</u>	
State Has Such a Law (Yes/No):	Yes ¹ §24-11-6(B)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes ¹
Vehicle Passengers:	Yes ¹
Pedestrian:	Yes ¹

¹The information, that is obtained from these test results, can only be used for statistical purposes. I.e., the information cannot contain any identification about deceased persons. §24-11-6(B)

Other State Laws Related To Alcohol Use: (continued)Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1934) §§60-3A-3(O) & 60-7B-1

Minimum Age (Years) Possession:

21 There is an exemption when the minor is on real property (not a licensed premises) under the control of a parent or guardian. §§60-3A-3(O) & 60-7B-1

Minimum Age (Years) Consumption:

None Note: A licensee cannot allow a person under 21 years old to consume alcoholic beverages on the licensed premises. §60-7B-1(A)(1)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §41-11-1^{1,2&3}"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):Yes but abrogated via §41-11-1(H)³

Dram Shop Actions-Social Hosts:

Yes §41-11-1(E)^{1,2&3} Liability is based upon the host providing alcoholic beverages to the guest in reckless disregard of the rights of others including the guest. *Walker v. Key*, 686 P.2d 973 (N.M.App. 1984)

Other:

None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Petty Misd-for persons; Misd-for corporations §§31-19-1(A) & (B), 31-20-1(A), 60-7A-16 & 60-7A-25

Term of Imprisonment:

Not more than 6 mos

Fine (\$ Range):

Not more than \$500 (For corporations, not more than \$1,000)

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes⁴ §60-6C-1

¹The law (1) limits liability for social hosts to cases involving serving alcoholic beverages in reckless disregard of the rights of others and (2) increases the burden of evidence needed to hold liquor license establishments liable for serving alcoholic beverages to intoxicated persons.

²**Special Note:** The New Mexico Supreme Court has held that §41-11-1(I), which limits damage awards in dram shop cases, violates the equal protection clause of the New Mexico Constitution. *Richardson v. Carnegie Library Restaurant, Inc.*, 763 P.2d 1153 (N.M. 1988). Under this law, for each transaction or occurrence, damage awards are limited to either (1) \$50,000 for injuries/death and \$20,000 for property damage for one individual or (2) \$100,000 for injuries/death and \$20,000 for property damage for two or more persons.

³The dram shop law is the exclusive remedy for damages against either alcoholic beverage licensees or social hosts. §41-11-1(H) This provision, therefore, abrogated court decisions that had established liability via common law negligence. See, e.g., *Lopez v. Maze*, 651 P.2d 1269 (N.M. 1982), which concerned alcoholic beverage licensees, and *MRC Prop. v. Gries*, 652 P.2d 732 (N.M. 1982), which concerned social hosts.

⁴In emergency situations, licenses may be "summarily suspended". §60-6C-7

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Other State Laws Related To Alcohol Use: (continued)

Length of Term of License Withdrawal:

2 yrs §60-6C-8

An administrative fine of not more than \$10,000 can also be imposed. §60-6C-1(B) See the Special Note and Licensed Servers below.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misd §60-7B-1

Term of Imprisonment:

None¹

Fine (\$ Range):

Not more than \$1,000

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes^{2&3} §60-6C-1

Length of Term License Withdrawal:

2 yrs §60-6C-8

An administrative fine of not more than \$10,000 can also be imposed. §60-6C-1(B) See the Special Note and Licensed Servers below.

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes §66-8-138(B) & (C)

Anti-Consumption Law (Yes/No):

Yes Driver and passengers §66-8-138(A)

¹**Community Service.** A person, who is convicted of selling alcoholic beverages to a minor, must perform the community service related to reducing drunk driving as follows: 1st offense-30 hrs; 2nd offense-40 hrs; and, 3rd or subsequent offense-60 hrs. §60-7B-1(F)

²In emergency situations, licenses may be "summarily suspended". §60-6C-71

³In addition, a person's license to sell alcoholic beverages under the Alcohol Server Education Act is suspended as follows: 1st violation-No suspension; 2nd violation-60 dy suspension; and, 3rd or subsequent violation-1 yr suspension. §60-7B-1(F)

Special Note: A license suspension/revocation or administrative fine is mandatory, if the licensee's employees or agents, "knowingly" serve alcoholic beverages in violation of the law and such violation was the second in 12 mos. §60-6C-1(B)

Licensed Servers. Persons, who serve alcoholic beverages at a business licensed to sell such beverages, must be individually licensed to serve these beverages. If such a person serves alcoholic beverages to either an intoxicated person or to one under the legal drinking age, the licensed individual is subject to the following administrative sanctions which are in addition to any criminal liability that may be imposed: 1st offense-An administrative fine of not more than \$500 and/or server permit suspended for 30 dys; 2nd offense-Server permit suspended for 1 yr; and, 3rd offense-Server permit permanently revoked. §60-6D-18

STATE:
General Reference:

NEW YORK
McKinney's Consolidated Laws of New York
Note: Most citations are to the Vehicle and Traffic Law (V&T Law).

Basis for a DWI Charge:

Standard DWI Offense:

I. Ability to operate a vehicle is impaired by the consumption of alcohol V&T Law §1192(1)

II. Operate a motor vehicle while in an intoxicated condition¹ V&T Law §1192(3)

≥0.10² V&T Law §1192(2)

None

A Controlled Substance^{1&3} V&T Law §§114-a & 1192(4) and Public Health Law §3306

A BAC >0.05 but <0.07² is "relevant evidence" of being impaired. V&T Law §1195(2)(b) & (c)

A BAC >0.07 but <0.10² is *prima facie* evidence of impairment. V&T Law §1195(2)(b) & (c)

For Commercial Motor Vehicle Operators, see p. 3-342.

Illegal Per Se Law (BAC):
Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes V&T Law §1194(1)(b) Note: The law does not specifically authorize the use of PBTs in all situations. The law only authorizes these tests in those situations where a driver has been involved in an accident and has committed a traffic law violation. A violation could include other offenses as well as DWI.

Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

No^{4&5} V&T Law §1194(2)

Yes V&T Law §1194(2)(a)

Yes (Criminal and Civil Cases) V&T Law §1194(2)(f)

Special Note: Under V&T Law §1194(3), a driver may be compelled via court order to submit to a chemical test of their blood for either alcoholic or drug content if they have been involved in an accident related to a DWI offense and there has been a fatality or a serious physical injury.

¹The law provides that no one shall operate a motor vehicle while in an intoxicated condition. This condition could be the result of drug as well as alcohol ingestion.

²Standard: Percent by weight of alcohol in the blood. V&T Law §§1192(2) and 1195(2)(b) & (c) Percent by wgt. of alcohol in the blood may be expressed as grams of alcohol per 100 milliliters of blood. 10 NYCRR §59.1(b), *People v. Ritchie*, 511 N.Y.S.2d 482 (Sup. 1987), & *People v. McDonough*, 518 N.Y.S.2d 524 (A.D. 4 Dept. 1987)

³The law provides that no one shall drive while impaired by drugs as defined in the motor vehicle law.

⁴A DWI arrest is one basis for requiring a person to submit to an implied consent chemical test (V&T Law §1194(2)(a)(1)). However, an arrest is not required in all situations. If a PBT indicates that alcohol has been consumed, a request to submit to a chemical test under the implied consent law may be made without the need for a formal arrest. V&T law §1194(2)(a)(2)

⁵A person under 21 yrs old, who has been stopped for operating a motor vehicle "after having consumed alcohol," cannot be arrested. However, they can be "temporarily detained" by law enforcement officers for the purpose of requesting a chemical test. V&T Law §1194(2)(a)(4)

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes V&T Law §1194(2)(a)
Urine:	Yes V&T Law §1194(2)(a)
Other:	Saliva V&T Law §1194(2)(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):

No

Yes Unless available evidence determines otherwise, plea bargaining is allowed only to another DWI offense. V&T Law §1192(10)(a) A person under 21 yrs old, who has been charged with "driving while impaired," may satisfy such charge by agreeing to an administrative license suspension or revocation under V&T Law §1192-a. V&T Law §1192(10)(c)

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No Note: See Criminal Procedure Law §390.20 for the general requirements related to pre-sentence investigations following a conviction for either a misdemeanor or felony.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):

Infraction¹ 1st Refusal: Jail-not more than 15 dys; fine-not more than \$50; 2nd Refusal (w/n 18 mos): Jail-not more than 45 dys; fine-not more than \$100; 3rd Refusal (w/n 18 mos): Jail-not more than 90 dys; fine-not more than \$250 V&T Law §1800(b)

Administrative Licensing Action
(Susp/Rev):
Other:

None
None

Refusal to Take Implied Consent
Chemical Test
Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

None

Other:

Rev for at least 6 mos (at least 1 yr if under 21)²; Rev for at least 1 yr for a 2nd or subsequent refusal (w/n 5 yrs) or a 1st refusal where there has been a previous DWI off conviction (w/n 5 yrs)
Special Note: These revs are mandatory. V&T Law §1194(2)(d) See 15 NYCRR (New York Code Rules and Regulations) 13 §3 & 139.4 for a temporary lic. susp. prior to a hearing on a refusal.
(1) Under V&T Law §1194(2)(b), a person who refuses to submit to a chemical test may have their license suspended at the time of arraignment based upon a sworn written police report.

¹*People v. Steves*, 459 N.Y.S.2d 402 (Sup. 1983)

²For persons under 21 who have refused to submit to a chemical test and who have had either a previous alcohol/drug driving offense conviction or a prior administrative violation for operating a motor vehicle after having consumed alcohol, revocation for 1 year or until they reach 21 whichever is the longer revocation period.

Sanctions for Refusal to Submit to a
Chemical Test: (continued)

Other: (continued)

(2) 1st refusal-**\$300** (\$350 if operating a CMV) Civil Penalty; 2nd or sub refusal (w/n 5 yrs) or a 1st refusal where there has been a prior DWI off (w/n 5 yrs) **\$750** Civil Penalty V&T Law §1194(2)(d)(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

See the Special Note below and School Bus Operators on p. 3-342.

I. "Impaired" alcohol status offs V&T Law §§1192(1) & 1193(1)(a)-1st off (Traffic Infraction)-Not more than **15 dys**; 2nd off¹ (w/n 5 yrs)(Misd)-Not more than **30 dys**; 3rd and any subsequent off¹ (w/n 10 yrs)(Misd)-Not more than **180 dys**

II. Per se and Intoxicated status offs²-1st off (Misd)-Not more than **1 yr** V&T Law §1193(1)(b); 2nd off³ (w/n 10 yrs) Cl E Felony-Not more than **4 yrs**⁴; 3d off³ (w/n 10 yrs) Cl D Felony-Not more than **7 yrs**⁴ V&T Law §§1192 & 1193(1)(c)
None

Mandatory Minimum Term:

Fine:

Amount (\$ Range):

I. "Impaired" alcohol status offs-1st off-**\$300 to \$500**; 2nd off¹ (w/n 5 yrs)-**\$500 to \$750**; 3rd and any subsequent offs¹ (w/n 10 yrs)-**\$750 to \$1,500** V&T Law §1193(1)(a)

II. Per se and intoxicated status off²-1st off (Misd)-**\$500 to \$1,000** V&T Law §1193(1)(b); 2nd off (w/n 10 yrs) Cl E Felony-**\$1,000 to \$5,000**; 3rd off (w/n 10 yrs) Cl D felony-**\$2,000 to \$10,000** V&T Law §1193(1)(c)

Mandatory Min. Fine (\$):

I. "Impaired" alcohol status offs-1st off-**\$300**; 2nd off (w/n 5 yrs)-**\$500**; 3rd and any subsequent offs (w/n 10 yrs)-**\$750**

II. Per se and intoxicated off²-1st off (Misd)-**\$500**; 2nd off (w/n 10 yrs) Cl E felony-**\$1,000**⁵; 3rd off (w/n 10 yrs) Cl D felony-**\$2,000**⁵

Other Penalties:

Community Service:

Restitution

(eg Victim's Fund)

Yes As a condition of probation. Penal Law §65.10(2)(h)

Yes (1) The court may require restitution by a defendant to a victim. Penal Law §§60.27 & 65.10(2)(g) (2) A person may also receive compensation from the State's victims' compensation fund. Executive Law §620 et seq.

¹A previous alcohol offense conviction (of any type) is considered a previous offense.

²Includes driving while impaired by drugs.

³A previous offense also includes vehicle assault (Penal Law §§120.03 & 120.04) and vehicle homicide (Penal Law §§125.12 & 125.13).

⁴Penal Law §§70.00 & 80.00

⁵This fine (for a felony conviction) may not be mandatory. *People v. Porter*, 522 N.Y.S.2d 88 (Co.Ct. 1987)

Special Note: A person commits "Vehicle Assault", a Cl E Felony, if they injure another in a criminally negligent manner while in violation of the DWI law. It is a Cl D Felony if the offender committed this offense while driving on a suspended or revoked license where such action was based either on a refusal to submit to a chemical test or a drunk driving offense conviction. Penal Law §§120.036 & 120.04

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Ignition Interlock. I. A driving while impaired/intoxicated offender, who is sentenced to probation, may be required to only operate vehicles equipped with an "ignition interlock" device. V&T Law §1198 (repealed 7/1/2001) II. The use of an "ignition interlock" may be a condition of probation for an illegal per se/intoxicated offense conviction. Penal Law §65.10(2)(k-1)

Surcharges. Felony-Mand surcharge of \$150 plus a \$5 crime victim assistance fee Misd-Mand surcharge of \$85 plus a \$5 crime victim assistance fee Penal Law §60.35 V&T Law §1809 provides that for any offense there is a mand surcharge of \$25.

School Bus Operators: A person, who operates a school bus with at least one student passenger, in violation of the drunk driving laws is subject to the following sanctions. 1st Impaired status off-(Cl A Misd)-Imprisonment for not more than 1 yr and/or a fine of \$500 to \$1,500. V&T Law §1193(1)(d)(1-a) and Penal Law §§55.10(2)(b) & 70.15 License revocation for 1 yr V&T Law §1193(2)(b)(4-a)(a) Sub Impaired status off (w/n 10 yrs) (Cl E Felony)-Imprisonment for not more than 4 yrs and/or a fine of \$1,000 to \$5,000. V&T Law §1193(1)(d)(1-a) & (4) and Penal Law §70.00 License revocation for 3 yrs V&T Law §1193(2)(b)(4-A)(b) Per Se Intoxicated and driving while impaired by drugs off-(Cl E Felony)-Imprisonment for not more than 4 yrs and/or a fine of \$1,000 to \$5,000. V&T Law §1193(1)(d)(4-a) and Penal Law §§70.00 & 80.00 License revocation for 1 yr. (Comment: The law is not clear but a subsequent offender may receive a 3 yr revocation.) V&T Law §1193(2)(b)(4-a) & (b) See Footnote No. 5 on p. 3-343.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Licensing Action: A person will have their privilege to operate a CMV "revoked" for one (1) year (mandatory) (three (3) years (mandatory) if they were transporting hazardous materials) if, while operating a CMV they either (1) had a BAC ≥ 0.04 (percent by weight of alcohol in the blood), (2) violated any provision of the DWI law (V&T §1192, subds. 1, 2, 3 & 4) or (3) refused to submit to a chemical test for alcoholic/drug content. For either (1) a second violation or (2) a combination of two violations of any of the above listed items, there is a "disqualification" for at least ten (10) years (mandatory). For either (1) a third violation or (2) a combination of three violations of any of the above listed items, there is a mandatory permanent "disqualification". V&T Law §§501-a, 510-a, 530(5), 1193(2)(b)(5), 1193(2)(e)(3), 1194(2)(d)(1)(c) & (d) and 1196(5) **Criminal Sanctions: Infraction:** A person commits an "infraction" if they operate a CMV with a BAC at or above 0.04 but below 0.07 (a CMV Per Se Level I Offense V&T Law §1192, subd. 5). The sanctions for an this "infraction" are the same as for "impaired" driving. **Misdemeanor:** A person commits a misdemeanor if they operate a CMV with a BAC at or above 0.07 but below 0.10 (a CMV Per Se Level II Offense V&T Law §1192, subd. 6). For a first Per Se Level II Offense, the sanctions are a fine of \$500 to \$1,500 and/or a jail term of not more than 180 days. Either (1) for a subsequent Per Se Level II Offense (within five (5) years) or (2) for a first such offense where there has been a previous DWI offense conviction (within five (5) years), the sanctions are a fine of \$500 to \$1,500 and/or a jail term or not more than one (1) year. A person commits a misdemeanor if they operate a CMV and violate the regular provisions of the DWI law (V&T §1192, subds. 1, 2, 3 & 4). The sanctions for this offense are a fine of \$500 to \$1,500 and/or a jail term or not more than one (1) year. **Felony:** A person commits a Class E felony if they are convicted of a Per Se Level II offense and have been convicted 2 or 3 times w/n 5 years of either (1) a Per Se Level II offense or (2) any DWI offense (One of these must be a misdemeanor.). A person commits a Class D felony if they are convicted of a Per Se Level II offense and have been convicted 4 or more times w/n 5 years of either (1) a Per Se Level II offense or (2) any DWI offense (One of these must be a misdemeanor.). **Class E felony** sanctions: A fine of \$1,000 to \$5,000 and/or a term of imprisonment of not more than 4 years. **Class D felony** sanctions: A fine of \$2,000 to \$10,000 and/or a term of imprisonment of not more than 7 years. V&T Law §1193(1)(d)(1), (2), (3) & (4) and Penal Law §§55.10(1)(b), 55.10(2)(b), 70.00 & 70.15(1)(a)

DWI Offenses Involving Other Motor Vehicles Used In Commerce: The following sanctions apply to persons who operate taxicabs, liveries or a truck weighing more than 18,000 lbs. but less than 26,000 lbs. while in violation of the regular provisions of the DWI law (V&T Law §1192, subds. 1, 2, 3 & 4). For a first offense the person commits a misdemeanor and may be fine \$500 to \$1,500 and/or a jail term of not more than one (1) year; in addition, their license is revoked for 1 year. For a 2nd offense (w/n 10 years), person commits a Class E felony and may be fined \$1,000 to \$5,000 and/or an imprisoned for of not more than 4 years; for a 3rd offense (w/n 10 years), person commits a Class D felony and may be fined \$2,000 to \$10,000 and/or an imprisoned for of not more than 7 years; in addition, such person is "disqualified" from operating these types of vehicles for at least five (5) years. V&T Law §§1193(1)(d)(1), (2), (3) & (4), 1193(2)(b)(4) & 1193(2)(e)(3) and Penal Law §§55.10(1)(b), 55.10(2)(b), 70.00 & 70.15(1)(a) Note: Operating a vehicle weighing > 18,000 lbs while transporting flammable gas, radioactive materials or explosives and while either Per Se, Intoxicated or driving while impaired by drugs offs is also a Cl E Felony with the criminal sanctions as noted above. V&T Law §1193(1)(d)(5)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Other:

Persons Under 21 Years Old. Operating a motor vehicle "after having consumed alcohol" A person is only considered to have consumed alcohol if their BAC is ≥ 0.02 but < 0.07 V&T Law §1192-a 1st action-Susp-6 mos¹ V&T Law §1193(2)(a) Sub. action-Rev-1 yr or until they reach 21 yrs old whichever is the greater period (mand)² V&T Law §1193(2)(b)(7) & (9)

I. Temporary susp is mandatory where a person is charged with a violation of V&T Law §1192(2), (3) & (4) and they have a previous alcohol/drug driving conviction of any type w/n 5 yrs. V&T Law §1193(2)(e)³ See "Other" under Sanctions for Refusal to Submit to an Implied Consent Test on p. 3-340.

II. Suspension Pending Prosecution. (Eff. until November 1, 2000) A person, who has been arrested for driving while intoxicated or illegal per se under V&T Law §1192(2) & (3), must have their license suspended by the court, at the time of arraignment, if there is "reasonable cause to believe" that the person was operating a motor vehicle with a BAC ≥ 0.10 (percent by wgt. of alcohol in the blood). However, this suspension is not mandatory. An offender is eligible for a conditional license after the suspension as been in effect for 30 dys. In addition, they are eligible for immediate driving privileges based on a showing of "extreme hardship" for educational, employment or medical purposes. V&T Law §§1193(2)(e)(7) & 1196(7)(h)⁴ **Comment:** The law does not provide for a specific period of suspension.

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

See the Special Note below and School Bus Operators on p. 3-342.

I. "Impaired" alcohol status offs⁵-1st off-Susp (Rev if person is under 21 years old); Sub off (w/n 5 yrs of 1 alcohol driving off

¹This suspension is not mandatory. A conditional license is available if the offender participates in an alcohol rehabilitation program. V&T Law §1196(4) & (7)

²This revocation is mandatory even if the offender participates in an alcohol rehabilitation program.

³A violation of V&T Law §1192(2), (3) & (4) must be based upon "reasonable cause" before the court can impose this suspension.

⁴V&T Law §1193(2)(e)(7), the arraignment license susp law, has been held not to violate constitutional principles of due process of law. *Pringle v. Wolfe*, 668 N.E.2d 1376 (N.Y. 1996) In addition, a person, who has been subjected to licensing action under V&T Law §1193(2)(e)(7), may also be subsequently prosecuted and punished for a drunk driving offense. Such subsequent criminal action does not violate the constitutional prohibition against double jeopardy. *Smith v. County Court of Essex County*, 649 N.Y.S.2d 507 (A.D. 3 Dept. 1996), *People v. Conrad*, 654 N.Y.S.2d 226 (Sup. 1996), *People v. Haishun*, 656 N.Y.S.2d 660 (A.D. 2 Dept. 1997), *People v. Steele*, 661 N.Y.S.2d 908 (Sup. App. Term 1997), *People v. Uzquiano*, 661 N.Y.S.2d 438 (Sup.App.Term. 1997), *People v. Busby*, 670 N.Y.S.2d 960 (Sup.App.Term. 1997), & *People v. Malone*, 673 N.Y.S.2d 809 (Sup.App.Term 1997)

⁵If a person is convicted of an "impaired" alcohol offense while operating a motor vehicle on a probationary license, such license is suspended for 60 days (mandatory). V&T Law §510-b(1)

Special Note: I. A person under 21 yrs old, who is convicted of any alcohol driving offense shall for a 1st offense have their license revoked for 1 year and for a subsequent offense revocation for 1 year or until they reach 21 which ever is the greater period of time. A conditional license is not available even if the offender participates in an alcohol rehabilitation program. V&T Law §1193(2)(b)(6), (7) & (9) II. In addition to the licensing sanctions given, V&T Law §510(2)(b)(v) provides for a 6 mo susp for persons who have been convicted (1st or sub off) of violating V&T law §1192(4) (driving while their ability is impaired by certain defined drugs). This sanction is effective until October 1, 2000.

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Sanctions Following a Conviction for a DWI Offense: (continued)

	I. (continued) of any type or w/n 10 yrs of 2 alc driving offs of any type)- Rev II. Per se and intoxicated offs ¹ - <u>1st off-Rev</u> ; <u>2nd and any subsequent offs</u> (w/n 10 yrs)- Rev V&T Law §1193(2) See Footnote No. 2.
Term of License Withdrawal (Days, Months, Years, etc.):	I. "Impaired" alcohol status offs- <u>1st off-90 dys</u> ; <u>Sub off</u> (w/n 5 yrs of 1 alcohol driving off of any type or w/n 10 yrs of 2 alc driving offs of any type)- 6 mos II. Per se and intoxicated offs ¹ - <u>1st off-At least 6 mos</u> ; <u>2nd and any subsequent offs</u> (w/n 10 yrs)- At least 1 yr V&T Law §1193(2)(a) & (b)
Mandatory Minimum Term of Withdrawal:	I. "Impaired" alcohol status offs- <u>Sub off</u> (w/n 5 yrs of 1 alcohol driving off of any type or w/n 10 yrs of 2 alc driving offs of any type)- 6 mos II. Per se and intoxicated offs ¹ - <u>2nd and any subsequent offs</u> (w/n 10 yrs)- 1 yr ³ V&T Law §1193(2)(a) & (b) See Footnote No. 4.
Other:	
Rehabilitation:	
Alcohol Education:	Yes for all offs V&T Law §1196
Alcohol Treatment:	Yes for all offs V&T Law §1196
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	Forfeiture. A defendant's vehicle may be subject to forfeiture if they have been convicted of a felony drunk driving offense (e.g., a second or subsequent Per Se or Intoxicated offense w/n 10 yrs). This sanction is not mandatory. Civil Practice Law & Rules §§1301(5) & 1311(1)(a) and <i>Holtzman v. Bailey</i> , 503 N.Y.S.2d 473 (Sup. 1986)
Terms Upon Which Vehicle Will Be Released:	N/A
Other:	Registration Suspension/Revocation. The registration of a defendant's vehicle may be susp/rev. Registration susp/rev periods are the same as the license susp/rev periods for DWI offense convictions. Applies also to persons under 21 years old. V&T Law §1193(2)(a) & (b)

¹Also includes driving while impaired by drugs under V&T Law §1192(4).

²A bus operator (including school bus operator) is disqualified from operating a bus for 5 yrs if they (1) are convicted of operating a bus in violation of any provision of the drunk driving laws or (2) have been convicted to two such offenses while operating any other type of vehicle. V&T Law §§509-c & 509-cc

³Under V&T Law §1193(2)(c), if a person is convicted of two (2) violations of either driving while intoxicated or driving while impaired by drugs (V&T Law §1192(3) & (4)) where a personal injury has resulted in each offense, their license is permanently revoked.

⁴A person may be issued a conditional license while participating in a rehabilitation program. However, a person is not permitted to take part in such a program and obtain a conditional license (1) if, they have participated in such a program w/n a five yr period or (2) if they have been convicted of a subsequent alcohol driving offense w/n 5 yrs. Successful completion of the program shall satisfy any sentence of imprisonment and allow an offender to apply for reinstatement of his/her driver's license. V&T Law §1196(4) & (7)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

Victim Impact Program. A defendant may be required to attend a "victim impact program". This program consists of a single session in which prior DWI offenders discuss the impact that such an offense has had on them. V&T Law §1193(f)

Civil Penalty. A person <21 yrs old, who has had their license susp/rev for driving "after having consumed alcohol," is liable for a civil penalty of \$125. V&T Law §1194-a(2)

Probation. A defendant may be placed on probation with conditions provided such conditions are related to the offender's rehabilitation.¹ Penal Law §65.10(2)(f)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes Vehicle Manslaughter in the 2nd degree-C1 D felony Death of another based on criminally negligent action while in violation of the DWI laws. Penal Law §125.12 See Footnote No. 2.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than 7 yrs Penal Law §70.00(2)(d)

Mandatory Minimum Term:

None

Fine (\$ Range):

Not more than \$5,000 Penal Law §80.00(1)(a)

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Rev V&T Law §510(2)(a)(i)

Type of Action:

Length of Term of

At least 6 mos V&T Law §510(6)

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

6 mos V&T Law §510(6)

Other:

Special Note: Persons convicted of either 1st or 2nd degree Vehicle Manslaughter are not eligible for the shock incarceration program. Correction Law §§865(1), 866 & 867

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

See Footnote Nos. 2 & 3.

¹**Important.** Unless related to rehabilitation, a court cannot as a condition of probation, without specific statutory authority, (1) require a DWI defendant to affix to the license plates of the vehicles they operate a sign that states that they have been convicted of a drunk driving offense or (2) place such a defendant on "electronic monitoring". *People v. Letterlough*, 655 N.E.2d 146 (N.Y. 1995), & *People v. McNair*, 665 N.E.2d 167 (N.Y. 1996)

²If a person kills another while operating a motor vehicle while their license is either suspended or revoked for either an alcohol or a drug related driving offense or for refusal to submit to a chemical test, they have committed Vehicle Manslaughter in the 1st degree which is a Class C Felony. The sanctions for this offense are a jail sentence of not more than 15 yrs and/or a fine of not more than \$5,000. Penal Law §§70.00(2)(c), 80.00(1)(a) & 125.13

³If a person operates a CMV during either the suspension or revocation of their CDL, they appear to be subject the sanctions given in V&T Law §511. Also, if a person violates an out-of-service order, their CDL is suspended for 90 dys. V&T Law §510-a(3)(d)

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Other Criminal Actions Related to DWI: (continued)

Sanction:	
Criminal:	
Imprisonment (Term):	Misd 7 to 180 dys V&T Law §511(2)(a)(iii) & (2)(b) See Footnote Nos. 1,2 & 3.
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	\$500 to \$1,000 V&T Law §511(2)(b)
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	None
Length of Term of License Withdrawal Action:	
Mandatory Term of License Withdrawal Action:	
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	No
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine (\$ Range):	
Mandatory Minimum Fine (\$):	
Licensing Actions (Specify):	

¹Aggravated unlicensed operation of a motor vehicle in the second degree. As a condition of probation, the court may require a defendant to participate in an either alcohol or drug treatment program. V&T Law §511(2)(b) & (6). Also, under V&T §511-b, for a 1st or 2nd offense, the vehicle used in the offense may be impounded; the vehicle may be "redeemed" to a person who has furnished satisfactory evidence of registration and financial security.

²A person, who operates a motor vehicle while DWI and while their license has either been suspended or revoked for a previous DWI conviction, commits the offense of aggravated unlicensed operation of a motor vehicle in the first degree which is a Class E Felony and they are subject to the following sanctions: Imprisonment-Not more than 4 yrs; fine-\$500 to \$5,000. As a condition of probation, the court may require a defendant to participate in either an alcohol or a drug treatment program. V&T Law §511(3) & (6) and Penal Code §70.00(2)(e). The defendant's vehicle may also be subject to forfeiture. Civil Practice Law and Rules §§1310(5) and 1311(1)(a).

³Note: A person, who operates a motor vehicle following either suspension or revocation not associated with a drunk driving offense, is guilty of the misd offense of aggravated unlicensed operating of a motor vehicle in the third degree. The sanctions for this offense are an imprisonment term of not more than 30 dys and/or a fine of \$200 to \$500 (\$500 to \$1,500 if the offender was operating a vehicle weighing more than >18,000 lbs). V&T Law §511(1)

Other State Laws Related To Alcohol UseLaws Requiring BAC Chemical Tests on
Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):

Yes N.Y. County Law §674(3)(b)¹BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes (If 16 yrs or older)

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21² (Year Eff: 1985) Alcoholic Beverage Control Law §§65,
65-b & 82 and Penal Law §260.20(2)

Minimum Age (Years) Possession:

21³

Minimum Age (Years) Consumption:

21³Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes N.Y. Gen. Oblig. Law §§11-100 & 11-101

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):No However, see *Berkeley v. Park*, 262 N.Y.S. 2d 290 (Sup.
1965), a trial court opinion.

Dram Shop Actions-Social Hosts:

Limited Liability in situations where a person <21 yrs old is
served alcoholic beverages.^{4,5} N.Y. Gen. Oblig. Law §11-100
In general, a provider of alcoholic beverages is not liable for the
injuries sustained by a intoxicated patron (even a minor) due to
their voluntary consumption of alcohol.⁶ *Sheehy v. Big Flats
Community Day, Inc.*, 541 N.E.2d 18 (N.Y. 1989)⁷

Other:

¹The test shall not be made if there is reason to believe that the decedent is of a religious faith which is opposed to such test on religious or moral grounds. N.Y. County Law §674(3)(b)²It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to use "written evidence" of their age which is "false" or "fraudulent" in order to obtain alcoholic beverages. Alcoholic Beverage Control Law §65-b³Unlawful possession with intent to consume by persons under 21 years old. Alcoholic Beverage Control Law §65-c Exceptions: (1) Either a person under 21 yrs old is required as part of an educational curriculum to consume/taste alcoholic beverages or (2) such person has been provided alcoholic beverages by a parent/guardian.⁴Under N.Y. Gen. Oblig. Law §11-100, a social host, who unlawfully procures alcoholic beverages for consumption by an underage person, may be held liable for any damages caused by such person who became intoxicated as a result of such consumption. *Cole v. O'Toole's of Utica, Inc.*, 643 N.Y.S.2d 283 (A.D. 4 Dept. 1996). Also, a home owner, who was not at home when and who had no knowledge that alcoholic beverages were being served to an underage person, can be held liable for any damages caused by such person who became intoxicated as a result of such consumption. *Rust v. Reyer*, 693 N.E.2d 1074 (N.Y. 1998)⁵The court found no social host liability at a party given by a business where alc. bevs. were furnished to an adult guest who caused injuries as a result of becoming intoxicated at the party. *Joly v. Northway Motor Car Corp.*, 517 N.Y.S.2d 595 (A.D. 3 Dept. 1987)⁶Nevertheless, under the dram shop law, a licensee, who serves alcoholic beverages to a minor child to the point of intoxication, is liable to either the child or the child's parents for any injuries sustained by the minor while in such an intoxicated condition. *Ray v. Galloway's Cafe*, 634 N.Y.S.2d 495 (A.D. 2 Dept. 1995), & *Basile v. Francino*, 677 N.Y.S.2d 595 (A.D. 2 Dept. 1998)⁷In *Sheehy*, the court held that there was no such liability either for a violation of Penal Law §260.20, which prohibits licensees from serving alcoholic beverages to minors, or under the common law. However, if such consumption was "imposed" on a person (e.g., via hazing to join a fraternity), liability may result. *Oja v. Grand Chapter of Theta Chi Frat.*, 667 N.Y.S.2d 650 (Sup. 1997)

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Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Class A Misd §§65 & 130(5) of the Alcoholic Beverage Control Law and §§55.10(2)(b), 70.15(1) and 80.05(1) of the Penal Law
Not more than 1 yr

Term of Imprisonment:

Fine (\$ Range):

Not more than \$1,000 (For corporations, the fine is not more than \$5,000.) §80.10(1)(b) of the Penal Law

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Susp, canceled, or rev Alc. Beverage Control Law §17(3)
Not specified in the statute

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Class A Misd^{1,2} §§65 & 130 of the Alcoholic Beverage Control Law and §§55.10(2)(b), 70.15(1), 70.15(2), 80.05(1), 80.05(2), 80.10(1)(b), 80.10(1)(c) & 260.20 of the Penal Law

Term of Imprisonment:

Fine (\$ Range):

Not more than 1 yr

Not more than \$1,000³ (Not more than \$5,000 for corporations)

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp, canceled, or rev Alc. Beverage Control Law §17(3)
Not specified in the statute

Anti-Happy Hour Laws/Regulations:

Yes⁴ Alcoholic Beverage Control Law §117-a

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes⁵ Driver and passengers V&T Law §1227

Yes⁵ Driver and passengers V&T Law §1227

¹Penal Law §260.20(4), concerning the selling or giving of alcoholic beverages to a person under 21 years old, does not apply to the parent or guardian of such a person.

²Under N.Y. law, there are two provisions making it illegal to sell alcoholic beverages to persons under 21 years old. One is in the Alcoholic Beverage Control Law (§65). The other is in the Penal Law (§260.20).

³For a 2nd or sub off (w/n 5 yrs), there is a civil penalty of not more than \$500. Alcoholic Beverage Control Law §119(5)

⁴Prohibits the selling or delivering of an unlimited number of drinks during any set period of time for a fixed price.

⁵Does not apply to vehicles operating under certain certificates or permits issued by the U.S. Dept. of Tran. V&T Law §1227

STATE:
General Reference:

NORTH CAROLINA
General Statutes of North Carolina

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an impairing substance¹ §§20-4.01(14a) & 20-138.1(a)(1)

Illegal Per Se Law (BAC/BrAC):

≥0.08^{2a3} §§20-4.01(0.2) & 20-138.1(a)(2)

Persons Under 21 Years Old. Any alcohol in the body or a controlled substance in the blood⁴ §20-138.3.

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of **Any Impairing Substance**¹ §§20-4.01(14a) & 20-138.1(a)(1)

Other:

Important. See Footnote No. 5 on p. 3-358 concerning vehicle operation with an open container of alcoholic beverages and "while the driver is consuming alcohol or while alcohol remains in the driver's body".

For Commercial Motor Vehicle Operators, see p. 3-350.

For School Bus and Child Care Veh. Operators, see p. 3-352.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes⁵ §§20-16.2(i), 20-16.3, 20-138.3(d), 20-138.2A & 20-138.2B

Implied Consent Law:

Arrest Required (Yes/No):

Yes⁶ §20-16.2(a)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes⁷ §§20-16.2(a) & (a1) and 20-139.1

Note: Sec. 20-139.1 only applies to procedures governing chemical tests for alcohol concentration.

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) §§20-16.2(a)(3) & 20-139.1(f)

Other Information:

Under the implied consent law, if a person refuses to submit to a chemical test, none shall be given. However, the statute allows a law enforcement officer to obtain a test via other lawful procedures. As a result, a person may be required (forced) to submit to a chemical test. §20-16.2(c)

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:

Yes⁷

Urine:

Yes⁷

Other:

Yes⁷

¹"Impairing substance" means alcohol, a controlled substance (under Ch. 20), any other drug or psychoactive substance. §20-4.01(14a)

²This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

³Alcohol concentration means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §20-4.01(1b)

⁴**Special Note:** This law does not apply in situations where the controlled substance was lawfully obtained and is taken in therapeutically appropriate amounts. For details, see **Persons Under 21 Years old** on p. 3-353.

⁵Based upon "suspected" violations of driving either a CMV or school bus while consuming alcohol or while having any alcohol in the body, a preliminary breath may be administered and the results of a such a test may be admitted into evidence. A refusal to submit to such a test may also be admitted into evidence. §§20-138.2A(b2) & 20-138.2B(b2)

⁶Arrest or if criminal process for the DWI offense has been issued. §20-16.2(a1)

⁷A law enforcement officer shall "designate the type of chemical analysis to be administered". §20-16.2(a) & (b)

NORTH CAROLINA

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No However, the law does require the prosecutor to explain a reduction or dismissal of a DWI charge. §20-138.4
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes ¹ §§20-179(f), (h), (i), (j) & (k) and 20-179.1

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	No
Administrative Licensing Action (Susp/Rev):	No
Other:	None
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Rev 12 mos ² (with 30 dy ^{2&3} immediate license revocation) §§20-16.2(d) & 20-16.5 ⁴

¹A person is eligible for restricted driving privileges, if they complete substance abuse assessment. §20-179.3(b)(1)(e)

²**Limited License.** There are two types of limited licenses that are available. I. A limited driving privilege license may be issued after 6 mos of the rev period have passed provided the driver either (1) has not had a previous chemical test refusal (w/n 7 yrs), (2) has not had a previous DWI offense conviction (w/n 7 yrs) or has not been charged with a DWI offense that involved either death or critical injury to another person. §20-16.2(e1) II. Under separate provisions, limited driving privileges may also be granted after 10 dys if the person does not have a conviction for an offense involving "impaired driving" and they agree to participate in a substance abuse training or treatment program. §20-16.5(p)

³If the driver is late in surrendering or does not surrender their license to the court when ordered to do so, the immediate revocation period is 45 dys. §20-16.5(f) Limited driving privileges may be granted after 30 dys if the person does not have a conviction for an offense involving "impaired driving" and they agree to participate in a substance abuse training or treatment program. §20-16.5(p)

⁴For persons <21 years old a rev for 1 yr (mandatory). This rev is in addition to and runs concurrently with any other licensing action authorized by law for an implied consent law violation. §§20-4.01(31a) & 20-13.2

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): I. A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥ 0.04 (See Footnote No. 3 on p. 3-349.), (2) are under the influence of an impairing substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand but, for 3rd violation/refusal, disqualification for life is mand) II. It is a misdemeanor to operate a CMV (1) while under the influence of an impairing substance or (2) with a BAC/BrAC ≥ 0.04 . The sanctions for this offense are the same as for a regular drunk driving offense (§20-179). III. The State has adopted by reference the "out-of-service" provisions of 49 CFR §§392.5 & 395.13. These provisions provide, among other things, that a CMV operator be placed "out-of-service" for 24 hrs, if by general appearance or conduct, it appears the operator has consumed intoxicating beverages with the preceding 4 hrs. IV. Driving a CMV while consuming alcohol or while alcohol remains in the body (BAC/BrAC > 0.00): 1st off (Cl 3 misd)-\$100 fine and disqualification for 10 dys (mand); 2nd or sub off (w/n 7 yrs) (misd)-Same criminal sanctions as for a DWI off and CDL disqualification for 1 yr (mand). An offender must have alc education/treatment prior to re-licensing. However, for a 4th off, disqualification is for life (mand). Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.2A). §§15-1340.23, 20-4.01(0.2), (3d), (5a), (14a), (24a) & (25a), 20-17(2), 20-17.4(a), (a1), (b), (b1) & (6), 20-17.6, 20-19(f), 20-37.12, 20-138.2, 20-138.2A and 20-179 See **BAC Restricted Licenses** on p. 3-352.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See (1) the Special Note and Double Jeopardy below and (2) Persons Under 21 Years Old on p. 3-353.

Imprisonment:

Term (Day, Month, Years,
Etc.):

Level 1 Punishment-30 dys-24 mos; Level 2 Punishment-7 dys-12 mos; Level 3 Punishment-72 hrs-6 mos¹; Level 4 Punishment-48 hrs-120 dys¹; Level 5 Punishment-24 hrs to 60 dys¹ §20-179 See Footnote No. 2. 4th off or sub. off (w/n 7 yrs) (Habitual Impaired Driving) (Class F Felony)-≤59 mos³ §20-138.5

Mandatory Minimum Term:

Level 1 Punishment-30 dys²; Level 2 Punishment-7 dys² §20-179(g) & (h) 4th off or sub. off (w/n 7 yrs) (Habitual Impaired Driving) (Class F Felony)-12 mos³ §20-138.5(b)

Fine:

Amount (\$ Range):

Level 1 Punishment-Not more than \$4,000; Level 2 Punishment-Not more than \$2,000; Level 3 Punishment-Not more than \$1,000; Level 4 Punishment-Not more than \$500; Level 5 Punishment-Not more than \$200 §20-179 4th off or sub. off (w/n 7 yrs) (Habitual Impaired Driving) (Class F Felony)-Fines are authorized but are not specified in the statute.³ §20-138.5.

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

Level 3 Punishment-72 hrs¹; Level 4 Punishment-48 hrs¹; Level 5 Punishment-24 hrs¹

Restitution

(eg Victim's Fund)

Yes (1) Direct compensation by the defendant to a victim (§15B-24) (2) Also via a victims' compensation fund (§15B-1 st seq See especially §15B-2(5).)

¹The term of imprisonment may be suspended on the condition that the defendant either (1) serve the minimum term of imprisonment as a special condition of probation, or (2) perform the indicated community service, or (3) have their license withdrawn for the period of time shown under Post-DWI Conviction Licensing Action or (4) any combination of the above.

²For DWI offenses where sentencing is authorized under §20-179, the court, at its discretion, may order that either the term of imprisonment or community service be served on weekends. The court is authorized to impose this type of sentence even if the sentence cannot be served consecutively. §20-179(s)

³The sanctions for Habitual Impaired Driving are an imprisonment term from 12 to 59 mos and a fine. The length of the imprisonment term above the minimum period of 12 mos is determined by the number of prior criminal convictions and by aggravating and mitigating circumstances. The fine amount is discretionary with the court. §§15A-1340.14, 15A-1340.16, 15A-1340.17 & 20-138.5(b)

Special Note: The level of punishment to be given a DWI offender is determined by weighing the aggravating and mitigating factors as specified in §20-179(d) & (e). However, the court must impose level 2 punishment (§20-179(h)) if (1) there has been a previous DWI conviction w/n a 7 yr period, (2) there has been a "serious injury" related to a DWI offense or (3) there was a child under 16 years old riding with the offender (**child endangerment**). The court must impose Level 1 punishment (§20-179(g)) if there has been two previous DWI offense convictions w/n 7 yrs (i.e., for a 3rd DWI offense). The court must also impose Level 1 punishment (§20-179(g)) if any two or more of the following conditions exist: (1) The defendant has a previous DWI offense conviction w/n 7 yrs of the offense charged; (2) the defendant at the time of the offense was driving on a revoked license where such revocation was based on a previous DWI offense conviction; (3) the present offense resulted in a "serious injury"; or (4) there was a child under 16 years old riding with the offender (**child endangerment**). §20-179(c)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Oliver*, 470 S.E.2d 16 (N.C. 1996)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

House Arrest. For either Level 1 or Level 2 Punishment, "house arrest" may be authorized in lieu of part of the mandatory term of imprisonment. §20-179(g) & (h).

Community Service Fee. Offenders, who participate in community service, are assessed a fee of \$100. §20-179.4(c)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

See Double Jeopardy on p. 3-351 and Due Process of Law below.
Yes ≥ 0.08 (> 0.00 for Persons Under 21 Years Old) BAC/BrAC^{1&2} Rev for 30 dys³ §20-16.5(b), (1b), (e) & (f)
Note: If the driver is late in surrendering or does not surrender their license to the court when ordered to do so, the rev period is 45 dys.³ §20-16.5(f) In addition, if the driver has a pending drunk driving offense at the time current one, their license is revoked for the present offense until a final judgement (including all appeals) has become final.³ §20-16.5(e) & (f)
None

Other:

See Persons Under 21 Years Old on p. 3-353.

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

1st off-Rev; 2nd off (w/n 3 yrs)-Rev; 3rd off (where the 2nd off was w/n 5 yrs of the 3rd)-Rev §§20-17, 20-19 & 20-179
4th or sub. off (w/n 7 yrs)-Rev §20-138.5 Note: An offender, who is required to participate in either an alcohol education or treatment program, must complete such program before their license can be restored. §§20-17.6 & 122C-142.1

¹See Footnote No. 3 on p. 3-349.

²For commercial motor vehicle operators, if the BAC/BrAC is ≥ 0.04 . §20-16.5

³**Mandatory Licensing Action & Limited Driving Privileges.** Limited driving privileges may be granted after **10 dys** (after 30 dys for a 45 dy revocation) if the person does not have a conviction for an offense involving "impaired driving" and they agree to participate in a substance abuse training or treatment program. For revocations pending final judgement, limited driving privileges may be granted after **30 dys** (after 45 dys if the license was not surrendered to the court). §20-16.5(p)

BAC Restricted Licenses (Effective July 1, 2000). I. After an offender's license has been restored, a restriction is placed on the license prohibiting them from driving at or above certain BAC levels as follows: (1) For a 1st restoration-BAC ≥ 0.04 ; (2) for a 2nd or sub restoration-BAC > 0.00 ; and, (3) for a restoration following either (i) a DWI conviction in a CMV or (ii) a conviction if < 21 yrs old of driving with any BAC/controlled substances in the body or (iii) a conviction of a vehicle homicide offense-BAC > 0.00 . II. These BAC restrictions are in effect for the following periods after license restoration. (1) If the offender's license was permanently revoked for a DWI offense but can be restored, the restriction lasts 7 yrs. (2) If the offender was < 21 yrs old and their license was restored following a conviction for driving with any BAC/controlled substances in the body, the restriction lasts until the person is 21 yrs old. In all other cases, the restriction lasts for 3 yrs. §20-19(c3)

School Bus, School Activity Bus or Child Care Vehicle Operators. It is illegal to operate either a school bus, a school activity or a child care vehicle while consuming alcohol or while alcohol remains the body (BAC/BrAC > 0.00). 1st off (Cl 3 misd)-\$100 fine and license susp for 10 day (and). 2nd or sub off (w/n 7 yrs)-Same criminal sanctions as for a regular drunk driving offense and license revocation for 1 yr. A person must complete either an alcohol education or treatment program prior to re-licensing. §§20-17(a)(14), 20-17.6, 20-19(2), 20-138.2B & 20-179 Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.2B).

Due Process of Law. The administrative per se law does not violate a person's constitutional right to due process of law. *Henry v. Edmisten*, 340 S.E.2d 720 (N.C. 1986)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

See **BAC Restricted Licenses** on p. 3-352.

1st off-1 yr^{1,2}; Sub. off not covered by one of the following categories-1 yr; 2nd off (w/n 3 yrs)-4 yrs; 3rd off (where the 2nd off was w/n 5 yrs of the 3rd)-Permanent; 4th or sub. off (w/n 7 yrs)-Permanent §§20-19(c1), (d) & (e) and 20-138.5

Mandatory Minimum Term of
Withdrawal:

1st off-None^{1,2}; Sub. off not covered by one of the following categories-1 yr; 2nd off-2 yrs (w/n 3 yrs) (After 2 yrs, a conditional license may be issued); 3rd off-3 yrs (where the 2nd off was w/n 5 yrs of the 3rd) (After 3 yrs, a conditional license may be issued); 4th or sub. off (w/n 7 yrs)-Permanent §§20-19(d) & (e) and 20-138.5

Other:
Rehabilitation:
Alcohol Education:

Yes §§20-179(g), (h), (i), (j) & (k) See Alcohol Education below.

Alcohol Treatment:

Yes I. Offenders, regardless of the level of punishment, who are placed on probation, are required to participate in either an alcohol education or treatment program.³ §20-179(g), (h), (i), (j) & (k)

II. Under §20-179.1, treatment may be ordered by the court as a condition of probation.

III. Under §29-179(k1), the court may order that a term of imprisonment imposed as a condition of probation be served in an inpatient alcohol treatment facility.

¹Under §20-179.3, limited driving privileges may be granted for essential purposes as specified in this section (e.g., employment) provided a driver has not had either a previous conviction w/n 7 yrs or a previous DWI injury related conviction and is subject to only levels 3, 4 or 5 punishment. See Ignition Interlock on p. 3-354. This privilege is not effective until after the court ordered license withdrawal period, if any, has been completed as a part of probation requirements. See Footnote No. 2.

²If a 1st offender is subject to either Levels 3, 4 or 5 Punishments and the court grants them probation under §20-179, the court may impose as a condition of such probation that the person not operate a motor vehicle for the following periods of time: Level 3 Punishment-90 dys; Level 4 Punishment-60 dys; and, Level 5 Punishment-30 dys. Under §20-17.2, if the court orders these licensing actions they must be imposed by the State licensing agency. **Comment:** The law is not clear whether these court ordered licensing actions replace the 1 yr revocation period per §§20-17(2) and 20-19(c1).

³As part of the conditions for probation, the offender must participate in either alcohol education or treatment before their driving privileges can be restored. §20-179(g), (h), (i), (j) & (k)

Persons Under 21 Years Old: I. It is C12 Misd for persons under 21 yrs old to operate a motor vehicle with any alcohol or controlled substance ("unless lawfully obtained and taken in therapeutically appropriate amounts") in the body but where such amount would not result in a normal DWI charge and conviction. The sanctions for this offense are a jail term of 1 to 60 dys and/or a fine of not more than \$1,000. The length of the imprisonment term is determined in part by the number of prior criminal convictions. An offender is also subject to rev for 1 yr. First offenders, who are 18, 19 or 20 yrs old, may receive limited driving privileges. See Ignition Interlock on p. 3-354. However, such revocation is mandatory for subsequent offenses. §§20-13.2, 20-138.3, 20-176(c) & 15A-1340.23 II. Persons <21 yrs old, who are convicted of a regular drunk driving offense, are subject to a rev for 1 yr plus a regular DWI rev. These revs, however, are to run concurrently. §§20-4.01(31a) & 20-13.2 **Comment:** The law is not clear, but a 1st offender may be eligible for limited driving privileges. §20-179.3 See Ignition Interlock on p. 3-354. III. Note: A person convicted under I above, a §20-138.3 offense, may also be convicted of a regular DWI offense (§20-138.1). I.e., a §20-138.3 offense is not a lesser included offense under §20-138.1. However, the aggregate punishment that can be imposed cannot exceed the maximum punishment for a DWI offense (§20-138.1). §20-138.3(c) See **BAC Restricted Licenses** on p. 3-352. Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.3).

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Sanctions Following a Conviction for a DWI Offense: (continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Forfeiture. For a 4th or sub off (w/n 7 yrs) the motor veh driven for the offender is subject to forfeiture. This forfeiture may be mandatory. §20-138.5(e) See the Special Note below.

Terms Upon Which Vehicle
Will Be Released:
Other:

Limited Forfeiture. A vehicle (whether or not owned by the driver) is subject to forfeiture (which appears to be mandatory) if the driver was driving such vehicle (1) while in violation of the drunk driving laws and (2) while their license is still in a revocation status for either (1) a previous drunk driving conviction, (2) implied consent refusal, (3) admin. per se action or (4) other license revocation related alcohol.¹ §20-28.2(b)
Special Note: Certain innocent parties, who have an ownership interest in the vehicle, or a lien holder may have the vehicle released to them. §§20-28.2(d) & (e), 20-28.5 and 20-138.5(e)
See **Vehicle Registration Revocation** below.

Miscellaneous Sanctions
Not Included Elsewhere:

Ignition Interlock. I. Persons, eligible for restricted driving privileges, may be required to operate motor vehicles that are equipped with an ignition interlock device. II. Effective July 1, 2000, this requirement is mandatory, if their BAC was ≥ 0.16 or they are a 2nd or sub offender (w/n 7 yrs).² III. Such use does not apply on employer owned vehicles. §§20-17.7(a) & (b) and 20-179.3(g3) & (g5)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

See **Murder** on p. 3-355.

Yes Death by Vehicle I. **Class G Felony** if death is DWI related³ §20-141.4
II. **Class 1 Misd** if death is not DWI related §20-141.4

Sanctions:
Criminal Sanction:
Imprisonment (Term):

I. **Class G Felony-8 to 36 mos**⁴ §15A-1340.17
II. **Class 1 Misd-1 to 120 dys**⁵ §15A-1340.23

¹A vehicle that is subject to forfeiture is also subject, at the time of the violation, to seizure by law enforcement officers. §20-28.3

²Required ignition interlock usage, after license restoration, is as follows: (1) 1 yr if license revocation was for 1 yr; (2) 3 yrs if license revocation was for 4 yrs; and (3) 7 yrs if the license was permanently revoked but can be restored. §20-17.7(c)

³Includes deaths that are related to CMV operation while in violation of §20-138.2.

⁴The length of the imprisonment term is determined by the number of prior criminal convictions and by aggravating and mitigating circumstances. §§15A-1340.14, 15A-1340.16 & 15A-1340.17

⁵The length of the imprisonment term is determined in part by the number of prior criminal convictions.

Vehicle Registration Revocation. Except for certain innocent owners, the registrations of all of the vehicles that are owned by a person are revoked (until their license is restored) if they have been convicted for a drunk driving offense while their license is still in a revocation status for either (1) a previous drunk driving conviction, (2) implied consent refusal, (2) admin. per se action or (4) any other license revocation related alcohol. In addition, such a person cannot register a recently purchased/obtained motor vehicle until their driving privileges are restored. §20-54.1

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term:
Fine (\$ Range):

Fine (\$ Range): (continued)

Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and
Type of Action:
Length of Term of
Licensing Withdrawal:

Mandatory Action—Minimum
Length of License
Withdrawal:
Other:

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense*:

Sanction:
Criminal:
Imprisonment (Term):

None

I. Class G Felony-The fine amount is discretionary with the court. §15A-1340.17

II. Class 1 Misd-The fine amount is discretionary with the court. §15A-1340.23

None

Rev

1 yr unless the trial judge issues a limited driving privileges to the person convicted containing a condition that the defendant successfully complete a course of instruction at an Alcohol Drug Education Traffic School. If the defendant complies with these conditions, their license must be restored within 6 mos. §§20-17(1) & 29-19(c) See Ignition Interlock on p. 3-354.

None

See BAC Restricted Licenses on p. 3-352.

See the Special Note below.

See Vehicle Impoundment/Confiscation and Vehicle Registration Prohibition on p. 3-354.

Driving While Revoked-Class 1 Misd-1 to 120 dys¹ §§20-28(a) & (b) and 15A-1340.23

¹The length of the imprisonment term is determined in part by the number of prior criminal convictions. Community service is also authorized for misdemeanor offenses. §15A-1340.23(c)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: I. It is a Cl 1 misd (See the imprisonment and fine sanctions for this type of misd and Footnote No. 1 above.) to operate a CMV during a CDL disqualification. For a 1st offense, there is an additional disqualification for a period equal to the original disqualification. For a 2nd offense, there is an additional disqualification for a period equal to twice the original disqualification. And, for a subsequent offense, disqualification for life. §§20-28(d) II. It is a Cl 3 misd to operate a CMV while under a CDL out-of-service order. For a 1st or subsequent offense, an offender is subject to an imprisonment term of 1 to 20 dys (See Footnote No. 1 above.). For a 1st offense, an offender is subject a fine of not less than \$250. And, for a subsequent offense, an offender is subject a fine of not less than \$500. Also, the following CDL disqualifications are imposed: 1st off-90 dys; 2nd off (w/n 10 yrs)-1 yr; and, 3rd or sub off (w/n 10 yrs)-3 yrs. The following disqualification periods are imposed if the offender was operating a CMV carrying hazardous materials: 1st off-180 dys; and, 2nd or sub off (w/n 10 yrs)-3 yrs. §§15A-1340.23(c), 20-17.4(g) & (h), 20-37.12(b) and 20-37.21(a) In addition, via regulations, the State may adopt the fines of the CMV Safety Alliance for out-of-service violations. §20-17.7

Murder. I. In a drunk driving situation where there is a death, it is possible that the drunk driver can be convicted of first-degree murder. The driver can be considered to have committed an assault with a deadly weapon inflicting serious injury if they were driving a motor vehicle either with actual intent to inflict injury or they commit a culpable or criminally negligent act while driving from which such intent may be implied (e.g., reckless driving while DWI). Such action is a felony. A death resulting from such an assault is first-degree murder under the State's murder felony rule. *State v. Jones*, 516 S.E.2d 405 (N.C.App. 1999) II. In a previous case, this same court held that a person could be convicted of second-degree murder, if they caused the death of another person while operating a motor vehicle at a high rate of speed and after consuming alcohol. Such behavior may be considered evidence of "malice" for the purposes of proving this offense. *State v. Grice*, 505 S.E.2d 166 (N.C.App. 1998)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term
of Imprisonment:

Fine (\$ Range)

Mandatory Minimum Fine:
Administrative Licensing Actions:
Type of Licensing Action
(Susp/Rev):

Length of Term of License
Withdrawal Action:

Mandatory Term of License
Withdrawal Action:

Habitual Traffic Offender Law:
State Has Such a Law (Yes/No):
Grounds for Being Declared an
Habitual Offender:
Term of License Rev While
Under Habitual Offender Status:
Type of Criminal off if
Convicted on Charges of
Driving While on Habitual
Offender Status
Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:
Imprisonment (Term):
Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

If a person's license has been permanently revoked and they thereafter drive, **30 dys** §20-28(b) See the Special Note below.
Class 1 Misd-The fine amount is discretionary with the court.
§15A-1340.23
None See the Special Note below.

Rev

1st off-1 yr (90 dys mand) rev added to original rev period; 2nd off-2 yrs (12 mos mand) rev added to original rev period; 3rd off-Permanent rev (3 yrs mand) §§20-28(a) & (c)

1st off-90 dys; 2nd off-12 mos; 3rd off-3 yrs (The licensing agency may issue a new license with or without conditions after these terms of license withdrawal.) §§20-28(c)

No Note: The Habitual Traffic Offender Law, §§20-220 to 20-231, was repealed by Session Laws 1977, Ch. 243, §1.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:
Driver:
Vehicle Passengers:
Pedestrian:

No

Special Note: If a person is convicted of a DWI off and they were at the time of such off driving while their license was revoked for a previous DWI off conviction (w/n 7 yrs), the Court must impose Level 1 punishment. §20-179(c) See Levels of Punishment on p. 3-351.

Other State Laws Related To Alcohol Use: (continued)Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1986) §§18B-302(a) & (b)

Minimum Age (Years) Possession:

21 §§18B-301(f)(4) & 18B-302(b) Employment exemption

Minimum Age (Years) Consumption:

21 §18B-301(f)(4)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §§18B-120 et seq.¹ Note: The law limits recovery to \$500,000.

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes *Estate of Mullis by Dixon v. Monroe Oil*, 505 S.E.2d 131
(N.C. 1998)²

Dram Shop Actions-Social Hosts:

Yes Under general negligence principles of common law, a
social host may be held liable for the injuries caused by
intoxicated guests. *Hart v. Ivey*, 420 S.E.2d 174 (N.C. 1992)

Comment: Although the *Hart* case concerned injuries caused by
intoxicated minors, language by the court indicates that liability
could also result from injuries caused by intoxicated adult guests.
A licensee is not liable for the injuries sustained by an intoxicated
patron. *Sorrells v. M.Y.B. Hospitality Ventures*, 423 S.E.2d 72
(N.C. 1992)

Other:

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Class 1 Misd §§18B-102 & 18B-305

Term of Imprisonment:

1 to 120 dys The length of the imprisonment term is determined
in part by the number of prior criminal convictions. §15A-
1340.23

Fine (\$ Range):

The fine amount is discretionary with the court.³ §15A-1340.23

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Board's discretion as to whether to suspend or to revoke.
§§18B-104 & 18B-305 See Footnote No. 2 on p. 3-358.

¹These statutory provisions create a Dram Shop type of liability in situations involving minors (those persons under 19 yrs old) who cause damages while DWI. The law places limitations on damage amounts which can be awarded in such actions. However, the law specifically does not limit or prohibit Dram Shop actions based either on other statutes or on "common law". Note: A person (or the estate of a person) injured (killed) via the actions of an intoxicated individual is generally not entitled to recover damages for such injuries (death) if the injured (dead) person "aided or abetted" the intoxicated individual by purchasing alcoholic beverages for them. *Estate of Darby v. Monroe Oil Co., Inc.*, 488 S.E.2d 828 (N.C.App. 1997)

²See also, *Hutchens v. Hankins*, 303 S.E.2d 584 (N.C. App. 1983) (discretionary review denied by the North Carolina Supreme Court 305 S.E.2d 734 (N.C. 1983)), *Freeman v. Finney*, 309 S.E.2d 531 (N.C.App. 1983) (discretionary review denied by the North Carolina Supreme Court 315 S.E.2d 702 (N.C. 1984)), & *Chastain v. Litton Systems, Inc.*, 694 F.2d 957 (CA4, 1982) (cert. den., 462 U.S. 1106 (1983))

³Administrative fines may also be imposed on a permittee: 1st off-up to \$500; 2nd off-up to \$750; 3rd off-up to \$1,000. §18B-104

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Other State Laws Related To Alcohol Use: (continued)

Length of Term of License Withdrawal:

Susp-Not more than 3 yrs Rev period is not specified in the statute.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Class 1 Misd §§18B-102, 18B-302 & 18B-302A

Term of Imprisonment:

1 to 120 dys The length of the imprisonment term is determined in part by the number of prior criminal convictions.¹ §15A-1340.23

Fine (\$ Range):

The fine amount is discretionary with the court.¹ §15A-1340.23

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes² Left to the Board's discretion as to whether to suspend or to revoke. §§18b-104 & 18B-302

Length of Term License Withdrawal:

Susp-Not more than 3 yrs Rev period is not specified in the statute.

Anti-Happy Hour Laws/Regulations:

Yes (Regulation) T04: 02S.0200³

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes⁴ §§18B-401(a) & 20-138.7⁵

Anti-Consumption Law (Yes/No):

Yes⁴ Driver only §18B-401(a) & 20-138.7⁵

¹I. If the court does not impose "active punishment," it must, nevertheless, impose the following sanctions: 1st off-\$250 fine and at least 25 hrs of community service; and, subsequent off (w/n 4 yrs)-\$500 fine and at least 150 hrs of community service. §18B-302A II. The following administrative fines may also be imposed on a permittee: 1st off-up to \$500; 2nd off-up to \$750; 3rd off-up to \$1,000. §18B-104

²In lieu of either suspension or revocation, the permittee may agree to pay a penalty of not more than \$5,000. §18B-104

³North Carolina Administrative Code

⁴The law states that "it shall be unlawful for a person to transport fortified wine or spiritous liquor in the passenger area of a motor veh in other than the manufacturer's unopened original container. It shall be unlawful for a person who is driving a motor veh on a highway or public veh area to consume in the passenger area of that veh any malt beverage or unfortified wine."

⁵Sec. 20-138.7 makes it an offense to operate a motor vehicle with an open container of alcoholic beverages in a vehicle's passenger area and "while the driver is consuming alcohol or while alcohol remains in the driver's body". A 1st offense is a Class 3 misd (jail-1 to 20 dys and/or a fine-not more than \$200). A 2nd or subsequent offense is a Class 2 misd (jail-1 to 60 dys and/or a fine-not more than \$1,000). Jail term length is determined by the number of prior convictions. Even though there is no licensing action against a 1st offender, a 2nd offender is subject to a 6 mo license revocation and a 3rd or subsequent offender is subject to a 1 yr license revocation. Second or subsequent offenders are eligible for restricted driving privileges provided they have do not have a prior drunk driving offense conviction. See Ignition Interlock on p. 3-354. §§15A-1340.23(b) & (c), 20-17(12), 20-19(g1) and 20-138.7 Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.7).

STATE:

General Reference:

NORTH DAKOTA

North Dakota Century Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:
 Illegal Per Se Law (BAC/BrAC):
 Presumption (BAC):
 Types of Drugs/Drugs and Alcohol:

Under the influence of intoxicating liquor¹ §39-08-01(1)(b)
 ≥ 0.10 ^{2,3} §§39-08-01(1)(a) and 39-20-07(3) & (4)

None

Under the influence of (1) **Any Drug or Substance**, (2) Any Combination of Drugs or Substances and (3) a Combination of Intoxicating Liquor and Any Drug or Substance §39-08-01(1)(c) & (d)

Other:

A person is considered to be "under the influence of intoxicating liquor" if they have an alcohol concentration of at least 0.10 (if under, 21 yrs old, this level is at least 0.02)^{3,4} §39-20-07(3)
 For Commercial Motor Vehicle Operators, see p. 3-361

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
 Implied Consent Law:
 Arrest Required (Yes/No):
 Implied Consent Law Applies to
 Drugs (Yes/No):
 Refusal to Submit to Chemical Test
 Admitted into Evidence:

Yes⁵ §39-20-14

Yes §39-20-01

Yes §39-20-01

Yes (Criminal and Civil Cases) §39-20-08 & *State v. Murphy*, 527 N.W.2d 254 (N.D. 1995)⁶

Other Information:

In any accident in which there is either a death or a serious bodily injury and there is probable cause showing that a driver has committed any DWI offense, such driver may be compelled to submit to a chemical test. §39-20-01.1

Chemical Tests of Other Substances for Alcohol
 Concentration Which Are Authorized Under
 the Implied Consent Law:

Blood:
 Urine:
 Other:

Yes §39-20-01

Yes §39-20-01

Saliva §39-20-01

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
 Anti-Plea Bargaining Statute (Yes/No):

No

No

¹The term "intoxicating liquor" means and includes any beverage containing alcohol. §39-01-01(28)

²This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or urine alcohol concentration of 0.10 or more.

³Alcohol concentration is described as percent by wgt. of alcohol in the blood. However, this is defined to mean either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine. §39-20-07(4)

⁴These alcohol concentrations must still be supported by physical evidence of intoxication. N.D. Atty. Gen. Opinion 98-01, 1/8/98

⁵Under §39-06.2-10.2(5), a CMV operator is deemed to have given consent to a PBT under §39-20-14.

⁶See also, *City of West Fargo v. Maring*, 458 N.W.2d 318 (N.D. 1990), and *State v. Murphy*, 516 N.W.2d 285 (N.D. 1994). If an arrested drunk driving offender has not been given their *Miranda* warnings, statements that they made refusing to submit to a chemical test cannot be admitted into evidence at trial. However, the fact that they refused to submit to such a test is admissible. *State v. Beaton*, 516 N.W.2d 645 (N.D. 1994), & *State v. Sarrom*, 524 N.W.2d 92 (N.D. 1994)

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Adjudication of DWI Charges: (continued)

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes Addiction evaluation is required for 1st thru 3rd offs.
§39-08-01(4)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

Other:

No

Same as for Implied Consent Refusal §§39-20-04 & 39-20-14
There are no sanctions if they submit to an implied consent test.
None

Refusal to Take Implied Consent
Chemical Test:
Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

None

1st refusal Rev-1 yr; 2nd refusal¹ (w/n 5 yrs) Rev-2 yrs; 3rd or
sub refusal¹ (w/n 5 yrs) Rev-3 yrs These license revocations are
mandatory; i.e., no temporary restricted license may be issued.
§§39-06.1-11(2) & 39-20-04 There is no licensing action for a
refusal if a person pleads guilty to a DWI offense. §39-20-04(2)
None

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment:
Term (Day, Month, Years,
Etc.):

See Double Jeopardy below and Misc. Sanctions on p. 3-363.

Mandatory Minimum Term:

1st off (Cl B Misd)-Not more than **30 dys**; 2nd off (w/n 5 yrs)
(Cl B Misd)-Not more than **30 dys**; 3rd (w/n 5 yrs) (Cl A
Misd)-Not more than **1 yr**; 4th off (w/n 7 yrs) (Cl A Misd)-Not
more than **1 yr**; 5th and sub offs (w/n 7 yrs) (Cl C felony)-Not
more than **5 yrs** §§12.1-32-01 and 39-08-01(2) & (4)
1st off-No; 2nd off (w/n 5 yrs)-**5 dys** of which 48 hrs must be
served cons; 3rd off (w/n 5 yrs)-**60 dys** of which 48 hrs must
served cons; 4th or sub off (w/n 7 yrs)-**180 dys**² of which 48 hrs
must be served cons. §§39-08-01(4), 39-08-04(a) & *State v.
Nelson*, 417 N.W.2d 814 (N.D. 1987)

¹Previous DWI convictions are also considered as prior refusals.

²The law does not specifically provide for mandatory criminal sanctions beyond a 4th offense.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Zimmerman*, 539 N.W.2d 49 (N.D. 1995), *State v. Kvislen*, 544 N.W.2d 876 (N.D. 1996), *State v. Jacobson*, 545 N.W.2d 152 (N.D. 1996), *State v. Barth*, 545 N.W.2d 162 (N.D. 1996), & *State v. Storbakken*, 552 N.W. 78 (N.D. 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine: Amount (\$ Range):	Special Note: If an offender has been ordered to participate in an addiction treatment program and they are also subject to mandatory imprisonment, the time spent in the treatment program "must be credited as a portion of the sentence of imprisonment...." §39-08-01 <u>1st off</u>-Not more than \$1,000; <u>2nd off</u> (w/n 5 yrs)-Not more than \$1,000; <u>3rd off</u> (w/n 5 yrs)-Not more than \$1,000; <u>4th off</u>-Not more than \$1,000; <u>5th and sub offs</u>-Not more than \$5,000 §12.1-32-01 <u>1st off</u>-\$250; <u>2nd off</u> (w/n 5 yrs)-\$500; <u>3rd off</u> (w/n 5 yrs)-\$1,000; <u>4th or sub off</u> (w/n 7 yrs)-\$1,000 See Footnote Nos. 2 and 3 on p. 3-360.
Mandatory Min. Fine (\$):	
Other Penalties: Community Service:	<u>2nd off</u> (w/n 5 yrs)- 30 dys as an alternative to imprisonment (does not apply to other subsequent offenses)
Restitution (eg Victim's Fund)	Yes By the defendant for all offs (§§5-01-06, 12.1-32-02 & 12.1-32.08) and via a victims' compensation fund (§65-13-01 et seq.).
Other:	Ignition Interlock. The court or driver licensing agency may order a defendant to install an "ignition interlock" device on their veh. The requirement to use an "ignition interlock" device does not effect the mandatory license suspension periods noted on p. 3-362. Such a requirement appears to apply only to the issuance of temporary restricted driving privileges. §§39-06.1-11 & 39-08-01.3.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they either (1) have a BAC/BrAC/UrAC ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters or breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or drugs or (3) refuse to submit to a chemical test for an alcohol concentration. Note: The disqualification section, §39-06.2-10, appears to only apply to a refusal to submit a chemical test for an alcohol concentration; however, the CMV implied consent section, §39-06.2-10.2, applies to tests for either an alcohol concentration or for the presence of other drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). A person, who operates a CMV with any "measurable or detectable amount of alcohol" in their system, must be placed "out-of-service" for 24 hrs. Note: It appears to be an infraction to operate a CMV with an alcohol concentration ≥ 0.04 . A person, who is convicted of committing an infraction, is subject to a fine of not more than \$500. However, under the criminal code, if they have been convicted of a prior infraction w/n 1 yr of the present offense, they may be convicted of a CIB misd. The sanctions for this misd are an imprisonment term of not more than 30 dys and/or a fine of not more than \$1,000. §§12.1-32-01(7), 39-06.2-02, 39-06.2-10, 39-06.2-10.1, 39-06.2-10.2, 39-06.2-10.9 & 39-07-06 and N.D. Admin. Code 37-10-01-01

NORTH DAKOTA

Sanctions Following a Conviction for a DWI Offense: (continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Double Jeopardy on p. 3-360.

Yes (1) ≥ 0.10 or (2) Persons Under 21 Years Old ≥ 0.02 (BAC/BrAC/UrAC For standards, see Footnote No. 3 on p. 3-359.) §§39-06.1-11(2), 39-20-03.1, 39-20-04.1 & 39-20-07 1st off-91 dy susp (30 dys mand. A restricted lic. may be issued after this mand period.); 2nd off¹ (w/n 5 yrs)-**365 dy susp** (mand); 3rd and sub off¹ (w/n 5 yrs)-**2 yr susp** (mand)
None

Other:

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

See Persons Under 18 Years Old below.

See Alcohol Education/Treatment below.

1st off-Susp; 2nd off (w/n 5 yrs)- **Susp**; 3rd and sub off (w/n 5 yrs)-**Susp** §39-06.1-10 Note: For a 4th or subsequent offense (w/n 7 yrs), see II under Alcohol Treatment below.

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-91 dys; 2nd off (w/n 5 yrs)-**365 dys**; 3rd and sub off (w/n 5 yrs)-**2 yrs**

Mandatory Minimum Term of

Withdrawal:

1st off-30 dys (A temporary license may be issued after the 30 dy mandatory period. §39-06.1-11(2)); 2nd off (w/n 5 yrs)- **365 dys**; 3rd and sub off (w/n 5 yrs)-**2 yrs** §§39-06.1-10(3.1) & 39-06.1-11

Note: No restricted licenses can be issued in cases where there has been a serious injury related to a DWI offense. §§39-06-31 & 39-06.1-11(2)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

See Alcohol Treatment below.

Yes I. For a 1st, 2nd and 3rd DWI off conviction, the defendant must be referred to an alcohol rehabilitation facility for addiction evaluation. Following the evaluation, the court may require the defendant to complete an alcohol education or treatment program. §39-08-01(4) A defendant's license cannot be restored until they furnish a written statement from an approved treatment program either that they do not need alcohol education/treatment or that they have complied with the "attendance rules" of such program. §39-06.1-10(3.1)(a)

II. For a 4th or subsequent offense (w/n 7 yrs), a defendant must complete an addiction treatment program and have no alcohol or drug related offense convictions w/n 2 consecutive years before their driving privileges can be restored. §39-06.1-10(3.1)(b)

¹A previous violation also includes a previous DWI offense conviction or previous implied consent refusal.

Persons Under 18 Years Old. A person under 18 yrs old, who commits a drunk driving offense, must have their driving privileges canceled. Such a person is considered to never to have had a license and, after any period of suspension or revocation, they may apply for and be issued an instructional permit. Such individuals must complete certain State required classroom and behind-the-wheel instruction and satisfy all other requirements for licensing prior to being issued a driver's license. §§14-10-01 & 39-06-01.1

Sanctions Following a Conviction for a DWI Offense:
(continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Forfeiture (Not Mandatory). For a 2nd or subsequent DWI offense conviction (w/n 5 yrs), a defendant's vehicle may be subject to forfeiture. §39-08-01.3

Terms Upon Which Vehicle
Will Be Released:
Other:

Impoundment. License plates may be impounded following a conviction for an alcohol driving off. The period of impoundment is for the same period of time as the defendant's license susp. period. §39-08-01(3)

Miscellaneous Sanctions
Not Included Elsewhere:

Mandatory Sanctions DWI Injury/Death. Mandatory imprisonment sanctions apply if either a death or a serious injury is DWI related. If a person is convicted of a homicide which is related to DWI (e.g., manslaughter (§12.1-16-02) or negligent homicide (§12.1-16-03)), there is a mandatory penalty of 1 yr. imprisonment. If a person is convicted of DWI where there is a serious injury caused by the defendant, there is a mandatory penalty of 90 dys imprisonment. §§39-06-31(1) & 39-08-01.2

Child Endangerment. It is a CI A misd (imprisonment term for not more than 1 yr and/or a fine of not more than \$1,000) for a person ≥21 yrs old to commit a DWI offense while transporting a "minor". §§12.1-32-1 & 39-08-01.4 Note: The term "minor" is not defined in the motor vehicle law (Title 39). However, North Dakota law usually defines a "minor" as any person under 18 yrs old (e.g., §14-10-01).

Exemplary Damages. A person, who while operating a motor vehicle, injures another person, either (1) while their BAC was ≥0.10, (2) they were under the influence of a controlled substance (except in cases where the substance was legally prescribed), (3) they were under the influence of alcohol and they refused to submit to a chemical test under the implied consent law, or (4) they were under the influence of a volatile chemical as list in §12.1-31-06, may be liable for "exemplary damages". §32-03.2-11

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

No See the Special Note note above under Miscellaneous Sanctions for DWI offenses.

Sanctions:
Criminal Sanction:
Imprisonment (Term):
Mandatory Minimum Term:
Fine (\$ Range):
Mandatory Minimum Fine:

NORTH DAKOTA

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:
Licensing Authorized and
Type of Action:

Special Note: Even though this State does not have a veh homicide statute, it, nevertheless, provides for mandatory license rev from 30 dys to 1 yr for a conviction of manslaughter resulting from the operation of a motor veh. §39-06-31(1)

Length of Term of
Licensing Withdrawal:
Mandatory Action--Minimum
Length of License
Withdrawal:
Other:

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

See The Special Note below.

Sanction:
Criminal:
Imprisonment (Term):

1st offense, 2nd offense (w/n 5 yrs) & 3rd offense (w/n 5 yrs)-CI B Misd Not more than **30 dys** Subsequent offense (w/n 5 yrs)-CI A Misd Not more than **1 year** §§12.1-32-01(5) & (6) and 39-06-42

Mandatory Minimum Term
of Imprisonment:
Fine (\$ Range):

4 con dys §§39-06-42(2) & 39-08-01
1st offense, 2nd offense (w/n 5 yrs) & 3rd offense (w/n 5 yrs)-
Not more than **\$1,000** Subsequent offense (w/n 5 yrs)-CI A
Misd Not more than **\$1,000** §12.1-32-01(5) & (6)
None

Mandatory Minimum Fine:
Administrative Licensing Actions:
Type of Licensing Action
(Susp/Rev):

I. For driving while license is suspended. The lic. suspension is extended for an additional period as follows: 1st off-at least 6 mos (90 dys if the original lic. susp was not DWI related); 2nd off (w/n 3 yrs)-at least 6 mos; 3rd and sub. off (w/n 3 yrs)-1 yr §39-06-43 II. For driving while license is revoked. The license revocation is extended for and additional period of **1 yr.** §39-06-43 **Note:** Special licensing actions apply for a violation of the conditions of a restricted license. 39-06.1-11, 39-06-43 & 39-08-01

License Plate Impoundment. Under §39-06-42(3), license plates may also be impounded for the duration of the driver's license susp/rev.

Length of Term of License
Withdrawal Action:
Mandatory Term of License
Withdrawal Action:

See above.

See above.

Special Note: It appears to be an infraction to operate a CMV during a CDL disqualification. Although the law is not clear, it may also be an infraction to operate a CMV while in violation of a CDL out-of-service order as prescribed by State regulations. A person, who is convicted of committing an infraction, is subject to a fine of not more than \$500. However, under the criminal code, if they have been convicted of a prior infraction w/n 1 yr of the present offense, they may be convicted of a CI B misd. The sanctions for this misd are an imprisonment term of not more than 30 dys and/or a fine of not more than \$500. §§12.1-32-01(7), 39-06.2-06(2), 39-06.2-10.9 & 39-07-06

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:
 State Has Such a Law (Yes/No): No
 Grounds for Being Declared an
 Habitual offender:
 Term of License Rev While
 Under Habitual Offender Status:
 Type of Criminal Offense if
 Convicted on Charges of
 Driving While on Habitual
 Offender Status
 Sanctions Following a Conviction of
 Driving While on Habitual Offender
 Status:
 Imprisonment (Term):
 Mandatory Minimum Term of
 Imprisonment:
 Fine (\$ Range):
 Mandatory Minimum Fine (\$):
 Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): Yes §39-20-13
 BAC Chemical Test Is Given to the
 the Following Persons:
 Driver: Yes
 Vehicle Passengers: Yes
 Pedestrian: Yes

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21 (Year Eff: 1936) §§5-01-08, 5-01-09, 5-02-01.1(2)(d) & 5-02-06
 Minimum Age (Years) Possession: 21^{1&2} §5-01-08
 Minimum Age (Years) Consumption: 21² §5-01-08

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): Yes §5-01-06.1 **Special Note:** The law prohibits an adult passenger, who is injured while riding with an intoxicated driver, from bringing a dram shop cause of action.

"Dram Shop Law" Concept Has Been
 Adopted Via a Change to the Common
 Law Rule by Action of the Highest
 Court of Record in the State (Case
 Citation):

No

¹There is any employment exemption for persons who are 19-20 years old. §5-02-06.

²There is an exception when an "under age" person is accompanied by a parent or legal guardian. §5-01-08

NORTH DAKOTA

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:

Yes¹ §5-01-06.1

Other:

None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Cl A Misd §5-01-09

Term of Imprisonment:

Not more than 1 yr §12.1-32-01

Fine (\$ Range):

Not more than \$1,000 §12.1-32-01

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Rev/susp §§5-02-10 and 5-02-11

Length of Term of License Withdrawal:

Time period is not specified in the statute. §5-02-11

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Cl A Misd §§5-01-09 & 5-02-06

Term of Imprisonment:

Not more than 1 yr §12.1-32-01

Fine (\$ Range):

Not more than \$1,000 §12.1-32-01

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Rev/susp §§5-02-10 and 5-02-11

Length of Term License Withdrawal:

Time period is not specified in the statute. §5-02-11

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Yes §39-08-18

Anti-Consumption Law (Yes/No):

Yes Driver and passengers §39-08-18 The law states that "no person shall drink or consume alcoholic beverages ... in or on any motor veh when such veh is upon a public highway or in an area used principally for public parking."

¹*Olson v. Griggs County*, 491 N.W.2d 725 (N.D. 1992), & *Born v. Mayers*, 514 N.W.2d 687 (N.D. 1994)

STATE:
General Reference:

OHIO
Ohio Revised Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Under the influence of alcohol §4511.19(A)(1)
≥0.10¹⁴² §4511.19(A)(2), (3) & (4)
Persons Under 21 Years Old ≥0.02 but <0.10¹⁴³ §4511.19(B)
None

Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Under the influence of (1) a **Drug Abuse** or (2) a Combination of Alcohol and a Drug of Abuse §4511.19(A)(1)
For Commercial Motor Vehicle Operators, see below.

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:

No

Yes §4511.191(A)

Yes §4511.191(A)

Yes (Criminal Cases) *City of Westerville v. Cunningham*, 239 N.E.2d 40 (Ohio 1968), & *Maumee v. Aristic*, 632 N.E.2d 497 (Ohio 1994)

Other Information:

A conscious person cannot have a blood sample withdrawn via force for BAC testing. *State v. Lampman*, 612 N.E.2d 779 (Ohio App. 1992)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:
Urine:
Other:

Yes §4511.191(A)

Yes §4511.191(A)

Probably No "Other bodily" substance is applicable to §4511.19 but is not mentioned in the implied consent statute (§4511.191).

¹Alcohol concentration standards are (1) percent by weight of alcohol in the blood, (2) grams of alcohol per 210 liters of breath or (3) grams of alcohol per 100 milliliters of urine. §§4511.19(A) & (B) and 4511.191(F)

²This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of 0.10 or more or (2) a urine alcohol concentration of 0.14 or more.

³Under §4511.19(B), a person under 21 years old shall not operate a vehicle with an alcohol concentration of ≥0.02 up to 0.10 for blood or breath and ≥0.028 up to 0.14 for urine.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 100 milliliters of urine.) ≥0.04, (2) are under the influence of a controlled substance, (3) refuse to submit to a chemical test for the presence of either alcohol or controlled substances or (4) violate an "out-of-service" order. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (or for any other period as specified by Federal regulations) (mand). A violation of any of these items appears to be a 1st Degree misd; the sanctions for such a misd are an imprisonment for not more than 6 mos and/or a fine of not more than \$1,000. In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol or a controlled substance in their system must be placed "out-of-service" for 24 hours. **Special Note:** Under separate provisions of law, no person shall operate a CMV while their alertness is impaired; such impairment includes the use of any drug which would adversely affect such alertness or ability to operate a CMV. The sanctions for violating this prohibition are for a 1st offense (minor misd) a fine of not more than \$100 and for a 2nd offense (4th Degree misd) jail for not more than 30 dys and/or a fine of not more than \$250. §§2929.21, 4506.01(A), (E), (G), (H) & (V), 4506.15, 4506.16(A) & (B), 4506.17(A), 4511.79 and 4511.99(C)

OHIO

Adjudication of DWI Charges

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	<u>1st Refusal</u> (minor misd)-Not more than \$100; <u>2nd refusal</u> (w/n 1 yr) (4th Degree misd)-30 dys and not more than \$250; <u>3rd and subsequent refusals</u> (w/n 1 yr of 1st) (3rd Degree misd)-not more than 60 dys and not more than \$500 §§4511.99(D) & 2929.21(B)

Administrative Licensing Action (Susp/Rev):

1st Refusal-Susp-1 yr (30 dys mand); 2nd Refusal (w/n 5 yrs)-Susp-2
yrs (90 dys mand); 3rd Refusal (w/n 5 yrs)-Susp-3 yrs (1 yr mand);
Subsequent Refusal (w/n 5 yrs)-Susp-5 yrs (3 yrs mand) Except as
noted, occupational driving privileges may be granted after the
mandatory period of lic. susp has passed. **Caution:** Occupational
driving privileges cannot be granted if the driver has had 3 prior
refusals w/n 7 yrs or 3 or more drunk driving or vehicle homicide
offense convictions w/n 7 yrs. §§4511.191(E), (I) & (K)

Special Note: I. A susp for a refusal will not be terminated if the driver
is found "not guilty" of the related DWI offense. II. However, such
susp will terminate if the person is either found guilty of or pleads
guilty to a related DWI offense. §§4511.191(H)(2) & (K)

Other:

Important. See the Special Note on p. 3-370 and Footnote No. 1 on
p. 3-371.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Aggravated Vehicle Assault and Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	

1st off (1st Degree misd)-Not more than 6 mos; 2nd off¹ (w/n 6 yrs)
(1st Degree misd)-Not more than 6 mos; 3rd off (w/n 6
yrs)(misd)^{1&2}-30 con dys-1 yr; sub offs (w/n 6 yrs)(4th Degree
felony)¹-60 con dys-18 mos §§2929.14, 2929.16, 2929.18(B)(3),
2929.19(C), 2929.21 & 4511.99(A)

¹For sanction enhancement purposes, a previous offense also includes either a conviction for a vehicle homicide offense where alcohol or drugs were a factor or a violation of §4511.19(B) (persons under 21 years old who operate a motor vehicle with a BAC ≥0.02).

²A crime is classified as a misdemeanor if the imprisonment sanction is not more than 1 yr. §2901.02(F)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:

Offense for Persons Under 21 Years Old (≥ 0.02 but < 0.10). 1st off (4th Degree misd)-Not more than **30 dys**; 2nd off (w/n 1 yr) (3rd Degree misd)-Not more than **60 dys** §§2929.21, 4511.19(B) & 4511.99(N)(1)

1st off-3 con dys^{1&2} (Note: 3 con dys is defined as 72 con hrs.) §4511.991); 2nd off (w/n 6 yrs)-**10 con dys**² (Alternative: 5 con dys in jail and not less than 18 con dys "house arrest" with electronic monitoring³); 3rd off (w/n 6 yrs)-**30 con dys**² (Alternative: 15 con dys in jail and not less than 55 con dys "house arrest" with electronic monitoring³); sub offs (w/n 6 yrs)-**60 con dys**⁴

Important: Misdemeanor offenders, who are either alcoholics or who are suffering from acute alcohol intoxication, may not be subject to the above mandatory imprisonment sanctions. See "I" under Alcohol Treatment on p. 3-372.

Offense for Persons Under 21 Years Old (≥ 0.02 but < 0.10). **None**

Fine:

Amount (\$ Range):

1st off-**\$200 to \$1,000**; 2nd off (w/n 6 yrs)-**\$300 to \$1,500**; 3rd off (w/n 6 yrs)-**\$500 to \$2,500**; sub offs (w/n 6 yrs)-**\$750 to \$10,000**

Offense for Persons Under 21 Years Old (≥ 0.02 but < 0.10). 1st off -Not more than **\$250**; 2nd off (w/n 1 yr)-Not more than **\$500**

¹In lieu of this 3 day jail sanction, the court may place a defendant on probation and order them to attend a driver's intervention program for 3 consecutive days. §§4511.99(A)(1) & 3720.66.

²For a 1st, 2nd or 3rd off, a defendant may be given work release following the mandatory jail sentence. §4511.99(A)(5)(a) & (b)

³This alternative is imposed only when their are overcrowded jail conditions which prohibit the offender from commencing their term of imprisonment within 60 dys of sentencing. §4511.99(A)(8)

⁴**Special Conditions for DWI Felony Offenses.** I. For a first DWI felony offense, the 60 con dys must be served in a local incarceration facility (e.g., jail, a community based correctional facility, a halfway house, or other alternative residential facility). In addition, after the mand incarceration period is served, the offender may be placed in either community control probation or the electronic monitoring program. II. For a subsequent DWI felony offense, the 60 con dys must be served in State prison and such person is not eligible to participate in the electronic monitoring program. §§2929.13(G), 2929.15(A), 2929.17 & 2929.23(3)(d)

Aggravated Vehicle Assault. A person commits "Aggravated Vehicle Assault" if they cause serious injury to another person while operating a motor vehicle (e.g., DWI). 1st off (4th Degree felony): Jail-18 mos to 5 yrs; fine-not more than \$2,500; subsequent off (or a 1st off where the defendant has previously been convicted of a vehicle homicide offense) (3rd Degree felony): Jail-2 to 10 yrs; fine-not more than \$5,000. §§2903.08 & 2929.11 Note: "Shock probation" is not available for persons who are repeat offenders or who have a prior DWI or vehicle homicide offense conviction. §2903.08(C) At arraignment, the court may suspend a defendant's license until the matter is adjudicated on the merits if the court determines that the defendant's continued driving will be a treat to public safety. §2903.07(D)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Gustafson*, 668 N.E.2d 435 (Ohio 1996), & *Herbert v. Billy*, 160 F.3d 1131 (6th Cir. 1998)

OHIO

Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Min. Fine (\$):	<u>1st off-\$200; 2nd off (w/n 5 yrs)-\$300; 3rd off (w/n 5 yrs)-\$500; sub offs (w/n 5 yrs)-\$750</u> See Footnote No. 1. <u>Offense for Persons Under 21 Years Old (≥ 0.02 but < 0.10).</u> None
Other Penalties:	
Community Service:	Possible The law is not specific, but it appears that community service could be made a condition of probation. §2947.061
Restitution (eg Victim's Fund)	Yes (1) A victim may receive payment only for property damage directly from a defendant. §2929.21(E) & <i>State v. Theuring</i> , 546 N.E.2d 436 (OhioApp. 1988). (2) A victim is also eligible for reparations from the State. §2743.51 et seq.
Other:	Driver's Intervention Program. §3720.66 Ignition Interlock. As a condition of probation by the court. ² §§2951.02(I), 4507.16(C), 4511.83 & 4511.99(L) Fine In Lieu of Vehicle Forfeiture. See Footnote No. 2 on p. 3-372.
Administrative Licensing Actions:	
<u>Pre-DWI Conviction</u> Licensing Action:	See Double Jeopardy on p. 3-369 and the Special Note below.
Administrative Per Se Law:	≥ 0.10 BAC/BrAC or ≥ 0.14 UrAC (For standards, see Footnote No. 1 on p. 3-367.) (1) Susp-90 dys (15 dys mand) if the offender has no prior DWI, vehicle homicide or vehicle assault convictions. (2) Susp-1 yr (30 dys mand) if the offender has one prior DWI, vehicle homicide or vehicle assault conviction w/n 6 yrs. (3) Susp-2 yrs (180 dys mand) if the offender has two prior DWI, vehicle homicide or vehicle assault conviction w/n 6 yrs. (4) Susp-3 yr (mand) if the offender has three or more prior DWI, vehicle homicide or vehicle assault conviction w/n 6 yrs. Occupational licenses may be issued after the above mandatory suspension periods. Administrative license suspensions are to be "offset" by any license suspension imposed as a result of a DWI offense conviction. Caution: Occupational driving privileges <u>cannot</u> be granted if the driver has had 3 or more drunk driving or vehicle homicide offense convictions w/n 7 yrs.

¹Ref: *State v. Cichy*, 480 N.W.2d 90 (Ohio App. 1984).

²If such a condition is imposed, defendants must also obtain a specially marked driver's license indicating that they may only operate a vehicle equipped with such a device. §2951.02(I)(3)

Special Note: I. Usually, following a DWI arrest where there has been either a refusal to submit to a chemical test or where the test indicated an illegal alcohol concentration level (administrative per se), an offender's license is immediately suspended until the initial court appearance which must take place within 5 dys after the arrest. §4511.191(D) & 4511.196 Important. The Ohio Supreme Court has held that the immediate suspension of a license by a law enforcement officer does not violate Federal or State constitutional provisions concerning due process of law. *State v. Hochhauser*, 668 N.E.2d 457 (Ohio 1996) However, in this same case, the court held that those provisions of the administrative per se law that prohibit the courts from granting a stay of license suspension violated constitutional principles of separation of powers. **II.** If an offender's license has not been suspended either for a refusal or under the administrative per se provisions, the court may impose a license suspension where the offender would pose a "threat to the public safety". §4511.196(B) **III.** Notwithstanding the fact that a court may on appeal terminate a license suspension based either on a refusal or under the administrative per se provisions, it may still impose a license suspension where the offender would pose a "threat to the public safety". §4511.196(B)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: Post DWI Conviction Licensing Action: Type of Licensing Action (Susp/Rev): Term of License Withdrawal (Days, Months, Years, etc.): Mandatory Minimum Term of Withdrawal:	Ignition Interlock. For (1) and (2), a person <u>may</u> be required to use "ignition interlock" devices when operating a vehicle on an occupational license. For (3) and (4), a person <u>must</u> use these devices when driving on an occupational license. Note: A susp for an administrative per se violation will terminate if the person is either (1) found "not guilty" of or (2) pleads "guilty" to a related DWI offense. §§4507.16 and 4511.191(F), (H)(2), (I)(4) & (K) None See Point System below. <u>1st off-Susp; 2nd off (w/n 6 yrs)-Susp; 3rd off (w/n 6 yrs)-Susp; sub offs (w/n 6 yrs)-Susp/Rev DWI Related Aggravated Vehicle Assault-Rev §§2903.08 & 4507.16(B) See the Special Note below. Offense for Persons Under 21 Years Old (≥ 0.02 but < 0.10)-Susp §§4507.16(E), (G) & (I)</u> <u>1st off-6 mos to 3 yrs; 2nd off (w/n 6 yrs)-1 to 5 yrs; 3rd off (w/n 6 yrs)-1 to 10 yrs; sub offs (w/n 6 yrs)-Susp for not less than 3 yrs or Permanent Revocation See Footnote No. 1. DWI Related Aggravated Vehicle Assault-Permanent Revocation Offense for Persons Under 21 Years Old (≥ 0.02 but < 0.10)-60 dys to 2 yrs §§4507.16(E), (G) & (I)</u> <u>1st off-15 dys²; 2nd off (w/n 6 yrs)-30 dys²; 3rd off (w/n 6 yrs)-180 dys²; sub offs (w/n 6 yrs)-3 yrs² §4507.16(F) & (L) After these mandatory minimum susp periods, occupational driving privileges may be granted. Caution: Occupational driving privileges <u>cannot</u> be granted if the driver has had 3 or more drunk driving or vehicle homicide offense convictions w/n 7 yrs. See Footnote No. 1. §4507.16(F) & (G) DWI Related Aggravated Vehicle Assault-Permanent Revocation Offense for Persons Under 21 Years Old (≥ 0.02 but < 0.10)-60 dys</u>

¹Persons Under 18 Years Old. I. Persons < 18 yrs old, who violated any provision of the DWI law (§4511.19), have their license suspended for 6 mos (appears mand). §4507.162(A) I.e., this suspension also applies to persons < 18 yrs old who violate §4511.19(B) by driving with a BAC/BrAC ≥ 0.02 (UrAC ≥ 0.028) but < 0.10 (UrAC < 0.14). II. Persons < 18 yrs old, who commit 3 or a combination of 3 violations as specified in §4507.162 w/n 2 yrs, have their license suspended for 1 yr (appears mand). These violations include refusal to submit to a chemical test, admin. per se and driving while suspended or revoked. §4507.162(A).

²For 1st and 2nd offs, the court may order a person to use "ignition interlock" devices when using an occupational license. for 3rd and sub. offs, the court must require a person to use these devices when using an occupational license. See Footnote No. 2 on p. 3-370. §4511.16(F) & (L)

Point System. A license may be suspended via a point system under §4507.021(D), (G)(11) & (K). In brief, under this section a DWI conviction results in an assessment of 6 points. If a driver accumulates 12 or more points from traffic violations within a 2 yr period, their license may be suspended for 6 mos. Also, 4 points are assessed for a 0.02 offense for persons under 21 years old.

Special Note: I. Under §4507.1610, the court is authorized to suspend a license for a violation of a municipal DWI ordinance which is substantial similar to State law. However, the suspension period cannot exceed that imposed under State law. II. The licensing agency can also suspend an offender's license for 6 mos. An occupational license is available after the person has served the same mandatory license suspension periods noted above. §4507.169(B) & (E)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Yes I. A person, (1) who has been charged with a misdemeanor offense, (2) who has been determined by the court to be either an alcoholic or a person suffering from acute alcohol intoxication and (3) who would benefit from an alcohol or drug treatment program, may, in lieu of imprisonment, be placed in such a program under close supervision. However, a regular DWI offender, a §4511.19(A) offender, must be confined in a treatment facility for at least 3 dys. §2935.33

II. For 2nd offs, the court may require a defendant to attend a treatment program. For 3rd and sub. offs, the court shall require the defendant to attend a treatment program. §4511.99(A)(2), (3) & (4)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Important. See the Special Note below. 2nd off (w/n 6 yrs)-Immobilization of and impoundment of the license plates of the vehicle used in the offense for 90 dys; 3rd off (w/n 6 yrs)-Immobilization of and impoundment of the license plates of the vehicle used in the offense for 180 dys; Sub. off (w/n 6 yrs)-Criminal Forfeiture of the vehicle used in the offense §§4507.164, 4511.195 & 4511.99 See Footnote Nos. 2 & 3.

Terms Upon Which Vehicle

Will Be Released:

Other:

A person convicted of a 4th or subsequent offense, is prohibited from registering a motor vehicle for 5 yrs. §§4503.234(E) & 4507.021(C)(3)

Miscellaneous Sanctions

Not Included Elsewhere:

A person under 18 yrs old, who violates the regular DWI law, §4511.19(A), may be assigned to temporary custody of not more than 5 dys either (1) to a detention home, (2) to another similar institution for children or (3) to a school camp. §2151.356(A)(6)

¹Even though the occupation licenses can be granted as indicated, under §4507.16(I), the court cannot suspend (1) the first 90 days of the license suspension period for a 1st off, (2) the first year of the license suspension period for a 2nd off, (3) the first year of the license suspension period for a 3rd off and (4) the first 3 years of the license suspension for a 4th or subsequent offense.

²A non-driver owner of the vehicle may avoid the forfeiture sanction if they can prove by a preponderance of the evidence that they neither knew or should have known that an offense was or would be committed. §4503.234(C)(3) If the vehicle is not subject to forfeiture due to this provision and the vehicle's registration has been either been assigned or transferred, the defendant may be required to pay a fine which is equal to the value of the vehicle. §§4503.234 & 4511.99(A)(4)(b)

³The court has discretionary authority to prohibit the defendant from either registering a vehicle or renewing or transferring the registration of any vehicle owned by a person who has been convicted of an offense that requires driver's license suspension or revocation. §4507.16(A)(2)

Special Note: The Ohio Supreme Court has held that the law providing for vehicle seizure and immobilization, without a prior hearing, violates U.S. Constitutional provisions concerning due process of law when it is applied against vehicle owners who were not operating the vehicle at the time of the drunk driving offense. *State v. Hochhausler*, 668 N.E.2d 457 (Ohio 1996)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere: (continued)

Child Endangerment. It is separate offense to operate a motor vehicle in violation of the drunk driving laws while carrying a passenger who is under 18 yrs old. 1st off (1st Degree misd)-imprisonment for not more than 6 mos and/or a fine of not more than \$1,000; 1st where there has been serious physical harm to the child or subsequent off (5th Degree felony)-imprisonment from 6 to 12 mos and/or a fine of not more than \$2,500; subsequent child endangerment off where there has been serious physical harm to the child or where there has been serious physical harm to the child and the driver has a prior drunk driving offense conviction (4th Degree felony)-imprisonment from 6 to 18 mos and/or a fine of not more than \$5,000. In addition to the above, offenders are subject to not more than 200 hrs of community service, which is not in lieu of community service that may be imposed via probation, and license suspension for 90 dys, which is consecutive to any other licensing action. §§2919.22, 2929.14, 2929.18 & 2929.21

Confinement Costs. In some counties, offenders may have to pay the costs of confinement (workhouses). §§2929.223 & 2947.19

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

See the Special Note below.

Yes (1) Aggravated (Reckless) Vehicle Homicide-Felony §2903.06; (2) Vehicle Homicide (Negligence)-1st off-Misd; sub. off or driving while susp/rev-Felony §2903.07

Sanctions:
Criminal Sanction:
Imprisonment (Term):(1)

Aggravated (Reckless) Vehicle Homicide: 1st off (aggravated Felony 3rd degree)-1 to 5 yrs; sub. off¹ (aggravated Felony 2nd degree)-2 to 8 yrs; (2) Vehicle Homicide (Negligence): 1st off (Misd 1st degree)-not more than 6 mos; sub. off¹ or driving while susp/rev (Felony 4th degree)-6 to 18 mos §§2929.14 & 2929.21 See Footnote No. 2.

Mandatory
Minimum Term:
Fine (\$ Range):

See Footnote No. 2.

(1) Aggravated (Reckless) Vehicle Homicide: 1st off (aggravated Felony 3rd degree)-not more than \$10,000; sub. off¹ (aggravated Felony 2nd degree)-not more than \$15,000; (2) Vehicle Homicide (Negligence): 1st off (Misd 1st degree)-not more than \$1,000; sub. off¹ or driving while susp/rev (Felony 4th degree)-not more than \$5,000 §§2929.18 & 2929.21

Mandatory Minimum Fine:

See Footnote No. 2.

¹A previous offense includes either a §2903.06 or a §2903.07 offense.

²For either type of offense, either a second offender or a 1st offender who has had a previous DWI conviction is not eligible for probation. §§2903.06(C) & 2903.07(C)

Special Note: "Involuntary manslaughter" (death as a result of committing a felony or misdemeanor) may include DWI as an element of the offense. §2903.04 If the death is felony related, the offense is an aggravated felony 1st degree (Jail-3 to 10 yrs; fine-not more than \$20,000). If the death is misdemeanor related, the offense is an aggravated felony 3rd degree (Jail-1 to 5 yrs; fine-not more than \$10,000). §§2929.14 & 2929.18

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:
Licensing Authorized and
Type of Action:

For either Aggravated (Reckless) Vehicle Homicide or Vehicle Homicide (Negligence)-Susp or rev §§2903.06(B), 2903.07(B), 4507.16(A), 4507.16(D), 4507.34 & *City of Columbus v. Tyson*, 484 N.E.2d 155 (Ohio App. 1983) See the Special Note on p. 3-371.

Length of Term of
Licensing Withdrawal:

For either Aggravated (Reckless) Vehicle Homicide or Vehicle Homicide (Negligence)-susp-30 dys to 3 yrs or rev-not more than 1 yr For either offense, if alcohol or drugs were involved, the driver's license is **permanently revoked**. §4507.16(D) There is also **permanent license revocation** if a person has been convicted of "Involuntary Manslaughter" where DWI is an element of the offense. §2903.04(D)(1)(a)

Mandatory Action--Minimum
Length of License
Withdrawal:

For either Aggravated (Reckless) Vehicle Homicide or Vehicle Homicide-susp-30 dys §4507.16(G) For either offense, if alcohol or drugs were involved, the driver's license is **permanently revoked**. §4507.16(D) There is also **permanent license revocation** if a person has been convicted of "Involuntary Manslaughter" where DWI is an element of the offense. §2903.04(D)(1)(a)

Other:

For either vehicle homicide offense, 6 points are assessed against a driver's record. §4507.021(G)(3) A driver's license may be suspended for 6 mos if a person has accumulated 12 points w/n a 2 year period.

License Plate Impoundment. A vehicle's license plates may be impounded if the owner thereof has had their driver's license either suspended or revoked for any death related vehicle offenses. §4507.164(A) See Footnote No. 3 on p. 3-372.

Suspension at Arraignment. At the arraignment hearing for any vehicle homicide offense, the court may suspend a defendant's license until the matter is adjudicated on the merits if the court determines that the defendant's continued driving will be a treat to public safety. §2903.07(D)

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

See Footnote No. 1 and the Special Note below.

Sanction:

Criminal:

Imprisonment (Term):

1st Off (1st Degree misd)-not more than 6 mos; 2nd Off (w/n 5 yrs) (misd)-10 con dys to 1 yr; 3rd & sub. Off (w/n 5 yrs) (misd)-30 con dys to 1 yr §§2929.21, 4507.02(D)(2) & 4507.99(B)

¹Driving while suspended for an implied consent law violation (refusal)-1st Degree misd: Imprisonment-not more than 6 mos ; fine-not more than \$1,000 ; and license revocation-not more than 1 year §§2929.21(B)(1) & (C)(1), 4511.192 and 4511.99(B)

Special Note: It is a 1st Degree misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 6 mos and/or a fine of not more than \$1,000. In addition, if the offense concerned CDL operation while under an out-of-service order, the offender is subject to a CDL disqualification; see DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL) on p. 3-367. §§2929.21(B)(1) & (C)(1), 4506.04(A)(2) and 4506.99(A)

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term
of Imprisonment:

1st Off-3 con dys (Alternative: 30 con dys of "house arrest" with electronic monitoring.¹); 2nd Off (w/n 5 yrs)-10 con dys (Alternative: 90 con dys of "house arrest" with electronic monitoring.¹); 3rd & sub. Off (w/n 5 yrs)-30 con dys

Fine (\$ Range):

1st Off-\$250 to \$1,000; 2nd Off (w/n 5 yrs)-\$500 to \$2,500; 3rd & sub. Off (w/n 5 yrs)-\$500 to \$2,500

Mandatory Minimum Fine:

1st Off-\$250; 2nd Off (w/n 5 yrs)-\$500; 3rd & sub. Off (w/n 5 yrs)-\$500 See Footnote No. 2.

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

Susp² §4507.99(B)(4)

Length of Term of License
Withdrawal Action:

For 1st, 2nd, 3rd and sub. off-not more than **1 yr** §4507.99(B)(4)
See the Special Note below.

Mandatory Term of License
Withdrawal Action:

For 1st, 2nd, 3rd and sub. off-not more than **1 yr** §4507.99(B)(4)
See the Special Note below and Footnote No. 1 on p. 3-371.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

¹This alternative is imposed only when their are overcrowded jail conditions which prohibit the offender from commencing their term of imprisonment within 60 dys of sentencing. §4507.99(B)(6)

²Ref: *State v. Cichy*, 480 N.E.2d 90 (Ohio App. 1984).

³(1) The vehicle used in the offense shall be "immobilized" and the license plates "impounded" for the following mandatory periods: 1st Off-30 dys; 2nd Off-60 dys and (2) for a 3rd or sub. off, the vehicle used in the offense will be subject to criminal forfeiture. §§4507.361(C), 4507.164(C) & 4507.99(B). A non-driver owner of the vehicle may avoid the forfeiture sanction if they can prove by a preponderance of the evidence that they neither knew or should have known that an offense was or would be committed. §4503.234(C)(3) If the vehicle is not subject to forfeiture due to this provision and the vehicle's registration has been either been assigned or transferred, the defendant may be required to pay a fine which is equal to the value of the vehicle. §4507.99(B)(3)

Special Note: In addition to the "immobilization" and license plate "impoundment" of a vehicle that was used in the offense, the law also provides via judicial action for the mandatory "impoundment" of the license plate(s) of vehicle(s) registered to the offender even if such vehicles were not used in the offense. The license plates of such vehicles shall be impounded until the offender's license is reinstated. §4507.02(F)(1) Nevertheless, under §§4507.02(F)(2) & 4503.231, such vehicle may be operated if special license plates are obtained. These special license plates must be different in appearance than the normal ones. (Note: Under §4507.164(C), discretionary judicial authority also exists for such registration suspension.) See Footnote No. 3 on p. 3-372.

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Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:
Imprisonment (Term):
Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): Yes §313.13(B)

BAC Chemical Test Is Given to the
the Following Persons:

Driver: Yes §313.13(B)

Vehicle Passengers: No

Pedestrian: No

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21¹ §§4301.22(A)(1), 4301.63 & 4301.69 (Year Eff: 1987)

Minimum Age (Years) Possession: 21¹ §4301.632

Minimum Age (Years) Consumption: 21¹ §§4301.632 & 4301.69

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): Yes §§4399.01, 4399.02 & 4399.18

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes *Mason v. Roberts*, 244 N.E. 2d 844 (Ohio 1973)²

¹It is illegal (1) for a licensee to sell to a person under 18 yrs old or (2) for a person under 18 yrs old to either purchase, possess or consume (unless accompanied by a parent, legal guardian or spouse who is over 18 yrs old) a low-alcohol beverage. §§4301.22(A)(2) & 4301.631 A low-alcoholic beverage, "means any brewed or fermented malt product, or any product made from the fermented juices of grapes, fruits, or other agricultural products, that contains either no alcohol or less than one-half of one per cent of alcohol by volume." However, such beverages do not include soft drinks (e.g., root beer, birch beer or ginger beer). §4301.01(B)(20)

²See also *Terry v. Markoff*, 497 N.E.2d 1133 (Ohio App. 1986), & *Great Central Insurance Co. v. City of Bowling Green*, 523 N.E.2d 354 (Ohio 1988).

Other State Laws Related To Alcohol Use: (continued)Dram Shop Actions-Social Hosts:

Yes Limited A social host is not liable for the actions of an intoxicated adult guest. *Settemyer v. Wilmington Veterans Post No. 49, American Legion, Inc.*, 464 N.E.2d 521 (Ohio 1984), & *Morrison v. Fleck*, 697 N.E.2d 1064 (OhioApp. 9 Dist. 1997) However, a social host may be held liable for either the death or injury of a third person caused by an intoxicated minor guest. *Museff v. Wheeler*, 526 N.E.2d 798 (Ohio 1988), and *Williams v. Veterans of Foreign Wars*, 650 N.E.2d 175 (Ohio App. 2 Dist. 1994) Also, a social host may be held liable for the injuries sustained by an intoxicated minor guest. *Huston v. Konieczny*, 556 N.E.2d 505 (Ohio 1990)

Other:

An intoxicated patron (or the estate of a deceased intoxicated patron), including a person under the legal drinking age, does not have a cause of action against a licensee for injuries they have sustained off the licensee's premises due to the consumption of alcoholic beverages at the licensed establishment. *Smith v. 10th Inning, Inc.*, 551 N.E.2d 1296 (Ohio 1990), *Fifer v. Buffalo*, 601 N.E.2d 601 (OhioApp. 6 Dist. 1991), *Gillum v. Fairgreens County Club*, 673 N.E.2d 637 (OhioApp. 4 Dist 1996), *Cole v. Broomsticks, Inc.*, 669 N.E.2d 253 (OhioApp. 1 Dist. 1996), & *Walker v. Capri Ent. Inc.*, 707 N.E.2d 1201 (OhioApp. 10 Dist. 1997) (Discretionary appeal was not allowed by the State supreme court. 691 N.E.2d 1062 (Ohio 1998))

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

3rd Degree Misd §§4301.22(B) & 4301.99(E)

Term of Imprisonment:

Not more than **60 days** §2929.21(B)(3)

Fine (\$ Range):

Not more than **\$500** §2929.21(C)(3)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Rev/Susp¹ §§4301.25 and 4301.27

Length of Term of License Withdrawal:

Indeterminate

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

See the Special Note on p. 3-378.

Term of Imprisonment:

Misd² 1st or 3rd Degree1st Degree Misd: Not more than **6 mos** §2929.21(B)(1); 3rd DegreeMisd: Not more than **60 days** §2929.21(B)(3)1st Degree Misd: Not more than **\$1,000** §2929.21(C)(1); 3rd DegreeMisd: Not more than **\$500** §2929.21(C)(3)

Fine (\$ Range):

¹For a 1st or 2nd off (w/n 2 yrs), a monetary forfeiture may be imposed in lieu of a suspension: 1st violation-\$100 to \$200 for each day of the suspension; 2nd violation-\$200 to \$400 for each day of the violation. §4301.252

²A person may be charged with a misd of either the 1st or 3rd degree. §§4301.22(A), 4301.69, 3301.99(C) & §4301.99(E)

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Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

See the Special Note below.

Yes Rev/Susp¹ §§4301.25 & 4301.27

Indeterminate

Anti-Happy Hour Laws/Regulations:

Yes 4301:1-1-50 (regulation)² This regulation prohibits the sale of alcoholic beverages at a lower price (i.e., below the regular price) only after 9:00 p.m.

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes §4301.62(B)(4) & (5)

Yes Drivers and passengers §4301.64 The law states that "[n]o person shall consume any beer or intoxicating liquor in a motor vehicle."

¹For a 1st or 2nd off (w/n 2 yrs), a monetary forfeiture may be imposed in lieu of a suspension: 1st violation-\$100 to \$200 for each day of the suspension; 2nd violation-\$200 to \$400 for each day of the violation. §4301.252

²This regulation was held to be constitutional. *DDDJ, Inc. v. Liquor Control Comm.*, 582 N.E.2d 1152 (Ohio App. 10 Dist. 1990)

Special Note: A licensee commits a 4th degree misdemeanor if they sell a low-alcohol beverage to a person under 18 yrs old. See Footnote No. 1 on p. 3-376. The sanctions for this offense are a jail term of not more than 30 dys and/or a fine of not more than \$250. §§2929.21(B)(4) & (C)(4) and 4301.99(B) However, they are not subject to having their license either suspended, revoked or canceled. §4301.22(A)(2)

STATE:
General Reference:

OKLAHOMA
Oklahoma Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:

I. Under the influence of alcohol 47 §11-902(A)(2)
II. Impaired by the consumption of alcohol (driving while impaired) 47 §761(A)

Illegal Per Se Law (BAC/BrAC):

≥0.10^{1&2} 47 §§756(5) & 11-902(A)(1)
Persons Under 21 Years Old-Any Measurable Quantity of Alcohol in the Blood or Breath 47 §6-106.4(A)

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

I. Under the influence of (1) **Intoxicating Substances** or (2) a Combination of These and Alcohol 47 §11-902(A)(3) & (4)

II. Impaired by **Any Other Substance** 47 §761(A)

III. Persons Under 21 Years Old-Under the influence of any other intoxicating substance 47 §6-106.4(A)

Other:

I. A BAC/BrAC ≥0.10² is also *prima facie* evidence that a person was under the influence of alcohol. 47 §756(3)

II. A BAC/BrAC >0.05 but <0.10² is evidence of Driving While Impaired. 47 §756(2)

For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

Yes 47 §751(A)

Implied Consent Law Applies to
Drugs (Yes/No):

Yes 47 §751(A)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) 47 §756(A)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more. 47 §756(5)

²Alcohol concentration is defined as grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. 47 §756(4)

Special Note: For any type of DWI offense, a defendant may be placed on probation before judgement. Following the completion of the proscribed probation period (which cannot exceed 5 yrs) and the satisfactory completion of any terms of probation (which could include jail, community service or restitution), the DWI charge is dismissed and the criminal record is expunged. 22 §991c. Also, under 43A §3-452(A), upon a plea of guilty, *nolo contendere*, et al. by the defendant to either driving while under the influence or driving while impaired, the court, prior to judgment, may defer further proceedings on condition that the defendant agrees to attend and to successfully complete an alcohol and drug course or treatment program.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials), if while operating a CMV they (1) have a BAC/BrAC ≥0.04 (See Footnote No. 3 above.), (2) are under the influence of alcohol or an intoxicating substance or (2) refuse to submit to a chemical test for an alcohol concentration. For either (1) a second "conviction" or (2) a combination of two "convictions" of any of the above listed items, the "disqualification" is for life (10 yrs mand). Note: A conviction includes an unvacated adjudication of guilt, a failure to comply with the provisions of the CMV law (47 §6-205.2) or a violation of the admin. per se law (47 §754). 47 §6-205.2

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Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information:

(1) Under 47 §753, a mandatory chemical test may be ordered in situations where there is probable cause that a person "while intoxicated" has operated a motor vehicle and that such operation has caused either death or serious physical injury to another person. (2) Also, under 47 §10-104(B), a mandatory chemical for alcohol/drugs may be ordered in traffic accident situations where the driver (person to be tested) has been cited for a traffic offense.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:
Urine:
Other:

Yes For alcohol & intoxicating substances 47 §751(A)
Yes For intoxicating substances only 47 §751(A)
Saliva For intoxicating substances only 47 §751(A)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No
No

Yes 1st off-Driving While Under the Influence/Illegal per Se¹ and 1st or sub offs-Driving While Impaired-Offenders are required to submit to alcohol and drug evaluation prior to sentencing. 47 §§11-902(H) & 761(D)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):
Other:

N/A
N/A
N/A

Refusal to Take Implied Consent
Chemical Test:
Criminal Sanction (Fine/Jail):

None

Administrative Licensing Action
(Susp/Rev):

1st Refusal-Rev 180 dys²; 2nd Refusal (w/n 5 yrs)-Rev 1 yr²;
Sub Refusal (w/n 5 yrs)-Rev 3 yrs² 47 §§ 6-205.1, 6-211(I),
753, 754.1 & 755 See Footnote No. 2 on p. 3-382.

Other:

None

¹A person, who has been convicted of driving under influence/illegal per se and who has had a prior conviction for these offenses w/n 10 yrs, does not undergo an alcohol and drug substance abuse evaluation. Instead, such an offender, as a condition of any sentence imposed, is required to participate in an alcohol and drug abuse treatment program. 47 §11-902(K)

²This license revocation is not mandatory. It may be "modified". However, as a condition of modification, the driver must be agree, except in certain circumstances, to only operate motor vehicles that are equipped with an ignition interlock device. 47 754.1(B) See Footnote No. 1 on p. 3-382.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Double Jeopardy, Prior Offenses and Persons Under 21 Years Old below.

Imprisonment:

Term (Day, Month, Years,
Etc.):

I. Driving While Impaired-Not more than 6 mos 47 §761

II. Driving While Under the Influence/Illegal Per Se: 1st Off (Misd)-10 dys to 1 yr; 2nd off (w/n 10 yrs) (Felony)-1 to 5 yrs; 3rd off (w/n 10 yrs) (Felony)-1 to 7 yrs; 4th and sub off (w/n 10 yrs) (Felony)-1 to 10 yrs 47 §11-902

See Schedule I-3 Felony under "Intoxicant Crimes Involving a Vehicle Matrix" below. 21 §9(B)

III. Personal Injury Accident (Driving While Under the Influence/Illegal Per Se)-1st Off (Misd)-90 dys to 1 yr; 2nd or sub off-Schedule I-2 Felony See "Intoxicant Crimes Involving a Vehicle Matrix" below. 21 §9(B) & 47 §11-904(A)

IV. Great Bodily Injury (Driving While Under the Influence/Illegal Per Se)-Schedule I-1 Felony See "Intoxicant Crimes Involving a Vehicle Matrix" below. 21 §9(B) & 47 §11-904(B) See Great Bodily Injury below.

Yes-Driving While Under the Influence/Illegal Per Se-1 yr in the custody of the Dept. of Corrections or 48 con hrs in either inpatient rehabilitation or treatment in a public/private facility. 47 §11-902(E)

For other offense, the court may suspend or defer a sentence. 21 §12(C) & 22 §991a

Mandatory Minimum Term:

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Kane v. State*, 915 P.2d 932 (Okla. Cr. 1996) In *Price v. Reed*, 725 P.2d 1254 (Okla. 1986), a person's driving privileges were withdrawn via the administrative per se law after they had been **acquitted** of a drunk driving offense. Nevertheless, the court upheld the licensing action and held that there was no double jeopardy issue.

Persons Under 21 Years Old. Persons <21 yrs old are subject to the following legal prohibitions in addition to those provided for under the regular drunk driving laws. It is unlawful for these persons to operate a motor vehicle either (1) with "any measurable quantity of alcohol" in either their blood or breath or (2) while under the influence of "any other intoxicating substance" or a combination of alcohol and an intoxicating substance. 47 §6-106.4(A) The sanctions for violating these prohibitions are as follows. For a 1st offense, there is a fine of \$100 to \$500 and/or at least 20 hrs of community service. For a 2nd or sub offense, there is a fine of \$100 to \$1,000 and/or at least 40 hrs of community service. For either a 1st or sub offense, a defendant may be require to complete a treatment program. 47 §6-106.4(B)

Intoxicant Crimes Involving a Vehicle Matrix. Felony sanctions are determined via the "Intoxicant Crimes Involving a Vehicle Matrix". The matrix is divided into various sanction levels for each type of felony. For a Schedule I-1 Felony, the sanction levels range from 12-36 mos community service to 1-4 yrs imprisonment. For a Schedule I-2 Felony, the sanction levels range from 3-12 mos community service to 1-2.5 yrs imprisonment. And, for a Schedule I-3 Felony, the sanction levels range from 0-12 mos community service to 1-24 mos imprisonment. The court determines the appropriate sanction level based upon enhancement factors such as the number of prior offenses, whether a victim was older than 62 or less than 12 years old and/or whether a victim was maimed as a result of the offense. 21 §§9(A), 15(A), (B)(2) & (G), 16(A)(11), (12) & (13), 17(A)(2), (B)(5) & (C)(1) and 20.4

Prior Offenses. "Any person who, within ten (10) years after a previous conviction of a violation of murder in the second degree or manslaughter in the first degree in which the death was caused as a result of driving under the influence of alcohol or other intoxicating substance, is convicted of a violation of this section [47 §11-902] shall be deemed guilty of a felony." 47 §11-902(C)

Great Bodily Injury. Great bodily injury "means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss of or impairment of the function of any bodily member or organ." 47 §11-904(B)(2)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Fine:

Amount (\$ Range):

I. Driving While Impaired-\$100 to \$500 47 §761

II. Driving While Under the Influence/Illegal Per Se: 1st Off (Misd)- Not more than \$1,000; 2nd off (w/n 10 yrs)-Not more than \$2,500; 3rd and sub off (w/n 10 yrs) (Felony)-Not more than \$5,000 47 §11-902

III. Personal Injury Accident (Driving While Under the Influence/Illegal Per Se)-1st off (Misd)-Not more than \$2,500; 2nd off (Felony)-Not more than \$5,000 47 §11-904(A)

IV. Great Bodily Injury (Driving While Under the Influence/Illegal Per Se) (Felony)-not more than \$5,000 47 §11-904(B)

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

Yes-Driving Under the Influence/Illegal Per Se-10 dys in lieu of either imprisonment (Dept. of Corrections) or Inpatient Rehabilitation/Treatment 47 §11-902(E) A fine cannot be imposed in lieu of community service. 47 §11-902(K)
See "Intoxicant Crimes Involving a Vehicle Matrix" on p. 3-381.

Restitution

(eg Victim's Fund)

Yes The court may order a defendant to pay restitution to a victim. 22 §§991a(A)(1)(a), 991a-10 & 991f

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Double Jeopardy on p. 3-381.

Yes (1) BAC/BrAC ≥ 0.10 or (2) Persons Under 21 Years Old-Any Measurable Quantity of Alcohol in the Blood or Breath
See Footnote No. 3 on p. 3-379. 1st Action-Rev 180 dys¹; 2nd Action (w/n 5 yrs)-Rev 1 yr^{1&2}; Sub. Action (w/n 5 yrs)-Rev 3 yrs^{1&2} 47 §§6-205.1, 6-211(I), 754, 754.1, 755 & 756

Other:

None

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

See the Special Note on p. 3-383.

Driving While Impaired-Susp 47 §761 Driving While Under the Influence^{1&4}: 1st Off-Rev; Sub. Off-Rev 47 §§6-205(A)(2) & 11-902

See Footnote No. 2 below and the Comment on p. 3-383.

¹There is no minimum mandatory period of license revocation. A revocation may be "modified" in cases of where "no other adequate means of transportation" exists. See Ignition Interlock on p. 3-384. 47 §§6-211, 754.1 & 755

²For license sanction enhancement purposes only, a previous offense includes prior revocations based on either DWI offenses, admin. per se violations or implied consent test refusals. 47 §6-205.1(a)(3) & (4)

³The revs for a violation of 47 §11-902 would, it appears, apply also to violations of 47 §11-904 (personal injury accident or causing great bodily injury while operating a vehicle under the influence/illegal per se). 47 §§6-205, 6-205.1 & 756 There are no specific licensing actions in 47 §11-904.

⁴Persons Under 21 Years Old. The same license revocation sanctions that apply to driving while under the influence also apply to persons <21 yrs old who are convicted of driving either (1) with "any measurable quantity of alcohol" in either their blood or breath or (2) while under the influence of "any other intoxicating substance." 47 §§6-106.4(B)(4)(c), 6-205(A)(2) & 6-205.1

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

Driving While Impaired-1st off-30 dys; 2nd off-6 mos; 3rd off-12 mos 47 §761 Driving While Under the Influence 1st Off-180 dys¹; 2nd Off (w/n 5 yrs)-Rev 1 yr¹; Sub Off (w/n 5 yrs)- Rev 3 yrs¹ 47 §§6-205 & 6-205.1

Mandatory Minimum Term of
Withdrawal:

Driving While Impaired: 1st off-None; 2nd off-6 mos; 3rd off-12 mos 47 §761 Driving While Under the Influence: 1st off-None²; 2nd off-None²; sub off-None²

Note: The license suspensions or revocations for respectively driving while impaired or driving while under the influence do not apply if the defendant has had their license revoked for a refusal to submit to a chemical test or for an administrative per se violation based on the same incident. 47 §§6-205(A)(2) & 761

Other:
Rehabilitation:
Alcohol Education:

Yes 1st and subsequent offenders (all types of DWI offenses) may be ordered by the court to participate in alcohol or drug substance abuse courses.³ A 1st offender must successfully complete this course before their license can be reinstated. 22 §§987.8(B)(11) & 991a(A)(6) and 47 §6-212.2

Alcohol Treatment:

Yes The court may order 1st and subsequent offenders (all types of DWI offenses) to participate in alcohol or drug rehabilitation treatment programs.³ 22 §§987.8(B)(11) & 991a(A)(6)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Vehicle Forfeiture (Discretionary). A subsequent DWI offender's vehicle is subject to forfeiture.⁴ 47 §11-902b

¹See Footnote No. 4 on p. 3-382.

²See Footnote No. 1 on p. 3-382.

³For any drunk driving offense, a defendant's sentence may be suspended if they agree to attend and successfully completes an alcohol and drug abuse course or treatment program. 43A §452(B) However, a person, who has had a subsequent driving under the influence/illegal per se offense convictions w/n 10 yrs must participate in an alcohol and drug abuse treatment program. 47 §11-902(K) ⁴If a person's vehicle is involved in one of the offenses noted, it may be subject to forfeiture provided (1) the person has been convicted of either driving while under the influence/illegal per se, vehicle negligent homicide or a DWI injury related offense and they have a prior conviction for one of these offenses (w/n 10 yrs) and (2) one of the offenses, either present or prior, must have involved either an injury or a death to another person. 47 §11-902b

Special Note: Under separate provisions of law, either (1) an offender < 18 yrs old, who is convicted of a regular drunk driving offense, or (2) an offender 18, 19 or 20 yrs, who is convicted of driving with either "**any measurable quantity of alcohol**" in either their blood or breath or while under the influence of "any other intoxicating substance" is subject to having their license either canceled or denied for one of the following periods: 6 mos, 1 yr, 2 yrs or until they reach 21 yrs old. However, a 2nd or subsequent offender must have their license either canceled or denied for 2 yrs or until they reach 18 yrs old whichever is longer. Licensing action is not mandatory. A 1st or subsequent offender may obtain relief from this action upon a showing of hardship. 47 §§6-107.1 & 6-107.2

Comment: The law does not appear to provide for a license revocation based upon an illegal per se offense conviction (47 §11-902(A)(1)). The license revocation provisions of 47 §6-205 provide for a revocation based upon a conviction of driving while under the influence of alcohol or intoxicating substances but it does not specifically provide for such action based upon a conviction of operating a motor vehicle with a BAC/BrAC ≥ 10. Note: There is a license revocation for operating a motor vehicle with a BAC/BrAC ≥ 0.10 via the admin. per se law.

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Sanctions Following a Conviction for a DWI Offense: (continued)

Terms Upon Which Vehicle
Will Be Released:
Other:

Miscellaneous Sanctions
Not Included Elsewhere:

Electronic Home Monitoring. A defendant may also be subject to court ordered electronic home monitoring. There is fee which is not to exceed \$75 per month associated with participation in this program. 22 §§987.8(B)(14) & 991a(A)(5)(e) See V under Ignition Interlock below. **Comment:** It appears that electronic home monitoring can be used as a substitute for incarceration.

Victim Impact Program. The court may order a defendant may to participate in a victim impact panel program and pay a \$15 to \$25 fee to attend such program. 47 §11-902(I) and 22 §§987.2(B)(12) & 991a(A)(6)(b)

Ignition Interlock. I. the court may order a defendant to install an ignition interlock device on every vehicle used by them following reinstatement of their driving privileges. This requirement shall remain in effect for a period of time as the court deems proper. 22 §§987.8(B)(13) & 991a(A)(6)

II. As a condition of license modification for either an administrative violation or a driving while under the influence conviction, the licensing agency must require a person to install ignition interlock devices on the vehicles they operate. 47 §754.1(B)

III. For a felony offense where the offender receives a suspended sentence and is not otherwise required to use an ignition interlock device under 47 §754.1(B), such offender shall, as a condition of the suspended sentence, be required install such a device on the vehicles they own for not less than 6 mos not more than 3 yrs. 47 §11-902(I)

IV. If a court modifies a license action which has been sustained by the licensing agency for any drunk driving offense, it may require a person to install ignition interlock devices on the vehicles they operate. 47 §755

V. Following inpatient substance abuse treatment, an offender may be assigned to a halfway house, structured community placement or home placement. If such an assignment is made, the offender shall be required to have either **electronic home monitoring** or an **ignition interlock** use requirement. 57 §612(2)

Investigation Costs. The defendant may be required by the court to reimburse the Oklahoma State Bureau of Investigation for any services that were associated with the defendant's criminal offense. There is an exception based on "manifest hardship" to the defendant. 22 §§987.8(B)(9) & 991a(A)(4)

Other Costs. A defendant may be required to pay other costs such as reimbursing the State for the cost of a victim's medical expenses and for the cost of court appointed attorneys for the defendant. The defendant may also be required to pay amounts into victim's compensation trust funds. 22 §991a(A)

Other Criminal Actions Related to DWI:Homicide by Vehicle:

State Has Such a Law:

Yes Negligent Homicide Misd¹ 21 §§5 & 6 and 47 §11-903

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than 1 yr in the county jail

Mandatory Minimum Term:

None

Fine (\$ Range):

\$100 to \$1,000

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev

Length of Term of

Licensing Withdrawal:

1st off-1 yr; Sub off (w/n 5 yrs)-3 yrs 47 §6-205(A)(1), (B) & (C)

Mandatory Action--Minimum

Length of License

Withdrawal:

1st off-1 yr; Sub off (w/n 5 yrs)-3 yrs

Other:

Restitution. The court may order a defendant to pay restitution to a victim. 22 §§991a(A)(1)(a), 991a-10 & 991f

Vehicle Forfeiture. See Vehicle Impoundment/Confiscation on p. 3-383.

Driving While License Suspended or RevokedWhere the Basis Was a DWI Offense*:

See Footnote No. 2.

Sanction:

Criminal:

Imprisonment (Term):

Misd-Not more than 1 yr 47 §6-303(B)

Mandatory Minimum Term

of Imprisonment:

None

Fine (\$ Range):

\$100 to \$500 47 §6-303(B)

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp or rev 47 §6-303(C)

Length of Term of License

Withdrawal Action:

Period of susp/rev extended for 3 mos 47 §6-303(C)

Mandatory Term of License

Withdrawal Action:

Period of susp/rev extended for 3 mos 47 §6-303(C)

¹Special Note: The Oklahoma Courts have decided that if a veh homicide is proximately caused by an alcohol driving law offender, for a first off the charge may be Manslaughter 1 and for a second off the charge may be Murder II. See respectively para. 1 of sec. 711 of Title 31 (*Mc Connell v. State*, 485 P.2d.764 (1971), & *White v. State*, 483 P.2d 751 (1971)) and para 2 sec. 701.8 of Title 21 (*Isom v. State*, 646 P.2d 1288 (1982)).

²I. It is a misd to operate a CMV during a CDL disqualification. The sanctions for this offense are an imprisonment term for not more than 1 yr and/or a fine of not less than \$100 and not more than \$500. 47 §6-205.2(I) II. A person, who violates and out-of-service order, is subject to the following CDL disqualification periods: 1st violation-90 dys (mand); 2nd violation (w/n 10 yrs)-1 yr (mand); and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand). If the offense involved the transportation of hazardous materials, the disqualification periods are as follows: 1st violation-1 yr (mand); and, 2nd or sub violation (w/n 10 yrs)-3 yrs (mand). 47 §6-205.2(G) & (H)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

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Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No): No

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): No

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21 (Year Eff: 1983) 37 §§163.2(a), 241, 246(A) & 537(A)(1)
& 528(E)

Minimum Age (Years) Possession: 21 21 §1215¹ & 37 §246(A)²

Minimum Age (Years) Consumption: 21³ 37 §§241(C) & 246

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): No

¹Under 21 §1215, it is illegal for a person under 21 years old to possess alcoholic beverages (alcoholic beverages containing more than 3.2% alcohol by weight) "upon any public street, road, or highway or in any public building or place."

²Under 37 §246(A), it is illegal for a person under 21 years old to possess "low-point beer" (alcoholic beverages containing more than ½ of 1% alcohol by volume but not more than 3.2% alcohol by weight) with the intent to consume such beverages in public.

³I. Under 37 §246, it is only illegal for a person under 21 years old to consume "low-point beer" (alcoholic beverages containing more than ½ of 1% alcohol by volume but not more than 3.2% alcohol by weight) in public. II. Under 37 §241(C), it is illegal for a licensee to allow a person under 21 yrs old to consume "low-point beer" on the licensed premises.

Other State Laws Related To Alcohol Use: (continued)

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Dram Shop Actions-Social Hosts:
Other:

Yes Brigrance v. The Velvet Dove Restaurant, et al., 725 P.2d 300 (Okla. 1986), *Tomlinson v. Love's Country Stores, Inc.*, 854 P.2d 910 (Okla. 1993), & *Bennett v. 2 Poor White Boys, Inc.*, 973 P.2d 896 (Okla. Civ. App. Div. 4 1998)¹

No *Troxell v. Bingham*, 774 P.2d 1073 (Okla. App. 1989)

An adult patron has no cause of action against a licensee for injuries sustained as a result of becoming intoxicated at the licensee's establishment. *Ohio Cas. Ins. Co. v. Todd*, 813 P.2d 508 (Okla. 1991) However, a licensee may be held liable for the injuries sustained by an intoxicated minor patron. *Busby v. Quail Creek Golf & Country Club*, 885 P.2d 1326 (Okla. 1994), and *Mansfield v. Circle K. Corp.*, 877 P.2d 1130 (Okla. 1994)

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

For alcoholic beverages 3.2% and above - **Felony** 37 §506(3), §537(A)(2) & §538(G) For low point beer ½ of 1% to 3.2% alcohol - **Misd** 37 §247

Term of Imprisonment:

For felony off-Not more than 1 yr 37 §538(G) For misd off-Not more than 6 mos 37 §247

Fine (\$ Range):

For felony off-**\$500 to \$1,000** 37 §538(G) For misd off-Not more than **\$500** 37 §247

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Rev 37 §§244, 247 and 528(C)(1) & (E)

(1) For alcoholic beverages 3.2% and above - The period of revocation is not stated in the statute. Revocation periods are established via regulations. The law provides that the revocation period shall be "increasingly severe" for subsequent offenses. However, for a 4th offense w/n 24 mos, there is a mand. revocation. (2) For low point beer ½ of 1% to 3.2% alcohol - Rev by the district court for 12 mos

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

For alcoholic beverages 3.2% and above - **Felony** 37 §§537(A)(1) & 538(F)

¹The *Bennett* case concerned an action by a passenger injured in an automobile accident against a licensee who served alcoholic beverages to the vehicle's driver. The driver's intoxication was the cause of the injury resulting accident.

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Other State Laws Related To Alcohol Use: (continued)

Type of Action: (continued)

For low point beer ½ of 1% to 3.2% alcohol **Misd** 21 §§10, 21 & 1220 and 37 §§163.1, 163.2, 163.11, 163.20(a) & 241

Term of Imprisonment:

For felony off - Not more than 5 yrs For misd off - Not more than 1 yr

Fine (\$ Range):

For felony off - \$2,500 to \$5,000 For misd off - Not more than \$500

Special Note: Separate provisions of law provide for special sanctions against out-of-State persons to sell any type of alcoholic beverages to persons less than 21 yrs old within the State contrary to State law. A person, who violates these provisions, is guilty of a Schedule G Felony. The sanctions for this felony are determined via a sentencing matrix. The matrix is divided into various sanction levels. For a Schedule G Felony, the sanction levels range from 0-12 mos community service to 1-27 mos imprisonment. The court determines the appropriate sanction level based upon enhancement factors. In addition, the court may impose a fine of not more than \$5,000. 21 §§15(G) & 20.1, 37 §505(c) and 47 §§163.20(b) & 163.26

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Rev 37 §§163.11(K)(3) & (L), 244, 528(C)(1), (D) & (E) and 538(E) & (F)

Length of Term License Withdrawal:

(1) For alcoholic beverages 3.2% or more alcohol- The period of rev not stated in the statute. Revocation periods are established via regulations. The law provides that the revocation period shall be "increasingly severe" for subsequent offenses.¹ However, for a 4th offense w/n 24 mos, there is a mand. revocation. (2) For low-point beer ½ of 1% to 3.2% alcohol- Rev by the district court for 1yr/12 mos This rev is mand for sub offenses.

Anti-Happy Hour Laws/Regulations:

Yes 37 §537(B)(4)

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes 21 §1220 and 37 §537(A)(7)

Anti-Consumption Law (Yes/No):

Yes Driver and passengers Under 37 §537(A)(8), "[i]t shall be unlawful to drink intoxicating liquor ... in a public place." And, under 37 §8, no person shall consume intoxicating liquor in or upon any passenger coach, streetcar or in or upon any other vehicle commonly used for the transportation of passengers.

¹For package store licensees who "knowingly" sell alcoholic to persons under 21 years old, license revocation is mandatory. 37 §528(D)

STATE:
General Reference:

OREGON
Oregon Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC):
Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Under the influence of intoxicating liquor¹ §813.010(1)(b)
≥0.08^{1&2} §813.010(1)(a)

None

Under the influence of (1) **A Controlled Substance** (2) an Inhalant³ or (3) Any Combination of Intoxicating Liquor, an Inhalant and a Controlled Substance¹ §813.010(1)(b) & (c)

Other:

A BAC of not less than 0.08 constitutes being under the influence of intoxicating liquor. §813.300(2)

For Commercial Motor Vehicle Operators, see p. 3-393.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

No

Yes §§813.100 & 813.131

Yes⁴ §813.131

Yes⁵ (Criminal and Civil Cases) §813.310

I. There is also an implied consent law on field sobriety testing.³ §813.135 Important. See Field Sobriety Tests on p. 3-394.

II. The Oregon Supreme Court has indirectly indicated that law enforcement officers are not authorized via statute to obtain a blood sample via force for BAC testing in DWI cases. However, such a sample may be forcefully obtained and tested for BAC (and possibility drug content) for other criminal offenses related to motor vehicle operation (e.g., criminally negligent homicide or manslaughter). §§813.140, 813.320 & *State v. Milligan*, 748 P.2d 130 (Or. 1988)

¹A person commits a DWI offense if they drive "while under the influence of intoxicants". This offense is defined as illegal per se at a BAC ≥0.08 or driving while under the influence of either intoxicating liquor, a controlled substances or an inhalant. §813.010(1) The Oregon Supreme Court has held that §813.010 is one offense namely that of driving while under the influence of intoxicants. This offense may be proven by showing that a person operated a motor vehicle either (1) with a BAC ≥0.08 or (2) while under the influence of alcohol or a controlled substance. *State v. King*, 852 P.2d 190 (Or. 1993), & *State v. Miller*, 788 P.2d 974 (Or. 1990) Note: The term "intoxicating liquor" has been judicially defined to include beer, wine or any other substance that contains alcohol. *State v. Miles*, 492 P.2d 497 (Or.App. 1972)

²Standard: Percent by weight of alcohol in the blood. §813.010(1)(a) However, under §813.300(4), percent by weight of alcohol in the blood is to be based on grams of alcohol per 100 cubic centimeters of blood.

³An inhalant "means any glue, paint, cement or other substance that is capable of causing intoxication and that contains one or more of the following chemical compounds: Acetone; amyl acetate; benzol or benzene; butane; butyl acetate; butyl alcohol; carbon tetrachloride; chloroform; cyclohexanone; difluoroethane; ethanol or ethyl alcohol; ethyl acetate; hexane; isopropanol or isopropyl alcohol; isopropyl acetate; methyl cellosolve acetate; methyl ethyl ketone; methyl isobutyl ketone; nitrous oxide; toluol or toluene; trichloroethylene; tricresyl phosphate; xylol or xylene; or any other solvent, material, substance, chemical or combination thereof having the property or releasing toxic vapors or fumes." §801. ____ (§2 of Chapter 619 (Laws of 1999))

⁴See Footnote No. 3 on p. 3-390.

⁵The State supreme court has indirectly abrogated a statutory provision, §813.136, which provides that, if a person either fails or refuses to submit to field sobriety testing, this fact may be admitted into evidence in any criminal or civil action arising out of the allegation that the person was DWI. The court has held that such an admission violates the State's constitutional provision against self-incrimination. *State v. Fish*, 893 P.2d 1023 (Or. 1995)

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes Limited ^{1&2}
Urine:	Yes Limited ^{2&3}
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes §813.170 A diversion program for offenders who have not been convicted of a DWI off w/n 10 yrs. §§813.215 & 813.200 et seq.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol screening is required. §§813.020(1)(b) & 3 of Chapter 126, Sessions Laws of 1999

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	See Special Note No. 1 and Vehicle Impoundment/Confiscation on p. 3-393.
Administrative Licensing Action (Susp/Rev):	None
Other:	1. Susp-1 yr if no previous susps for either a test refusal or a DWI off (90 dys are mandatory) ⁴ 2. Susp-3 yrs for either a previous test refusal or a previous DWI off/admin. per se violation based license susp w/n 5 yrs (1 yr mand) ⁴ §§813.100, 813.130, 813.131, 813.132, 813.410, 813.420, 813.430 & 813.520 Consecutive license suspensions for refusals to submit to both breath and urine tests. §813.132

¹Implied consent to submit to a chemical test via a blood sample applies only if the driver is "receiving medical care in a health facility immediately after a motor vehicle accident." §813.100(1)

²A law enforcement officer may obtain either a blood or urine sample for testing to determine either an alcohol concentration or drug content. Such samples may be obtained only (1) if the driver "expressly consents" to the taking of the sample or (2) if they are unconscious (or otherwise in condition rendering them incapable of expressly consenting) and there is probable cause to believe the person was violating the DWI law. §813.140 Note: A person can "expressly consent" by physical actions as well as by verbal communication. *State v. Doran*, 983 P.2d 569 (Or.App. 1995)

³A law enforcement officer may request a person to submit to a chemical test of their urine to determine the presence of a controlled substance. However, this requirement only applies if either (1) a breath test disclosed an alcohol concentration <0.08 or (2) the person was involved in an accident that resulted in either a personal injury or property damage. Nevertheless, in the case of either injury or property related accidents, a law enforcement officer may request a urine test following a breath test regardless of the results of the breath test. §813.131

⁴A restricted hardship license may be issued after this mandatory period. §813.520(1) & (3) This mand. period is reduced by any mand. susp. period that may be imposed for either a 2nd or sub. DWI off conviction (w/n 5 yrs) based on the same occurrence. §813.520

Sanctions Following a Conviction for a DWI Offense:**Criminal Sanctions:****Imprisonment:**

Term (Day, Month, Years,

Etc.):

See Double Jeopardy and the Special Note below.

I. 1st, 2nd or 3rd off-Cl A Misd-Not more than 1 yr §§813.010(4) & 161.615(1)II. 4th off (w/3 prior offs w/n 10 yrs)-Cl C Felony-Not more than 5 yrs §§813.010(5) & 161.605(3)**All offenses-48 con hrs¹** §813.020(2)**Mandatory Minimum Term:****Fine:**

Amount (\$ Range):

I. 1st, 2nd or 3rd off-Class A Misd-Not more than \$5,000² §161.635(1)(a)II. 4th off (w/3 prior offs w/n 10 yrs)-Cl C Felony-Not more than \$100,000² §§813.010(5) & 161.625(1)(c)**All offenses-1st off-\$1,000; 2nd off-\$1,500; 3rd off-\$2,000** (only if the person is not sentenced to a term of imprisonment §813.010(6))**Mandatory Min. Fine (\$):****Other Penalties:****Community Service:****All offenses-Not less than 80 hrs nor more than 250 hrs** (as an alternative to imprisonment) §§813.020(2) & 137.129(4)**Restitution**

(eg Victim's Fund)

Yes Direct compensation to victims by the defendant (§§137.102 to 137.109) and also via a victims' compensation fund (§147.005 et seq.)I. **A \$130 fee** is charged in addition to any fine imposed. The fee is used to pay for diagnostic assessment, for intoxicated driver programs and for other purposes per §137.295. The court may waive this fee in whole or in part for indigent defendants. §§813.020(1)(a) & 813.030II. **All offenses-Mand Unitary Assessment of \$84.** §137.290(1)(c)III. Every DWI offender must pay a **County Assessment** which is in addition to and which is based on the amount of fine they have to pay. The assessments vary in amount but are not more than \$59. §137.309**Other:****Administrative Licensing Actions:****Pre-DWI Conviction Licensing Action:****Administrative Per Se Law:**

See Double Jeopardy below.

Yes ≥0.08 (BAC See Footnote No. 2 on p. 3-389.) or **Any BAC for persons under 21 years old** 1. **A 90 dy susp** (30 dys are mandatory³) if there has been no previous susp for either a chemical test refusal, an admin. per se violation or a DWI off.

¹This term must be served unless justice requires otherwise. The court must state the reasons why the mandatory imprisonment term cannot be served consecutively. §813.020(2)(b) For the purpose of the minimum period of incarceration, imprisonment includes either a jail, minimum security facility or inpatient rehabilitation or treatment center. §813.020(2)(a) & *State v. Oary*, 829 P.2d 90 (Or.App. 1992).

²There is also a special assessment of \$40 which must be imposed by the court not withstanding other fines. However, indigent persons are not required to pay this assessment. §147.259(1)

³A restricted hardship license may be issued after this mandatory period. §813.520(2)

⁴This mand. susp is reduced by any mand. susp imposed for either a 2nd or sub. DWI off (w/n 5 yrs) if based on the same occurrence. §813.520

Special Note: A Cl C Felony DWI offense is a Category 6 Crime under the rules of the Oregon Criminal Justice Commission §813.____ (§3 of Chapter 1049 (Laws of 1999))

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Phillips*, 909 P.2d 882 (Or.App. 1996)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:	2. A 1 yr susp (mandatory) ⁴ if there has been a previous susp for either a chemical test refusal, an admin. per se violation or a DWI off. §§813.100(4), 813.130, 813.300(2) & (3), 813.410, 813.420, 813.430 and 813.520 Important: See Special Note No. 1 on p. 3-393. See Vehicle Impoundment/Confiscation on p. 3-393.
<u>Post DWI Conviction Licensing Action:</u> Type of Licensing Action (Susp/Rev):	<u>1st Off-Susp; 2nd and subsequent offs</u> (w/n 5 yrs)-Susp See Special Note No. 3 on p. 3-393. Ignition Interlock. I. Persons convicted of DWI offenses <u>shall</u> have an "ignition interlock" device installed in their vehicles prior to being issued a hardship license. Also, offenders must operate motor vehicles equipped with ignition interlock devices for 6 mos <u>after</u> the end of the license suspension period. II. The court may require the use of an ignition interlock device as part a diversion agreement. Note: There is an employment exception to the above requirements. §§813.602(1) (a), (1)(b) & (2) and 813.606
Term of License Withdrawal (Days, Months, Years, etc.):	<u>1st Off-1 yr; 2nd and subsequent offs</u> (w/n 5 yrs)-3 yrs. §§809.420(2) & 813.400(2) Under §§809.260 & 809.280(7), a person under 17 but not younger than 13 who is convicted of a DWI offense is subject to the following licensing action: <u>1st off-Susp for 1 yr</u> or until the person reaches 17 whichever is the longer susp period; <u>2nd or sub. off-Susp for 1 yr</u> or until the person reaches 18 whichever is the longer susp period. Persons Under 18 Years Old. Also, under §809.405(4), persons under 18, who have been convicted of a DWI offense, must have their license suspended until they are 18 or are otherwise eligible for license reinstatement. Important: See Special Note No. 2 on p. 3-393.
Mandatory Minimum Term of Withdrawal:	<u>1st Off-See Footnote No. 1; 2nd Off</u> (w/n 5 yrs)- 90 dys ² ; <u>3rd and subsequent offs</u> (w/n 5 yrs)- 1 yr ² For persons under 17 but not younger than 13, <u>1st off-90 dys; 2nd or sub off-1 yr</u> Important: See Special Note Nos. 1 & 2 on p. 3-393.
Other: Rehabilitation: Alcohol Education: Alcohol Treatment:	Yes See Alcohol Treatment below. Yes I. A drunk driving offender must complete an appropriate treatment program for alcoholism or drug dependency. Comment: This could include an alcohol/drug education program. §§813.020(1)(b), 813.500 & 3 of Chapter 126 (Laws of 1999)

¹A restricted hardship license may be issued. §§807.240 & 813.520 Note: A 30 dy susp is mandatory if the defendant within the previous yr has been convicted of a "traffic crime". §813.520(9)

²A restricted hardship license may be issued after this mandatory period. §813.520(4) & (5) Note: This mand. period is reduced by any mand. susp period imposed for either an implied consent law test refusal or an admin. per se law violation if based on the same occurrence. §813.520

Sanctions Following a Conviction for a DWI Offense:
(continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

II. A 2nd or subsequent offender may be issued a restricted hardship license only on the condition that they complete an alcohol/drug assessment and, if required, enroll in an alcohol/drug rehabilitation program. However, if an assessment indicates that they are not required to participate in a rehabilitation program, they must, nevertheless, enter an alcohol/drug information program as a condition for obtaining restricted hardship driving privileges. §813.500

See Footnote No. 1.

I. **Forfeiture (Discretionary).** A vehicle used in a drunk driving offense may be forfeited if w/n 3 yrs the offender had either a prior drunk driving offense or a had been convicted of either murder, manslaughter, criminally negligent homicide or assault related to the operation of a motor vehicle. §809.____ (§2 of Chapter 1100 (Laws of 1999))

II. **Discretionary Impoundment/Immobilization.** 2nd or sub DWI offs or Driving While Susp/Rev-Not more than 1 yr² Applies to a vehicle that is either owned by or used by the offender.² Applies to vehicles (1) either owned and used by the offender or (2) owned b an offender but not used in the offense. §809.700

Terms Upon Which Vehicle
Will Be Released:

The offender must pay the costs of removing, storing or immobilizing the vehicle. §809.700(1)(a), (2) & (6)

¹The City of Portland has an ordinance that provides for vehicle forfeiture if a person is operating a motor vehicle while their driving privileges have been suspended for a DWI offense.

²An offender's vehicle's registration must be suspended for not more than 120 dys. §809.010

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's CDL privilege is suspended if while operating a CMV they either (1) are convicted of a DWI offense (§813.010 offense), (2) had a BAC ≥0.04 (See Footnote No. 2 on p. 3-389.) or (3) refused to submit to a chemical test for alcohol concentration. For a 1st DWI conviction or a first violation of operating a CMV with a BAC ≥0.04, the CDL is suspended for 1 yr (mand); however, if the person was carrying hazardous materials, the suspension is for 3 yrs (mand). For a 1st refusal, the CDL is suspended for 3 yrs (mand); however, if the person was carrying hazardous materials, the suspension is for 5 yrs (mand). For a subsequent refusal, DWI conviction or violation of operating a CMV with a BAC ≥0.04 or a combination of these, the CDL privilege is suspended for life (mand). A CMV operator must be placed "out-of-service" for 24 hrs if (1) they have any amount of alcohol in their blood or (2) if they have consumed alcohol or other intoxicating beverage within 4 hrs of operating a CMV. §§813.050, 813.120, 813.130, 813.403, 813.404 & 813.410

Special Note No. 1: Under §807.220, persons may be issued an emergency driver's licenses if they are at least 14 years old. Except for restrictions that may placed on the emergency license such as when and where a vehicle may be operated, it appears that such a license could be issued for any emergency situation regardless of whether the person being issued this license has had the regular one either suspended or revoked for either (1) an implied consent law refusal, (2) an administrative per se law violation, (3) a DWI conviction or (4) convictions for other traffic law offenses. This section further provides that for persons 17 years old or younger, an emergency includes the situation where the person has to use a vehicle to travel to and from school.

Special Note No. 2: In addition to the licensing sanctions in the DWI law for driving while under the influence of controlled substances, it appears, that independently under other sections, a driver's license can be suspended for six (6) months for this offense. A hardship license cannot be issued. However, under "compelling circumstances" a court does not have to suspended a license. §§807.250(2), 809.265 & 809.280(9)

Special Note No. 3: The State issues special licenses to persons 14 to 17 yrs old for the purpose of attending educational institutions. The State, it appears, can issue such licenses notwithstanding a DWI conviction and the mandatory licensing sanctions provided for such an off if veh transportation is needed by the minor to attend such institutions. §§807.230, 809.420 & 813.400

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Impoundment Following Arrest. If there is probable cause of either a drunk driving or an offense of driving while suspended or revoked, the vehicle used in such offenses may be impounded. The vehicle shall be released if the person entitled to lawful possession (1) has a valid driving privileges, (2) submits proof of financial responsibility and (3) pays any fees associated with the impoundment. §809.720

Miscellaneous Sanctions
Not Included Elsewhere:

Home Detention. DWI defendants, who are placed on probation, may be "restricted" to their own residences. §137.540(2)(a) Note: This provision does not appear to interfere with the mand. jail requirements of §813.020(2).

Diversion Filing Fee. There is a diversion filing fee of \$237. §813.240(1)

Diagnostic Assessment Fee. There is a diagnostic assessment fee of \$90. §§813.020(1)(b) & 813.240(2)

Victim Impact Program. A DWI offender may be required to attend a victim impact treatment session. The offender may be require to pay a fee of from \$5 to \$50 to offset the cost of this program. §813.020(3)

Incarceration & Medical Costs. A city or county may seek reimbursement from an offender for the costs of medical care and incarceration. §§169.150 & 169.151

No Deferred Proceedings. A person, who has been found guilty of or who pleads guilty to a DWI offense, cannot be placed on probation and have the judgment of guilt not entered on the record via a deferred proceeding. §1 of Chapter 819 (Laws of 1999)

School & Work Zones. If the offense occurred in either a school or work zone, there is a minimum mandatory fine which is equal (1) to 20% of the maximum fine for a misdemeanor offense and (2) 2% of the maximum fine for felony offense. §§811.230 & 211.235

Non Economic Damages. A person may not be able to recover non economic damages for injuries related to the operation of a motor vehicle if they were in violation of the drunk driving laws. §1 of Chapter 1065 (Laws of 1999)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

No

Field Sobriety Tests. The Oregon Supreme Court has issued conflicting opinions concerning whether field sobriety tests are searches. In *State v. Nagel*, 880 P.2d 451 (Or. 1994), the court held that field sobriety tests are searches which are reasonable under both the Federal and State constitutions. The court further concluded that, given the facts in the case before it, such searches were not subject to the warrant requirement due to the fact that there existed both "probable cause" of a drunk driving offense and "exigent circumstances" based on the rationale that a suspect's intoxication would dissipate before a warrant could be obtained. However, an equally divided State supreme court affirmed a decision of the Oregon Court of Appeals that had held that such tests were not searches. *State v. Lawrence*, 843 P.2d 488 (Or.App. 1992), affirmed, 880 P.2d 431 (Or. 1994) However, a later case of the Oregon Court of Appeals has cited *Nagel* for authority. *Walls v. DMV*, 960 P.2d 888 (Or.App. 1998)

Other Criminal Actions Related to DWI: (continued)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Note: Even though this State does not have a veh homicide statute, it, nevertheless, provides for mandatory license rev for 8 yrs for murder, manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle. If the offender has been incarcerated, the revocation period begins after their release from confinement. §809.410(1) Important: See Special Note No. 1 on p. 3-393. Special Note: Sec. 807.240 on hardship occupational licenses applies only to persons who have had their licenses suspended not revoked. See especially §807.240(1).

Length of Term of

Licensing Withdrawal:

Mandatory Action—Minimum

Length of License

Withdrawal:

Other:

Driving While License Suspended or RevokedWhere the Basis Was a DWI Offense:

See Footnote Nos. 1, 2 & 3.

Sanction:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term

of Imprisonment:

Fine (\$ Range):

CI A Misd-Not more than 1 yr §§811.182(4)(k) & 161.615(1)

None

Not more than **\$5,000** §161.635(1)(a)

There is also a Unitary Assessment of \$94 and a County Assessment of between \$5 and \$59. §§137.290(1)(a) & 137.309

See Incarceration & Medical Costs on p. 3-394.

Mandatory Minimum Fine:

1st off-\$1,000; 2nd or sub off-\$2,000 §811.182(5)

¹It is Class C felony (imprisonment for not more than 5 yrs/a fine of not more than \$100,000) to operate a motor vehicle after license revocation for any degree of murder, manslaughter or criminally negligent homicide resulting from the operation of such vehicle. §§161.605(3), 161.625(1)(a) & 811.182(3) See School & Work Zones on p. 3-396.

²It is also a Class A misdemeanor to operate a CMV while under an out-of-service order. An offender is also subject to a civil penalty of \$1,000 to \$2,000 and additional CDL mand suspensions of 90 dys for a 1st violation and 3 yrs for a subsequent violation (w/n 10 yrs). However, if the CMV operator was either transporting hazardous materials or operating vehicle designed to carry 16 or more persons, the mand suspension periods for a violation of an out-of-service order are 1 yr of a 1st violation and 5 yrs of a subsequent violation (w/n 10 yrs) (regardless of the type of load or vehicle involved in the 1st violation). §§809.410(32), (33), (34) & (35), 813.050 and 813.052

³It is also a Class A misdemeanor for persons to operate vehicles while their licenses are suspended either for an implied consent refusal or for an admin. per se law violation (including persons <21 yrs old who operate a motor vehicle after administrative susp for driving with any alcohol in their blood). §§153.623(21)(b) & 811.182(4)(c)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

None

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Other:

Note: See (1) Vehicle Impoundment/Confiscation and Footnote No. 2 on p. 3-393 and (2) Impoundment Following Arrest on p. 3-394 **School & Work Zones**. If the offense occurred in either a school or work zone, there is a **minimum mandatory** fine which is equal (1) to 20% of the **maximum** fine for a misdemeanor offense and (2) 2% of the **maximum** fine for felony offense. §§811.230 & 211.235

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes §809.600 et seq.

Grounds for Being Declared an

Habitual Offender:

(1) Three serious traffic offs (w/n 5 yrs) or (2) A combination of 20 minor and serious traffic offs (w/n 5 yrs)

Term of License Rev While

Under Habitual Offender Status:

5 yrs Note: One (1) yr probationary and renewable license is available if certain conditions are met. §§807.270 & 809.650 **Important:** See Special Note No. 1 on p. 3-393.

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Cl C Felony §811.182

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Not more than 5 yrs §161.605

Mandatory Minimum Term of

Imprisonment:

None

Fine (\$ Range):

Not more than \$100,000 §161.625

There is also a Unitary Assessment of \$94 and a County Assessment of between \$5 and \$59. §§137.290(1)(a) & 137.309

See Incarceration & Medical Costs on p. 3-394.

None

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §146.113

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes If over 13 yrs of age and w/n 5 hrs of accident §146.113

Vehicle Passengers:

Yes If over 13 yrs of age and w/n 5 hrs of accident §146.113

Pedestrian:

Yes If over 13 yrs of age and w/n 5 hrs of accident §146.113

Other State Laws Related To Alcohol Use: (continued)Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

Minimum Age (Years) Possession:

Minimum Age (Years) Consumption:

21 (Year Eff: 1933) §§471.410 & 471.430

21 Exemption for the possession of an alcoholic beverage in a private residence accompanied by or with the consent of a parent or for religious purposes. §§471.410 & 471.430

21 Note: Under §471.430(2), "personal possession" of an alcoholic beverage by a person under 21 years old includes "consumption".

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes¹ §§30.950 & 30.960 In order to be liable, it must be shown either (1) that the licensee provided alcoholic beverages to a "visibly intoxicated" patron or (2) to a minor where it can be demonstrated that a reasonable person would have requested identification.

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Dram Shop Actions-Social Hosts:

No²Yes §§30.950 & 30.960 Note: In order to be liable, it must be shown either that the social host provided alcoholic beverages either (1) to a "visibly intoxicated" guest³ or (2) to a minor guest where it can be demonstrated that a reasonable person would have requested identification.

Other:

Generally, a licensee is not liable for injuries sustained by intoxicated patrons.⁴ *Fulmer v. Timber Inn Restaurant and Lounge, Inc.*, 954 P.2d 201 (Or. App. 1998) (rev. allowed by the Or. Sup. Ct., 971 P.2d 411)

¹An intoxicated passenger was injured in a traffic accident while riding with an intoxicated driver. It appears, that both individuals had been socializing and drinking alcoholic beverages purchased and/or consumed at numerous licensed establishments. The Oregon Court of Appeals held that the passenger could bring a third party dram shop action against various alcoholic beverage licensees to recover damages for injuries sustained in the accident. *Grady v. Cedar Side Inn, Inc.*, 963 P.2d 36 (Or. App. 1998) (rev. allowed by the Or. Sup. Ct., 1999 Ore. LEXIS 120) Note: In an earlier decision by this same court, a minor assisted in the purchase of alcoholic beverage from a licensee and was later injured in a traffic accident while riding with another minor who was intoxicated and who also assisted in such purchase. The injured minor passenger could not recover damages from the licensee. *Smith v. Harms*, 865 P.2d 486 (Or. App. 1993)

²Previous case law, that established common law negligence actions, appears to have been abrogated by the dram shop statute. Ref: *Cambell v. Carpenter*, 566 P.2d 893 (Or. 1977); *Chartrand v. Coos Bay Tavern, Inc.*, 696 P.2d 513 (Or. 1985); *Davis v. Billy's Con-Teena, Inc.*, 587 P.2d 75 (Or. 1978); and, *Solberg v. Johnson*, 760 P.2d 867 (Or. 1988).

³Comment: The guest could be either an adult or a minor.

⁴However, a licensee can be held liable for the injuries of an intoxicated patron if they suffer criminal assault after being ejected from the licensee's premises while in a highly intoxicated condition. *Cunningham v. Happy Place, Inc.*, 970 P.2d 669 (Or. App. 1998)

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Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

CI A Misd¹ §471.410(1) & (4)

Not more than 1 yr §161.615

Not more than \$5,000 §§161.635 & 161.655

There is also a Unitary Assessment of \$54 and a County Assessment of between \$5 and \$59. §§137.290(1)(b) & 137.309

See Incarceration & Medical Costs on p. 3-394.

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Canceled/Rev §§471.315 & 471.385

The length of any cancellation/revocation is not specified in the statute.²

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages or the Wrong Type of Alcoholic
Beverage to Those Persons Under the
Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

See Employees below.

CI A Misd §471.410(2) & (4)

Not more than 1 yr³ §161.615

Not more than \$5,000³ §§161.635 & 161.655

There is also a Unitary Assessment of \$54 and a County Assessment of between \$5 and \$59. §§137.290(1)(b) & 137.309

See Incarceration & Medical Costs on p. 3-394.

¹It is a CI A Misd for a licensee to knowingly allow a patron to consume or to continue to consume alcoholic beverages if they are visibly intoxicated. §§161.555(3), 471.412 & 471.990 However, for the first 3 violations w/n 2 yrs, the only sanction is a letter of reprimand. §471.412(4)

²A licensee, who is subject to a suspension ≤30 dys, may also have an administrative monetary penalty imposed on them either in addition to or in lieu of such suspension. The monetary penalty is from \$100 to \$5,000. For persons holding a server permit, the penalty is from \$25 to \$500. §471.322 See Footnote No. 1 on p. 3-399.

³The following mandatory sanctions to persons who sell or serve alcoholic beverages to minors: 1st offense-a \$350 fine; 2nd offense-a \$1,000 fine; and, 3rd or subsequent offense-a jail sentence of 30 dys and a fine of \$1,000. Note: These mandatory sanctions do not apply to licensees. §471.410(4), (5) & (6)

Employees (Effective January 1, 2001). Employees of "off-premises" licensees are subject to the following sanctions if they sell alcoholic beverages to minors. I. They must attend special training program (1) that concerns the importance of not selling alcoholic beverages to either minors or visibly intoxicated persons, (2) that provides guidelines for checking and recognizing false/alters identification and (3) that recommends approaches for refusing to sell alcoholic beverages to either minors or visibly intoxicated persons. II. They are also subject to a civil penalty of not more than \$500. §§9 & 10 of Chapter 1062 (Laws of 1999)

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Canceled/Rev¹ §§471.315 & 471.385

The length of any cancellation/revocation is not specified in the statute. See Footnote No. 2 on p. 3-398.

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes §811.170(1)(b) & (c)

Yes driver and passengers §811.170(1)(a) Excludes passengers riding in a vehicle used to carry persons for hire.

¹I. In lieu of either a civil penalty or license cancellation/suspension, a licensee may be allowed "to acquire and use equipment designed to prevent the sales of alcoholic beverages to minors." §471.____ (§5 of Chapter 1062 (Laws of 1999))

II. A license shall not be canceled/revoked if an employee sells alcoholic beverages to a minor provided the licensee participates in a responsible vendor program. §471.____ (§7(2) of Chapter 1062 (Laws of 1999))

OREGON

STATE

General Reference:

PENNSYLVANIA

Pennsylvania Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC):

Under the influence of alcohol¹ 75 §3731(a)(1)
≥0.10^{1&2} 75 §3731(a)(4)(i) & (a.1)³
Persons Under 21 Years Old. ≥0.02² 75 §3731(a)(4)(ii) & (a.1)³
None

Presumption (BAC):
Type of Drugs/Drugs and Alcohol:

Under the influence of (1) A **Controlled Substance** or (2) a
Controlled Substance and Alcohol 75 §3731(a)(2) & (3)

Other:

For Commercial Motor Vehicle Operators, see p. 3-403.
Persons <21 Yrs Old. Any Alcohol in the System 75 §3718(a)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

Yes 75 §1547(k)

No⁴

Yes 75 §1547(a)

Yes (Criminal Cases) 75 §1547(e)

A person has a right to refuse to submit to a chemical test. A
"forced" test cannot be administered if this right is exercised. 75
§1547(b)(1) & *Com. v. Eisenhart*, 611 A.2d 681 (Pa. 1992)^{5&6}

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:
Urine:
Other:

Yes 75 §1547

Yes 75 §1547

None

¹The State supreme court has determined that 75 §3731 establishes only one type of drunk driving offense that of driving under the influence to a degree that renders a person incapable of safely driving. However, as matter law, such offense can be established if a person has a BAC ≥0.10. *Com. v. McCurdy*, 735 A.2d 681 (Pa. 1999)

²Standard: Percent by weight of alcohol in the blood. 75 §3731(a)(4) Percent by wgt. of alcohol in the blood may be expressed as grams of alcohol per 100 milliliters of blood. *Com. v. Karch*, 502 A.2d 1359 (Pa.Super. 1986)

³Title 75, §3731(a.1) provides that a chemical test of a driver's breath, blood or urine test which shows a BAC of ≥0.10 (≥0.02 for persons <21 yrs old & ≥0.04 for CMV operators), w/n 3 hrs after driving, is *prima facie* evidence of such BAC.

⁴Only "reasonable grounds", not an actual arrest, is all that is needed. *Com. v. Urbanski*, 627 A.2d 789 (Pa.Super. 1993)

⁵**Special Note:** Under 75 §1547(a)(2), a person implicitly consents to a chemical test if they were driving a vehicle that was involved in an accident that resulted in either a death or an injury that required treatment at a medical facility. The Pennsylvania Supreme Court has held that this provision is unconstitutional because it did not require law enforcement officers to have "probable cause" of a crime prior to conducting a chemical test. The court considered such test to be a search. *Com. v. Kohl*, 615 A.2d 308 (Pa. 1992)

⁶The results of a chemical test (obtained via a warrantless search) showing an alcohol concentration, where the test was conducted on a blood sample that was withdrawn from an injured driver by medical personnel at a hospital for treatment purposes but where such withdrawal was without the driver's consent, are admissible into evidence at a DWI trial. Of course, there must have been probable cause of a drunk driving offense before such evidence is admissible. *Com. v. Riedel*, 651 A.2d 135 (Pa. 1995)

PENNSYLVANIA

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

Yes Limited The original DWI charge cannot be reduced at a preliminary hearing or arraignment. 75 §3731(f)

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

Yes Alcohol or drug screening is required. 75 §1548(a)

Sanctions for Refusal to Submit to a

Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

None

Administrative Licensing Action

(Susp/Rev):

None

Other:

None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

None

Administrative Licensing Action

(Susp/Rev):

Susp 12 mos (Mand) An occupational or probationary license is not available. 75 §§1547(b)(1), 1553(d)(7) & 1554(f)(9)

Other:

None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Acceptance of Accelerated Rehabilitation Disposition (ARD), DWI Aggravated Assault and Persons <21 Years Old below.

Imprisonment:

Term (Day, Month, Years,

Etc.):

1st or 2nd offs-2nd Degree misd-Not more than 2 yrs

3rd or sub offs-1st Degree misd-Not more than 5 yrs

18 §1104(1) & (2) and 75 §3731(e)(1)

Accelerated Rehabilitation Disposition (ARD). A first DWI offender may be placed in ARD. 75 §§1552 & 3731(e)(6) and Pa. Cr. Pro. Rule 175 et seq. 1) Acceptance into and satisfactory completion of program may lead to dismissal of DWI charge. 2) Acceptance determined by judge after hearing relevant facts of prosecutor, defendant and any victims. Judge also announces terms of ARD 3) The following conditions must be imposed: costs for alcohol evaluation, education, treatment or any other costs of ARD; restitution to any victims; not less than 1 nor more than 12 mos license susp; and, court supervision from 6 to 12 mos. 4) Programs duration shall not exceed 2 yrs. 5) If defendant is found by the judge, at a hearing, to have violated ARD terms the program will be terminated and the prosecutor may proceed with the DWI charge(s). 6) When defendant enters ARD program because of a DWI charge, the Pa. Dept. of Tran. shall keep a record for 7 yrs. **Important:** ARD applies only to a first offense and acceptance of ARD is considered a 1st conviction for purposes of computing any subsequent violations. 75 §3731(e)(2) **Special Note:** However, ARD may not be allowed if: (1) defendant was convicted or accepted ARD, because of DWI charge within last 7 yrs; (2) present off violated habitual offender statute; (3) if any person other than defendant was seriously injured or killed.

DWI Aggravated Assault. A person, who "negligently causes serious bodily injury to another person" while violating the DWI laws, commits "aggravated assault by vehicle while driving under the influence," a 2nd degree Felony, and is subject to an imprisonment term of not more than 10 yrs and/or a fine of not more than \$25,000. "Serious bodily injury" is defined to mean "any bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ." 18 §§1101(1) & 1103(2) and 75 §3735.1

Persons <21 Years Old. It is a Summary Offense for a person <21 yrs old to operate a motor vehicle "while having any alcohol in his system." The only sanction for this offense is a fine of \$100. 75 §3718(a) & (c) However, a person <21 yrs old commits a regular drunk driving offense if they operate a motor vehicle with a BAC ≥0.02. 75 §3731(a)(4)(II)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:

1st off-48 con hrs¹; 2nd off (w/n 7 yrs)-30 dys¹; 3rd off (w/n 7 yrs)-90 dys¹; 4th off (w/n 7 yrs)-1 yr¹ 42 §9721 & 75 §3731(e) *Com. v. Sojourner*, 518 A.2d 1145 (Pa. 1986) Important. See the Special Note below.

Fine:

Amount (\$ Range):

1st or 2nd off-Not more than \$5,000 18 §1101(4)
3rd or sub off-Not more than \$10,000 18 §1101(3)

Mandatory Min. Fine (\$):

1st off²-\$300 and a surcharge of \$50²; 2nd off (w/n 7 yrs.)¹-\$300 and a surcharge of \$100²; 3rd off (w/n 7 yrs.)¹-\$300 and a surcharge of \$200²; 4th off (w/n 7 yrs.)¹-\$300 and a surcharge of \$300² 75 §§3731(e) & 6506(a)(7)
See Footnote No. 3.

Other Penalties:

Community Service:

Restitution

(eg Victim's Fund)

1st off-Possible under ARD

Yes⁴ Restitution is to be paid by a defendant to a victim. 18 §1106 Restitution is required under ARD. 75 §3731(e)(6)(iii)

¹**Work Release.** Day time work release is possible for 1st and sub offenses. 75 §3731(h) & *Com. v. Kriston*, 588 A.2d 898 (Pa. 1991) **Comment:** Although the statute would appear to confine work release to litter collection from either public or private property, a recent decision by the Pennsylvania Superior Court has held that such "work release is not limited to litter collection." *Com. v. Snyder*, 560 A.2d 165, 174 (Pa. Super 1995) In *Kriston*, The Pennsylvania Supreme Court mentioned this statutory provision in a case concerning a subsequent offense but it did not discuss address this issue.

²These surcharges do not apply to violations committed by the operators of motorcycles, motor-driven cycles, motorized pedalcycles or recreational vehicles not intended for highway use. 75 §6506(a)(7) The amounts received from the surcharges are deposited into the Catastrophic Loss Benefits Continuation Fund. Note: These surcharges may be subject to termination by the Pennsylvania Insurance Commissioner provided there are sufficient funds to cover unfunded catastrophic losses. 75 §6506(b) & (c)

³The fines for DWI offenses are doubled if the offense was committed within a designed construction or maintenance area manned by workers acting in their official capacity. 75 §3326(c)

⁴Note: The State's victims' compensation fund does not normally cover damages (e.g. personal injuries) resulting from motor vehicle law violations (e.g., DWI). 71 §180-7 et seq. & *Price v. Crime Victim's Comp. Bd.*, 546 A.2d 763 (Pa. Cmwlth. 1988)

Special Note: The DWI law would appear to mandate the indicated minimum imprisonment sentences. 75 §3731(e) However, other provisions provide that, as an alternative to mandatory imprisonment, either a 1st or subsequent offender may be sentenced either to residential inpatient rehabilitation or to house arrest-electronic surveillance along with drug and alcohol treatment. The law does not specify a minimum mandatory period of time a defendant has to be in one of these alternative programs. However, the maximum time an offender can be sentenced to these alternatives is limited to the maximum imprisonment term for the offense. 42 §§9721(a.1), 9763(a) & (c) and *Com. v. Harrison*, 661 A.2d 6 (Pa. Super 1995) Prior to the enactment of these alternatives, the Pennsylvania Supreme Court had held that electronic home monitoring could not be used as a substitute for mandatory incarceration because it was not the equivalent of imprisonment. *Com. v. Kriston*, 588 A.2d 898 (Pa. 1991)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, they are convicted of driving a CMV (1) with a BAC ≥0.04 (percent by weight of alcohol in the blood See Footnote No. 1 on p. 3-401.) or (2) while under the influence of alcohol or a controlled substance. For either (1) a subsequent conviction or (2) a combination of two or more convictions of any of the above listed items, the "disqualification" is for life (10 yrs mand). Title 75 §3731(i)(4) makes it illegal to operate a CMV with a BAC ≥0.04; a person who violates this provision is subject to the same criminal sanctions as for any other DWI offense. A person is "disqualified" from operating a CMV for 1 yr if, while operating a CMV, they refuse to submit a chemical test for either an alcohol concentration or the presence of controlled substances. In addition, a CMV operator must be placed "out-of-service" for 24 hours if they have any amount of alcohol in their system. A person, who operates a CMV with any amount of alcohol in their system, commits a summary offense and is subject to a fine of \$100. 75 §§1603, 1611, 1612, 1613 & 3731(i) See Footnote No. 2 on p. 3-401.

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:	ADR Program: Court supervision for not less than six (6) months if counseling or treatment is not necessary. However, if counseling or treatment is necessary, court supervision must be for not less than 12 months. 75 §3731(e)(6)(v)
Administrative Licensing Actions	
<u>Pre-DWI Conviction</u> Licensing Action:	
Administrative Per Se Law:	None
Other:	
None	
<u>Post DWI Conviction</u> Licensing Action:	See Habitual Traffic Offender Law on p. 3-406.
Type of Licensing Action	
(Susp/Rev):	Susp 75 §§1532(b)(3) & 3731(e)(6)(ii)
Term of License Withdrawal	
(Days, Months, Years, etc.):	12 mos (1st offenders in ARD program, 1 to 12 mos ¹) Persons Under 18 Years Old. ² For person under 18 yrs old, 6 mos license susp provided the offender is placed under "home supervision via a "consent decree". 42 §6340 & 75 §1532(b)(3)
Mandatory Minimum Term of	
Withdrawal:	12 mos or for 1st offenders, if accepted into ARD program, 1 mo ^{1&3} An occupational or probationary license is not available. 75 §§1553(d)(6) & (8) and 1554(f)(8) & (10)
Other:	
Rehabilitation:	
Alcohol Education:	Yes ^{1&3}
Alcohol Treatment:	Yes ^{1&3}
Vehicle Impoundment/Confiscation:	
Authorized by Specific	
Statutory Authority:	Yes (Discretionary) A vehicle used in a DWI offense is subject to forfeiture under the "common law". <i>Commonwealth v. Crasby</i> , 568 A.2d 233 (Pa.Super. 1990)
Terms Upon Which Vehicle	
Will Be Released:	
Other:	

¹If a court orders a person to attend a treatment program, the person must successfully complete such a program before their license can be restored. 75 §1541(d) I.e., a person will not be eligible for driving privileges even after the suspension period has expired until they complete the treatment program. Second and subsequent offenders are required to attend a treatment program via court order. 75 §1548(b) & (d)

²**Junior Drivers.** Under separate provisions of law, a "junior driver" (a licensee 16 or 17 yrs old) is subject a suspension of their driving privileges until they are 18 yrs old or for a period not to exceed 90 dys if they are convicted of **any** violation of Title 75. This licensing action is in addition to any other licensing action. 75 §1503(c)(3)

³1) Every convicted person must take and pass an approved alcohol highway safety class. 2) A Court may order participation (successful) in an individual or group outpatient intervention program to treat substance abuse. Participation may be ordered for up to 2 yrs. 3) If a convicted person is found to be a "chronic" abuser, who represents a "demonstrated and serious" threat, he may be ordered (committed) into treatment at a DOH approved facility. 75 §1548

Required counseling or treatment under ARD. 75 §3731(e)(6)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

Laboratory Costs. A defendant may be required to pay the costs associated with (1) laboratory services for BAC testing and (2) any court appearances by laboratory technicians. 42 §1725.3

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes¹ 18 §§1101, 1103, & 1104 and 75 §§3732 & 3735.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Misd 1st degree (non-alcohol related death 75 §3732)-Not more than 5 yrs 18 §1104(1); Felony 2nd degree (alcohol related death 75 §3735)-Not more than 10 yrs 18 §1103(2)

Mandatory Minimum Term:

Misd 1st Degree (non-alcohol related death)-None; Felony 2nd Degree (Alcohol related death)-3 yrs 75 §3735(a) & (b) and 42 §9721(a.1)

Fine (\$ Range):

Misd 1st Degree (Non-alcohol Related Death)-Not more than \$10,000 18 §1101(3); Felony 2nd Degree (Alcohol related death)-Not more than \$25,000 18 §1101(1)

Mandatory Minimum Fine:

Administrative Licensing Action:

None
See Footnote No. 2 on p. 3-404 and Habitual Traffic Offender Law on p. 3-406.

Licensing Authorized and

Type of Action:

Misd 1st Degree (Non-Alcohol Related Death)-Rev; Felony 2nd Degree (Alcohol Related Death)-Rev 75 §1532(a)(2) & (3)

Length of Term of

Licensing Withdrawal:

Misd 1st Degree (Non-Alcohol Related Death)-1 yr; Felony 2nd Degree (Alcohol Related Death)-1 yr 75 §1532(a)(2) & (3)

Mandatory Action--Minimum

Length of License

Withdrawal:

Misd 1st Degree (Non-Alcohol Related Death)-1 yr; Felony 2nd Degree (Alcohol Related Death)-1 yr An occupational or probationary license is not available. 75 §§1532(a)(2) & (3), 1553(a)(2) and 1554(f)(11)

Other:

See Laboratory Costs under Miscellaneous DWI Sanctions above.

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

See the Special Note and Injury or Death on p. 3-406.

Sanction:

Criminal:

Imprisonment (Term):

Summary Offense-Not less than 90 dys^{2&3} 75 §1543(b)

Mandatory Minimum Term

of Imprisonment:

90 dys³ 75 §§1543(b) & 42 §9721(A.1) See Footnote No. 2 on p. 3-406.

¹A person can also be charged with involuntary manslaughter in situations where they have caused a death related to a drunk driving offense. *Com. v. Huckleberry*, 631 A.2d 1329 (Pa. Super. 1993)

²These sanctions also apply if a person drives in violation of either a susp or rev imposed either as a condition of ARD or as a result of a refusal to submit to a chemical test under the implied consent law.

³For a subsequent offense, there is a jail term of not more than 6 mos and/or a fine of \$200 to \$1,000. 75 §6503

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Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range):	\$1,000 ¹ 75 §1543(b)
Mandatory Minimum Fine:	\$1,000 ¹ 75 §§1543(b) ²
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Rev/Susp 75 §1543(c) See Footnote No. 2 on p. 3-404.
Length of Term of License Withdrawal Action:	If based on a susp-original susp. extended of an additional period of 1 yr If based on a rev-original rev. extended of an additional period of 2 yrs 75 §1543(c)
Mandatory Term of License Withdrawal Action:	Same as above. An occupational or probationary license is not available. 75 §§1553(d)(15) & 1554(f)(12)
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes
Grounds for Being Declared an Habitual Offender:	3 convictions of any one or more of the following w/n a 5-yr period: 1) serious traffic offense (e.g., DWI, reckless driving, veh homicide); or 2) leaving the scene of an accident where there has been either a death, injury or property damage. 75 §1542
Term of License Rev While Under Habitual Offender Status:	5 yrs or for another offense committed w/n 5 yrs, an additional rev period of 2 yrs. 75 §1542
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine (\$ Range):	
Mandatory Minimum Fine (\$):	
Licensing Actions (Specify):	

¹For a subsequent offense, there is a jail term of not more than 6 mos and/or a fine of \$200 to \$1,000. 75 §6503

²*Com. v. Hill*, 549 A.2d 583 (Pa.Super. 1988), & *Com. v. Hoover*, 494 A.2d 1131 (Pa.Super. 1985)

Special Note: It is a summary offense either (1) with a fine of \$1,000, to operate a CMV while under a CDL out-of-service order based on driving with alcohol in the body, (2) with a fine of \$500 for a 1st offense and a fine of \$500 to \$1,500 for a subsequent one, to operate a CMV during an alcohol related disqualification or (3) with an imprisonment term of 6 mos and/or a fine of \$1,000, to operate a CMV during an alcohol-hazardous materials related disqualification. 75 §1606(c) & (d)

Injury or Death. I. A driver, who causes an accident which results in injury to another person while their license is either suspended, revoked or canceled, commits a 2nd degree Misd. and is subject to an imprisonment term of not more than 2 yrs and/or a fine of not more than \$5,000. II. A driver, who causes an accident which results in either serious injury or death to another person while their license is either suspended, revoked or canceled, commits a 3rd degree Felony and is subject to an imprisonment term of not more than 7 yrs and/or a fine of not more than \$15,000. A "serious bodily injury" is defined to mean "any bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ." For either offense, the vehicle used therein may be forfeited. 18 §§1101(2) & (4), 1103(3), 1104(2) and 75 §3742.1

Other State Laws Related To Alcohol UseLaws Requiring BAC Chemical Tests on
Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):

Yes 75 §3749¹ Urine samples may also be taken.BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes If >15 yrs old and died w/n 4 hrs of the accident.

Vehicle Passengers:

Yes But only if the driver of the veh cannot be determined.

Pedestrian:

Yes If >15 yrs old and died w/n 4 hrs of the accident.

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff. 1935) 1 §1991, 18 §6308 & 47 §4-493(1)

Minimum Age (Years) Possession:

21 18 §6308

Minimum Age (Years) Consumption:

21 18 §6308

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes 47 §4-497^{1&2}"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):Yes *Jardine v. Upper Darby Lodge No. 1973 Inc.*, 198 A.2d 550
(Pa. 1964), *Matthews v. Konieczny*, 527 A.2d 508 (Pa. 1987)²,
& *Johnson v. Harris*, 615 A.2d 771 (Pa.Super. 1992)³

Dram Shop Actions-Social Hosts:

Yes *Limited Congini v. Porterville Valve Co.*, 470 A.2d 515
(Pa. 1983) This case limited liability of social hosts to the
actions of intoxicated minor guests.⁴ See also *Klein v. Raysinger*,
470 A.2d 507 (Pa. 1983)⁵, where the court found no social host
liability for the actions of adult guests.^{6&7}

Other:

A licensee can be held liable for the injuries or death of an
intoxicated patron via a violation of 47, §4-493(1)³. *Fandozzi v.*
Kelly Hotel, Inc., 711 A.2d 524 (Pa.Super. 1998)¹The law applies to either licensees or their employees and if the "customers" are "visibly intoxicated". *Derwiler v. Brumbaugh*, 656 A.2d 944 (Pa.Super. 1995)²The term "customer" does not include minors. A licensee can be held liable under the "common law" (not the dram shop act) for the injuries caused by an "inebriated" minor who has been sold alcoholic beverages even though such minor does not appear to be "visibly intoxicated". In fact, in the *Matthews* case, a licensee was held liable for the actions of inebriated minors notwithstanding the fact the licensee did not sell them alcoholic beverages. I.e., liability occurred even though the injury causing minor received the alcoholic beverage from another minor who had purchased such beverages illegally from the licensee.³Negligence per se standard for a violation of 47, §4-492(1) which prohibits the service of alcoholic beverages to intoxicated patrons.⁴*Maclearly v. Hines*, 817 F.2d 1081 (3rd Cir. 1987), & *Orner v. Mallick*, 527 A.2d 521 (Pa. 1987) Note: If adult (parent) social hosts are not at the residence and have not given permission for a minor social host to furnish alcoholic beverages to minor guests, the adult (parents) social host are not liable for the injuries sustained by an intoxicated minor guest who was served such beverages by the minor social host. *Maxwell v. Keas*, 639 A.2d 1215 (Pa.Super. 1994)⁵*Bemis v. Gumbeski*, 534 A.2d 1099 (Pa.Super. 1987), & *Sites v. Cloonan*, 477 A.2d 547 (Pa.Super. 1994)⁶A social host cannot be held liable for the injuries caused to a third person by an intoxicated minor guest, if the host did not "knowingly furnish" alcoholic beverages to such minor guest. *Alumni Ass'n v. Sullivan*, 572 A.2d 1209 (Pa. 1990)⁷Note: There is contrary case law as to whether a minor, a person under 21 yrs old, can be held liable as a social host where the injury causing guest is also a minor. *Kapres v. Heller*, 612 A.2d 989 (Pa.Super. 1992) (held against such liability), & *Muntz v. Com., Dept. of Transp.*, 630 A.2d 524 (Pa.Cmwlth. 1993) (held in favor of such liability)

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Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd 47 §§4-493(1) & 4-494(a)

Term of Imprisonment:

3 mos to 1 yr

Fine (\$ Range):

Not more than \$5,000

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes or liquor control board may impose a fine of \$50 to \$1,000.

3rd or sub. off (w/n 4 yrs)-mand susp/rev 47 §4-471

Length of Term of License Withdrawal:

3 yrs if revoked (1 yr for location unless ownership changes hands, including immediate family members.); if susp, indeterminate 47 §4-471

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misd¹ 47 §§4-493(1) & 4-494(a)

Term of Imprisonment:

3 mos to 1 yr

Fine (\$ Range):

Not more than \$5,000

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes or Liquor Control Board may impose a fine of \$1,000 to \$5,000 3rd or sub. off (w/n 4 yrs)-mand susp/rev 47 §4-471

Length of Term License Withdrawal:

3 yrs if revoked (1 yr for structure unless ownership changes hands, including immediate family); if susp, indeterminate

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes² driver only 75 §3715

¹It is a 3rd degree misd. to "knowingly sell" alcoholic beverages to a minor. 18 §6310.1 The sanctions for this offense are as follows: 1st off-Jail for not more than 1 yr; fine \$1,000 (mand) to \$2,500; 2nd or sub. off-Jail for not more than 1 yr; fine-\$2,500 (mand). 18 §§1101(5), 1104(3) & 6310.1(c)

²Also applies to the consumption of "controlled substances". 75 §3715

JURISDICTION:
General Reference:

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Laws of Puerto Rico Annotated*

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC):
Presumption (BAC):

Under the influence of intoxicating drinks 9 §1041(a)

None

≥0.10¹ 9 §1041(b)(2)

≥0.05¹ for operators of trucks, busses, school busses, heavy motor vehicles and public service motor vehicles 9 §1041(b)(3)

Types of Drugs/Drugs and Alcohol:

Under the effects of (1) **Any Narcotic Drug**, (2) Marijuana or (3) a Depressing or Stimulating Substance 9 §1045

Other:

None

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes 9 §1043(a)

Implied Consent Law:

Arrest Required (Yes/No):

Yes 9 §1043(b)

Implied Consent Law Applies to

Drugs (Yes/No):

No 9 §1043(b)

Refusal to Submit to Chemical Test

Admitted into Evidence:

n.a.

Other Information:

None

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:

Yes 9 §1043(a)

Urine:

No²

Other:

"Any other substance of his body" 9 §1043

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes Alcohol screening is required. 9 §1042(d)

¹Standard: Percent of alcohol by volume (grams in 100th milliliters of one (1) percent of volume of blood) in the driver's blood. 9 §1041(b)(2) & (3)

²The law states that for "any substance of his body except urine". 9 §1043 However, despite the statutory language, the courts have held that the police may request a urine sample and that the results of a urinalysis for alcohol concentration may be admitted into evidence at a DWI trial. See, e.g., *People v. Santos Vazquez*, 89 P.R.D. 86 (1963).

***Important.** Title 9, §§1041 and 1042 have been amended by §1 of Act No. 49, August 9, 1989, and §§1 & 2 of Act 50, August 9, 1989. And, Title 9, §1044 has been amended by §3 of Act 50, August 9, 1989. However, some of the amendments made by these acts have not been codified.

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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): None
Administrative Licensing Action (Susp/Rev): None
Other: None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): None
Administrative Licensing Action (Susp/Rev): Susp - 6 mos to 2 yrs 1st refusal - mand susp for 6 mos; sub. refusal - mand susp for 1 yr 9 §1044
Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

Non-Injury DWI Off (Misd): 1st off-not more than 15 dys¹; 2nd off (w/n 5 yrs)-10 to 30 dys; 3rd off-30 to 60 dys; subsequent off-60 dys to 6 mos Injury Related DWI Off: 1st off (Misd)-30 to 90 dys¹; 2nd off (Misd) (w/n 5 yrs)-90 dys to 6 mos; 3rd and subsequent off (Felony)-fixed jail term of 1 yr³ Serious Injury Related DWI Off (Felony): fixed jail term of 1 yr³ 9 §1042

Mandatory Minimum Term:

Non-Injury DWI Off (Misd)-1st off-None¹; 2nd off (w/n 5 yrs)-24 con. hrs²; 3rd off-30 dys; subsequent off-60 dys Injury Related DWI Off: 1st off (Misd)-None¹; 2nd off (Misd) (w/n 5 yrs)-24 con. hrs²; 3rd and subsequent off (Felony)-6 mos and 1 dy³ Serious Injury Related DWI Off (Felony): 6 mos and 1 dy³ 9 §1042

¹For 1st offenses, "The effects of the sentence" may be "suspended" if the defendant meets the following three (3) conditions. (1) They have not refused to submit to a BAC chemical test. (2) Their BAC was of between 0.10 and 0.14 (or 0.05 and 0.10 if operating either a truck, bus, school bus, heavy motor vehicle or public service motor vehicle). And, (3) they agree to participate in an alcohol/drug rehabilitation program. 9 §1042(f)

²For 2nd offenses, "The effects of the sentence" of imprisonment may be "suspended" if the defendant meets the following three (3) conditions. (1) They have not refused to submit to a BAC chemical test. (2) Their BAC was between 0.10 and 0.14 (or 0.05 and 0.10 if operating either a truck, bus, school bus, heavy motor vehicle or public service motor vehicle). And, (3) they agree either (1) to serve "non-domiciliary" confinement for an uninterrupted" 24 hr period or (2) to participate in 10 dys of community service. 9 §1042(m)

³For aggravating circumstances, the imprisonment sanction may be increased to 3 yrs. For extenuating circumstances, the imprisonment sanction may be reduced to 6 mos and 1 dy. 9 §1042(b)(1) & (2)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine: Amount (\$ Range):	<u>Non-Injury DWI Off (Misd)</u>-1st off-not more than \$100 to \$300¹; 2nd off (w/n 5 yrs)-\$200 to \$400; 3rd off-\$300 to \$500; subsequent off-\$400 to \$500 Injury Related DWI Off: 1st off (Misd)-\$200 to \$500¹; 2nd off (Misd) (w/n 5 yrs)-\$300 to \$500; 3rd and subsequent off (Felony)-None Serious Injury Related DWI Off (Felony): None 9 §1042
Mandatory Min. Fine (\$):	All offs-None
Other Penalties:	
Community Service:	Yes For 2nd off (either non-injury or injury DWI offs)-10 dys of community service in lieu of imprisonment. 9 §1042(m) See Footnote No. 2 on p. 3-410.
Restitution (eg Victim's Fund):	Yes Paid by the defendant² 33 §3212
Other:	A defendant may be ordered to take and pass a driver improvement course. 9 §1042(h)
Administrative Licensing Actions:	
<u>Pre-DWI Conviction</u> Licensing Action:	
Administrative Per Se Law:	None
Other:	None
<u>Post DWI Conviction</u> Licensing Action:	
Type of Licensing Action (Susp/Rev):	Susp, Restriction or Rev 9 §1042(n)
Term of License Withdrawal (Days, Months, Years, etc.):	For either non-injury, injury or serious injury DWI offs: 1st off-up to 3 mos¹; 2nd off (w/n 5 yrs)-3 mos-2 yrs; 3rd off-3 yrs; 4th off-permanent rev 9 §1042(n)
Mandatory Minimum Term of Withdrawal:	See Rehabilitation below. Note: There is a hardship licensing provision. 9 §1042(i)
Other:	
Rehabilitation:	
Alcohol Education:	License susp, restriction or rev until the defendant participates in and passes a driver improvement course or until the agency in charge of rehabilitation certifies that the defendant is qualified to drive. 9 §1042(h)

¹See Footnote No. 1 on p. 3-410.

²Payment cannot be more than \$500.

PUERTO RICO

Sanctions Following a Conviction for a DWI Offense:
(continued)

Alcohol Treatment:
Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **No**
Terms Upon Which Vehicle
Will Be Released:
Other: **None**

Miscellaneous Sanctions
Not Included Elsewhere: **None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
Jurisdiction Has Such a Law:

Yes There are two vehicle homicide offs. (1) Involuntary manslaughter while operating a motor vehicle (Misdemeanor) 33 §4005; (2) Death caused by gross or willful negligence in driving a motor vehicle (Felony) 33 §§3044 & 4006

Sanctions:
Criminal Sanction:
Imprisonment (Term):

Misdemeanor off-a fixed term of 1 yr (3 yrs if there are aggravating circumstances; 6 mos and 1 dy if there are extenuating circumstances.);
felony off-a fixed term of 6 yrs (10 yrs if there are aggravating circumstances; 4 yrs if there are extenuating circumstances.)

Mandatory Minimum Term:
Fine (\$ Range):
Mandatory Minimum Fine:

None
Misdemeanor off-\$3,000; felony off-None
None

Administrative Licensing Action:

Licensing Authorized and
Type of Action:
Length of Term of
Licensing Withdrawal:
Mandatory Action--Minimum
Length of License
Withdrawal:
Other:

Rev 33 §4007

1 yr 33 §4007

1 yr 33 §4007

Restitution A defendant may be ordered to pay restitution. The following maximum payments may be imposed: For a misd.-\$500 and for a felony-\$5,000. 33 §3212

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense*:

Sanction:

Criminal:

Imprisonment (Term):

1st off (Misd)-1 to 3 mos; sub. off (Misd)-3 to 6 mos 9 §§721(13) & 722(d)

Mandatory Minimum Term
of Imprisonment:

None

Fine (\$ Range):

1st off-\$200 to \$500; sub. off-none

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

None

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Habitual Traffic Offender Law:

Jurisdiction Has Such Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

PUERTO RICO

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes 9 §1043

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

18 13 §6083 (Sales only) (Year Eff: 1969)

Minimum Age (Years) Possession:

None

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

Jurisdiction Has

a Dram Shop Law (Yes/No):

No

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No

Dram Shop Actions-Social Hosts:

No

Other:

None

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

Type of Criminal Action:

None

Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners of Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

None

Length of Term of License Withdrawal:

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:	Misd ¹ 13 §6107
Term of Imprisonment:	30 dys to 6 mos ²
Fine (\$ Range):	\$100 to 500 ²

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes 13 §6093
Length of Term License Withdrawal:	Indeterminate

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):	No
Anti-Consumption Law (Yes/No):	No

¹There are two other provisions under Puerto Rico law that make it an offense to sell alcoholic beverages to a person under the legal drinking age. (1) Sanctions against a person (Misd) Jail: 25 dys to 6 mos; fine: \$25 to \$500. 33 §§1021 & 3035 (2) Sanctions against dealers. Misd. Jail: 30 dys to 1 yr; fine: \$100 to \$1,000. 13 §§6083 & 6116

²An administrative fine of not more than \$2,000 may be imposed at any time before a misd. trial of an alcohol offense.

PUERTO RICO

STATE:
General Reference:

RHODE ISLAND
General Laws of Rhode Island

Basis for a DWI Charge:

Standard DWI Office:
Illegal Per Se Law (BAC):

Under the influence of intoxicating liquor §31-27-2(a)
 $\geq 0.10^1$ and Any Blood "Presence" of a Scheduled Controlled Substance² §31-27-2(b)(1) & (2)

Persons under 21 years old who have a BAC ≥ 0.02 but $< 0.10^3$ are considered to have been driving "while impaired" which is not a criminal offense. §§31-27-2.5(d) & (g) and 31-27-2.7

Presumption (BAC):
Types of Drugs/Drugs and Alcohol⁴

None
Under the influence of (1) **Any Drug**, (2) Toluene, (3) any Controlled Substance or (4) Any Combination of These Substances and Intoxicating Liquor §31-27-2(a)

Other:

DWI Serious Bodily Injury Offense. Causing a serious bodily injury⁴ to a person while under the influence of any intoxicating liquor, toluene or any controlled substance. §31-27-2.6(a)
For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes §31-27-2.3

Implied Consent Law:

No⁵

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §31-27-2.1

Refusal to Submit to Chemical Test

Admitted into Evidence:

Note: There is no statutory or case law on this subject.

Other Information:

None

¹Standard: Percent by weight of alcohol in the blood. §31-27-2(b) However, §31-27-2(e) provides that percent by weight of alcohol in the blood is to be based upon milligrams of alcohol per 100 cubic centimeters of blood.

²Comment: The law does not appear to provide for an exemption for persons who are legally entitled to use a scheduled controlled substance.

³Standard: Blood alcohol concentration is based upon percent by weight. §§31-27-2.5(d) & 31-27-2.7 **Comment:** There are no provisions in these sections that further defines this standard. However, §31-27-2(e) provides that percent by weight of alcohol in the blood is to be based upon milligrams of alcohol per 100 cubic centimeters of blood.

⁴A "serious bodily injury" is defined as a "physical injury that creates a substantial risk of death or causes serious physical disfigurement or protracted loss or impairment of the function of any bodily member or organ." §31-27-2.6(b)

⁵A request to submit to a chemical test is based on "reasonable grounds" of driving while under the influence of intoxicating liquor. §31-27-2.1

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is "suspended" for at least 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if they are convicted of driving a CMV (1) with a BAC ≥ 0.04 (Standard: Blood alcohol concentration is based upon percent by weight. There is no provision in the CMV law that further defines this standard. However, §31-27-2(e) provides that percent by weight of alcohol in the blood is to be based upon milligrams of alcohol per 100 cubic centimeters of blood.), (2) while under the influence of alcohol or controlled substances or (3) of a refusal to submit to a chemical test. For a second violation of any of the above listed items, a person's privilege to operate a CMV is "revoked" for life (10 yrs mand). In addition, a CMV operator who has any alcohol in their system must "cease" to operate a CMV for 24 hours. Note: A CMV operator commits a "regular" DWI offense if they should operate a CMV with a BAC ≥ 0.04 . §§31-10.3-3(9), (11), (13) & (28) and 31-10.3-31

RHODE ISLAND

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes However, there is an exception on religious grounds. §§31-27-2 & 31-27-2.1
Urine:	Yes §§31-27-2 & 31-27-2.1
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol Assessment (Not Mandatory) §31-27-2(d)(7)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail): Administrative Licensing Action (Susp/Rev): Other:	None None Administrative fine-\$50 §§31-27-2.3(B) & 31-41.1-4(a)
Refusal to Take <u>Implied Consent Chemical Test</u> : Criminal Sanction (Fine/Jail):	<u>1st refusal</u> -\$200 to \$500 and 10 to 60 hrs of public service; <u>2nd refusal</u> (w/n a 5 yr period)-\$300 to \$500; <u>3rd and subsequent refusal</u> (w/n a 5 yr period)-\$400 to \$500 In addition to the above fines, a defendant must pay an <u>assessment</u> fee of \$500. Special Note: The imposition of these fines, assessments and/or public community service is mandatory. §31-27-2.1
Administrative Licensing Action (Susp/Rev):	<u>1st Refusal</u> -Susp 3 to 6 mos (3 mos mand) (For persons under 18 years old-mandatory susp for 6 mos §31-27-2.5(a)); <u>2nd refusal</u> (w/n 5 yr period)-Susp 1 to 2 yrs (1 yr mand); <u>3rd and subsequent refusal</u> (w/n 5 yr period)-Susp 2 to 3 yrs (2 yrs mand) §31-27-2.1
Other:	<u>1st Refusal</u> -Attendance at a DWI class or alcohol/drug treatment program; <u>2nd refusal</u> (w/n 5 yr period)-Attendance at an alcohol/drug treatment program; <u>3rd and subsequent refusal</u> (w/n 5 yr period)-Attendance at an alcohol/drug treatment program Special Note: Attendance at these classes or programs is required. Vehicle Registration Suspension. See Vehicle Impoundment/Confiscation on p. 3-420.

Sanctions Following a Conviction for a DWI Offense:**Criminal Sanctions:****Imprisonment:**

Term (Day, Month, Years,
Etc.):

A Non-Injury DWI Off is a Misd §31-27-2(a) & (b)(2) 1st off-Not more than 1 yr; 2nd off (w/n 5 yrs)-10 dys to 1 yr; 3rd and subsequent offs (w/n 5 yrs)-6 mos to 1 yr; §31-27-2(d) DWI serious bodily injury offs-Felony: 1st off-1 to 10 yrs; 2nd and sub. off (w/n 5 yrs)-2 to 15 yrs §§11-1-2 & 31-27-2.6 The sanctions for young persons who commit certain alcohol driving offenses are contained in the Miscellaneous Sanctions section on p. 3-421.

Mandatory Minimum Term:

1st off-None; 2nd off (w/n 5 yrs)-10 dys containing at least 48 cons hrs¹; 3rd and subsequent offs (w/n 5 yrs)-6 mos containing at least 48 cons hrs¹ For DWI serious injury offs-None

Fine:

Amount (\$ Range):

1st off-\$100-\$300; 2nd off (w/n 5 yrs)-\$400; 3rd and subsequent offs (w/n 5 yrs)-\$400 DWI serious injury offs: 1st off-\$1,000 to \$5,000; 2nd and sub. off (w/n 5 yrs)-\$3,000 to \$10,000 §31-27-2.6 See Criminal Offender's Fees below.

Mandatory Min. Fine (\$):

1st off-\$100¹; 2nd off (w/n 5 yrs)-\$400¹; 3rd and subsequent offs (w/n 5 yrs)-\$400¹ §31-27-2(d) For DWI serious injury off-None

Other Penalties:**Community Service:**

1st off-10 to 60 hrs¹ of "Public Community Restitution" (i.e., Community Service) §§31-27-2(d)(1) & 31-27-21

Restitution

(eg Victim's Fund)

Yes Victim's compensation fund §12-25-17 et seq.^{2&3} See Criminal Offender's Fees below.

Other:

Highway Assessment Fee. In addition to the above fines, a defendant must pay a highway assessment fee of \$500.¹ §31-27-2(d)(5)(i)

EMS Special Assessment. In addition to any fine, an offender must be assessed \$1. §31-27-18 **Comment.** These funds are deposited into the general State fund and, therefore, do not appear to be obligated for EMS functions.

Child Endangerment. An offender, who is over 18 yrs old, is subject to an imprisonment term of not more than 1 yr if they were transporting a passenger under 13 yrs old at the time of the offense. §31-27-2(d)(4)(12)

¹Neither jail, fines, assessments, "public community restitution" (i.e., community service) nor any other drunk driving offense sanction can be suspended. §31-27-2(i)

²Awards are limited to \$25,000 plus attorney's fees. §12-25-22(b)

³Note: Citations are to the Criminal Injuries Compensation Act of 1996.

Criminal Offender's Fees. Persons, who are convicted of a criminal offense, whether violent or not, must pay the following fees. These fees fund the victims of violent crimes fund and are used to in part compensate victims of DWI related deaths or injuries. **Misd Off.** Either \$30 or 15% of the fine imposed which ever is the greater amount. **Felony Off** (where imprisonment is <5 yrs): Either \$90 or 15% of the fine imposed which ever is the greater amount. **Felony Off** (where imprisonment is ≥5 yrs): Either \$150 or 15% of the fine imposed which ever is the greater amount. §12-25-28(a) & (b)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

None

A license may be susp for not more than 1 yr if a person has "committed" an off that requires rev/susp (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction. §31-11-7(a)

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

See School Bus Operators below.

Susp all non-injury DWI offs¹ For DWI serious injury offs-Rev §§31-27-2(d) & 31-27-2.6 For young persons, see Miscellaneous Sanctions on p. 3-421.

Term of License Withdrawal
(Days, Months, Years, etc.):

DWI non-injury offs: 1st off-3 to 6 mos; 2nd off-1 to 2 yrs; 3rd off-2 to 3 yrs §31-27-2(d) DWI serious injury offs: 1st off-up to 2 yrs; 2nd and sub. off (w/n 5 yrs)-up to 4 yrs §31-27-2.6

Mandatory Minimum Term of
Withdrawal:

DWI non-injury offs: 1st off-3 mos; 2nd off-1 yr; 3rd off-2 yrs; §31-27-2(d) & (i) DWI serious injury offs: **None**

Other:

Rehabilitation:

Alcohol Education:

1st off-Alcohol (DWI)/drug education course and/or treatment program (Required) See "DWI Course Fees" below.

Alcohol Treatment:

2nd off-Yes (Required); 3rd off-Yes (Required)

1st or subsequent DWI Serious Injury Offs: A court may order a person to successfully complete an alcohol or drug treatment program. §31-27-2.6(c) & (d)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Yes Forfeiture (Discretionary) 3rd or sub. DWI off (w/n 5 yrs)-A person's vehicle may be forfeited (confiscated) by the State §31-27-2(d)(3)(ii)

Terms Upon Which Vehicle

Will Be Released:

Other:

Vehicle Registration Suspension. A person, who has had their license suspended or revoked for any reason, may also have the registrations of any vehicles they own suspended. However, such registrations are not suspended if financial responsibility is provided. §31-32-4(b)

¹A person convicted of driving while under the influence of a "controlled substance" may have their license revoked for 1 year. §31-11-6(2)

School Bus Operators. A person may have their privileges to operate a school bus suspended for up to 5 yrs if they have been convicted of a criminal "motor vehicle driving offense" while driving any vehicle or of any alcohol or drug related motor vehicle driving related offense. §31-10.3-31(j)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

DWI Course Fees. A 1st offender must pay the following fees that are associated with attending an alcohol/drug education course: (1) A course fee of not more than \$25; (2) a \$75 fee for use of the Admin. Adj. Div.; and, (3) a \$100 fee to the Dept. of Health Laboratory. §31-27-2(j)

Ignition Interlock. A 2nd or sub offender may be required to operate motor vehicles equipped with "ignition interlock" devices. This requirement may last up to 2 yrs following the completion of any sanction. §§31-27-2(d)(2) & (3) and 31-27-2.8

Shock Incarceration. Eighteen (18) to 28 year old non violent offenders, who have never been incarcerated following a conviction, are eligible to participate in a "shock incarceration" program. "The program shall include extensive physical regimentation, drug and alcohol abuse counseling, behavioral counseling and mandatory education courses and community services." §12-19-2.2 **Comment:** This program does not appear to interfere with the mandatory jail sanctions that must be imposed on 2nd and sub drunk driving offenders. §12-19-23.2

Special Drunk Driving Offense Fee. All DWI offenders must pay a special fee per the schedule listed in Footnote No. 1. §31-27-2(d)(5)(ii)

DWI Offenders Under 18 Years Old. In addition, the following sanctions apply to persons convicted of DWI who are under 18 years old: 1st offense-a highway assessment fine of not more than \$500, 10 to 60 hrs. of "public community restitution" (i.e., community service) & a 6 to 18 mo. lic. susp (6 mos mand); 2nd and subsequent offense-confinement in a training school for not more than one (1) yr., a fine of not more than \$500 and license susp until the person is 21 (mand). §31-27-2(d)(6)

Persons Under 21 Years Old with a BAC ≥ 0.02 but < 0.01 . There are two separate provisions of law that provided for sanctions against young persons who drive while impaired who drive with a BAC ≥ 0.02 but < 0.10 . §§31-27-2.5 & 31-27-2.7²
I. For persons under 18 years old, who have been found to have been driving while impaired (BAC ≥ 0.02 but < 0.10), the following sanctions apply. For 1st and sub. offs, an assessment fee of \$150 or "public community restitution" (i.e., community service) (§31-27-2.5(d)(1)) and the following licensing sanctions: 1st violation-6 to 12 mos susp (6 mos mand); 2nd violation-susp until the person is 21 years old (appears mand); 3rd and subsequent violations-suspension until the person is 21 yrs old plus an additional 2 yr susp (appears mand) §§31-27-2.5(d)(2), (3) & (4) and 31-27-21

¹This fee will be \$173 for fiscal years 1996 through 1999 and \$86 for fiscal years 2000 through 2006.

²Note: A violation of these sections is not a criminal offense.

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Sanctions Following a Conviction for a DWI Offense: (continued)

II. For persons under 21 but ≥ 18 years old, who have been found to have been driving while impaired (BAC ≥ 0.02 but < 0.10), the following sanctions apply. 1st violation: A fine of not more than \$250; "public community restitution" (i.e., community service) of 30 hrs; and, license suspension-1 to 3 mos (1 mo mand); 2nd and sub. violations: A fine of not more than \$250; a highway safety assessment fee of \$300 (mand); 60 hrs of "public community restitution" (i.e., community service); and, license suspension-3 to 6 mos (3 mos mand). For both 1st and sub. violations, a person may be ordered by the court to participate in either and alcohol education or treatment program. §§31-27-2.7 & 31-27-21

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Criminal Sanction:

Imprisonment (Term):

See School Bus Operators on p. 3-420.

Yes

I. Death related DWI offs-felony-1st off - 5 to 15 yrs; 2nd and subsequent (w/n 5 yrs) - 10 to 20 yrs §§31-27-2.2 & 11-1-2

II. Non-DWI related driving causing death-felony-Not more than 10 yrs §§31-27-1 & 11-1-2

None

Mandatory Minimum Term:

Fine (\$ Range):

I. Death related DWI offs, 1st off - \$5,000 to \$10,000; 2nd and subsequent (w/n 5 yrs) - \$10,000 to \$20,000

II. Non-DWI related deaths - None

None

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

I. Death related DWI offs, 1st off-Rev; 2nd and subsequent (w/n 5 yrs)-Rev

II. Non-DWI related driving causing death-Rev §31-11-6

Length of Term of

Licensing Withdrawal:

I. Death related DWI offs, 1st and subsequent offs (w/n 5 yrs)-5 yrs

II. Non-DWI related driving causing death-3 yrs

Mandatory Action--Minimum

Length of License

Withdrawal:

I. Death related DWI offs, 1st and subsequent offs (w/n 5 yrs)-5 yrs

II. Non-DWI related driving causing death-3 yrs

Other:

1st or subsequent offs: A court may order a person to successfully complete an alcohol or drug treatment program. §31-27-2.2(b)(1) & (2)

See Vehicle Impoundment/Confiscation on p. 3-420.

See Criminal Offender's Fees on p. 3-419.

Other Criminal Actions Related to DWI: (continued)Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

Imprisonment (Term): (continued)

Mandatory Minimum Term
of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):Length of Term of License
Withdrawal Action:Mandatory Term of License
Withdrawal Action:

See the Special Note below.

Where susp or rev is due to either a DWI conviction, a refusal to submit to chemical test, reckless driving, motor veh manslaughter or 3 moving violations in one yr.¹ 1st off (Misd)-10 dys to 1 yr; 2nd off (w/n 5 yrs) (Misd)-6 mos to 1 yr; 3rd and subsequent offs (w/n 5 yrs) (felony)-1 to 5 yrs §§31-11-18.1, 31-27-13 & 31-27-14

1st off-10 dys; 2nd off (w/n 5 yrs)-6 mos; 3rd and subsequent offs (w/n 5 yrs)-1 yr §31-11-18.1(d)

1st off-\$500; 2nd off (w/n 5 yrs)-\$500; 3rd and subsequent offs (w/n 5 yrs)-\$1,000 to \$5,000 §31-11-18.1, 31-27-13 & 31-27-14 See Criminal Offender's Fees on p. 3-419.

1st off-\$500; 2nd off (w/n 5 yrs)-\$500; 3rd and subsequent offs (w/n 5 yrs)-\$1,000 §31-11-18.1(d)

Susp/Rev §31-11-18.1 See Vehicle Impoundment/Confiscation on p. 3-420.

For Driving While Susp: 1st & 2nd off-An additional susp period as the licensing agency "deems proper"; sub. off-Rev-for an additional period of 1 yr For Driving While Rev: 1st & sub. off-Rev-for an additional period of 1 yr §31-11-18.1

For Driving While Susp: 1st off-for an additional period of 3 mos; 2nd off-for an additional period of 6 mos; sub. off-for an additional period of 1 yr For Driving While Rev: 1st & sub. off-for and additional period of 1 yr §31-11-18.1

¹See §31-11-18 for sanctions related to driving after either susp or rev for other traffic law violations.

Special Note: I. The sanctions given appear to apply to the operation of a CMV during a CDL suspension or revocation for an alcohol related offense conviction. §31-11-18.1 II. A person, who does not "cease" to operate a CMV for 24 hrs when required to do so, commits a misdemeanor and is subject to a fine of \$150 and CDL revocation for 3 mos. §31-10.3-31(h) III. Under separate provisions of law, a CMV operator, who violates an out-of-service order issued by an authorized Federal or State official pursuant to Federal Regulations, is subject to the following CDL disqualifications: 1st violation-disqualification for 90 dys (mand); 2nd violation (w/n 10 yrs)-disqualification for 1 yr (mand); and, 3rd or subsequent violation (w/n 10 yrs)-disqualification for 3 yrs (mand). A CMV operator, who violates an out-of-service order either while transporting hazardous materials or while driving a CMV designed to transport 15 or more persons, is a CMV operator is to the following CDL disqualifications: 1st violation-disqualification for 180 dys (mand); and, 2nd or subsequent violation (w/n 10 yrs)-disqualification for 2 yrs (mand). In addition to the above disqualifications, the violator is subject to a "penalty" of \$1,000. §31-10.3-31(j)

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Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:
State Has Such a Law (Yes/No):
Grounds for Being Declared an
Habitual Offender:

Yes §31-40-1 et seq.

Three or more convictions within 3 yrs for any of the following:
1) Motor veh manslaughter; 2) DWI (alcohol or drugs); 3)
Driving while license suspended or revoked; 4) Willfully
operating a motor veh without a license; 5) any felony off using
a motor veh; 6) failure to stop and report death/injury after
accident driver was involved in; 7) failure of driver to stop and
report accident where damages equalled \$150 or more; or 8) a
combination of six (6) traffic off. convictions where any one
conviction could result in license susp/rev for 30 dys or more.
§31-40-2

Term of License Rev While
Under Habitual Offender Status:

1-5 yrs §31-40-7 See Vehicle Impoundment/Confiscation on p.
3-420.

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status
Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:
Imprisonment (Term):
Mandatory Minimum Term of
Imprisonment:

Felony §11-1-2

Not more than 5 yrs §31-4-8

The 5 yr sentence may not be suspended except in cases where
the defendant operated a vehicle in order to save life or limb.
§31-40-8

Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

None
None
None

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic
Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:
Driver:
Vehicle Passengers:
Pedestrian:

No

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:
Minimum Age (Years) Sale/Purchase:
Minimum Age (Years) Possession:
Minimum Age (Years) Consumption:

21 (Year Eff: 1984) §§3-8-1, 3-8-5 & 3-8-6(a)(2)
21 §3-8-10
21 Note: Applies only to licensed premises §3-8-6(a)(2)

Other State Laws Related To Alcohol Use: (continued)Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §3-14-1 et seq.¹

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No

Dram Shop Actions-Social Hosts:

No *Ferreira v. Strack*, 652 A.2d 965 (R.I. 1995)² & *Marty v. Garcia*, 667 A.2d 282 (R.I. 1995)

Other:

None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

Type of Criminal Action:

1st off-Petty Misd; 2nd off-Petty Misd; 3rd and Subsequent
offs-Misd §§ 3-8-1, 3-11-5 & 11-1-2

Term of Imprisonment:

1st off-3 mos; 2nd off-6 mos; 3rd and subsequent offs-Not more
than 1 yr

Fine (\$ Range):

1st off-Not more than \$200; 2nd off-Not more than \$300; 3rd and
subsequent offs-Not more than \$500 See Criminal Offender's
Fees on p. 3-419.

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp/Rev §3-5-23

Length of Term of License Withdrawal:

Susp-Length is not specified §3-5-23; Rev.- 5 yrs (under
§3-5-23)³

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Violations⁴ §§3-8-5 & 11-1-2

Term of Imprisonment:

None

Fine (\$ Range):

1st off-\$250; 2nd off-\$500; 3rd and subsequent offs-\$750 If no
offense in 3 successive yrs, next off shall be treated as a 1st
offense.

¹Rhode Island's Dram Shop Law is similar to the Model Alcoholic Beverage Retail Licensee Liability Act of 1985. This model law was developed via a grant for the National Institute on Alcohol Abuse and Alcoholism.

²The court held that there was no duty of care in a typical social host type dram shop situation. I.e., injured third parties did not have a common law cause of action for negligence against a social host for the injuries cause by an intoxicated guest.

³If the revocation is under §3-5-22, the length would be 1 yr.

⁴A licensee who sells alcoholic beverages to one under the legal drinking age can also be charged with a violation of §3-8-1 (as well as §3-8-5). The sanctions for violating §3-8-1 are as follows: 1st off. (petty misd)-imprisonment not more than 3 mos; a fine of not more than \$200; 2nd off. (petty misd)-imprisonment for not more than 6 mos; a fine of not more than \$300; 3rd and sub. offs. (misd)-imprisonment for not more than 1 yr; a fine of not more than \$500. §§3-11-5 & 11-1-2 See Criminal Offender's Fees on p. 3-419.

RHODE ISLAND

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp/Rev §3-5-23

Susp-Length is not specified §3-5-23; Rev. - 5 yrs (under §3-5-23)¹

Anti-Happy Hour Laws/Regulations:

Yes §3-7-26

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes² §31-22-21.1

No³

¹If the revocation is under §3-5-22, the length would be 1 yr.

²The law makes it illegal for a person to "operate a motor vehicle upon the public highways with any unsealed alcoholic beverage container within the passenger section of said vehicle." Note: This prohibition does not apply to rented limousines or buses. Nevertheless, neither an operator nor a passenger under 21 years old shall possess an unsealed container of an alcoholic beverage.

³Historical Note: The statute that prohibited the consumption of alcoholic beverages by a driver, §31-22-21, was repealed by §1 of Chapter 99-382.

STATE:

General Reference:

SOUTH CAROLINA

Code of Laws of South Carolina Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC):
Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Under the influence of alcohol!¹ §56-5-2930(1)
None
≥0.08^{2,3} §56-5-2950(b)(3)
Under the influence of (1) **Any Drug**, (2) Any Combination of
Drugs or Substances or (3) A Combination of Alcohol and Other
Drugs or Substances §56-5-2930(2) & (3)
For Commercial Motor Vehicle Operators, see p. 3-431.

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:

No
Yes §§56-5-2950(a) & 56-5-286(C)
Yes §56-5-2950(a)
Yes (Criminal Cases) *State v. Miller*, 185 S.E.2d 359 (S.C.
1971), & *City of Columbia v. Ervin*, 500 S.E.2d 483 (S.C.
1998)⁴
A person **must** submit to a chemical test if they have been
arrested or if there is probable cause that such person violated
§56-5-2945 which makes it illegal to cause great bodily injury or
death while in violation of the drunk driving law.⁵ §56-5-2946

Other Information:

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:
Urine:
Other:

Yes⁶ A breath sample test must be offered first. §56-5-2950(a)
Yes⁶ A breath test must be offered first. §56-5-2950(a)
None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No
No
No However, alcohol assessment is needed prior license
reinstatement. §56-5-2990 (¶2)

¹"Alcohol" any substance containing any form of alcohol (e.g., ethanol, methanol, propanol, and isopropanol). §56-1-10(16)

²South Carolina law uses the term "inferred" instead of "presumed". §56-5-2950(b)(3)

³"Alcohol concentration" is defined to mean either (1) grams of alcohol per 100 milliliters of blood or (2) "as determined by the South Carolina Law Enforcement Division for other bodily fluids." §56-1-10(17)

⁴In *Ervin*, an offender refused to submit to a breath test and instead insisted he obtain an independent blood test. A law enforcement officer transported defendant to a medical facility for blood test but the officer did not authorize such a test. The facility's staff refused to perform such test without police authorization. Evidence of refusal to submit to the breath test was admissible.

⁵**Comment:** The enactment of §56-5-2946 and the revisions to the implied consent law (§56-5-2950), all of which occurred in 1998, in effect abrogated the holding in *State v. Mullins*, 489 S.E.2d 923 (S.C. 1997). This case interpreted the implied consent law as prohibiting the taking of blood samples once a person had refused to submit to a breath chemical test.

⁶Additional testing is not authorized if the driver has registered an alcohol concentration ≥0.08. §56-5-2950(a)

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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

N/A

Administrative Licensing Action

(Susp/Rev):

N/A

Other:

N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

None

Administrative Licensing Action

(Susp/Rev):

1st refusal-90 dy susp; sub refusal¹ (w/n 10 yrs)-180 dys
 §56-5-2951(A) & (K) These susps are not mand. A person may
 be issued restricted driving privileges for either employment or
 college education purposes. §56-5-2951(J)
Persons Under 21 Years Old (0.02 violation). 1st refusal-6 mos
susp (mand); sub refusal¹ (w/n 5 yrs)-1 yr (mand) §56-5-286(B),
 (C) & (F)

Other:

See Temporary Driving Privileges on p. 3-430.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,

Etc.):

1st off (Misd)-48 hrs to 30 dys; 2nd off (w/n 10 yrs) (Cl C
Misd)-48 hrs to 1 yr; 3rd off (w/n 10 yrs) (Cl A Misd)-60 dys
to 3 yrs; 4th and subsequent off (w/n 10 yrs) (Cl F felony)-1 to
5 yrs §§16-1-10, 16-1-20, 16-1-90(F), 16-1-100(A) & (C) and
56-5-2940 DWI where there is great bodily injury-Cl B felony,
30 dys to 10 yrs §§16-1-10(B) & 56-5-2945

Mandatory Minimum Term:

1st off-48 hrs²; 2nd off-48 hrs²; 3rd off-60 dys²; 4th and
subsequent offs-1 yr² DWI where there is great bodily injury-30
dys²

Fine:

Amount (\$ Range):

1st off-\$300; 2nd off-\$2,000 to \$5,000; 3rd off-\$3,500 to
\$6,000; 4th off-None DWI where there is great bodily
injury-\$5,000 to \$10,000

Mandatory Min. Fine (\$):

1st off-\$300; 2nd off-\$1,000; 3rd off-\$3,500; 4th off-None DWI
where is great bodily injury-\$5,000 §§56-5-2940 & 56-5-2945

¹This licensing sanction also applies if there has been a prior admin. per se violation (for person under 21 yrs old, this includes licensing action for a 0.02 violation) or prior drunk driving offense within the period of time indicated. §§56-1-286(F) & 56-5-2951(K)(2)

²I. Secs. 56-5-2940 and 56-5-2945(A)(2) provide that these minimum sanctions are mandatory and, therefore, cannot be either suspended or probated. *State v. Tisdale*, 467 S.E.2d 270 (S.C.App. 1996) However, there are exceptions. (1) An offender may be allowed to participate in out-of-jail **public service work** while serving an incarceration sentence. §24-13-660 Also, (2) the law provides, that notwithstanding other provisions providing for mandatory incarceration, an offender may be sentenced to **home detention** in lieu of incarceration with or without electronic monitoring. §24-13-1530 II. For an alcohol or drug offense for which a person can be imprisoned ≥90 dys, the court may suspend sentence and place the offender in an alcohol and drug rehabilitation center. Upon release from this center, the court must impose a term of probation. The length of this term appears to be discretionary with the court. §§24-13-1930 & 24-13-1950

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:

Community Service:

Non-Injury DWI Offs: 1st off-A minimum of **48 hrs** in lieu of imprisonment¹; 2nd off-Not less than **10 dys** in lieu of imprisonment¹

Restitution

(eg Victim's Fund)

Other:

Yes Victims' Compensation Fund §16-3-1110 et seq.

Child Endangerment. A person ≥18 yrs old, who commits either a drunk driving offense under §56-5-2930 or a death/serious bodily injury drunk driving offense under §56-5-2945 while transporting a child <16 yrs old, is subject to additional jail and fine sanctions which are equal to not more than half maximum jail and fine sanctions for these offenses. These sanctions are mandatory if the jail or fine sanctions have been imposed for the original offense. In addition, a person's driving privileges must be suspended for 60 dys. §56-5-2947

Mandatory Assessments. I. In general sessions court and municipal court, a defendant must pay respectively an assessment which is equal to 62 % and 74 % of the fine actually imposed (i.e., that part of the fine that has not been suspended). §§14-1-206(A) & 14-1-208(A) II. Every defendant must pay a \$12 assessment in addition to any other sanction. §56-5-2995

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Temporary Driving Privileges on p. 3-430.

≥**0.15 BAC** (See Footnote No. 3 on p. 3-427.) 1st violation-**30 dy susp**²; sub violation³(w/n 10 yrs)-**60 dy susp**² §56-5-2951(A) & (K)

Persons Under 21 Years Old-≥**0.02 BAC** (See Footnote No. 3 on p. 3-427.) 1st violation-**3 mo susp** (mand); sub violation³ (w/n 5 yrs)-**6 mo susp** (mand) §56-1-286(A) & (G)

None

Other:

See the Special Note below.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off⁴-Susp; 2nd off⁴ (w/n 10 yrs)-Susp; 3rd off⁴ (w/n 5 or 10 yrs)-Susp; 4th and subsequent offs⁴ (w/n 10 yrs)-Rev §56-5-2990 DWI off where there is great bodily injury-Susp §56-5-2945

¹Home detention may be ordered in lieu of community service. §24-13-1530

²These susps are not mand. A person may be issued restricted driving privileges for either employment or college education purposes. §56-5-2951(J)

³This licensing sanction applies if there has been either a prior refusal or prior drunk driving offense within the period of time indicated. For persons under 21 yrs old, it also includes a prior violation of the 0.15 admin. per se law. §§56-1-286(F) & 56-5-2951(K)(2)

⁴Note: An off is considered either a §56-5-2930, §56-5-2945 or other alcohol use and driving related law violation. §§56-1-1320 & §56-5-2990.

Special Note: An offender, who is <18 yrs old, may have their license suspended by the court until they reach their 18th birthday. §20-7-1333(B)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-6 mos; 2nd off (w/n 10 yrs)-1 yr; 3rd off (w/n 10 yrs)-2 yrs; 3rd off (w/n 5 yrs)-4 yrs; 4th and subsequent offs (w/n 10 yrs)-Permanent §56-5-2990; DWI off where there is great bodily injury-Term of imprisonment plus 3 yrs §56-5-2945

Mandatory Minimum Term of
Withdrawal:

1st off - For a 1st DWI off, a provisional license may be issued for the 6-mo susp period provided the defendant participates in an alcohol/drug education/treatment program §§56-1-1320 & 56-1-1330; 2nd off (w/n 10 yrs)-1 yr; 3rd off (w/n 10 yrs)-2 yrs; 3rd off (w/n 5 yrs)-4 yrs; 4th and subsequent offs (w/n 10 yrs)-7 yrs (§56-1-385(A)(1)); DWI off where there is great bodily injury-Term of imprisonment plus 3 yrs

Other:

Rehabilitation:

Alcohol Education:

An offender, who has had their license suspended, must successfully complete an Alcohol and Drug Safety Action Program prior to license reinstatement.¹ However, upon the recommendation by the Medical Advisory Board, an offender's license may be restored notwithstanding the fact they have not successfully completed this program. §56-5-2990(b) & (d) Persons, who have had their driving privileges permanently revoked, must successfully complete an alcohol or drug treatment program before their license can be reinstated. §56-1-385(A)(2) Yes See Alcohol Education above and II under Footnote No. 2 on p. 3-428.

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Yes For a 3rd or sub DWI off (w/n 10 yrs), the vehicle either (1) owned and operated by the offender or (2) operated by an offender who is a resident of the household of the registered owner must be forfeited. §56-5-6240(A)

Terms Upon Which Vehicle

Will Be Released:

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

Under §56-5-3000, the licensing agency shall publish the names and addresses of persons who have had their licenses suspended under §56-5-2990 (i.e., for DWI).

¹Notwithstanding the fact that they have not completed this program, a person, who has had their driving privileges suspended via the administrative per se law, must have such privileges restored after the suspension period has ended. Nevertheless, they must continue to participate in the Alcohol and Drug Safety Action Program. §56-5-2951(L)

Temporary Driving Privileges (Temporary Alcohol Restricted Driver's License). At the time of arrest, a person, who is subject to licensing action under either the implied consent or the admin. per se laws, may be granted temporary driving privileges until they can obtain a hearing on the issues. However, these driving privileges are conditioned on the person enrolling in an Alcohol and Drug Safety Action Program and requesting a hearing w/n 10 dys of arrest (notice of susp). If a person fails to satisfy either of these two items, they waive their right to a hearing and to obtain a temporary driving privileges. §§56-1-286(M) & 56-5-2951(G)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes I. Cl B Felony if death is based on a DWI off
 II. Cl E Felony if death is caused by the reckless (non-DWI related) operation of a vehicle (reckless homicide). §§16-1-10, 16-1-20, 16-1-30, 16-1-90, 56-5-2910 & 56-5-2945.
Important. See Child Endangerment on p. 3-429.

Sanctions:
Criminal Sanction:
Imprisonment (Term):

I. Cl B Felony-**1 to 25 yrs**¹ §56-5-2945(A)(2)
 II. Cl E Felony-not more than **10 yrs**¹ §56-5-2910
 I. Cl B Felony-**1 yr** §56-5-2945(A)(2) See Footnote No. 1 on p. 3-430.

Mandatory Minimum Term:

II. Cl E Felony-None
 I. Cl B Felony -**\$10,000 to \$25,000** §56-5-2945(A)(2)
 II. Cl E Felony-**\$1,000 to \$5000** §56-5-2910
 I. Cl B Felony-**\$10,000** §56-5-2945(A)(2)
 II. Cl E Felony-None

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Action:
Licensing Authorized and
Type of Action:

I. Cl B Felony-Susp §§56-1-280(1) & (2) and 56-5-2945
 II. Cl E Felony-Rev §§56-1-280(1) & (2) and 56-5-2910

Length of Term of
Licensing Withdrawal:

I. Cl B Felony-**Term of imprisonment plus 3 yrs** §56-5-2945
 II. Cl E Felony-**5 yrs** §56-5-2910

Mandatory Action--Minimum
Length of License
Withdrawal:

I. Cl B Felony off-**Term of imprisonment plus 3 yrs** §56-5-2945
 II. Cl E Felony-**1 yr**² §56-5-2910

¹**Special Note:** (1) An offender may be allowed to participate in out-of-jail **public service work** while serving an incarceration sentence. §24-13-660 Also, (2) the law provides, that notwithstanding other provisions providing for mandatory incarceration, an offender may be sentenced to **home detention** in lieu of incarceration with or without electronic monitoring. §24-13-1530

²After 1 yr, a person may petition the circuit court for license reinstatement. The court may grant either (1) complete or (2) provisional driving privileges. A person, who is granted provisional driving privileges, is allowed to drive only for either employment or educational needs. Note: The court cannot grant either complete or provisional privileges if either intoxicating alcohol, beer, wine, drugs or narcotics were involved in the vehicular accident related to the reckless homicide offense. §56-5-2910(B)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC ≥ 0.04 (Standard: Grams of alc. per 100 milliliters of blood.), (2) have an alcohol concentration ≥ 0.04 in "other bodily substances (fluids) as determined by the Law Enforcement Division, (3) are under the influence of alcohol, a controlled substance or a drug which impairs driving ability or (4) refuse to submit to a chemical test for an alcohol concentration. Note: The disqualification section, §56-1-2110(A)(5), appears to only apply to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent section, §56-1-2130, applies to tests for both an alcohol concentration and the presence of other drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any "measurable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§56-1-2030(1), (6), (7), (8), (10), (19) & (21), 56-1-2110, 56-1-2120, 56-1-2130 and 56-1-6190

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Other Criminal Actions Related to DWI: (continued)

Other:

Assessments. In general sessions court, a defendant must pay an assessment which is equal to 62% of the fine actually imposed (i.e., the fine that has not been suspended). §14-1-206(A)

Persons Under 18 Years Old. An offender, who is <18 yrs old, may have their license suspended by the court until they reach their 18th birthday. §20-7-1333(B)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

See the Special Note below.

Sanction:

Criminal:

Imprisonment (Term):

1st off (Misd)-10 to 30 dys; 2nd off (w/n 5 yrs) (Misd)-60 dys to 6 mos; 3rd and subsequent off (w/n 5 yrs) (Cl A Misd)-6 mos to 3 yrs §§16-1-10(C), 16-1-20, 16-1-100(A) & 56-1-460

Mandatory Minimum Term
of Imprisonment:

1st off-10 dys^{1&2}; 2nd off-60 dys^{1&2}; 3rd and sub off-6 mos^{1&2}
§56-1-460

Fine (\$ Range):

1st off-\$200^{3&4}; 2nd off-\$500^{3&4}; 3rd and sub off-None
§56-1-460

Mandatory Minimum Fine:

None⁴

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp/Rev For a 4th or sub off (w/n 5 yrs), the vehicle either (1) owned and operated by the offender or (2) operated by an offender who is a resident of the household of the registered owner **must be forfeited**. §56-5-6240(A)

Length of Term of License

Withdrawal Action:

Susp for a like period of time if the original susp was for a definite period of time. If not, then a susp for 3 mos. If license was revoked, a new license shall not be issued for an additional 1 yr from the date such person would have otherwise been entitled to apply for a new license. §56-1-460.

¹(1) An offender may be allowed to participate in out-of-jail **public service work** while serving an incarceration sentence. §24-13-660 Also, (2) the law provides, that notwithstanding other provisions providing for mandatory incarceration, an offender may be sentenced to **home detention** in lieu of incarceration with or without electronic monitoring. §24-13-1530

²If the case is decided in a magistrate's court, the court is prohibited from suspending sentence and placing the offender on probation in lieu of incarceration. §22-3-800

³**Comment:** It is not clear whether a fine sanction can be imposed on a person who has been convicted of driving while suspended or revoked where the original license suspension or revocation was based on a DWI offense conviction.

⁴**Mandatory Assessments.** In general sessions court, a defendant must pay an assessment which is equal to 62% of the fine actually imposed (i.e., that part of the fine that has not been suspended). §14-1-206(A)

Special Note: I. It is a misd to operate a CVM during a CDL disqualification. For a 1st offense, a person is subject to an imprisonment term for 30 dys (mand) and a fine of \$200 (mand). For a 2nd offense, a person is subject to an imprisonment term for 60 con dys (mand) and a fine of \$500 (mand). And, for a subsequent offense, a person is subject to an imprisonment term for 90 dys (mand) to 6 mos. §§16-1-10(C), 56-1-460 and 56-1-2070(D) II. A person, who operates a CMV while their CDL is under an out-of-service order, is subject to the following sanctions: 1st violation-disqualification for 90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-disqualification for 1 (mand) to 5 yrs; and, 3rd or subsequent violation (w/n 10 yrs)-disqualification for 3 (mand) to 5 yrs. In addition, 1st or subsequent offenders are subject to a civil penalty of \$1,000 to \$2,500. If the offender was operating a CMV either while (1) transporting either hazardous materials or (2) operating a vehicle designed to transport more than 15 persons, they are subject to the following sanctions: 1st violation-disqualification for 180 dys (mand) to 2 yrs; and, 2nd or subsequent (w/n 10 yrs)-disqualification for 3 (mand) to 5 yrs. In addition, 1st or subsequent offenders are subject to a civil penalty of \$1,000 to \$2,500. §56-1-2070(E)

Other Criminal Actions Related to DWI: (continued)

Mandatory Term of License

Withdrawal Action:

Persons Under 18 Years Old. An offender, who is <18 yrs old, may have their license suspended by the court until they reach their 18th birthday. §20-7-1333(B)

None

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared an

Habitual Offender:

Yes §56-1-1010 et seq.

3 or more serious off convictions or 10 or more convictions for violations rated at 4 points or more under the point system within a period of 3 yrs §56-1-1020(a) & (b)

Term of License Rev While

Under Habitual Offender Status:

5 yrs and until the court thereafter restores the driving privilege. After 1 yr, this period may be reduced to 2 yrs upon a showing of "good cause." §56-1-1090(a) & (c)

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status:

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Felony §56-1-1100

Imprisonment (Term):

Not more than 5 yrs¹ §56-1-1100

Mandatory Minimum Term of

Imprisonment:

None

Fine (\$ Range):

None

Mandatory Minimum Fine (\$):

N/A

Licensing Actions (Specify):

None

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests onPersons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):

Yes §17-7-80

BAC Chemical Test Is Given to the

the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes (16 years old or older)

Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff. 1986) §§20-7-8920, 20-7-8925, 61-4-50(A), 61-4-580(1), 61-6-1500 & 61-6-4080(A)

Minimum Age (Years) Possession:

21 There are exemptions for home, religious ceremonies and employment. The employment exemption applies only to persons over 18 years old. §§20-7-320, 20-7-8920 & 20-7-8925

Minimum Age (Years) Consumption:

None

¹An offender may be allowed to participate in out-of-jail **public service work** while serving an incarceration sentence. and may be sentenced to **home detention** in lieu of incarceration with or without electronic monitoring. §§24-13-660 & 24-13-1530

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Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

No

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

Yes *Jamison v. The Pantry, Inc.*, 392 S.E.2d 474 (S.C.App. 1990)¹, *Chrittansen v. Cambell*, 328 S.E.2d 351 (S.C.App. 1985), & *Steele v. Rogers*, 413 S.E.2d 329 (S.C.App. 1992)²

Dram Shop Actions-Social Hosts:

No *Garren v. Cummings & McCrady, Inc.*, 345 S.E.2d 508 (S.C.App. 1986)³, & *Hill v. Honey's, Inc.*, 786 F.Supp. 549 (D.S.C. 1992)

Other:

A patron may not bring a cause of action against a licensee for injuries they have sustained after becoming intoxicated at the licensee's establishment. *Tobias v. Sports Club, Inc.*, 504 S.E.2d 318 (S.C. 1998)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

For alcoholic liquors^{4,5}-(Misd) §61-6-1500 For nonintoxicating beverages-(Misd)⁴ §§61-2-250 & 61-4-580(2)

Term of Imprisonment:

Alc. Beverages and Non-intoxicating Beverages: Not less than 3 mos §62-2-250 & 61-6-4210

Fine (\$ Range):

Alc. Beverages and Non-intoxicating Beverages: Not less than \$100 §§62-2-250 & 61-6-4210 §61-13-870 See Footnote No. 4 on p. 3-432.

See admin. fines under Admin. Actions below.

¹In this case, the court held that a seller of alcoholic beverages to an under age person could be held liable for the injuries caused by such minor while intoxicated.

²A licensee can be held liable for the injuries caused by an intoxicated minor who consumed alcoholic beverages on the licensee's premises notwithstanding the fact that the licensee did not provide such beverages to the minor. The court held that by violating a State regulation that prohibits licensees from allowing minors to possess or consume alcoholic beverages on their premises, the licensee had committed a negligent act in that they violated a duty of care that they owed to the public to protect them against such intoxicated persons. *Norton v. Opening Break of Aiken, Inc.*, 462 S.E.2d 861 (S.C. 1995)

³However, a person, who encourages excessive consumption, may be held liable for the death of another who died as a result of such over consumption. *Ballou v. Sigma Nu General Fraternity*, 352 S.E.2d 488 (S.C.App. 1986)

⁴The term "non-intoxicating beverages" applies to beer (and other malt beverages) not in excess of 5% alcohol and wine not in excess of 21% alcohol. §61-4-10 The term "alcoholic liquors" applies to all other alcoholic beverages. §61-6-20(1)

⁵Nonprofit organizations, who are licensed to sell alcoholic liquors in minibottles, are prohibited from selling such beverages to intoxicated persons. §61-6-2220 The sanctions for a violation of this prohibition are as follows: 1st off-fine from \$200 to \$500 and/or license suspension for not more than 30 dys; 2nd off w/n 3 yrs-fine from \$200 to \$500 and/or license suspension for not more than 180 dys; and, 3rd off w/n 3 yrs-fine not less than \$500 and permanent license revocation. §61-6-2600 However, under §61-6-4270, an admin. fine of from \$100 to \$1,500 may be paid in lieu of susp/rev.

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Susp/Rev

Alcoholic Beverages: 1st off-Rev for 1 yr or pay a penalty of \$200; sub. off-Rev for 2 yrs or pay a penalty of \$500 §61-6-4260 Note: Under §61-6-4270, an admin. fine of from \$100 to \$1,500 may be paid in lieu of susp/rev.

Non-intoxicating Beverages: Susp/Rev under §61-4-580-Length of susp/rev is not specified or an admin. fine of from \$25 to \$1,000 may be paid in lieu of susp/rev. §61-4-250

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Alcoholic Liquors¹-(Misd); Non-intoxicating beverages¹-(Misd)
Alcoholic Beverages: 30 to 60 dys §§61-6-1500, 61-6-2600, 61-6-4080 & 61-6-4700 Non-intoxicating Beverages: 30 to 60 dys §61-4-50

Alcoholic Beverages: \$100 to \$200 §§61-6-1500, 61-6-2600, 61-6-4080 & 61-6-4700 Non-intoxicating Beverages: \$100 §61-4-50 See Footnote No. 4 on p. 3-432.

See Admin. fines under Admin. Actions below.

Fine (\$ Range):

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp/Rev

Alcoholic Beverages: 1st off-Rev for 1 yr or pay a penalty of \$200; sub. off-Rev for 2 yrs or pay a penalty of \$500 §61-6-4260 Note: Under §61-6-4270, an admin. fine of from \$100 to \$1,500 may be paid in lieu of susp/rev.

Non-intoxicating Beverages: Susp/rev §61-4-580-Length of susp/rev is not specified or an admin. fine of \$25 to \$1,000 may be paid in lieu of the susp/rev. §61-4-250

Anti-Happy Hour Laws/Regulations:

Yes Limited §61-4-160 & 61-6-4550²

¹See Footnote No. 4 on p. 3-434.

²The law prohibits the selling of alcoholic beverages (1) for free (there are exceptions), (2) for less than half the regular price or (3) on a "two for one" basis. Any alcoholic beverage (including beer) may be sold at less than the regular price between 4 and 8 p.m.

SOUTH CAROLINA

Other State Laws Related To Alcohol Use: (continued)

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes §61-6-4020

Possible Driver and passengers The law states that "[a]ny person who drinks alcoholic liquors in any public conveyance shall be deemed guilty of a misdemeanor." This provision does not apply either to railroad dining/club cars or to commercial aircraft. §61-6-4720

STATE:

General Reference:

SOUTH DAKOTA

South Dakota Codified Laws

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Under the influence of an alcoholic beverage §32-23-1(2)
≥0.10¹ §32-23-1(1)

Presumption (BAC):

Persons Under 21 Years Old: ≥0.02¹ or Any Evidence of Marijuana or a Controlled Drug or Substance in the Body §32-23-21
≥0.10¹ §32-23-7 Note: Sec. 32-23-7 also applies this presumption to the veh homicide off.

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) Any Substance, (2) Any Controlled Drug, (3) Marijuana or (4) a Combination of These Substances and an Alcoholic Beverage §32-23-1(3) & (4)

Other:

For Commercial Motor Vehicle Operators, see p. 3-439.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

Yes §32-23-1.2

Yes §32-23-10

Yes §32-23-10

Yes §§19-13-28.1 & 32-23-10.1² (Criminal Cases)
Chemical test required for persons who have been arrested for a third or subsequent DWI offense (alcohol or drug related) which constitutes a felony. "Force" may be used to obtain a blood sample. §32-23-10, *State v. Heinrich*, 449 N.W.2d 25 (S.D. 1989), *State v. Lanier*, 452 N.W.2d 144 (S.D. 1990), *State v. Sickler*, 488 N.W.2d 70 (S.D. 1992), & *State v. Jacobson*, 491 N.W.2d 455 (S.D. 1992)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:
Urine:
Other:

Yes §32-23-10

No §32-23-10

"Other bodily substances" §32-23-10

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):

No

No Note: An illegal per se charge may be reduced or dismissed only when written reasons for such have been filed with the court. §32-23-1.3

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes Limited For 1st offenders where the BAC is ≥0.17, the court must require them to undergo an evaluation to determine if they are addicted to alcohol. §32-23-2.1 The courts have general authority to order discretionary pre-sentence investigation reports. §23A-27-5

¹Based on percent by weight of alcohol in the blood. However, §32-3-7 provides that "[p]ercent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath."

²This statute was held constitutional in *South Dakota v. Neville*, 459 U.S. 553 (1981).

SOUTH DAKOTA

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent

Chemical Test:	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Rev 1 yr ¹ A restricted hardship license is available. §§32-23-11 & 32-23-18
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

See Persons Under 21 Years Old and Subsequent Offenses below.

1st off CI 1 Misd-Not more than 1 yr (county jail); 2nd off (w/n 5 yrs) CI 1 Misd-Not more than 1 yr (county jail); 3rd off CI 6 Felony (w/n 5 yrs)-Not more than 2 yrs² (State penitentiary); 4th & sub. off (w/n 5 yrs) CI 5 Felony-Not more than 5 yrs² (State penitentiary) §§22-6-1, 22-6-2, 32-23-2, 32-23-3, 32-23-4 & 32-23-4.1 Vehicle Battery³ (CI 4 Felony)-Not more than 10 yrs (State penitentiary) §§22-6-1 & 22-16-42 **Limited**³

Mandatory Minimum Term:

Fine:

Amount (\$ Range):

1st off-Not more than \$1,000; 2nd off (w/n 5 yrs)-Not more than \$1,000; 3rd off (w/n 5 yrs)-Not more than \$2,000; 4th & sub. off (w/n 5 yrs)-Not more than \$5,000 Vehicle Battery⁴-Not more than \$10,000

¹Under §32-23-11.1, a driver's license is not subject to revocation for refusal to submit to a chemical test under the implied consent law if either (1) the driver pleads guilty to a DWI offense, (2) the DWI charge is dismissed prior a hearing on the refusal and the person is not convicted of a reckless (§32-24-1) or careless (§32-24-8) driving offense or (3) a hearing is not requested, prior to the revocation being ordered.

²A person convicted of a CI 5 or 6 Felony may be sentenced to serve not more than 1 yr in the county jail in lieu of the indicated incarceration period in the State penitentiary. §22-6-1.1

³Under §32-23-3, a 2nd offender, who was operating a motor vehicle without a license at the time of the offense, is subject to a mand 3 dys of imprisonment. Under §32-23-4, a 3rd offender, who was operating a motor vehicle without a license at the time of the offense, is subject to a mand 10 dys of imprisonment. Under §32-23-4.6, a 4th or subsequent offender, who was operating a motor vehicle without a license at the time of the offense, is subject to a mand 20 dys of imprisonment.

⁴Vehicle Battery: Causing serious bodily injury while driving a motor vehicle in a negligent manner while under the influence of an alcoholic beverage.

Persons Under 21 Years Old. A person under 21 years old, who operates a motor vehicle with a BAC ≥ 0.02 or with any evidence of a marijuana or any controlled drug or substance in their body, commits a CI 2 Misd. The criminal sanctions for this offense are a jail term of not more than 30 dys and/or a fine of not more than \$200. In addition, they are subject to the following licensing action: 1st offense-susp for 6 mos; and, 2nd or sub offense-susp for 1 yr. These licensing actions are not mandatory. Restricted driving privileges are available for either employment, education, or court ordered counseling programs. §§2-6-2 & 32-23-21

Subsequent Offenses. A subsequent offense is generally one committed w/n 5 yrs of a prior offense. "However, any period of time during which the defendant was incarcerated for a previous violation may not be included when calculating if the time period provided ... has elapsed." §32-23-4.1

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Min. Fine (\$):	None
Other Penalties:	
Community Service:	Yes Community service may be condition of probation. §23A-27-18.3
Restitution (eg Victim's Fund)	Yes §§22-6-1, 22-6-2 & 23A-28-1 et seq. Restitution is to be paid by the defendants to the victims.
Other:	Costs of Confinement. If they are financially able, an offender may be required to pay for the costs of their confinement in a county jail. §24-11-45
Administrative Licensing Actions:	
<u>Pre-DWI Conviction</u> Licensing Action:	
Administrative Per Se Law:	None
Other:	None
<u>Post DWI Conviction</u> Licensing Action:	Important: See Persons Under 21 Years Old on p. 3-438.
Type of Licensing Action (Susp/Rev):	<u>1st off-Rev</u> ; <u>2nd and sub off-Rev</u> (Special Note: Susp-If 15 points accumulated in 12 cons mos or 22 points in 24 cons mos; DWI=10 points §§32-12-49.1 & 32-12-49.2) §§32-23-2, 32-23-3, 32-23-4 & 32-23-4.6 Vehicle Battery (Cl 4 Felony)-Rev §22-16-42
Term of License Withdrawal (Days, Months, Years, etc.):	<u>1st off-Not less than 30 dys to 1 yr</u> ; <u>2nd off-Not less than 1 yr</u> ; <u>3rd off-For such a period as determined "by the court but in no event less than one [1] year from the date sentence is imposed or one [1] year from the date of discharge from incarceration, whichever is later;"</u>

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr nor more than 3 yrs (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC ≥ 0.04 (Standard: Percent by weight of alcohol in the blood. This standard is not further defined in the CMV law. However, see Footnote No. 1 on p. 3-437.) (2) are under the influence of alcohol or a controlled drug or substance or (3) refuse to submit to a chemical test for alcohol concentration. (Note: The "disqualification" provision, §32-12-104(5), only applies to a refusal to submit a chemical test for alcohol concentration; however, the CMV implied consent provision, §32-12-111, applies to the testing for both alcohol concentrations and drugs.) For either (1) a second violation or (2) a combination of two violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). For either (1) a subsequent violation or (2) a combination of three or more violations of any of the above listed items, the "disqualification" is permanent for life. Operating a CMV with a BAC "between 0.04 to 0.10 or more" is a Class 2 Misdemeanor; the sanctions for the offense are (1) a jail of not more than 30 days, (2) a fine of not more than \$200 and (3) the possible payment of restitution. In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Note: A person, who has had their non-CMV driving privileges suspended or revoked, may obtain a court order granting them CMV driving privileges for employment purposes. §§22-6-2, 32-12-77(5), (9) & (20), 32-12-104, 32-12-105, 32-12-106.1, 32-12-110, 32-12-110.1, 32-12-111 and 32-12-117 **Special Note:** The State has also adopted by reference 49 CFR Parts 383 and 384. §32-12-124 These parts contain the following disqualification and out-of-service requirements for CMV operators. A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC ≥ 0.04 (Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath), (2) are under the influence of alcohol or a controlled drug or substance or (3) refuse to submit to a chemical test for alcohol concentration. For a second violation or a combination of two violations of any of the above listed items, the "disqualification" is for life. However, if they successfully complete a rehabilitation program, the disqualification may be reduced to a mandatory period of 10 yrs. For a third or subsequent violation or a combination of three or more violations of any of the above listed items, the "disqualification" is for life (mand). 49 CFR 383.5 & 383.51 **Comment:** In adopting 49 CFR Part 484, the State appears to have also adopted the out-of-service provisions of 49 CFR Part 392, since this later provision is cited in the former. Under these Federal Regulations, a person, who operates a CMV while having "any measured alcohol concentration", must be placed out-of-service for 24 hrs. 49 CFR 392.5

SOUTH DAKOTA

Sanctions Following a Conviction for a DWI Offense: (continued)

Term of License Withdrawal
(Days, Months, Years, etc.): (continued)

4th and sub. off-For such a period as determined "by the court but in no event less than two [2] years from the date sentence is imposed or two [2] years from the date of discharge from incarceration, whichever is later." (Under the point system susp 1 yr §32-12-47) Vehicle Battery (CI 4 Felony)-2 yrs subsequent to release from incarceration §22-16-42

Mandatory Minimum Term of
Withdrawal:

1st off-None¹; 2nd off-1 yr (not mandatory in all situations)²; 3rd off-1 yr; 4th and sub. off-2 yrs Note: Under the point system, there is no mandatory susp. period. §32-12-52.1 Vehicle Battery (CI 4 Felony)-None Important. See the Special Note & Comment below.

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

None

For any offense conviction, where a driver's license can be revoked or suspended, the registration of all vehicles owned by the driver shall also be suspended. §32-35-44

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes CI 3 Felony where death is caused by vehicle operation while under the influence of alcohol or drugs. §22-16-41

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Not more than 15 yrs §22-6-1

None

Not more than \$15,000 §22-6-1

None

¹A restricted hardship license is available for employment purposes and for attending court ordered counseling programs. §32-23-2

²Upon the successful completion of an alcohol treatment program, the court may grant a 2nd offender driving privileges for employment purposes and may place such conditions on this privileges as it sees fit. §32-23-3

Special Note & Comment: For drunk driving offenses, §32-12-52.1 provides that the State Secretary of Commerce and Regulation must either carry out court ordered mandatory licensing action or take the same licensing action in the absence of a court order. In addition, the Secretary has the authority under §32-12-49 to either revoke or take other action against a person's license if they have been convicted of an offense which requires mandatory licensing action. However, §32-12-49.4, allows the Secretary to issue restricted licenses (for employment or educational purposes) to a person who has had their driving privileges revoked or otherwise terminated under §32-12-49. The law, §32-12-49.4, is not clear as to whether it is possible to issue restricted driving privileges to a drunk driving law offender notwithstanding other provisions of law that would impose mandatory periods of license suspension or revocation.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:
Licensing Authorized and
Type of Action:
Length of Term of
Licensing Withdrawal:

Rev §22-16-41

2 yrs Subsequent to release from incarceration §22-16-41

Mandatory Action--Minimum
Length of License
Withdrawal:
Other:

None

See DWI Vehicle Impoundment/Confiscation on p. 3-440.

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense*:

See Footnote No. 1.

Sanction:

Criminal:

Imprisonment (Term):

For driving while revoked, CI 1 Misd - Not more than 1 yr for driving while suspended, CI 2 Misd - Not more than 30 dys See Footnote No. 2. §§22-6-2, 32-12-65 & 32-12-84

Mandatory Minimum Term
of Imprisonment:

Special Note: A 2nd or subsequent DWI offender, who was operating a motor vehicle without a license at the time of the drunk driving offense, is subject to certain mandatory imprisonment sanctions. See Footnote No. 3 on p. 3-438.

Fine (\$ Range):

For driving while revoked, CI 1 Misd - Not more than \$1,000³ For driving while suspended, CI 2 Misd - Not more than \$200³

Mandatory Minimum Fine:
Administrative Licensing Actions:
Type of Licensing Action
(Susp/Rev):

None

Susp-if the conviction was based on driving while suspended; Rev-if the conviction was based on driving while revoked §32-12-66 Note: See DWI Vehicle Impoundment/Confiscation on p. 3-440.

¹It is a CI 1 misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 1 yr and/or a fine of not more than \$1,000. In addition, for violating an out-of-service order, a person is subject to a civil penalty of from \$1,000 to \$2,500. In the case of driving while disqualified, an offender is subject to an additional CDL disqualification for 1 yr. However, for violating a CDL out-of-service order, the disqualification as follows: 1st violation-90 dys (mand); 2nd violation (w/n 10 yrs)-1 yr (mand); and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand). If the CMV operator was driving a CDL either containing hazardous materials or designed to carry more than 16 persons, the CDL disqualification periods are as follows: 1st violation-180 dys (mand); 2nd violation (w/n 10 yrs)-3 yrs (mand); and, 3rd or sub violation-5 yrs (mand). §§22-6-2, 32-12-66, 32-12-84, 32-12-119, 32-12-120, 32-12-121 & 32-12-122 **Special Note:** The State has adopted by reference 49 CFR Part 383. §32-12-124 This CFR part provides that if a person operates a CMV while under an out-of-service order, they are subject to the following disqualification periods: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. If the CMV operator was driving a CDL either containing hazardous materials or designed to carry more than 15 persons, the CDL disqualification periods are as follows: 1st violation-180 dys (mand) to 2 yrs; and, sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. 49 CFR 383.51

²Under §22-6-2, for either a Class 1 or 2 Misd conviction, the court may order the defendant to pay restitution to a victim of the offense pursuant to §23A-28-1 et seq.

³**Costs of Confinement.** If they are financially able, an offender may be required to pay for the costs of their confinement in a county jail. §24-11-45

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

SOUTH DAKOTA

Other Criminal Actions Related to DWI: (continued)

Length of Term of License

Withdrawal Action:

If the conviction was based on driving while suspended, an additional susp period equal to the original period of susp. If the conviction was based on driving while revoked the original rev period extended for 1 yr. §32-12-66

Mandatory Term of License

Withdrawal Action:

If the conviction was based on driving while suspended, an additional susp period equal to the original period of susp.¹ §32-12-66

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §34-25-22.1

BAC Chemical Test Is Given to the the Following Persons:

Driver:

Yes

Vehicle Passengers:

Yes

Pedestrian:

Yes

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1988) §§35-4-78, 35-9-1 & 35-9-2

Minimum Age (Years) Possession:

21² §§35-4-78, 35-9-1 & 35-9-2

Minimum Age (Years) Consumption:

21³ §§35-4-78, 35-9-1 & 35-9-2

¹Mandatory licensing withdrawal actions apply only to the offense of driving while suspended. There is no additional mandatory licensing action (i.e., 1 yr. additional revocation period) for driving while revoked.

²There is an exemption for either the possession or the consumption of alcoholic beverages by persons under 21 yrs of age for religious ceremonies.

Other State Laws Related To Alcohol Use: (continued)Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No¹ Liability is prohibited via statutory law. §§35-4-78 & 35-11-1

Dram Shop Actions-Social Hosts:

Other:

Case law providing for dram shop liability has been abrogated by
statutory law.¹

No Liability is prohibited via statutory law. §35-11-2

None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Cl 1 Misd §§22-6-2 & 35-4-78 See Administrative Fines on p. 3-444.
Not more than 1 yr (county jail)

Not more than \$1,000

Note: If they are financially able, an offender may be required to pay
for the costs of their confinement in a county jail. §24-11-45

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Rev/Susp §35-2-10

Rev-1 yr or Susp-not more than 60 dys² §§35-2-20 & 35-2-21

¹**Historical Note:** The following is a brief chronology of recent dram shop liability events in South Dakota. In 1982, the South Dakota Supreme Court established dram shop liability via common law negligence. *Waltz v. City of Hudson*, 327 N.W.2d 12 (S.D. 1982) In 1985, in a case concerning the death of an intoxicated patron, the court reaffirmed its position in *Waltz*. *Selchert v. Lien*, 371 N.W.2d 791 (S.D. 1985) (Note: In *Selchert*, the court held that a wife had a cause of action in negligence against a licensee for the death of her intoxicated husband. The husband became inebriated at the licensee's establishment. While in this condition, he drove himself home and parked his vehicle in the garage and closed the garage's door via remote control. However, due to his intoxicated state, he was unable to exit the vehicle and did not turn off the vehicle's engine. As a consequence, he fell asleep and died of carbon-monoxide poisoning.) In response, the State legislature passed legislation in 1985 abrogating these decisions. §§35-4-78 & 35-11-1 However, in 1988, the State supreme court held that this legislation violated Art. VI, §20 of the State's constitution which provides that persons have a right to bring a cause of action either for personal injuries or for property damage. *Baatz v. Arrow Bar*, 426 N.W.2d 298 (S.D. 1988) (Note: On remand, the trial court granted summary judgement to the individual defendants (not the corporation). This decision was affirmed by the State supreme court. *Baatz v. Arrow Bar*, 452 N.W.2d 138 (S.D. 1990)) In 1997, apparently due to a change in the court's composition, the State supreme court reversed its decision in the *Baatz* (1988) case and reinstated the statutory law that precludes dram shop liability actions. *Wildeboer v. S.D. Junior Chamber of Comm.*, 561 N.W.2d 666 (S.D. 1997) (Comment: A majority of the court's justices took this action with little discussion and without specifically overruling the *Baatz* decision. See the dissenting opinion in the *Wildeboer* case.) In a later case, the State supreme court held that §35-11-1 does not violate constitutional principles regarding separation of powers. In this same case, the court also held that neither §35-11-1 nor §35-4-78 violate the State constitution's provision regarding "open courts" (Art. VI, §20) *Wegleitner v. Sattler*, 582 N.W.2d 688 (S.D. 1998)

²In lieu of either a revocation or a suspension, the licensee may be allowed to pay a "monetary offer in compromise." This "compromise" cannot exceed \$75,000. §35-2-21

SOUTH DAKOTA

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:
Type of Criminal Action:

Term of Imprisonment:
Fine (\$ Range):

Cl 1 Misd Licensees who sell alcoholic beverages to persons under 21 years old §§22-6-2 & 35-4-78¹ See Administrative Fines below.
Not more than 1 yr (county jail)
Not more than \$1,000
Note: If they are financially able, an offender may be required to pay for the costs of their confinement in a county jail. §24-11-45

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:
License to Serve Alcoholic Beverages
Withdrawn (Yes/No):
Length of Term License Withdrawal:

Yes Rev/Susp §35-2-10
Rev-1 yr or Susp-not more than 60 dys §35-2-20 & 35-2-21 See Footnote No. 2 on p. 3-443.

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):
Anti-Consumption Law (Yes/No):

Yes §35-1-9.1
Yes §35-1-9.1

¹Under §35-9-1, it is Cl 1 misd for a person to sell or give alcoholic beverages to a person under 18 years old except in situations where alcoholic beverages are sold or served to a minor in the "immediate presence" of a parent or guardian. Under §35-9-1.1, it is a Cl 2 misd. for a person to sell or serve alcoholic beverages to a person over 18 but under 21 years old unless it is done in the "immediate presence" of a parent or guardian. It is also a Cl 2 misd for an "on-sale" licensee to allow a person, who is under 19 years old, to consume alcoholic beverages on the licensee's premises. The sanctions for a Cl 2 misd are imprisonment of not more than 30 dys (county jail) and/or a fine of not more than \$200.

Administrative Fines. No criminal liability may be imposed on a person holding a "controlling interest" in a business licensed to sell alcoholic beverages at retail, if an employee of the business violates §35-4-78 and the person having such an interest is not present when the violation occurred. A person is considered to have "controlling interest" if they have an ownership interest in the business ≥ 10%. Nevertheless, such a person may be assessed an administrative fine as follows: 1st violation-\$500; 2nd violation (w/n 2 yrs)-\$700; and, 3rd violation (w/n 2 yrs)-\$1,000. §§35-4-78.1, 35-4-78.2, 35-4-78.3 & 35-4-78.4 **Comment:** It appears that these provisions are intended to insure that a decision of South Dakota Supreme Court, which held that a corporate licensee could be held criminally liable for the actions of its employees who sell alcoholic beverages to minors, continues to apply only to corporate entities. *State v. Hy Vee Food Stores, Inc.*, 533 N.W.2d 147 (S.D. 1995) Under these provisions, individual corporate owners and, in the case of partnerships, partners, who do not participate in the operation of the business, cannot be held criminally liable for the actions of an employee who violates §35-4-78. However, the corporate entity itself could still be held criminally liable under the *Hy Vee* decision.

STATE:
General Reference:

TENNESSEE
Tennessee Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:

I. Under the influence of any intoxicant¹ (e.g., alcohol) §55-10-401(a)(1)

II. Adult Driving While Impaired (Persons ≥21 Years Old) §55-10-418(a)¹

Illegal Per Se Law (BAC/BrAC):

≥0.10^{2&3} §55-10-401(a)(2)

Persons ≥16 but <21 Years Old->0.02^{1&3} (Underage Impaired Driving Offense) §55-10-415(a)(1)(A)

Presumption (BAC/BrAC):

I. 1st off-≥0.10^{3&4}; sub off-≥0.08^{3&4} §55-10-408(a) & (b)

II. Adult Driving While Impaired (Persons ≥21 Years Old)- ≥0.08 but <0.10³ §55-10-418(c)

Types of Drugs/Drugs and Alcohol:

I. Under the influence of (1) **Any Intoxicant**, (2) Marijuana, (3) Narcotic Drug or (4) Drugs Producing Stimulating Effects on the Central Nervous System⁵ §55-10-401(a)(1) II. Adult Driving While Impaired (Persons ≥21 Years Old) §55-10-418(a)¹
For Commercial Motor Vehicle Operators, see p. 3-449.

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Yes §55-10-406(a)(3)

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §55-10-406(a)(1)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) *State v. Smith*, 681 S.W.2d 569 (Tenn.Cr.App. 1984), & *State v. Frasier*, 914 S.W.2d 467 (Tenn. 1996)

Other Information:

None

¹Persons ≥16 but <21 Years Old. Sec. 55-10-415 establishes the offense of "underage driving while impaired" (which is a lesser included offense of regular DWI) for persons age 16 or over but under age 21. This offense consists of (1) driving with an alcohol concentration >0.02 (Based on percent of alcohol in the blood. See Footnote No. 3 below.), (2) driving while under the influence of alcohol, (3) driving while under the influence of any intoxicant, marijuana, narcotic drug or stimulating drug under §55-10-401(b) or (4) driving while under the combined influence of alcohol and any of the substances or drugs listed in (3). For persons ≥18 but <21, this offense is a Class A misd; for persons ≥16 but <18, this offense is a "delinquent act". §55-10-415(d) & (e) Note: An appellate court has held that §55-10-415 does not violate a person's Federal or State constitutional rights to equal protection of the laws. *State v. Crain*, 972 S.W.2d 13 (Tenn.Cr.App. 1998)

Persons ≥21 Years Old. A person ≥21 yrs old commits an "adult driving while impaired" offense if they operate a motor vehicle while their ability to safely drive is impaired "as the proximate result of the consumption or ingestion of alcohol, drugs, any other intoxicant or any combination thereof." §55-10-418(a)

²This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.

³Standard: Percent or percent by weight of alcohol in the blood. §§55-10-401(a)(2) and 55-10-408(a) & (b) The Tennessee Supreme Court has noted that blood alcohol concentration is expressed as "grams of alcohol per 100 cubic centimeters of blood or 210 liters of breath." *State v. Sensing*, 843 S.W.2d 412 (Tenn. 1993); see Footnote No. 2, 843 S.W.2d at 415. See also *State v. McKinney*, 605 S.W.2d 842 (Tenn.Cr.App. 1980) (Permission to appeal was denied by the Tennessee Supreme Court.).

⁴A lower BAC presumptive level for repeat offenders does not violate the constitutional protection of equal protection of the laws. *State v. Robinson*, 1999 Tenn. Crim. App. LEXIS 49, ___ S.W.2d ___ (Tenn.Cr.App. 1999)

⁵Drugs "producing stimulating effects" include "[t]he salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures 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 of internal use." §55-10-401(b)

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §55-10-405(5)
Urine:	Yes §55-10-405(5)
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	Yes §55-10-403(b)(1) ¹
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Susp-12 mos A refusal where there has been an injury related accident-Susp-2 yrs A refusal where there has been a death related accident-Susp-5 yrs §55-10-406(a)(3) A restricted license may be issued. §55-10-406(d)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See <u>Adult Driving While Impaired Offense</u> on p. 3-447.
Imprisonment:	
Term (Day, Month, Years, Etc.):	<u>1st off</u> (Cl A misd)-48 hrs to 11 mos 29 dys; <u>2nd off</u> (w/n 10 yrs) (Cl A misd)-45 dys to 11 mos 29 dys ² ; <u>3rd off</u> (w/n 10 yrs) (Cl A misd)-120 dys to 11 mos 29 dys; <u>4th and sub off</u> (w/n 10 yrs) (Cl E felony)-1 to 6 yrs §55-10-403 Vehicle Assault ³ (Cl D felony)-2 to 12 yrs §§39-13-106 and 40-35-111(b)(4) & (5)

¹Pre-trial diversion is prohibited until the minimum sentence is served. §55-10-403(b)(1) & *State v. Washington*, 866 S.W.2d 950 (Tenn. 1993)

²I. The court may order a 2nd offender to serve not more than 28 days of the jail sentence in an inpatient alcohol or drug treatment program. The remainder of the confinement period must be spent in jail. §55-10-403(a)(4) II. A 2nd offender, where the drunk driving offense involved neither a death nor an injury, is also eligible to participate in a work release program. To participate in this program, an offender must agree (1) to be screened daily for alcohol or drug use, (2) not to operate a motor vehicle, (3) to remain incarcerated when not at work and (4), if they are financially able, to pay the cost of their incarceration or treatment. §41-2-128(c)

³Recklessly causing a serious bodily injury to another person where such injury was the proximate result of operating a vehicle while in violation of §55-10-401.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:

Persons ≥ 16 but < 21 Years Old (Underage Impaired Driving)-None

1st off-48 hrs¹ (If BAC/BrAC ≥ 0.20-7 con dys); 2nd off (w/n 10 yrs)-45 dys¹ See Footnote No. 2 on p. 3-446.; 3rd off (w/n 10 yrs)-120 dys¹; 4th and sub off (w/n 10 yrs)-150 con dys Vehicle Assault-None

Fine:

Amount (\$ Range):

1st off-\$350 to \$1,500²; 2nd off (w/n 10 yrs)-\$600 to \$3,500²; 3rd off (w/n 10 yrs)-\$1,100 to \$10,000²; 4th and sub off (w/n 10 yrs)-\$3,000 to \$15,000² §55-10-403 Vehicle Assault-Not more than \$5,000¹ §40-35-111(b)(4)

Mandatory Min. Fine (\$):

Persons ≥ 16 but < 21 Years Old (Impaired Driving)-\$250 §55-10-415(d)

1st off-\$350; 2nd off (w/n 10 yrs)-\$600; 3rd and subsequent off (w/n 10 yrs)-\$1,100 Note: These fines are mandatory unless a judge determines that a defendant is indigent. §55-10-403(b)(2) Vehicle Assault-None

Persons ≥ 16 but < 21 Years Old (Underage Impaired Driving)-\$250 Comment: The law is not clear on whether this fine is mandatory.

Special Note: For sanction enhancement purposes for subsequent drunk driving offenses, a prior offense includes a previous vehicle homicide or assault offense related to drunk driving. §55-10-403

Other Penalties:

Community Service:

I. In metropolitan areas with a population of over 100,000, the court is authorized to sentence a 1st offender to perform 200 hrs of community service in lieu of the 48 hrs minimum jail term. §55-10-403³

II. After serving the minimum sentence, a judge may order the defendant to remove litter from various public areas or work in a recycling center or "other appropriate location" for any period

¹DWI offenders, who are allowed to serve imprisonment sentences on non-consecutive days, must, nevertheless, spend the first 48 hrs of such a sentence in a consecutive manner. §40-35-216

²**Head Injuries Costs.** The State has established a three year pilot program to financially assist persons in need who have suffered "head injuries". To fund this program, every person who is convicted of a DWI offense must pay an assessment of \$5. This assessment is paid into the Impaired Drivers Trust Fund. The trust fund cannot expend more than \$98,000 annually on this project. §§9-4-206 & 55-10-403(i)

³**Comment:** Given the holding by the Tennessee Supreme Court in *State v. Tester*, 879 S.W.2d 823 (Tenn. 1994), there is a question as to whether this provision is constitutional. In this case, the court held that provision of the law, §41-2-128(c), that limited drunk driving work release programs for 2nd offenders to counties with a population > 700,000, violated Federal and State constitutional provisions concerning equal protection. This law was amended by the Tennessee Legislature in 1995 to eliminate this constitutional impediment. Public Chapter No. 187 of 1995

Adult Driving While Impaired Offense. 1st offense (Cl B Misd)-The only sanction is a fine of \$500. §55-10-418(d)(1) However, a person, who is convicted of this offense again, is subject to the same sanctions as a person who is convicted of "driving while under the influence of an intoxicant" (§55-10-401(a)(1) offense) for either a 2nd, 3rd, 4th or subsequent offense. §55-10-418(d)(3) A person is considered to be a 1st offender only if they have not had a previous drunk driving offense of any kind. If they have had one or more prior drunk driving offense convictions and are convicted of this offense for the first time, they are sentenced as if they were a 2nd or subsequent "driving while under the influence of an intoxicant" offender. §55-10-418(e)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Restitution
(eg Victim's Fund):

II. (continued) of time in lieu of or in addition to other penalties. The community service work may be accomplished during non-working hrs. §55-10-104(a)(1)

III. **Persons ≥16 but <21 Years Old (Underage Impaired Driving).** The court may impose "public work" service. §55-10-415(d)

Other:

Yes (1) A defendant may be "sentenced" to pay compensation directly to a victim. §§39-11-118, 40-35-104 & 40-35-304 (2) A victim's compensation fund §§29-13 101 et seq. & 40-24-107(a)(3) Note: A "willing" passenger, who is injured while riding with a DWI offender, is not entitled to compensation. §40-24-107(e) (3) Also, the defendant shall be ordered to pay restitution as a condition of probation if defendant can afford it. Probation may commence only after minimum jail sentence has been served. §55-10-403(c)(3)

BAC Test Fee. DWI offenders in certain counties or counties with a metropolitan form of government are required to pay a BAC test fee. §55-10-403(h)

Ignition Interlock. In addition to any other penalties provided for a DWI offense conviction, a defendant may be required to operate vehicles equipped with "ignition interlock" devices.¹

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

None

Under §55-50-502(a), the licensing agency can suspend a person's license if they have "committed" an offense which requires mandatory license revocation. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:

See the Special Note on p. 3-449.

See Adult Driving While Impaired Offense on p. 3-447.

Type of Licensing Action
(Susp/Rev):

Prohibition/Rev^{2&3} §§55-10-403, 55-7-501(a)(2) & 55-7-502
Persons ≥16 but <21 Years Old (Underage Impaired Driving). **Susp** §55-10-415(d)

Vehicle Assault-The court prohibits a person from operating a motor vehicle. §39-13-106

¹The law provides that the use of such devices could be required for up to one (1) year after a person's license is no longer suspended/revoked. §55-10-412(d) For a 2nd or subsequent DWI law offender, the law creates an inference that the court should order the use of an ignition interlock device as a means of protecting the public. The court may require the use of these devices during all or part of susp/restriction period or after such susp/restriction period has expired. §55-10-412(i)

²The law uses various terms to describe the licensing action that is to be taken against DWI offenders. Under §55-10-403, the courts "prohibit" the offender from driving. However, §55-7-501 provides that the licensing agency shall "revoke" the offender's license.

³Under §§55-7-501(a)(2) and 55-7-502(e)(3) & (4), the licensing agency can also take the following action against a DWI offender. 1st off-rev for 6 mos; sub. off-rev for 1 yr.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

The following action is by the courts: 1st off-1 yr¹; 2nd off (w/n 10 yrs)-2 yrs²; 3rd off (w/n 10 yrs)-3 to 10 yrs²; 4th and subsequent off (w/n 10 yrs)-5 yrs §§55-10-403 & 55-50-501
See Footnote No. 2 on p. 3-448.

Persons ≥ 16 but < 21 Years Old (Underage Impaired Driving)-
1 yr

Vehicle Assault-1st off-1 yr; 2nd off-2 yrs; 3rd off-3 yrs; 4th and sub off-5 yrs §39-13-106

Mandatory Minimum Term of
Withdrawal:

1st off-1 yr^{1&3}; 2nd off-2 yrs²; 3rd off-3 yrs²; 4th and subsequent off-5 yrs §55-10-403(d)(2) & (3)

Persons ≥ 16 but < 21 Years Old (Underage Impaired Driving)-
1 yr **Comment:** The law is not clear on whether this licensing action is mandatory.

Vehicle Assault-1st off-1 yr; 2nd off-2 yrs; 3rd off-3 yrs; 4th and sub off-5 yrs §39-13-106

Special Note: Under separate statutory authority, the court can impose the following additional licensing sanctions for DWI offense convictions. 1st off-Prohibit driving for up to and including 6 mos; 2nd off-Prohibit driving for up to and including 3 yrs; 3rd and sub off-Prohibit driving for up to and including 10 yrs. §55-10-412(a)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Yes See Alcohol Treatment below.

Yes Participation in an alcohol safety DWI prog. is required as part of probation. Note: Probation can begin only after serving the min. imprisonment term. §55-10-403(c)(1) For 2nd and subsequent convictions, a condition of probation is participation in a rehab. prog. treatment facility. §55-10-403(c)(2) Under §55-50-502(c), the licensing agency, prior to reissuing a license to a person following a 2nd or subsequent DWI conviction, must require them to complete an alcohol or drug abuse education or treatment program. See Footnote No. 2 on p. 3-446.

¹Under §55-50-502(e)(4), if this is the defendant's first license revocation, it appears that they are able to apply for a new license after only 6 months.

²See Alcohol Treatment.

³Hardship license for employment available after a 1st conviction only if no one was killed or seriously injured as a result of the DWI off. §55-10-403(d)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's CDL is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC ≥ 0.04 (Standard: Percent by alcohol in the blood. See Footnote No. 3 on p. 3-445.) or (2) are under the influence of alcohol (with a BAC ≥ 0.04) or a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the suspension is for life (10 yrs mand). A commercial motor vehicle operator, who drives a CMV with a BAC ≥ 0.04 violates the regular DWI laws (§55-10-401). §§55-50-102(12), 55-50-405(a) & 55-50-408 The disqualification provisions also apply to non-CDL drivers who are operating commercial vehicles with a gross vehicle weight ≥ 10,001 lbs through 26,000 lbs. §55-50-405(f)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Forfeiture (Appears to be Mandatory).¹ The vehicle used in the offense is subject to forfeiture for a 2nd or sub. DWI offense conviction.² §55-10-403(k)(1)

Terms Upon Which Vehicle
Will Be Released:
Other:

None

Miscellaneous Sanctions
Not Included Elsewhere:

Child Endangerment. I. A person commits a Cl A misd if they commit a DWI offense and at the time of the offense they were "accompanied" by a child under 13 years old: Jail-not more than 11 mos 29 dys (30 dys mand); fine-not more than \$2,500 (\$1,000 mand). II. If the child was injured at the time of the offense, the person commits a Cl D felony: Jail-2 to 12 yrs; fine-not more than \$5,000. III. If the child was killed at the time of the offense, the person commits a Cl C felony: Jail-3 to 15 yrs; fine-not more than \$10,000. **Comment:** The mand. jail and fine sanctions for the misd offense may also apply to the felony offenses. However, the law is not clear on this point. §§40-35-111(b)(3) & (4), 40-35-111(e)(1) and 55-10-414

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes I. Cl C Felony §39-13-213(a)
II. If DWI related-Cl B Felony §39-13-213(a) & (b)
III. Aggravated Vehicle Homicide³-Cl A Felony §39-13-218

Sanctions:

Criminal Sanction:
Imprisonment (Term):

I. Cl C Felony-3 to 15 yrs §40-35-111(b)(3)
II. Cl B Felony-8 to 30 yrs §40-35-111(b)(2)
III. Cl A Felony-15 to 60 yrs §40-35-111(b)(1)

Mandatory Minimum Term:
Fine (\$ Range):

None
I. Cl C Felony-Not more than \$10,000 §40-35-111(b)(3)
II. Cl B Felony-Not more than \$25,000 §40-35-111(b)(2)
III. Cl A Felony-Not more than \$50,000 §40-35-111(b)(1)

Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and
Type of Action:

Rev/Prohibition §§39-13-213 & 55-50-501(1)

¹**Special Note:** Because of a lack of statutory authority, a court ordered DWI probation condition that provided for the temporary forfeiture of a defendant's vehicle was voided by the Tennessee Supreme Court. *State v. Bouldin*, 717 S.W.2d 584 (Tenn. 1986)

²One prior off must occur either on or after 1/1/97 and a second must occur w/n 5 yrs after the first. §55-10-403(k)(2)

³Aggravated Vehicle Homicide is vehicle homicide where the defendant had either (1) two or more prior DWI/vehicle assault convictions (or any combination of them), (2) a prior vehicle homicide conviction or (3), at the time of the vehicle homicide offense, a BAC ≥ 0.20 and a previous DWI or vehicle assault conviction. §39-13-218

Other Criminal Actions Related to DWI: (continued)

Length of Term of
Licensing Withdrawal:

There are two (2) separate driving privilege withdrawal schemes which could apply to all vehicle homicide offenses. (1) The licensing agency can revoke the offender's license for period that period of time that **equals the term of the sentenced received**¹. §55-50-501(a)(1) (2) The court can prohibit the offender from operating a motor vehicle from **3 to 10 yrs.** §39-13-213

Mandatory Action--Minimum
Length of License
Withdrawal:
Other:

3 yrs §39-13-213
None

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

See Footnote Nos. 2, 3 & 4.

Sanction:

Criminal:

Imprisonment (Term):

Cl B misd-2 dys to 6 mos

Cl A misd (if driving while rev where the original licensing action was a 2nd or sub DWI off)-**45 dys to 1 yr** §55-50-504(a)

Mandatory Minimum Term
of Imprisonment:

Cl B misd-2 dys

Cl A misd (if driving while rev where the original licensing action was a 2nd or sub DWI off)-**45 dys** §50-55-504(f)

Fine (\$ Range):

Cl B misd-Not more than \$1,000

Cl A misd (if driving while rev where the original licensing action was a 2nd or sub DWI off)-**Not more than \$3,000** §55-50-504(a)

Mandatory Minimum Fine:

None

¹If paroled, the defendant may have their license reissued upon satisfactory completion of a licensing exam and on petition of the defendant's parole officer. §55-50-501(a)(1)

²I. Under §55-50-405(a), a person is prohibited from operating a CMV during a CDL disqualification. However, the law is unclear as to whether there are specific sanctions for this offense. Note: The sanctions for operating a CMV without a valid CDL are (1) imprisonment for 30 dys to 90 dys and/or a fine of \$250 to \$1,000 for a 1st offense and (2) imprisonment for 90 dys to 1 yr and/or a fine of \$1,000 to \$2,500 for a subsequent offense. §§55-50-404(a) & 55-50-405(e) II. Tennessee law does not provide for CDL out-of-service orders for operating a CMV with any amount of alcohol in the body. Nevertheless, it does provide for licensing sanctions for violating such an order (e.g., under Federal law). A person, who is convicted of violating a CDL out-of-service order, is subject to the following CDL suspension periods: 1st off-90 dys (mand); 2nd off (w/n 10 yrs)-1 yr (mand); and, 3rd or sub off (w/n 10 yrs)-3 yrs (mand). However, the following disqualification periods apply if the out-of-service order conviction was the result of driving a CMV which was either transporting hazardous materials or 15 or more persons: 1st off-180 dys (mand); and, 2nd or sub off (w/n 10 yrs)-3 yrs (mand). §55-50-405(7) & (8)

³It is a Cl C misd to operate a motor vehicle in violation of a court ordered prohibition against driving following a conviction for a drunk driving offense. The sanctions for this misd are an imprisonment term of not more than 30 dys and/or a fine of not more than \$50. §55-10-412(b)

⁴**Vehicle Forfeiture.** The vehicle used in the commission of the offense is subject to forfeiture if the original suspension or revocation was for a drunk driving offense. §55-50-504(h)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

Rev-If the conviction was based on driving while revoked.
§55-50-504(b)

Length of Term of License

Withdrawal Action:

The original rev period extended 1 yr. §55-50-504(b)

Mandatory Term of License

Withdrawal Action:

The original rev period extended 1 yr. §55-50-504(b)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes §§55-10-601 to 55-10-617

Grounds for Being Declared an

Habitual Offender:

I. Three (3) or more serious traffic offense convictions w/n 3
II. Three (3) or more serious traffic offense convictions w/n 5
yrs. III. Five (5) or more serious traffic offense convictions w/n
10 yrs. Examples of serious traffic offenses are as follows: (1)
Voluntary or involuntary motor vehicle homicide; (2) DWI; (3)
failure to stop at the scene of an accident; (4) overtaking a school
bus; (5) driving on a revoked, cancelled or suspended license; or,
(6) reckless driving.

Term of License Rev While

Under Habitual Offender Status:

3 yrs §55-10-615

Type of Criminal Off if

Convicted on Charges of

Driving While on Habitual

Offender Status

Cl E felony §55-10-616

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

1 to 6 yrs §§40-35-111(b)(5) & 55-10-616

Mandatory Minimum Term of

Imprisonment:

1 yr¹ §55-10-616

Fine (\$ Range):

Not more than \$3,000 §§40-35-111(b)(5) & 55-10-616

Mandatory Minimum Fine (\$):

None

Licensing Actions (Specify):

None

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Discretionary §38-7-109

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Discretionary

Vehicle Passengers:

Discretionary

Pedestrian:

Discretionary

¹One (1) year of imprisonment is mandatory unless the habitual offender operated a motor vehicle in order to save life or limb.
§55-10-616

Other State Laws Related To Alcohol Use: (continued)Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff. 1984) §§1-3-113, 57-3-406(d), §57-4-203(b)(1) & (2)(A) and 57-5-301(a) & (d)(1)

Minimum Age (Years) Possession:

21 There is an employment exemption §§1-3-113, 57-3-412(a)(3), 57-4-203(b)(2)(A) & (b)(3) and 57-5-301(e)(1)

Minimum Age (Years) Consumption:

21 §1-3-113Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §57-10-101 et seq.¹⁴² **Comment:** This statute may have abrogated, at least in part, the case law noted below.

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State
(Case Citation):

Yes *Mitchell v. Kerner*, 54 Tenn. App. 656, 393 S.W.2d 755 (CA 1964)

Dram Shop Actions-Social Hosts:

No §§57-10-101 & 57-10-102

Other:

None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

See the Special Note on p. 3-454.

Cl A Misd §§40-35-111, 57-3-204, 57-3-406(c), 57-3-412(a)(1), 57-4-203(c) & 57-4-203(j)(1)

Term of Imprisonment:

I. Pkg sales of alc. bev (Except beer containing less than 5% alc.)-**11 mos 29 dys** **II.** On premises consumption of all alc. bev-**11 mos 29 dys**

Fine (\$ Range):

I. Pkg sales of alc. bev (Except beer containing less than 5% alc.)-**\$2,500** **II.** On premises consumption of all alc. bev-**\$2,500**

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes **Susp/Rev** §§40-35-111, 57-3-104(c)(1)(A), 57-3-214, 57-3-215(a), 57-4-202(a) & 57-4-203(j)(3)

Length of Term of License Withdrawal:

I. Pkg sales of alc. bev (Except beer containing less than 5% alc.)-Susp length not specified; Rev.-**1 yr** **II.** On premises consumption of all alc. bev-1st off-Length of susp/rev is not specified; 2nd off-**Permanent rev**

¹Before a commercial server can be held liable for the actions of their intoxicated patrons, the following must be proven. The court must determine "beyond a reasonable doubt" that the sale of alcoholic beverages was the proximate cause of the injury sustained and that such beverages were sold either to a person under 21 years old or to an obviously intoxicated person whose consumption thereof was the direct cause of the injury.

²Under the dram shop law, a licensee is not liable for the actions committed by intoxicated minors who did not directly purchase alcoholic beverages from the licensee. *Worley v. Weigels, Inc.*, 919 S.W.2d 589 (Tenn. 1996) Also, a licensee, who "gives" but does not "sell" alcoholic beverages to a minor, is not liable under the dram shop law for the injuries caused by a minor as a result of consuming such beverages. *LaRue v. 1817 Lake Inc.*, 966 S.W.2d 423 (Tenn.App. 1997)

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Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:
Type of Criminal Action:

See the Special Note below.

CI A Misd §§40-35-111, 57-3-406(d), 57-3-412(a)(1),
57-4-101(a), 57-4-203(b)(1), (j)(1) & (4), 57-5-101, 57-5-301(a)
and 57-6-102(2)

Term of Imprisonment:

I. Pkg sales of alc. bev (Except beer containing less than 5%
alc.)-11 mos 29 dys II. On premises consumption of all alc.
bev-11 mos 29 dys

Fine (\$ Range):

I. Pkg sales of alc. bev (Except beer containing less than 5%
alc.)-\$2,500 II. On premises consumption of all alc. bev-\$2,500

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages
Withdrawn (Yes/No):

Yes Sups/Rev §§57-3-104(c)(1)(A), 57-3-214, 57-3-215(a),
57-4-202(a), 57-4-203(j)(4), 57-5-109(c) & (k) and 57-5-303(c)
I. Pkg sales of alc. bev (Except beer containing less than 5%
alc.)-Susp length not specified; Rev.-1 yr II. On premises
consumption of all alc. bev-1st off-Length of susp/rev is not
specified; 2nd off-Permanent rev

Length of Term License Withdrawal:

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Yes Drivers only¹ §§55-10-416

Anti-Consumption Law (Yes/No):

Yes Drivers only¹ §§55-10-416

¹However, a municipality may enact an open container/anti-consumption ordinance that applies to passengers. §55-10-416(c)

Special Note: There are separate provisions of the code (1) that relate to sale of beer and other alcoholic beverages with a content of not more than 5% alcohol and (2) that apply to both package and by the drink sales of such beverages. These provisions do not provide sanctions for selling these types alcoholic beverages to an intoxicated person. However, they do have the following sanctions for selling such beverages to minors; in some respects, these sanctions "overlap" those given above. For a 1st off (CI A misd), there is a jail term for not more than 11 mos 29 dys and/or a fine of not more than \$2,500. In addition, the license to sell such beverages may be either be either suspended or revoked. A revocation is for 1 year. However, as an alternative to either a suspension or revocation, a licensee may pay a civil penalty of \$1,500. If the sale is to a person over 18 but under 21 who (1) presents some type of identification of their age or (2) otherwise appears to be over the legal drinking age, the license cannot be revoked but it may be suspended for not more than ten (10) days. For a 2nd off (CI E felony), there is an imprisonment term of from 1 to 6 yrs and/or a fine of not more than \$3,000. In addition, the license to sell such beverages is permanently revoked. §§40-35-111, 57-5-105, 7-5-108, 57-5-301(a)(1) & 57-5-303

STATE:

General Reference:

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Most citations are to Vernon's Texas Transportation Code, Penal Code, Alcoholic Beverage Code or Code of Criminal Procedure.

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Intoxicated while driving¹ Penal Code §§49.01(2)(A) & 49.04
≥0.08¹ Penal Code §§49.01(2)(B) & 49.04
Persons Under 21 Years Old >0.00² Alcoholic Beverage Code
§§106.01 & 106.041(a)

Presumption (BAC):
Types of Drugs/Drugs and Alcohol:
Other:

None
Intoxicated while driving¹ Penal Code §§49.01(2)(A) & 49.04
I. For Commercial Motor Vehicle Operators, see p. 3-461.
II. It is illegal for a person to operate a motor vehicle if they are
"addicted to the use of alcohol or a controlled substance." Tran.
Code §521.312

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:

No

Yes Tran. Code §724.011(a)

Yes Tran. Code §724.011(a)

Other Information:

Yes (Criminal Cases) Tran. Code §724.061 & *Jamail v. State*,
787 S.W.2d 380 (Tex.Cr.App. 1990)³
A law enforcement "shall require" a driver, who has been
arrested for "driving while intoxicated" and has refused to submit
to test voluntarily, to submit to a blood or breath test if the driver
was involved in an accident that either resulted in a death or will
likely result in one. Tran. Code §724.012

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:
Urine:
Other:

Yes Tran. Code §724.011(a)

No

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

¹The term "intoxicated" means either (1) not having normal use of mental or physical facilities by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug or a combination of two or more of these substances into the body or (2) having an "alcohol concentration" ≥0.08. Penal Code §49.01(2) (A) & (B) and *Sullivan v. State*, 807 S.W.2d 342 (Tex.App. — Houston [14th Dist.] 1991) (Note: This case was decided when the alcohol concentration level was an >0.10.) The term "alcohol concentration" is defined as grams of alc. per 100 milliliters of blood, grams or alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. Penal Code §49.01(1)

²It is illegal for a person <21 yrs old to operate a motor vehicle while having any detectable amount of alcohol in their system. Alcoholic Beverage Code §§106.01 & 106.041(a)

³Evidence of a refusal cannot be admitted if the driver was not warned of the consequences of such refusal. *Janak v. State*, 826 S.W.2d 803 (Tex.App. — Texarkana 1992)

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Adjudication of DWI Charges: (continued)

Anti-Plea Bargaining Statute

(Yes/No):

No¹

Pre-Sentencing Investigation Law

(PSI)(Yes/No):

Yes (Limited) Before the court can assign a drunk driving offender to community supervision (probation), the offender is required to submit to alcohol and drug evaluation.² Code of Criminal Procedure Article 42.12, §13

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

N/A

Administrative Licensing Action

(Susp/Rev):

N/A

Other:

N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

None

Administrative Licensing Action

(Susp/Rev):

I. Refusal-Persons ≥21 yrs old-Susp 90 dys/Persons <21 yrs old-Susp 120 dys An occupational license may be issued at any time based on essential need. II. Refusal where there has been either a prior refusal or a previous admin. per se action w/n 5 yrs-Persons ≥21 yrs old-Susp 180 dys/Persons <21 yrs old-Susp 240 dys III. Refusal (any person) where there has been either a previous intoxicated/under the influence of alcohol/controlled substance offense w/n 5 yrs-1 yr IV. 90 dys mand susp³ for any person if they have had either a prior refusal or a previous admin. per se licensing action w/n 5 yrs V. 180 dys mand susp³ for any person if they have had (1) a previous intoxicated/under the influence of alcohol/controlled substance offense, (2) a prior driving while intoxicated assault offense or (3) a prior driving while intoxicated manslaughter offense w/n 5 yrs² Tran. Code §§521.251, 724.035 & 724.045

Other:

If a driver is acquitted of a DWI offense associated with a license suspension based on a refusal, such suspension must either not be imposed or be rescinded. Tran. Code §724.048(c)

¹For persons ≥21 yrs old, there is no "deferred adjudication" for a drunk driving offense. Code of Criminal Procedure Art. 42.12, §5(d) For persons <21 yrs old, there is no "deferred adjudication" for a drunk driving offenses committed under the Penal Code and for a 3rd or sub offense of driving with any detectable amount of alcohol in the system. Family Code §53.03(g) Note: Under "deferred adjudication", a defendant is placed on probation and, after the probation period has been successfully completed, the charges against the defendant are dismissed.

²I. There is a general pre-sentence investigation law which has be codified as §9 of Art. 42.12 of the Code of Criminal Procedure. II. The law appears to allow a court defer the sentence of a drunk driving offender. As part of this deferral, the court may require an offender to submit to (1) diagnostic testing for alcohol/controlled substance/drug, (2) a psychosocial assessment or (3) alcohol/drug treatment. Art. 45.54(3)(f), (g) & (h) of the Code of Criminal Procedure III. See Treatment Alternative to Incarceration on p. 3-459.

³Even though the law specifically provides that a suspension based on a refusal cannot be "probated", an occupational license may be issued after the mandatory suspension period. Note: A court order granting an occupational license must also order the driver to submit to alcohol and drug counseling and rehabilitation. Tran. Code §§521.242, 521.251 & 724.045

Sanctions Following a Conviction for a DWI Offense:**Criminal Sanctions:****Imprisonment:**

Term (Day, Month, Years,
Etc.):

See Footnote No. 1 and Double Jeopardy below.

1st off (CI B Misd)-72 hrs to 180 dys; 2nd off (w/n 10 yrs) (CI A Misd)-15 dys to 1 yr; sub off (w/n 10 yrs) (3rd Degree Felony)-2 to 10 yrs Penal Code §§12.21, 12.22, 12.34, 49.04 & 49.09 Note: Penal Code §12.42 provides for increased imprisonment sanctions for repeat felony offenses.

Persons Under 21 Years Old (BAC > 0.00)-1st off-None; sub off-Not more than 180 dys Alcoholic Beverage Code §106.041(b) & (c)

Mandatory Minimum Term:

1st off (CI B Misd)-None² (It appears the court may allow a DWI offender to participate in community supervision without first having to complete a mand period of confinement.); 2nd off (w/n 10 yrs) (CI A Misd)-15 dys (not less than 3 dys of continuous confinement if community supervision is granted); sub off (w/n 10 yrs) (3rd Degree Felony)-2 yrs (not less than 10 dys of continuous confinement if community supervision is granted) Penal Code §49.04(b) & Code of Criminal Procedure Art. 42.12, §13 Note: Under Penal Code §12.44, a 3rd Degree Felony offender may receive the imprisonment sanction of a CI A Misd. Penal Code §§49.04 & 49.09 and Code of Criminal Procedure Art. 42.12, §13(a) See Treatment Alternative to Incarceration on p. 3-459 and Alcohol Treatment on p. 3-461.

Important: See Miscellaneous Sanctions on p. 3-461.

Persons Under 21 Years Old (BAC > 0.00)-1st off-N/A; sub off-None Alcoholic Beverage Code §106.041(b) & (c)

Fine:

Amount (\$ Range):

1st off (CI B Misd)-Not more than \$2,000; 2nd off (w/n 10 yrs) (CI A Misd)-Not more than \$4,000; sub offs (w/n 10 yrs) (3rd Degree Felony)-Not more than \$10,000 Penal Code §§12.21, 12.22, 12.34, 49.04 & 49.09

Persons Under 21 Years Old (BAC > 0.00)-1st off (CI C Misd)-Not more than \$500; sub off-\$500 to \$2,000 Alcoholic Beverage Code §106.041(b) & (c) and Penal Code §12.23

Mandatory Min. Fine (\$):

None

¹A person commits Intoxication Assault, a 3rd degree felony, if they cause "serious bodily injury" while DWI. The sanctions for this offense are incarceration from 2 to 10 yrs and/or a fine of not more than \$10,000. If community supervision is granted, the defendant must serve 30 dys of continuous confinement. Penal Code §§12.34 & 49.07 and Code of Criminal Procedure Art. 42.12, §13(a) There is no deferred adjudication for this offense. Code of Criminal Procedure Art. 42.12, §5(d) Note: In cases involving intoxicated assault, an offender can be found to have used a "deadly weapon" (a motor vehicle) in the offense. See the definition of a "deadly weapon" in Penal Code §1.07(a)(17)(B). Such a finding may impact on the types of sanctions that can be imposed (e.g., community service cannot be imposed Code of Civil Procedure Art. 42.12, §§3 & 3g) and on the duration of an offender's incarceration period before they are eligible for parole. *Rachuig v. State*, 972 S.W.2d 170 (Tex.App. — Waco 1998)

²If a 1st offender had in their immediate possession an open container of an alcoholic beverage, the minimum term of confinement is 6 dys. Penal Code §49.04(c)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Tharp v. State*, 935 S.W.2d 157 (Tex.Cr.App. 1996)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other Penalties:

Community Service:

Yes A person convicted of a criminal offense may be required to perform community service according to the schedule listed below. This sanction is in addition to and not in lieu of other sanctions. 2nd CI Felony-240 to 800 hrs; 3rd CI Felony-160 to 600 hrs; CI A Misd-80 to 200 hrs; and, CI B Misd-24 to 100 hrs Code of Criminal Procedure Art. 42.12, §16 & *Mills v. State*, 799 S.W.2d 447 (Tex. App. - Corpus Christi 1990)

Persons Under 21 Years Old (BAC > 0.00)-1st off (CI C Misd)-8 to 12 hrs; sub off-20 to 40 hrs Alcoholic Beverage Code §106.041(d)

Restituaion

(eg Victim's Fund)

Yes I. As a condition of community supervision Code of Criminal Procedure Art. 42.12, §11(14) II. A victim of a DWI offense can receive payments from a State victims' compensation fund via the State attorney general. Code of Criminal Procedure Art. 56.31 et seq.

Other:

Ignition Interlock (community supervision). For a 1st DWI¹ off conviction, in situations where a defendant has been placed on community supervision, the court may require that the offender install an "ignition interlock" device on their vehicle. For 2nd and sub DWI¹ off convictions (w/n 10 yrs), in situations where a defendant has been placed on community supervision, the court must require that the offender install an "ignition interlock" device on their vehicle.² Code of Criminal Procedure Art. 42.12, §13(i)

Ignition Interlock (occupational license based on essential need). When applying for an occupational license, the court may require a 1st offender^{1&3} and must require a sub offender (w/n 10 yrs)^{1&3} to only operate vehicles that are equipped with ignition interlock devices.² Tran. Code §521.246

Ignition Interlock (via magistrate after release). Unless the interests of justice indicate otherwise, a magistrate shall require an offender,⁴ after their release from confinement, to only operate vehicles that are equipped with ignition interlock devices. Code of Criminal Procedure Art. 17.441.

¹Also includes the offenses of Intoxicated Assault and Intoxication Manslaughter.

²An offender may obtain an exemption from using an ignition interlock device if they are required to operate a motor vehicle as part of their employment and if the vehicle to be used is owned by their employer. However, such exemption does not apply in the situations where the offender is self employed and owns the vehicle. Code of Criminal Procedure Art. 42.12, §13(i). Tran. Code §521.246 & Civil Statutes Art. 6687b, §23A(f). See Footnote No. 2 above for information concerning the repeal of and amendments made to Civil Statutes Art. 6687b, §23A(f).

³Offenders, who do not have a prior record of either an implied consent refusal, an admin. per se violation or DWI conviction, can receive an occupational license without delay. However, an offender, who has had a previous refusal or admin. per se violation (w/n 5 yrs), must wait 90 dys to obtain such a license. Likewise, an offender, who has had a prior DWI offense conviction (w/n 5 yrs), must wait 180 day before obtaining occupational driving privileges. The information in this footnote is contained in amended §23A(f) of Civil Statute Art. 6687b and is located after Tran. Code §521.246. Note: Tran. Code §521.246 replaced §23A(f) of Civil Statutes Art. 6687b. §§1 & 24(a) of Ch. 165, Laws of 1995. However, §76 of Ch. 318, Laws of 1995, amended §23A(f) of this article following its repeal by Ch. 165. Nevertheless, via Gov't. Code §311.03(c), the amended provision remains valid.

⁴A person who has been convicted of either Intoxicated Assault, Intoxicated Manslaughter or a subsequent DWI offense.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)

Rehabilitation Fee. A person convicted of a DWI offense must pay a \$25 fee which is deposited into a comprehensive rehabilitation fund. Code of Criminal Procedure §§102.081(b), 102.084 & 102.085 and Human Resources Code §111.060

EMS Cost. A defendant who causes an accident as a result of a DWI offense, is liable up to \$1,000 for the cost of any emergency response that was necessitated by such accident. Code of Criminal Procedure Art. 102.017(c)

Treatment Alternative to Incarceration. In counties with a population ≥550,000, an alcohol/drug treatment program must be established as an alternative to jail. Screening and assessment must be a part of this program when a person has been arrested for an offense in which use or possession of alcohol/drugs is an element. Health and Safety Code §461.017

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See the Special Note below and Double Jeopardy on p. 3-457.
≥0.08 BAC/BrAC/UrAC¹ I. Admin Per Se Action-Susp 60 dys²
An occupational license may be issued at any time based on essential need. II. Admin Per Se Action where there has been either a previous admin per se action or a refusal to submit to a chemical test w/n 5 yrs-Susp 120 dys² (90 dys mand) III. Admin Per Se Action where there has been a previous DWI offense conviction w/n 5 yrs-Susp 180 dys² (mand) After the mand susp period, an occupational license may be issued based on essential need. Note: A court order granting an occupational license must order the driver to submit to alcohol and drug counseling and rehabilitation. Tran. Code §§521.241, 521.242, 521.245, 521.251, 524.011, 524.012 & 524.022(a)

Persons Under 21 Years Old-BAC >0.00³-1st Admin. Per Se Action-Susp 60 dys (30 dys mand); 2nd Admin. Per Se Action-Susp 120 dys (90 dys mand); Sub Admin. Per Se Action-Susp 180 dys (mand) A person is eligible for an occupational license after the mandatory suspension period. Note: A prior drunk driving offense conviction is considered a prior action for license sanctions enhancement purposes. Tran. Code §§524.001, 524.012 and 524.022(b) & (c)

Other:

¹See the definition of "alcohol concentration" in Penal Code §49.01. Tran. Code §524.001(1)

²The law specifically provides that a suspension based on an admin per se action cannot be "probated". Tran. Code §524.021(b)

³The law provides that license suspension is based on operating a motor vehicle with any detectable amount of alcohol in the system. Tran. Code §524.012(b)(2)

Special Note: I. An admin. per se suspension is either not imposed or recinded if a driver is acquitted of the drunk driving offense (including offenses committed by persons <21 yrs old who are driving with any detectable amount of alcohol in their system) associated with such suspension. Tran. Code §524.015(b)

II. An admin. per se suspension is credited towards a suspensions imposed for a DWI offense conviction. Tran. Code §524.023

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Term of License Withdrawal

(Days, Months, Years, etc.):

Susp Tran. Code §521.344

I. The following suspensions must be based on a conviction that resulted from the introduction of alcohol into the body (includes Intoxicated Assault). 1st off-90 to 1 yr (365 dys)^{1&2}; subsequent off-180 dys to 2 yrs^{1&2} Tran. Code §521.344(a) & Code of Criminal Procedure Art. 42.12, §13(k) II. DWI offense based on driving while intoxicated by a "controlled substance"-Susp 180 dys Tran. Code §§521.371 & 521.372 A person is eligible for driving privileges based on an essential need to drive. Tran. Code §§521.241 et seq. & 521.377(b)

Mandatory Minimum Term of Withdrawal:

Special Note: I. Offenders may be issued an occupational license based on "essential need". Important. See Ignition Interlock on p. 3-458. However, a person cannot be issued such a license if they have had such a privilege w/n the past 10 yrs for a prior DWI offense conviction.² Tran. Code §§521.242(b) & (c) and 521.244 **Comment:** Although Tran. Code §521.242(a) prohibits the issuance of occupation licenses to DWI offenders, Tran. Code §521.242(b) nevertheless provides that such licenses may be issued to anyone who has had their license suspended under Ch. 521 (e.g., suspensions for drunk driving offenses). II. 1st offenders, who are over 21 years old and who are placed on probation, are not subject to license suspension if they attend and alcohol education program. Tran. Code §521.344(d) and Code of Criminal Procedure §13(h) & (j)

¹**DWI Offenders Under 21 Years Old.** License suspension for 1 yr. Except as noted, the licensing agency must suspend the offender's license regardless of whether the offender has been placed on probation and ordered to complete an alcohol education program. A person's license is not subject to suspension if they are placed under community supervision and are required to only operate motor vehicles that are equipped with ignition interlock devices. Tran. Code §521.342 An occupational license is available. Tran. Code §§521.241 et seq., 521.342(c) and the provision following §521.342 (Note: Tran. Code §521.342 replaced §24(a-1) of Civil Statutes Art. 6687b. §§1 & 24(a) of Ch. 165, Laws of 1995 However, §§77 and 79 of Ch. 318, Laws of 1995, amended §24(a-1) of this article following its repeal by Ch. 165. Nevertheless, via Gov't. Code §311.03(c), the amended provision remains valid.) Under separate provisions of law, a 1st offender (and possibly a subsequent one), who is placed on community supervision, must have their license suspended for 90 dys and can only operate motor vehicles that are equipped with ignition interlock devices. Code of Criminal Procedure Art. 42.12, §13(m) **Note:** There are two versions of this subsection. The reference is to the second version. **DWI Offenders Under 17 Years Old.** A suspension until the person reaches 19 or for 365 dys whichever is the longer suspension period. An occupational license is available if the person is eligible for a provisional license. Tran. Code §521.241 et seq. and Family Code §§51.02(2) and 54.042(a)(1), (c) & (d)

²I. For all DWI offenders a license cannot be suspended if a jury recommends community supervision and against such suspension. Tran. Code §521.344(d) & Code of Criminal Procedure Art. 42.12, §§4 & 13(g) **Comment:** As written, Tran. Code §521.344(d) and Code of Criminal Procedure Art. 42.12, §4 could be construed to also include 2nd and subsequent DWI offenders. II. An offender's license cannot be suspended if they are required to attend an alcohol education program as part of probation. However, if a person has been previously convicted of a DWI offense regardless of the time period between offenses and they have previously attended an alcohol education program as part of probation, their license must be suspended. Tran. Code §521.344(d), Code of Criminal Procedure Art. 42.12, §13(k), & *Texas Dept. of Public Safety v. Duarte*, 809 S.W.2d 611 (Tex.App. — Corpus Christi 1991)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Rehabilitation:

Alcohol Education:

Yes For any DWI offense, including Intoxication Assault and Intoxication Manslaughter, an offender is required, as a condition of community supervision, to complete an alcohol education program. This requirement may be waived upon a showing of good cause by the offender. Code of Criminal Procedure Art. 42.12, §13(h) & (j)

Persons Under 21 Years Old (BAC->0.00)-1st off-An offender **must** attend an alcohol awareness course; sub off-An offender **may** be required to attend an alcohol awareness course. Alcoholic Beverage Code §§106.041(d) & 106.115

Alcohol Treatment:

Yes Felony offenders (3rd or sub. DWI offenses, Intoxication Assault and Intoxication Manslaughter) may be confined in a substance abuse treatment facility in lieu of imprisonment from 6 mos to 1 yr. Code of Criminal Procedure Art. 42.12, §14

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Forfeiture (Does Not Appear to be Mandatory) A vehicle owned and operated by an offender during a drunk driving offense may be subject to forfeiture by the State following three or more DWI convictions. Tran. Code §704.001

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

Work Release. For misdemeanor and felony offenses (where imprisonment is in a county jail), the court may allow an offender to participate in a work release program. Code of Criminal Procedure Art. 42.034.

Intermittent Sentence. A sentence may be served intermittently including confinement as a condition of community supervision. Code of Criminal Procedure Art. 42.033

Electronic Monitoring. An offender may serve a county jail sentence via electronic monitored "house arrest". Code of Criminal Procedure Art. 42.035

Incarceration Costs. A person, who has been convicted of a misdemeanor offense, may be required to pay the cost, at a rate of \$25 per day, for any incarceration time that they serve in a county jail. Indigent defendants may not be required to pay this cost. Code of Criminal Procedure Art. 42.038(a) & (c)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥ 0.04 (Standards: Grams of alc per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol concentrations or the presence of a controlled substance or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Tran. Code §§522.003(1), (2), (5), (9) & (23), 522.081, 522.082, 522.085, 522.086, 522.101 and 522.102

TEXAS

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Length of Term of

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

Other:

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense*:

Sanction:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term

of Imprisonment:

Yes¹ **Intoxication Manslaughter²** (DWI related death) 2nd Degree Felony Penal Code §49.08

See Community Service for DWI offenders on p. 3-458.

2nd Degree Felony-2 to 20 yrs Penal Code §12.33

120 dys if community supervision is granted. Art. 42.12, §13(b) Code of Criminal Procedure

2nd Degree Felony-Not more than \$10,000 Penal Code §12.33
None

Susp Tran. Code §521.344(b)

180 dys to 2 yrs Tran. Code §521.344(b) For persons under 21 years old-susp 1 yr (appears to be mand) Tran. Code §521.342(b)

None An offender may be issued an occupational (restricted) lic. with an ignition interlock requirement based on "essential need".³ Tran. Code §521.241 et seq. See Ignition Interlock on p. 3-458.
None

See the Special Note below.

1st off-not less than 72 hrs nor more than 6 mos.; 2nd & sub. off (Class A Misd)-not more than 1 yr Tran. Code §521.457 & Penal Code §12.21

None

¹A person, who has killed another while driving a vehicle in a reckless or negligent manner while intoxicated, may also be convicted of involuntary manslaughter with the use of "deadly weapon". Penal Code §1.07(a)(17)(B), *Ray v. State*, 880 S.W.2d 795 (Tex.App. — Houston [1st Dist.] 1994), *Martinez v. State*, 883 S.W.2d 771 (Tex.App. — Fort Worth 1994), *Tyra v. State*, 897 S.W.2d 796 (Tex.Cr.App. 1995), & *Hall v. State*, 935 S.W.2d 852 (Tex.App. — San Antonio 1996)

²There is no deferred adjudication for this offense. Code of Criminal Procedure Art. 42.12, §5(d)

³**Offenders Under 21 Years Old.** The court may place these offenders on community supervision. If the court takes this action, it must suspend their driving privileges for 90 dys and require that such offenders only operate motor vehicles that are equipped with ignition interlock devices. Code of Criminal Procedure Art. 42.12, §13(m)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: There are two provisions that make it an offense to operate a CMV during either a CDL disqualification or a CDL out-of-service order. Under Tran. Code §522.011, such offense is a CI C misd with a fine, per Penal Code §12.23, of not more than \$500. Under Tran. Code §522.071, such an offense is considered the same as driving while suspended or revoked per Tran. Code §521.457.

Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range):	<u>1st off-not less than \$100 nor more than \$500; 2nd and sub. off-not more than \$4,000</u> Tran. Code §521.457 & Penal Code §12.21 See Incarceration Costs on p. 3-461.
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp Tran. Code §521.294(b)(1) & (c)
Length of Term of License Withdrawal Action:	The regular suspension period is the lesser of either an additional period that is equal to the original period or for 1 yr.
Mandatory Term of License Withdrawal Action:	None A restricted license may be issued based on essential need. Tran. Code §521.241 et seq.
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes Tran. Code §521.294(h)
Grounds for Being Declared an Habitual Offender:	"Any person with 4 or more convictions arising out of different transactions in a consecutive period of 12 mos or 7 or more convictions arising out of different transactions w/in a period of 24 mos...." Tran. Code §521.294(h)
Term of License Rev While Under Habitual Offender Status:	Susp for not more than 1 yr Tran. Code §521.294(c)
Offender Status:	An occasional license may be issued on a showing of "essential need". Tran. Code §521.241 et seq.
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	None
Mandatory Minimum Term of Imprisonment:	
Fine (\$ Range):	
Mandatory Minimum Fine (\$):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):

Limited

BAC Chemical Test Is Given to the the Following Persons:

Driver:

Discretionary¹

Vehicle Passengers:

No

Pedestrian:

No

¹A justice of the peace may order that a blood specimen be taken from a deceased person if there is evidence to indicated that such person was driving while intoxicated. Code of Criminal Procedure Art. 49.10(j)

TEXAS

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1986) Alcoholic Beverage Code §§106.01, 106.02 & 106.03¹

Minimum Age (Years) Possession:

21 Alc. Bev. Code §§106.01 & 106.05 Exemptions for employment or while in the presence of a parent or guardian.

Minimum Age (Years) Consumption:

21 Alc. Bev. Code §§106.01 & 106.04 Exemption for a minor's consumption of alcoholic beverages when they are in the "visible presence" of a parent or guardian.

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes^{2&3} Alcoholic Beverage Code §2.01 et seq. Under §2.02(b)(1), in order for a licensee to be liable, it must be proven that the patron was "obviously intoxicated to the extent that he presented a clear danger to himself and others" at the time they were sold/served alcoholic beverages. Also, under §2.03, these code provisions provide the exclusive remedy in situations where the patron is 18 years old or older.

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

Yes Note: The following case law may have been abrogated in part by the above provisions of the Alcoholic Beverage Code. *El Chico Corp. v. Poole*, 732 S.W.2d 306 (Tex. 1987)

Dram Shop Actions-Social Hosts:

Yes-Limited *Graff v. Beard*, 858 S.W.2d 918 (Tex. — San Antonio 1995)⁴, *Smith v. Merritt*, 940 S.W.2d 602 (Tex. 1997)⁵,

¹Selling Alcoholic Beverages to a minor with criminal negligence.

²Because of the principle of sovereign immunity, Indian tribes are not subject to civil liability under the State's dram shop law. *Holguin v. Ysleta Del Sur Pueblo*, 954 S.W.2d 843 (Tex. App. — El Paso 1997)

³I. Under §106.14 of the Alcoholic Beverage Code, actions of employees in serving alcoholic beverages to either minors or intoxicated persons are not attributable to employers if (1) the employer has required its employees to take alcoholic beverage seller training, (2) the employees have completed this training and (3) the employer has not encouraged employees to sell alcoholic beverages to either minors or intoxicated persons. See "The Safe Harbor Defense" in *Perseus, Inc. v. Canody*, 995 S.W.2d 202 (Tex. App. — San Antonio 1999). II. A licensee may not be liable for the damages resulting from the death of person caused by the criminal acts of an intoxicated patron. Such act may be a superseding cause which negates any dram shop cause of action. *Phan Son Vau v. Pena*, 990 S.W.2d 751 (Tex. 1999)

⁴The *Graff* case concerned a situation where a social host served alcoholic beverages directly to a guest (an adult) who became intoxicated. The social host was held not liable for the injuries caused by the intoxicated guest to third parties. See also *Walker v. Children's Services, Inc.*, 751 S.W.2d 717 (Tex.App. — Amarillo 1988), where no social host liability was found in a situation where an intoxicated adult guest was injured in a vehicle accident after consuming alcoholic beverages at a party. However, in *Ryan*, a social host was found liable for the death of a minor guest (a person <21 yrs old per Alcoholic Beverage Code §106.01) who had consumed alcoholic beverages at a party given by the host.

⁵In the *Smith* case, the court held that a social host owed no common law duty of care to avoid serving alcoholic beverages to a minor and thus there was no liability under general common law for injuries caused by such a minor. Likewise, the court held that there was no negligence per se cause of action against a social host for damages resulting from a violation of the alcoholic beverage control law which prohibits the service of alcoholic beverages to persons <21 yrs old. Note: This decision by the Texas Supreme Court reversed, in part, one by the Texas Court of Appeals. *Smith v. Merritt*, 929 S.W.2d 456 (Tex.App. — Tyler 1995)

Other State Laws Related To Alcohol Use: (continued)

Other:

& *Kovar v. Krampitz*, 941 S.W.2d 249 (Tex.App. — Houston [14 Dist.] 1996)¹

Under the Dram Shop Law, a licensee may be held liable for the injuries sustained by an intoxicated patron. *Smith v. Sewell*, 858 S.W.2d 350 (Tex. 1993)

Under common law negligence, an employer may be liable for the injuries sustained by an intoxicated employee where such intoxication occurred at an "after work hours" event sponsored by the employer. The extent of the employer's control over the employee will determine whether there is a duty of care to protect the employee from harm. *Spruiell v. Schlumberger Ltd.*, 809 S.W.2d 935 (Tex.App. — Texarkana 1991) (possible liability), & *Whitney Corp. v. George Distributors*, 950 S.W.2d 82 (Tex.App. — Amarillo 1997) (no liability)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd Alcoholic Beverage Code §101.63

1st off-Not more than 1 yr; 2nd off-Not more than 1 yr
Alcoholic Beverage Code §§101.63(b) & 101.63(c)

1st off-Not less than \$100 nor more than \$500; Subsequent off-Not less than \$500 nor more than \$1,000 See Incarceration Costs on p. 3-461.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes²

Suspended for not more than 60 dys, revoked or cancelled
Alcoholic Beverage Code §§11.61, 32.17 and 61.71

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd³

Not more than 1 yr⁴ Alcoholic Beverage Code §§106.01 & 106.03

1st off-Not less than \$100 nor more than \$500; Subsequent offense-\$500 to \$1,000 Alcoholic Beverage Code §106.03 See Incarceration Costs on p. 3-461.

¹In *Kovar*, the court held that, since a social host did not provide alcoholic beverages to a minor guest, they were not liable for the minor's death resulting from intoxication. The minor was killed in an automobile accident while driving in an intoxicated condition.

²In lieu of a suspension, the licensee may be allowed to pay a civil fine of not less than \$150 for each day of the proposed suspension.

³Alcoholic Beverage Code §11.621 The sale to a minor must be with criminal negligence. §106.03(a) of the Alcoholic Beverage Code

⁴Applies to both a 1st and sub off.

TEXAS

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes¹ Alcoholic Beverage Code §§106.13 & 61.71(a)(5)

1st off-suspended for not more than **60 dys** or cancelled; 2nd
off-suspended for not more than **3 mos** or cancelled; 3rd off
(within 36 mos)-suspended/cancelled for not more than **12 mos**

Anti-Happy Hour Laws/Regulations:

Yes Rule 060.09.04.001 (regulation)

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

No See Footnote No. 2 on p. 3-457.

Anti-Consumption Law (Yes/No):

Yes Applies only to drivers Penal Code §49.03

¹In lieu of a suspension, the licensee may be allowed to pay a civil fine of not less than \$150 for each day of the proposed suspension.

STATE:

General Reference:

UTAH

Utah Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC):

Types of Drugs/Drugs and Alcohol:

Other:

Under the influence of alcohol §41-6-44(2)(a)(ii)

≥0.08^{1&2} §41-6-44(2)(a)(i)

Any Measurable Controlled Substance in the Body³ §41-6-44.6

None

Under the influence of (1) Any Drug or (2) a Combination of Any Drug and Alcohol §41-6-44(2)(a)(ii)

For Commercial Motor Vehicle Operators, see p. 3-471.

See No Alcohol Condition License under Miscellaneous Sanctions on p. 3-472.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

No

Yes §41-6-44.10(2)

Yes §41-6-44.10(1)

Yes (Criminal & Civil Cases) §41-6-44.10(8)

It may be possible to obtain a blood sample without the driver's consent. Both the DWI law's evidence admissibility provisions and the automobile homicide law provide that "[e]vidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by Rules of Evidence or the constitution." §§41-6-44.5(b) & 76-5-207(6)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:

Urine:

Other:

Yes §41-6-44.10

Yes §41-6-44.10

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea Bargaining Statute (Yes/No):

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No Note: A Magistrate may not grant diversion in a DWI case. §77-2-9

No Note: If the defendant pleads guilty or *nolo contendere* to reckless driving as a substitute for a DWI charge, the prosecution must state for the record whether alcohol or drugs were related to the pleaded off. §41-6-44(10)

Yes Alcohol assessment is required. §§41-6-44(4) & (5) and 53-3-231(10)(a)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

²Alcohol concentration is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §41-6-44(2)(c)

³Unless the driver was using the controlled substance via a valid prescription.

UTAH

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Rev 1 yr ¹ (Mand) If the driver has had a previous refusal, admin. per se action or DWI offense conviction which occurred after 7/1/93-Rev 18 mos ² (mand) §41-6-44.10(2)(e), (f) & (h)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 2 and Double Jeopardy below.
Imprisonment:	See Serious Bodily Injury DWI Offenses on p. 3-472.
Term (Day, Month, Years, (etc.):	<u>1st and 2nd off</u> (w/n 6 yrs)-Class B misd-not more than 6 mos; <u>3rd or sub off</u> (w/n 6 yrs)-3rd Degree felony (See the Special Note below.)-not more than 5 yrs §41-6-44(3), (6) & (7) <u>1st or 2nd DWI off</u> -where there (1) is an injury related to negligent action or (2) is a passenger under 16 yrs old (child endangerment)-Class A misd-not more than 1 yr §§41-6-44, 76-3-203(3) & 76-3-204 <u>Any Measurable Controlled Substance in the Body</u> -Class B misd-not more than 6 mos §§41-6-44.6 & 76-3-204 See the Comment below.

¹This sanction also applies to persons under 21 years old who refuse to submit to a chemical test to determine if they have violated §53-3-231(1). Sec. 53-3-231 provides for administrative (licensing) actions against such persons who drive a vehicle with any amount of alcohol in their body.

²A vehicle homicide offense is to be considered a prior DWI offense. §41-6-44(1)(a)(iv)

Special Note: In 3rd Degree Felony situations, if the court suspends the execution of sentence, it (1) must impose a fine of not less than \$1,500, (2) require a jail sentence of not less than 1,000 hrs and (3) must order the person to participate in an alcohol or drug dependency program which provides for intensive care, inpatient treatment and long-term care. §41-6-66(6)(c) As an additional sanction, the court may require a person to participate in the electronic home monitoring program which could include an alcohol use restriction. §41-6-66(6)(d) & (13)(d)(ii)

Comment: The Utah Code establishes two distinct drunk driving offenses. The standard categories of drunk driving offenses are contained in §41-6-44. However, the offense of driving with any measurable controlled substance in the body is contained in §41-6-44.6. A conviction under §41-6-44.6 is considered a prior offense for sanction enhancement purposes following a conviction under §41-6-44. However, there is no reciprocal provision in §41-6-44.6 concerning the use of convictions under §41-6-44 as prior offenses for sanction enhancement purposes.

Double Jeopardy: Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Arbon*, 909 P.2d 1270 (UtahApp. 1996), & *City of Ogem v. Crandall*, 760 P.2d 920 (UtahApp. 1988)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term:	<u>1st off-48 cons hrs¹; 2nd off (w/n 6 yrs)-240 cons hrs¹; 3rd or sub off (w/n 6 yrs)-See the Special Note on p. 3-468. Important. See Community Service and Electronic Home Monitoring below.</u> <u>Any Measurable Controlled Substance in the Body-None</u>
Fine:	
Amount (\$ Range):	<u>1st and 2nd off (w/n 6 yrs) off-Class B misd-not more than \$1,000; 3rd or sub off (w/n 6 yrs)-3rd Degree felony (See the Special Note on p. 3-468.)-not more than \$5,000 §76-3-301 See Footnote Nos. 3 & 4.</u> <u>A 1st or 2nd DWI off-where there (1) is an injury related to negligent action or (2) is a passenger under 16 yrs old (child endangerment)-Class A misd-not more than \$2,500² §§41-6-44 & 76-3-301</u> <u>Any Measurable Controlled Substance in the Body-Class B misd-not more than \$1,000 §§41-6-44.6 & 76-3-301</u>
Mandatory Min. Fine (\$):	<u>1st off-\$700¹; 2nd off (w/n 6 yrs)-\$800¹; 3rd or sub off (w/n 6 yrs)-See the Special Note on p. 3-468. See Footnote Nos. 1 & 3</u> <u>Any Measurable Controlled Substance in the Body-None</u>
Other Penalties:	
Community Service:	<u>1st off-Not less than 24 hrs in lieu of imprisonment (24 hrs mandatory)¹; 2nd off (w/n 6 yrs)-Not less than 80 hrs in lieu of imprisonment (80 hrs are mandatory)¹; 3rd or sub off (w/n 6 yrs)-None §41-6-44(4), (5) & (6)</u>
Restitution (eg Victim's Fund):	<u>Yes Either via a Victims' Compensation Fund (§63-63-1 et. seq.) or via direct payment by the defendant to the victim (§76-3-201)</u>
Other:	<u>Ignition Interlock. In addition to any other sanctions that may be imposed for a DWI offense, an offender may be required, as a condition of probation, only to operate motor vehicles that are equipped with ignition interlock devices. This requirement is mandatory if the offender is under 21 yrs old. §41-6-44.7</u>

¹These minimum mand sanctions apply also to DWI offenses related to injury and child endangerment.

²The provisions of the drunk driving law may have limited this fine to \$1,000. §41-6-44

³Under § 62A-8-302, the court is required to impose, in addition to the above fines, a special fine of between \$50 to \$200 for 1st offenders and \$1,000 for 2nd and subsequent offenders; this special fine is for the purpose of funding alcohol education and treatment programs under §62A-8-303. In addition, under §62A-8-302(2), the Court is also required to impose other assessments that fully compensate agencies for the costs of treating DWI defendants. Defendants are also required to pay a fee of \$100 into a Crime Victims' Reparations Trust Fund. §41-25-1

⁴Under §63-63a-1, a 25% surcharge is levied on all fines. The funds collected from this surcharge are used to fund the Crime Victim Reparation Trust Fund. §63-63a-4(3) In addition, a mand "traffic mitigation surcharge" of \$10 is imposed on all offenders. §63-63b-101

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other: (continued)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Other:

Post DWI Conviction Licensing Action:
Type of Licensing Action

(Susp/Rev):

Electronic Home Monitoring. As an alternative to either imprisonment or community service for either a 1st or subsequent offense, a person may be allowed to participate in a home confinement electronic monitoring program. The court may impose a restriction on the consumption of alcoholic beverages by the offender as part of this program. §41-6-44(4)(b)(ii), (5)(b)(ii), 6(b)(ii)(A)(ii) & (13)(d)(ii)

See Double Jeopardy on p. 3-468.

Yes! I. (1) BAC/BrAC ≥ 0.08 (For standards, see Footnote No. 2 on p. 3-467.), (2) **Any Measurable Amount of a Controlled Substance in the Body** or (3) Based on reasonable grounds that a person has violated the DWI law (§41-6-44) (e.g., driving while under the influence of alcohol or drugs) 1st admin. action-Susp for 90 dys; 2nd and subsequent admin. actions-Susp for 1 yr Note: These license susp appear to be mandatory. §§53-3-222 & 53-3-223

II. Admin. Actions-Persons Under 21 Years Old. A person under 21 years old, who operates a vehicle with **any measurable or detectable amount** of alcohol in their body, is subject to the following admin. licensing actions. 1st violation-"Denial"-90 dys; 2nd or sub. violation (w/n 3 yrs)-susp-1 yr These denial or susp actions appear to be mand. §53-3-231

III. For the admin. per se actions in I and II above, a person's license cannot be reinstated until they have completed any required alcohol or drug education or treatment program. §§41-6-44(8)(b) & 53-3-231(11)(b)(i) See Footnote No. 1 on p. 3-471.

Under §53-3-221(1)(a) & (8)(a), a person's license may be susp for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., 2nd or sub. DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

See the Special Note below.

See **Serious Bodily Injury DWI Offenses** under Miscellaneous Sanctions on p. 3-472.

1st off (for either injury or non-injury related offs)-Susp; subsequent DWI off (w/n 6 yrs) (for either injury or non-injury related offs)-Rev §§41-6-44(11), 53-3-220 and 53-3-221

Any Measurable Controlled Substance in the Body-1st off-Susp; subsequent DWI off (w/n 6 yrs)-Rev §41-6-44.6(6)

¹The admin. per se law appears to also cover situations where a person was operating a motor vehicle with a measurable amount of a controlled substance in their body.

Special Note: The licensing actions listed under Post DWI Conviction are those which are taken by the licensing agency. In addition to these actions, the court is authorized (but is not required) to either suspend or revoke a DWI offender's license for either 90 dys, 180 dys or 1 yr. The court may take this action in order to "remove from the highways those persons who have shown they are safety hazards." §41-6-44(12)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off (for either injury or non-injury related offs)-**180 dys**¹;
subsequent off² (w/n 6 yrs) (for either injury or non-injury related
offs)-**2 yrs**¹ §41-6-44(11)(a)
Any Measurable Controlled Substance in the Body-1st off-**90 dys**¹;
subsequent off² (w/n 6 yrs)-**1 yr**¹ §41-6-44.6(6)
Important. See Court Ordered Licensing Action under Miscellaneous
Sanctions on p. 3-472.

Mandatory Minimum Term of
Withdrawal:

1st off (for either injury or non-injury related offs)-**180 dys**¹;
subsequent off² (w/n 6 yrs) (either injury or non-injury related offs)-**2**
yrs¹ §41-6-44(11) No hardship license may be issued.
§53-3-220(4)(a)(ii)
Any Measurable Controlled Substance in the Body-1st off-**90 dys**;
subsequent off² (w/n 6 yrs)-**1 yr** §41-6-44.6(6) No hardship license
may be issued. §53-3-220(4)(a)(ii)

Other:
Rehabilitation:
Alcohol Education:

Yes³ For a 1st off, a judge must order a defendant to attend an alcohol
or drug education program. §41-6-44(4)

Alcohol Treatment:

Yes³ For a 1st or 2nd off, the court may order a defendant to obtain
alcohol or drug treatment. And, for a 3rd or sub. off, the court must
order a defendant to obtain alcohol or drug treatment.
§41-6-44(4)(c)(ii), (5), (6) & (7)

Special Note: An offender's driving privileges cannot be restored until
they have (1) satisfactorily completed alcohol or drug assessment,
education, treatment or rehabilitation program that has been ordered
and (2) paid any fines or fees, including restitution fees, and
rehabilitation costs. §§41-6-44(7)(b) & 41-6-44.6(7)

¹The suspension or revocation period for a drunk driving conviction under either §41-6-44 or §41-6-44.6 is reduced by any suspension
period received under the administrative per se law. §§41-6-44(11)(b) & 41-6-44.6(6)(c)

²See the Comment on p. 3-468.

³A person under 21 years old, who is subject to license denial or suspension because they have operated a motor vehicle with any
amount of alcohol in their body, must be referred to a local substance abuse authority by the driver licensing agency for alcohol
assessment (screening) and appropriate action. The person must complete any recommended action (e.g., alcohol education or
treatment) before their license can be reinstated. §53-3-231(11)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from
operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol
concentration ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per
67 milliliters of urine.), (2) are under the influence of either alcohol, drugs or a controlled substance or (3) refuse to submit to a
chemical test for an alcohol concentration. (Note: The CMV implied consent provision, §41-2-717(2), applies to the testing of both
alcohol and drugs; however, the disqualification provision, §41-2-715(1)(e), applies only to a refusal to submit to a test for an alcohol
concentration.) For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items,
the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol
in their system must be placed "out-of-service" for 24 hours. §§53-3-102(5)(a), 53-3-102(9), 53-3-402(2), 53-3-402(5), 53-3-402(10),
53-3-402(11), 53-3-402(14), 53-3-414, 53-3-417 & 53-3-418

UTAH

Sanctions Following a Conviction for a DWI Offense: (continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

None

A vehicle used in a drunk driving offense may be temporarily impounded if its owner is the offender. §41-6-44.30

Miscellaneous Sanctions
Not Included Elsewhere:

Assessments for Treatment. Following a conviction under either §§41-6-44 or 41-6-44.6, the court may assess a defendant an amount sufficient to "fully compensate agencies" for the cost of any treatment provided to such offender. §§62A-8-302 & 62A-8-303

Court Ordered Licensing Action. In order to remove from the highways those individuals who have shown they are safety hazards, the court may suspend or revoke a person's license for 90 dys, 180 dys or 1 yr following a conviction under §41-6-44. §41-6-44(12)

No Alcohol Condition License. A person, who has been convicted of any drunk driving offense (including a violation of the no alcohol driving condition) or who has refused to submit to chemical test under the implied consent law, can only have their license reinstated with a "no alcohol condition". This condition prohibits such a person from driving with **any amount of alcohol** in their body. For a 1st violation, this condition lasts for **2 yrs**. And, for a 2nd or subsequent violation, such condition lasts for **6 yrs**. A person, who violates this condition commits a C1 B Misd (jail for not more than **6 mos** and/or a fine of not more than **\$1,000**) and is subject to a mand license revocation of **1 yr**. §§53-3-220(1)(a)(xiv), 53-3-225(1)(a), 53-3-232, 76-3-204(2) & 76-3-301(1)(d)

Serious Bodily Injury DWI Offenses. A person commits a 3rd Degree felony (See the Special Note on p. 3-468.) if they cause serious bodily injury¹ related to a DWI offense. The sanctions for this offense are an imprisonment term of not more than **5 yrs** and/or a fine of not more than **\$5,000**. If the court suspends sentence and grants probation, it must, nevertheless, impose the following mandatory sanctions: Jail for 1,000 hrs; a fine of \$1,500; and, alcohol or drug treatment. §§41-6-44(3)(b) & (6)(c), 76-3-203(3) and 76-3-301(1)(b)
Note: The licensing sanctions for this offense are the same as for a regular DWI offense. §41-6-44(2), (3)(b) & (11)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Automobile Homicide Two Types "Simple" Negligent Homicide: Death caused by operating a motor vehicle in a negligent manner while DWI or with an alcohol concentration ≥ 0.08 -3rd degree felony §76-5-207(1) & (3)

¹A "serious bodily injury" is defined as a "bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death." §41-6-44(1)(b)

Other Criminal Actions Related to DWI: (continued)

Sanctions:	<u>"Criminal" Negligent Homicide:</u> Death caused by operating a motor vehicle in a criminally negligent manner (as defined by §76-2-103(4)) while DWI or with an alcohol concentration ≥ 0.08 -2nd degree felony §76-5-207(2) & (3)
Criminal Sanction:	
Imprisonment (Term):	<u>Simple Negligent Homicide</u> -Not more than 5 yrs §76-3-203(3) <u>Criminally Negligent Homicide</u> -1 to 15 yrs §76-3-203(2)
Mandatory Minimum Term:	None
Fine (\$ Range):	<u>Simple Negligent Homicide</u> -Not more than \$5,000 §76-3-301(1)(b) <u>Criminal Negligent Homicide</u> -Not more than \$10,000 §76-3-301(1)(a)
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and	
Type of Action:	<u>For both offs</u> -Rev §53-3-220(1)(a)
Length of Term of	
Licensing Withdrawal:	<u>For both offs</u> -1 yr §53-3-225
Mandatory Action--Minimum	
Length of License	
Withdrawal:	<u>For both offs</u> -1 yr No hardship license may be issued. §53-3-220(4)(a)(i)
Other:	None
<u>Driving While License Suspended or Revoked</u>	
<u>Where the Basis Was a DWI Offense:</u>	See Footnote No. 1.
Sanction:	
Criminal:	
Imprisonment (Term):	Cl B Misd not more than 6 mos §§41-6-44, 53-3-227(3)(a) & 76-3-204(2)
Mandatory Minimum Term	
of Imprisonment:	None
Fine (\$ Range):	Not more than \$1,000 §76-3-301(1)(d)
Mandatory Minimum Fine:	\$750 ²

¹It is a Cl B misd to operate CMV during a CDL disqualification which was based either (1) on driving such a vehicle while either under the influence of alcohol or drugs or with an alcohol concentration ≥ 0.04 or (2) on a refusal to submit to a chemical test. The sanctions for this offense are an imprisonment term of not more than 6 mos and/or a fine of not more than \$1,000 (with mand minimum of \$750). It is a Cl C misd to operate a CMV during either a CDL disqualification which is not DWI related or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 90 dys and/or a fine of not more than \$750. In addition, the following licensing actions apply. If the offender was driving a CMV while disqualified, the disqualification period is extend for a like period. If an offender was driving a CMV while under a CDL out-of-service order, they are subject to the following CDL disqualification periods: (1) For a 1st violation, 90 dys to 1 yr; (2) for a 2nd violation (w/n 10 yrs), 1 to 5 yrs; and, (3) for a 3rd or subsequent violation (w/n 10 yrs), 3 to 5 yrs. If the out-of-service order violation involved the either (1) the transportation of hazardous materials or (2) the operation of a vehicle designed to carry 16 or more passengers, the offender is subject to the following disqualification periods: (1) For a 1st violation, 180 dys to 2 yrs; and, (2) for a 2nd or subsequent violation (w/n 10 yrs), 3 to 5 yrs. The minimum periods of disqualification appear to be mandatory. §§53-1-116, 53-3-220(2)(a), 53-3-227(1), (2) & (3), 53-3-404, 53-3-414(7), 76-3-204(2) & (3) and 76-3-301(1)(d) & (e)

²The fine shall be in an amount not less than the maximum fine for a Class C misdemeanor. §§53-3-227(3)(b) & 76-3-301(1)(e)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

For driving while suspended - Susp; For driving while revoked - Rev
§53-3-220(2)

Length of Term of License

Withdrawal Action:

An additional like period of susp or rev §53-3-220(2)

Mandatory Term of License

Withdrawal Action:

The above licensing action is mandatory (i.e., no "limited" employment lic. can be issued) if the original rev/susp was for a DWI offense or for vehicle homicide. §53-3-220(4)(a)(iii)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §26-1-30(17)

BAC Chemical Test Is Given to the the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes (Adults only)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 §§32A-12-203(1) & 32A-12-209 (Year Eff: 1935)

Minimum Age (Years) Possession:

21 §32A-12-209

Minimum Age (Years) Consumption:

21 §32A-12-209

Special Note: Title 32A, the Alcoholic Beverage Control Act (Title 32A) is repealed July 1, 1998. §63-55-232(1)

Other State Laws Related to Alcohol Use: (continued)Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §32A-14-101(1)(A)¹ Damages are limited to \$500,000 per person and \$1,000,000 per occurrence. §32A-14-101(6)**Important.** The Dram Shop Law does not apply to either general food stores or other businesses that are licensed to sell "beer" at retail for off-premises consumption. §32A-14-101(10)

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Dram Shop Actions-Social Hosts:

No

Yes (Limited) under the Dram Shop Law² §32A-14-101(2)(B)¹ Also, possible under common law³

Other:

None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Class B Misd §§32A-4-106(10), 32A-12-104, 32A-12-204, 76-3-204(2), 76-3-301(1)(d) & 76-3-302(3)

Term of Imprisonment:

Not more than 6 mos

Fine (\$ Range):

Not more than \$1,000 for individuals and not more than \$5,000 for either corporations, associations, partnerships or governmental instrumentalities.

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes⁴ Suspension or Revocation §32A-1-119**Suspension:** Time period not specified in the statute **Revocation:** At least 3 yrs §32A-1-119(5)(e)**Administrative Fine.** An administrative fine of not more than \$25,000 may be imposed in lieu of or in addition to a license suspension. §32A-1-107(5)(a)

¹**Historical Note:** The Dram Shop Law was substantially revised in 1997. Chapter 94 of Session Laws of 1997

²A person (a social host) 21 years old or older, who serves alcoholic beverages to an underage person (i.e. a person under 21 years old) to the extent that such underage person becomes intoxicated, may be liable for any injuries caused by such young person. §32A-14-101(2)(B)

³**Comment:** A social host may be liable to a third party, who has been injured by an intoxicated guest, if it can be shown that a special relationship existed that required the social host to protect such third party from injury. This relationship may be difficult to establish especially in cases where the guest is an adult. E.g., consider the following factual situation. A 19 year old, a legal adult, was left alone at his parents home with instructions not to consume alcoholic beverages but did so nevertheless and became intoxicated and injured another minor. The Utah Court of Appeals held that the parents were not liable for the injuries sustained by the third party minor because the parents could not be accountable for the actions of their adult child who was not subject to their control. *Drysdale on Behalf of Stong v. Rogers*, 869 P.2d 1 (UtahApp. 1994)

⁴Under §32A-1-119(6)(b), employees in violation of this law may be prohibited, via a suspension action, from serving alcoholic beverages for a period of up to one (1) month. However, any employee who has had three (3) suspensions within a 36 consecutive month period may be prohibited from handling liquor, in the course of employment, for one (1) year.

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Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:
Type of Criminal Action:

Term of Imprisonment:
Fine (\$ Range):

Class A Misd §§32A-4-106(10), 32A-12-104, 32A-12-203, 76-3-204(1), 76-3-301(1)(c), & 76-3-302(2)

Not more than 1 yr

Not more than \$2,500 for individuals and not more than \$10,000 for either corporations, associations, partnerships or governmental instrumentalities.

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:
License to Serve Alcoholic Beverages

Withdrawn (Yes/No):
Length of Term License Withdrawal:

Yes¹ Suspension or Revocation §32A-1-119

Suspension: Time period not specified in the statute; Revocation: At least 3 yrs §32A-1-119(5)(e)

Administrative Fine. An administrative fine of not more than \$25,000 may be imposed in lieu of or in addition to a license suspension. §32A-1-107(5)(a)

Anti-Happy Hour Laws/Regulations:

Limited (1) Liquor may not be sold except at prices established by the State and (2) mixed drinks and wine cannot be sold at discount prices. §32A-4-106(11)(a) & (b) The law also provides that a patron cannot have more than one alcoholic beverage at a time. A single beverage is restricted to either 1 ounce primary liquor, 5 ounces of wine or 1 liter of heavy beer.² §32A-4-106(2)(c), (2)(d), (12) & (13)

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):
Anti-Consumption Law (Yes/No):

Yes §41-6-44.20(2)

Yes Driver and passengers §41-6-44.20(1)

¹See Footnote No. 4 on p. 3-475.

²"Heavy beer" is defined as a fermented alcoholic beverage containing more than 4% alcohol by volume. §32A-1-105(19)

STATE:
General Reference:

VERMONT
Vermont Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Under the influence of intoxicating liquor¹ 23 §1201(a)(2)
≥0.08² 23 §1201(a)(1)
Persons Under 21 Years Old ≥0.02³-A Civil Traffic Violation 23 §1216(a)

Presumption (BAC/BrAC):

A BAC/BrAC ≥0.02³ w/n 2 hrs of a DWI incident is a "rebuttable presumption" that a person under 21 yrs old committed a Civil Traffic Violation. 23 §1216(e)

Types or Drugs/Drugs and Alcohol:

Under the influence of (1) Any "Regulated" Drug⁴ or (2) a Combination of Any "Regulated" Drug and Alcohol 23 §1201(a)(3)
(1) A BAC/BrAC ≥0.08³ is a "permissive inference" of a DWI offense. 23 §1204(a)(2)

Other:

(2) A BAC/BrAC ≥0.10³ w/n 2 hrs of a DWI incident is "permissive inference" of such offense. 23 §1204(a)(3)
For Commercial Motor Vehicle Operators, see p. 3-478.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes 23 §1203(f)

No⁵ 23 §1202(a)

Yes⁶ 23 §1202(a)

Yes (Criminal Cases) 23 §1202(b) Refusal to submit to a Horizontal Gaze Nystagmus test can also be admitted into evidence. *State v. Blouin*, 716 A.2d 826 (Vt. 1998) **Comment:** This case could also apply to refusal to submit to other field sobriety tests.

Other Information:

I. A driver, who is involved in a fatal "incident or collision" where there is reasonable grounds to believe that they had either alcohol or "other drug" in their system, is subject to the implied law. I.e., they are required to submit to a chemical test of their breath or blood chemical for alcoholic content and, if they refuse to submit to such a test, their driver's license is suspended or revoked. 23 §1202(a)
II. A driver, who is involved in an accident that resulted in either a bodily injury or death to another and who refuses to submit to a blood or breath chemical test under the implied consent law, may be compelled to submit to a blood test via a search warrant.⁷ 23 §1202(f)

¹Includes all alcoholic beverages. 23 §1200(4)

²This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

³Alcohol concentration is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 23 §1200(1)

⁴"Drug" means regulated drugs as defined in 18 §4201. 23 §1200(2)

⁵Note: If a driver refuses to submit to a chemical test and the police officer had "reasonable grounds to believe" that the driver was DWI, the State may proceed to suspend/revoke the driver's license. 23 §1205

⁶A blood sample may be requested (1) if breath testing equipment is not available to determine alcoholic content or (2) if the law enforcement officer believes that the driver was under the influence of drugs. 23 §1202(a) & *State v. Greenia*, 522 A.2d 242 (Vt. 1987)

⁷**Comment:** The legislature apparently via 23 §1202(f) indirectly abrogated a decision of the State supreme court that prohibited the taking of a blood sample by force. Since the implied consent law allowed a person to refuse all testing, the court held that the State could not use involuntary means (force) to obtain a blood sample for chemical testing for alcoholic content, I.e., the State must persuade a driver to voluntarily submit to a test or face certain licensing sanctions. *State v. Beyor*, 641 A.2d 344 (Vt. 1993)

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes See Footnote No. 6 on p. 3-477.
Urine:	No
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol assessment screening is mand for 2nd or subsequent offenders. 23 §§4(49), 1209a(a) & (c) and 1210(a)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	A person under 21, who has refused to submit to a breath test via a preliminary breath test screening device for the purpose of determining if they have a BAC/BrAC ≥ 0.02 , is subject the licensing action for a Civil Traffic Violation on p. 3-480. 23 §1216(d)
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	See <u>Criminal Refusal</u> below.
Administrative Licensing Action (Susp/Rev):	None
Other:	<u>1st refusal-Susp 6 mos (mand)¹; 2nd refusal-18 mos susp (mand)¹; 3rd or subsequent refusal-Susp for life (3 yrs mand)¹</u> 23 §1205(a) & (m)

¹See Rehabilitation on p. 3-480.

Criminal Refusal. A vehicle operator commits "Criminal Refusal" if they refuse to submit to either a blood or breath evidentiary test under the following circumstances: Either (1) the person has had a previous drunk driving offense violation and there is reasonable grounds to believe that they violated the drunk driving laws or (2) the person is involved in an accident that resulted in either a bodily injury or death and there is reasonable grounds to believe that they had alcohol in their system. 23 §1201(b) & (c) Sanctions: The sanctions for "Criminal Refusal" are the same as for a drunk driving offense. 23 §§1208 & 1210

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥ 0.04 (See Footnote No. 3 on p. 3-477.), (2) are under the influence of either "intoxicating liquor" or drugs (or under the combined influence of alcohol and any drug) or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. 23 §§4(59), 1218, 1219, 4103(5) & (12) and 4116

Sanctions Following a Conviction for a DWI Offense:**Criminal Sanctions:****Imprisonment:**

Term (Day, Month, Years,
Etc.):

See Double Jeopardy and the Special Note below.

1st off (Misd)-Not more than 2 yrs; 2nd off (Misd)-Not more than 2 yrs; 3rd and sub. off (felony)-Not more than 5 yrs; Serious injury related DWI off (felony)-1 to 15 yrs 13 §1 & 23 §1210
2nd DWI off-48 cons hrs 23 §1210(c)

Mandatory Minimum Term:**Fine:**

Amount (\$ Range):

1st off-Not more than \$750; 2nd off-Not more than \$1,500; 3rd and sub. off-Not more than \$2,500; Serious injury related DWI off-Not more than \$5,000 23 §1210.

Mandatory Min. Fine (\$):

None

Other Penalties:**Community Service:**

Yes Community service may be imposed as part of the sentence.
13 §7030

Restitution

(eg Victim's Fund):

Yes The court may order a defendant to pay restitution to a victim.
13 §7043

Other:

Surcharges. In addition of any fine, an offender must pay the following surcharges. A surcharge of \$60 which is used to fund the Health Department's Laboratory Services Special Fund. A surcharge of \$50 which is used to fund public defenders special fund. And, a surcharge of \$50 which is used to fund drunk driving law enforcement. 23 §1210(h), (i) & (j)

Administrative Licensing Actions:**Pre-DWI Conviction Licensing Action:****Administrative Per Se Law:**

See Double Jeopardy below.

Yes ≥ 0.08 BAC/BrAC See Footnote No. 3 on p. 3-477 and Rebuttable Resumption below. 1st action-Susp 90 dys (mandatory)¹; 2nd action-Susp 18 mos (mandatory)¹; 3rd or sub. action-Susp for life (3 yrs mandatory)¹ See Footnote Nos. 2 & 3. 23 §1205

Other:

None

¹See Rehabilitation on p. 3-480.

²Under 23 §1205(o), suspensions for admin. per se actions and for DWI convictions are to run concurrently.

³Title 23 §1205(m) creates a rebuttable presumption that a persons's alcohol concentration was ≥ 0.08 at the time of operating a motor vehicle if such was w/n two (2) hours after such operation.

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Strong*, 605 A.2d 510 (Vt. 1991), *State v. O'Brien*, 609 A.2d 981 (Vt. 1992), & *State v. Becker*, 669 A.2d 548 (Vt. 1995)

Special Note: A person under 21 years old, who is charged with a Civil Traffic Violation for operating a motor vehicle with a BAC/BrAC ≥ 0.02 , cannot be assessed either a fine or points. 23 §1216(f)

Rebuttable Presumption. If a person's alcohol concentration w/n 2 yrs of driving is ≥ 0.08 , there is rebuttable presumption that the person was operating a motor vehicle at or above this level. 23 §1205(n)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

1st off-Susp; 2nd off-Susp; 3rd or subsequent offs-Rev 23 §§1206 & 1208 See Footnote No. 2 on p. 3-479.

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-90 dys; 2nd off-18 mos; 3rd or subsequent off-Life

Mandatory Minimum Term of
Withdrawal:

1st off-90 dys; 2nd off-18 mos; 3rd or sub offs-3 yrs See Rehabilitation below.

Persons Under 21 Years Old (Civil Traffic Violation-BAC/BrAC ≥ 0.02): 1st violation-Susp-6 mos (mand) plus an alcohol and alcohol program. Following this, person must complete alcohol screening and any needed treatment program; 2nd or sub. violation-Susp 1 yr or until the person reaches age 21 whichever is longer (1 yr mand). The person must also be making substantial progress in completing a therapy program. Any education, treatment or therapy programs must be completed prior to license reinstatement. 23 §§1209a & 1216(a)(1) & (2)

Other:

Rehabilitation:

Alcohol Education:

Yes

Special Note No. 1: For a 1st license suspension based on a refusal, an admin. per se action or a DWI conviction, a defendant must complete an alcohol and driver education program. After this program, the person must submit to an assessment to determine if additional therapy is needed. The defendant must complete any required education or therapy prior to license reinstatement. 23 §§1205, 1206, 1208 & 1209a(a)(1)

Special Note No. 2: For a 2nd suspension based on refusals, admin. per se actions or DWI off convictions, a defendant has to successfully complete an alcohol and driving rehabilitation program and has to completed or show that they are making substantial progress in completing a therapy program prior to license reinstatement. 23 §§1205, 1206, 1208 & 1209a(a)(2)

Special Note No. 3: For a 3rd or subsequent suspension based on refusals, admin. per se actions or DWI off convictions, a defendant has to completed or show that they are making substantial progress in completing a therapy program prior to license reinstatement. 23 §§1205, 1206, 1208 & 1209a(a)(3)

Special Note No. 4: If a person has had their license suspended/revoked (1) for at least 3 yrs or (2) for life as a result of a refusal, admin. per se action, a DWI conviction or, for driving with a BAC/BrAC ≥ 0.02 if they were < 21 yrs old, they may have their license reinstated provided they have abstained from the consumption of alcohol for respectively 2 or 3 yrs. The abstinence period does not include any period of time the person was incarcerated in a correctional facility. In the case of a lifetime suspension, a person is eligible for license reinstatement only once. 23 §§1205, 1206, 1208 and 1209a(b)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Alcohol Treatment:

Yes See the Special Notes on p. 3-480.

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Immobilization. 2nd or subsequent off-The vehicle operated by the offender may be immobilized for 18 mos or when they obtain a valid license whichever comes first. This action is discretionary not mandatory. 23 §1213a

Forfeiture. 3rd or subsequent off-The vehicle operated by the offender may be forfeited. This action is discretionary not mandatory. 23 §1213b

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

Special Assessment. A defendant is assessed a mandatory **\$17.50** fee. Twelve dollars and 50 cents (\$12.50) of this fee is deposited into an account which is used to assist/compensate victims of crimes. 13 §7282

Other Criminal Actions Related to DWI

Homicide by Vehicle:

State Has Such a Law:

Yes There are two veh homicide laws. The first applies to death caused by motor veh operation in violation of law. 23 §1091(d) The second applies to death caused by DWI. 23 §1210(e) Both of these offenses are felonies and the criminal sanctions for a conviction under either section are the same.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

1 to 15 yrs **Special Note:** These penalties do not foreclose the option of tougher penalties for manslaughter (homicide) convictions. 13 §1 and 23 §§1091(c) & 1210(e)

Mandatory Minimum Term:

None

Fine (\$ Range):

Not more than \$10,000

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

If death is DWI related, a 23 §1210(e) conviction - **Susp**¹; If death is not DWI related, a 23 §1091(c) conviction - **Susp** 23 §§1206(b), 1210(e) & 1091(c)

Length of Term of

Licensing Withdrawal:

If death is DWI related - **1 yr**; If death is not DWI related - **1 yr** plus any other susp period required under the point system. See 23 §§2505 & 2506

¹Before a defendant's license is reinstated, they must complete an alcohol and driver education program. 23 §§1206(b) and 1209(a)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum

Length of License

Withdrawal:

If death is DWI related - 1 yr; If death is not DWI related - 1 yr plus any other susp period required under the point system 23 §§2505 & 2506

Other:

None

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

See the Special Note below.

See Community Service, Immobilization and Forfeiture under Other on p. 3-483.

Sanction:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term

Imprisonment:

Misd-Not more than 2 yrs¹ 13 §1 & 23 §674(b) See Footnote No. 2.

1st off - 48 hrs¹ (Note: This mand sanction does not apply if (1) the lic susp has "run" and (2) the offender has completed alc. education or treatment or other requirements under 21 §1209a. See the Special Notes under Rehabilitation on p. 3-480.); 2nd off - 96 hrs¹; 3rd off - 8 con dys¹; 4th and sub off - 16 con dys¹ 23 §674(b) There can be no community service in lieu of these minimum jail terms. *State v. Baker*, 579 A.2d 479 (Vt. 1990)

Not more than \$5,000 23 §674(b)

Surcharge. In addition to any fine sanction, there is a surcharge of \$50 which is used to fund drunk driving law enforcement. 23 §674(g)

None

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Length of Term of License

Withdrawal Action:

Susp 23 §2506

(1) 1st off - 30 dys¹; 2nd off - 90 dys¹; 3rd and 4th offs - 6 mos¹ (2) Or susp under the point system whichever is greater. 23 §2506

Mandatory Term of License

Withdrawal Action:

None

¹Under 23 §674(d), if a person is convicted of both a violation of 23 §674 and DWI (23 §1201), any penalty or susp/rev for these offenses shall be consecutive (not concurrent).

²A person commits only a traffic violation, with a fine of not more than \$175, if they drive while suspended or revoked but where the period of suspension or revocation has expired. I.e., the offender is eligible for a license but has not applied for reinstatement. 23 §§676(b) & 2302(c)

Special Note: There are several statutory schemes concerned with operating a CMV during either a CDL disqualification or a CDL out-of-service order. I. Under 23 §§674(a) and 677, a person who operates a CMV while disqualified commits a misd and is subject to an imprisonment of not more than 2 yrs and/or a fine of not more than \$5,000. II. Under 23 §§4107(b) and 2302(a)(5) & (c), it is a civil traffic violation, with a fine of not more than \$175, to operate a CMV while either disqualified or under an out-of-service order. III. Under 23 §4120, notwithstanding any other provision of law, a person, who violates CDL out-of-service order is subject to a penalty of \$1,000. IV. Under 23 §4119, a person, who is convicted of violating a CDL out-of-service order is subject to the following CDL disqualification periods: 1st off-90 dys (mand); 2nd off (w/n 10 yrs)-1 yr (mand); and, 3rd or sub off (w/n 10 yrs)-3 yrs (mand). However, the following disqualification periods apply if the out-of-service order conviction was the result of driving a CMV which was either transporting hazardous materials or 15 or more persons: 1st off-180 dys (mand); and, 2nd or sub off (w/n 10 yrs)-3 yrs (mand).

Other Criminal Actions Related to DWI: (continued)

Other:

I. **Community Service:** 1st off - 40 hrs; 2nd off - 80 hrs; 3rd off - 120 hrs These sanctions are in addition to incarceration. 23 §674(b)II. **Immobilization.** 2nd or subsequent off-The vehicle operated by the offender may be immobilized for 18 mos or when they obtain a valid license whichever comes first. This action is discretionary not mandatory. 23 §674(h)III. **Forfeiture.** 3rd or subsequent off-The vehicle operated by the offender may be forfeited This action is discretionary not mandatory. 23 §674(h)Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes 23 §673a

Grounds for Being Declared an
Habitual Offender:

8 or more convictions based on moving violations (with 6 points or more assessed) and DWI offs within 5-yr period

Term of License Rev While

Under Habitual Offender Status:

2 yrs 23 §673a

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status:

None

Sanctions Following a Conviction of
Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

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Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

Minimum Age (Years) Possession:

21¹ (Year Eff: 1986) 7 §§2(2), 238, 657 & 658

21¹ There is an employment exemption.

Special Note: The law does not specifically prohibit possession or consumption per se but makes illegal the possession of alcoholic beverages by minors for the purpose of consumption. 7 §657

21¹ See the Special Note above. 7 §657

Minimum Age (Years) Consumption:

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

"Dram Shop Law" Concept Has Been

Adopted Via a Change to the Common

Law Rule by Action of the Highest

Court of Record in the State (Case

Citation):

Dram Shop Actions-Social Hosts:

Yes 7 §501²

No

Yes *Langle v. Kurkul*, 510 A.2d 1301 (Vt. 1986) A social host, who furnishes alcoholic beverages to a visibly intoxicated guest, may be liable to a third person for injuries caused by such guests.³

I. A licensee may be liable for the injuries sustained by an intoxicated patron. *Estate of Kelly v. Moguls, Inc.*, 632 A.2d 360 (Vt. 1993) II. However, a social host is not liable for the injuries sustained by an intoxicated guest. *Langle v. Kurkul*, 510 A.2d 1301 (Vt. 1986)

Comment: Language by the court in this case seems to indicate that a social host may be liable for the injuries sustained by a minor guest.

Other:

Criminal Action Against Owner or Employees

of Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

Type of Criminal Action:

None Note: The Vermont Supreme Court has stated that this State "... has no ... statute making it a crime for any person ... to sell or furnish alcoholic beverages to an adult who is visibly intoxicated." *Lange v. Kurkul*, 510 A.2d 1301, 1304 (Vt. 1986)

Term of Imprisonment:

Fine (\$ Range):

¹Students, who are under 18 years old and who are enrolled in post secondary education culinary arts program, are exempt from the drinking age limit law. 7 §3

²I. Individuals, living with a person who was killed in an automobile accident after becoming intoxicated at two bars, have a cause of action against such bars under the Dram Shop Act for damages (loss of support). *Thompson v. Dewey's South Royaton, Inc.*, 733 A.2d 65 (Vt. 1999)

II. A franchisor may or may not be liable under the dram shop law for the actions of a franchisee. The extent of any liability will depend upon the control exercised by the franchisor over the franchisee. *Carrick v. Franchise Associates, Inc.*, 671 A.2d 1243 (Vt. 1995)

³Title 7, §501(g) provides that nothing in the dram shop law shall create a "statutory" cause of action against a social host. This subsection, however, states that it "shall not be construed to limit or otherwise affect the liability of a social host for negligence at common law."

Other State Laws Related To Alcohol Use: (continued)Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

No¹

Length of Term of License Withdrawal:

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misd^{2,3} 7 §658 & 13 §1

Term of Imprisonment:

2 yrs 7 §658

Fine (\$ Range):

\$500 to \$2,000 7 §658

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes⁴ Susp/Rev 7 §236(a)

Length of Term License Withdrawal:

Indeterminate 7 §236(a)

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes Drivers only 23 §1134

¹However, an establishment's liquor license can be revoked if they violate State regulations that either (1) prohibit intoxicated persons from loitering on a premises or (2) require that a licensee maintain control of patrons. *In Re Con-Elec. Corp.*, 716 A.2d 822 (Vt. 1998)

²Under 7 §224(c), "[n]o spirituous liquor shall be sold by a third class licensee to a minor." See 7 §667 for possible sanctions for a violation of 7 §224(c).

³A person commits a felony if they sell or furnish alcoholic beverages to a minor, who, as a result of such illegal action, causes either a death or serious bodily injury. Such death or injury can be to either the minor or another person. The sanctions for this offense are incarceration for not more than 5 yrs and/or a fine of not more than \$10,000. 7 §658(d) & 13 §1

⁴An "administrative penalty" of not more than \$2,500 may be imposed on a licensee in lieu of susp/rev. 7 §236(b)

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STATE:

General Reference:

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Code of Virginia Annotated and Virginia Admin. Code (VAC)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Other:

Under the influence of alcohol §18.2-266

≥0.08^{1&2} §18.2-266

Persons Under 21 Years Old: ≥0.02 but <0.08^{2&3} §18.2-266.1(A)
≥0.08² §18.2-269(A)(3)

Under the influence of (1) **Any Drug**, (2) Any Narcotic Drug, (3) any Self-Administered Intoxicant or Drug of Whatsoever Nature or (4) a Combined Influence of Alcohol and any Drug or Drugs §18.2-266

For Commercial Motor Vehicle Operators, see p. 3-490.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to
Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

Yes §18.2-267(a) For CMV operators, see §46.2-341.25.

Yes §18.2-268.2

Yes §18.2-268.2

Yes But only for rebuttal purposes⁴ §18.2-268(O)

None

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:

Urine:

Other:

Yes §18.2-268.2(A)

No

No

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea Bargaining Statute (Yes/No):

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No

No

Yes Substance Abuse Screening and Assessment is discretionary unless ordered to participate in an Alcohol Safety Action Program following a conviction for either 2nd or sub off. §19.2-299.2(A)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

²Standards: For blood, percent by weight by volume; for breath, grams of alcohol per 210 liters of breath. §§18.2-266, 18.2-266.1(A), 18.2-269(A)(3) & 46.2-391.2

³The law makes it an offense for a person under 21 years old to operate a motor vehicle after "illegally consuming alcohol." The law further provides that, if such a person has a BAC/BrAC ≥0.02 but <0.08 while driving, they have committed such an offense. §18.2-266.1(A)

⁴The Virginia Court of Appeals has held, in an *en banc* decision, that it is constitutional under both the Federal and State constitutions to admit evidence of a person's refusal to submit to "field sobriety tests". *Farmer v. Com.*, 404 S.E.2d 371 (Va.App. 1991) Note: This reversed a prior "panel" decision by this same court in *Farmer v. Com.*, 390 S.E.2d 775 (Va.App. 1990).

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Tench v. Com.*, 462 S.E.2d 922 (Va.App. 1995), and *Jones v. City of Lynchburg*, 474 S.E.2d 863 (Va.App. 1996)

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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent

<u>Chemical Test:</u>	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	

Other:

1st or subsequent refusal-Susp-1 yr¹ (This susp appears to be mandatory.) §18.2-268.4 **Special Note:** There is also a mandatory 7 dy susp under §46.2-391.2.
See "persons under 18 years old" in Post DWI Conviction Licensing Action on p. 3-489.

Sanctions Following a Conviction for a DWI Offense:

Important. See DWI Injury Offenses & DWI While Suspended or Revoked below.

Criminal Sanctions:

See Double Jeopardy on p. 3-487.

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off (CI 1 Misd)-Not more than 12 mos²; 2nd off (w/n 10 yrs) (CI 1 Misd)-1 mo to 1 yr²; 3rd and sub off (w/n 10 yrs) (CI 6 Felony)-1 5 yrs imprisonment or not more than 12 mos in jail² §§18.2-10(f), 18.2-11(a) & 18.2-270

Mandatory Minimum Term:

Offense for Persons Under 21 Years (≥0.02 but <0.08): None
1st off-None; 2nd off (w/n 5 yrs)-48 hrs²; 3rd off (w/n 10 yrs)-None; 4th and subsequent off (w/n 10 yrs)-1 yr²

Fine:

Amount (\$ Range):

1st off-Not more than \$2,500³; 2nd off (w/n 10 yrs)-\$200 to \$2,500³; 3rd and sub off (w/n 10 yrs)-Not more than \$2,500³
Offense for Persons Under 21 Years (≥0.02 but <0.08): Not more than \$500 §18.2-266.1(B)

Mandatory Min. Fine (\$):

None

¹The court may dismiss a refusal susp action if the defendant pleads guilty to a DWI offense. §18.2-268.4

²**Special Note:** It may be possible for the court to place a defendant on probation and allow them to serve any period of imprisonment via **electronic home monitoring**. §53.1-131.2

³If a person is required to enter the Virginia Alcohol Safety Action Program under §18.2-271.1, they must pay a fee of not less than \$250 but not more than \$300. §18.2-271.1(a1) See Footnote No. 4 on p. 3-490.

DWI Injury Offenses. It is a CI 6 felony to unintentionally cause serious bodily injury while in violation of the drunk driving laws where there is evidence of reckless disregard for human life. §18.2-51.4(A) Criminal Sanctions: Imprisonment from 1 to 5 yrs and/or a fine of not more than \$2,500. §18.2-10(f) Licensing Sanctions: **Indefinitely Rev** However, after 3 yrs, a restricted license for employment purposes may be issued. The offender may be required to undergo evaluation via the Va. Alcohol Safety Action Program and may be required to only operate motor vehicles that are equipped with **ignition interlock** devices. And, after 5 yrs upon a showing of "good cause", the offender may obtain "full" driving privileges. §§18.2-51.4(B), 46.2-389 and 46.2-391(A) & (B) A prior offense includes any prior drunk driving offense conviction. §18.2-51.4(D)

DWI While Suspended or Revoked. Driving while DWI and while license is susp/rev for a DWI offense is a felony. The sanction for this offense is either 1 to 5 yrs imprisonment or 12 mos in jail. Mandatory confinement for 1 yr except for a 1st offense where driving was necessary to save life or limb. §46.2-391(D) & (E) Note: No fine is specified for this offense.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:

Community Service:

Restitution

(eg Victim's Fund):

None

Yes Compensation may be obtained from two sources: (1) A victims' compensation (§19.2-368.1 et seq.); (2) direct compensation by a defendant to a victim. §19.2-305

Laboratory Fee. A DWI offender is required to pay a \$100 fee for any forensic laboratory analysis that was performed by the State in connection with the prosecution of the DWI offense. §18.2-264.1

Child Endangerment.¹ A person convicted of a DWI offense, while carrying a person 17 years old or younger, is subject to the following additional sanctions: 1st off-fine of \$500 (mand) to \$1,000 and community service of 40 hrs (mand) benefitting children; sub. off-fine of \$500 (mand) to \$1,000 and community service of 80 hrs (mand) benefitting children. §18.2-270 (12)

EMS/Enforcement Costs. Counties, cities and towns may enact ordinances that make an offender liable in a civil action for the expenses of responding to any DWI offense. Liability is limited to \$1,000. §15.1-132.1

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Double Jeopardy on p. 3-487.

Yes ≥ 0.08 BAC/BrAC For Standards, see Footnote No. 2 on p. 3-487. Susp-7 dys (mand) §46.2-391.2

None

Other:

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

See Footnote No. 2.

1st off-Privilege to operate any motor veh is "deprived" (or revoked); 2nd off (w/n 10 yrs)-Rev; 3rd or sub off Rev §§18.2-271, 46.2-391 & 46.2-394

Offense for Persons Under 21 Years (≥ 0.02 but < 0.08): Susp §18.2-266.1(B)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-1 yr; 2nd off (w/n 10 yrs)-3 yrs; 3rd or sub off (w/n 10 yrs)-Indefinite³ (See Footnote No. 3 on p. 3-490.); 4th off-5 yrs
Offense for Persons Under 21 Years (≥ 0.02 but < 0.08): 6 mos (A restricted license may be issued.) §18.2-266.1(B)

Persons under 18 years old: The DWI charge is deferred and the following licensing action must be taken-1st off-1 yr denial or until the person reaches 17 whichever is the longer susp. period (driving privileges may be restored after 90 dys); 2nd and sub. off-1 yr denial until the person reaches 18 whichever is the longer susp period (1 yr is mand). A restricted hardship lic may be issued to a 1st offender.

¹A drunk driving law offender, who operates a motor vehicle while transporting child < 18 yrs old, may be subject to prosecution for child abuse and neglect under §18.2-371.1. See *dicta* in *Com. v. Carter*, 462 S.E.2d 582 (Va.App. 1995).

²Subject to the provisions of §§18.2-271 & 18.2-271.1, the licensing agency may revoke a driver's license for a DWI offense under §§46.2-389, 46.2-391 & 46.2-394 as follows: 1st off-1 yr rev; 2nd off (w/n 10 yrs)-3 yr rev; 3rd off (w/n 10 yrs)-10 yr rev (5 yrs mand); 4th off-5 yrs (mand).

³After 10 yrs, the license can only be restored "for good cause shown". §46.2-391(B)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term of
Withdrawal:

Other:
Rehabilitation:
Alcohol Education:

Alcohol Treatment:

Persons under 18 years old: (continued) §16.1-278.9 **Special Note:**
The above also applies to persons under 18 years old who have
refused to submit to a chemical test under the implied consent law.

1st off - See Footnote No. 1; 2nd off (w/n 10 yrs) **4 mos²**; 3rd or sub
off (w/n 10 yrs) **3 yrs³**; 4th off **5 yrs**
Offense for Persons Under 21 Years (≥ 0.02 but < 0.08): **None**

1st off - **Yes⁴**; 2nd off (w/n 10 yrs) - **Yes⁴**; 3rd and sub off - Not eligible
to participate in VASAP⁴ under §18.2-271.1(A). §18.2-271(C) See
Footnote No. 3 below.

1st off - **Yes⁴**; 2nd off (w/n 10 yrs) - **Yes⁴**; 3rd and sub off - Not eligible
to participate in VASAP⁴ under §18.2-271.1(A). §18.2-271(C) See
Footnote No. 3 below.

Offense for Persons Under 21 Years (≥ 0.02 but < 0.08): An
offender is eligible to participate in the Va Alc Safety Action
Program (VASAP). §18.2-266.1(B)

¹A restricted lic. may be issued if the defendant participates in a rehabilitation program. §18.2-271.1(E)

²A restricted lic. may be issued after the minimum period of lic. withdrawal (4 mo revocation) has passed and a defendant has
participated in a rehabilitation program. §18.2-271.1(E), *Turner v. Com.*, 408 S.E.2d 586 (Va.App. 1991) & *Com. v. Meadows*, 440
S.E.2d 154 (Va.App. 1994) **Important:** See Ignition Interlock on p. 3-491.

³For a 3rd off, if a person at the time of the DWI conviction was dependent on alcohol, either (1) their license may be restored after
5 yrs or (2) a restricted license for employment purposes may be issued after 3 yrs provided they have been cured of such dependency
and are not otherwise a threat to the public safety. In addition, before either a license is reinstated or a restricted employment license
issued, an offender may be required to undergo an alcohol evaluation. Depending upon the recommendations contained in the alcohol
evaluation, an offender may not have their driving privileges restored after 5 yrs. Instead, they only may be allowed restricted driving
privileges that are not to exceed 5 yrs. Offenders are given credit for any period of license revocation that was imposed under the
habitual offender law. §46.2-391(C) **Important:** See Ignition Interlock on p. 3-491.

⁴Unless "good cause" is shown, a 1st or 2nd offender is required, as a condition of probation, to participate in the Va Alc Safety Action
Prog (VASAP). This program consists of driver awareness training, alcohol and drug education and, if necessary via leave of court,
referral to treatment. "Such programs serve a probation, intervention function through offender monitoring and follow-up." §18.2-
271.1 & 18.2-271.2 and 24 VAC 35-20-20 & 35-20-420

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): I. A person is "disqualified" from
operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a
BAC/BrAC ≥ 0.04 (Standards: For blood, percent by weight by volume; for breath, grams of alcohol per 210 liters of breath.), (2)
are under the influence of alcohol or any narcotic drug, self-administered intoxicant or other drug or (3) refuse to submit to a chemical
test for alcohol or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed
items, the "disqualification" is for life (10 yrs mandatory). II. It is a Class 3 Misd to operate a CMV with a BAC ≥ 0.04 ; the sanction
for this offense is a fine of not more than \$500. III. It is a Class 1 Misd to operate a CMV either with a BAC/BrAC ≥ 0.08 or while
under the influence of either alcohol or drugs. The sanctions for this offense are as follows: 1st off-Jail for not more than 12 mos
and/or a fine sanction of not more than \$2,500; 2nd off (w/n 10 yrs)-Jail from 1 mo to 1 yr and/or a fine of \$200 to \$2,500. If the
2nd off was w/n 5 yrs of a previous off, there is a mandatory jail sanction of 48 hrs. 3rd off (w/n 10 yrs)-Jail from 2 mos to 1 yr
and/or a fine of \$500 to \$2,500. A 30 dy jail sentence is mandatory if the 3rd or sub. off occurred w/n 5 yrs and a 10 dy jail sentence
is mandatory if the 3rd or sub. off occurred w/n 10 but more than 5 yrs. IV. In addition, a person who operates a CMV with any
alcohol in their system commits a traffic infraction (a fine of not more than \$200) and must be placed "out-of-service" for 24 hours.
§§18.2-11(a) & (c), 18.2-271.1(F), 46.2-113, 46.2-341.4, 46.2-341.17, 46.2-341.18, 46.2-341.24, 46.2-341.25, 46.2-341.26:1 to
46.2-341.26:11, 46.2-341.27, 46.2-341.28, 46.2-341.29 and 46.2-341.31

Sanctions Following a Conviction for a DWI Offense:
(continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

None

N/A

Registration Suspension. Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked (e.g., DWI, vehicle homicide, driving while license is either suspended or revoked), shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspend such registration if the person maintains proof of financial responsibility.

Miscellaneous Sanctions
Not Included Elsewhere:

I. Interdiction Order. The court may issue an order that prohibits alcoholic beverage licensees from selling such beverages to a person who has been convicted of a DWI offense. §4.1-333 Generally, such a person is also prohibited from possessing alcoholic beverages. §4.1-322

II. See Civil Damages on p. 3-492.

III. Ignition Interlock. **I.** For a 1st offense the court may require and for a 2nd offense the court must require, a DWI offender, who has been granted restricted driving privileges, to only operate motor vehicles (with the possible exception of vehicles used in the course of employment) that are equipped with ignition interlock devices. §§18.2-270.1, 18.2-270.2, 46.2-360 & 46.2-391 **II. Ignition Interlock Usage with VASAP.** A 2nd or subsequent offender (w/n 5 yrs), who is required to participate in either the Va Alc. Safety Action Prog (VASAP) or a treatment program (via an assessment that indicates that they have a substance abuse problem), can obtain restricted driving privileges only if they operate motor vehicles that are equipped with ignition interlock devices. This requirement shall not exceed the length of such program or for the duration of the license susp/rev period whichever is shorter. §18.2-271.3(A)

IV. Points. A person, who has either been convicted of a drunk driving offense or, if under 21 yrs old, found in violation of driving after "illegally consuming alcohol", has 6 points assigned to their driving record. §46.2-492(D)(1)

V. Probation.¹ Unless modified by the court, an offender must be placed on probation for the same period of time as their license suspension but, in no case, more than 3 yrs. §18.2-270 (¶1)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Death related DWI offense (involuntary manslaughter-death caused unintentionally via DWI) Class 5 Felony §18.2-36.1

¹**Comment:** The law is not clear but this probation requirement appears to apply to both 1st and subsequent offenders.

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Other Criminal Actions Related to DWI: (continued)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

1 to 10 yrs^{1&2} §18.2-10(e)

Mandatory Minimum Term:

None²

Fine (\$ Range):

None¹

Mandatory Minimum Fine:

N/A

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev §§18.2-36.1(D) & 46.2-389(A)(1)

Length of Term of

Licensing Withdrawal:

Indefinite³ §§18.2-36.1(D) & 46.2-389(A)(1)

Mandatory Action--Minimum

Length of License

Withdrawal:

3 yrs³ §18.2-36.1(D)

Other:

I. See "Registration Suspension" under DWI Vehicle Impoundment/Confiscation on p. 3-491.

II. **Civil Damages.** Exemplary damages may be awarded in a civil action, involving either a death or injury related drunk driving offense, provided either that the defendant acted with malice towards the plaintiff or that the defendant's conduct showed a willful or wanton disregard for the rights of others.⁴ §8.01-44.5

Driving While License Suspended or Revoked

Where the Basis Was a DWI Off*:

See Footnote No. 5 below and the Special Note on p. 3-493.

Sanction:

Criminal:

Imprisonment (Term):

I. **General Provisions.** 1st off (Cl 2 Misd)-Not more than 6 mos;
2nd and sub offs (Cl 1 Misd)-Not more than 12 mos §§18.2-11 & 46.2-301 See Footnote No. 6 and Special Note below.

¹**Alternative Sentence:** Jail for not more than 12 mos and/or pay a fine of not more than \$2,500. §18.2-10(e)

²If the defendant's conduct indicated a "reckless disregard for human life", they are guilty of aggravated involuntary manslaughter and are subject to an imprisonment term of 1 yr (mand) to 20 yrs. §18.2-36.1(B)

³After 3 yrs, a restricted license for employment purposes may be issued. The offender may be required to undergo evaluation via the Va. Alcohol Safety Action Program and may be required to only operate motor vehicles that are equipped with **ignition interlock** devices. And, after 5 yrs upon a showing of "good cause", the offender may obtain "full" driving privileges. §18.2-36.1(D) & (E)

⁴Willful or wanton behavior can be shown by proving the following: Either (1) when the incident occurred, the defendant's BAC/BrAC was ≥ 0.15 , they consumed alcoholic beverages knowing that they were going to operate a motor vehicle and their intoxication was the proximate cause of an injury or a death or (2) the person unreasonably refused to submit to a chemical test and the incident occurred while they were intoxicated, they knew that they were going to operate a motor vehicle and the intoxication was the proximate cause of the injury or death. §8.01-44.5

⁵A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. Except as noted below for out-of-service violations, the fine and imprisonment sanctions for these offenses are as given above for driving while suspended or revoked. The following fine and licensing sanctions are imposed in cases concerning out-of-service order violations: (1) The fine sanction is \$1,000 to \$2,500 and (2) the licensing sanctions are, for a 1st violation, CDL disqualification for 180 dys (mand) and, for a subsequent violation (w/n 10 yrs), CDL disqualification for 3 yrs. §46.2-341.21

⁶Violations that authorize susp/rev for 30 dys or more.

Special Note: Under separate provisions of the State's criminal code, it is a Class 1 Misd for a person to operate a motor vehicle when their privilege to do so has been "forfeited". §18.2-272.

*Except as noted, the sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Sanction:

Criminal:

Imprisonment: (continued)

Mandatory Minimum Term
of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:
Administrative Licensing Actions:
Type of Licensing Action
(Susp/Rev):
Length of Term of License
Withdrawal Action:Mandatory Term of License
Withdrawal Action:

II. Driving After Revocation for (1) DWI Manslaughter, (2) DWI Injury or (3) 2nd or 3rd DWI Offense. (1) Misd-Not more than 90 dys (2) If driving endangered life, limb or property-Felony-1 to 5 yrs of imprisonment or 12 mos in jail §§18.2-36.1(F) & (G), 18.2-51.4(D) & (E) and 46.2-391(D) & (E)

I. General Provision. None

II. Driving After Revocation for (1) DWI Manslaughter, (2) DWI Injury or (3) 2nd or 3rd DWI Offense. (1) Misd-10 dys (2) If driving endangered life, limb or property-Felony-1yr/12 mos except in 1st offense situations where driving was necessary in an "apparent extreme emergency" to save life or limb.

I. General Provisions. 1st off-Not more than \$1,000; 2nd and sub offs-Not more than \$2,500

II. Driving After Revocation for (1) DWI Manslaughter, (2) DWI Injury or (3) 2nd or 3rd DWI Offense. Misd-Not more than \$2,500 Felony-None Note: No fine is specified for this offense. None

Rev or Susp §46.2-301 See Footnote No. 1.

An additional susp/rev for the same period for which the license has been previously suspended or revoked; if the original period was not specified, then the additional susp or rev is not to exceed 90 dys. Under §46.2-394, for a 4th offense, the lic. is revoked for 5 yrs.

Same as above.

Registration Suspension. Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked, shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspend such registration if the person maintains proof of financial responsibility.

Special Note: I. Vehicles owned by an offender may be impounded or immobilized for up to 90 dys even if such vehicles were not used in the offense. §46.2-301(A)

II. The following sanction also may be imposed if the original licensing action was for either (1) a drunk driving offense, (2) an admin. per se violation, (3) a refusal to submit to a chemical test under the implied consent law or (4) driving after adjudication as an habitual offender (where such adjudication was based either in whole or in part on alcohol related offenses). Any vehicle (with the exception of rented or leased vehicles) used in the offense may be impounded or immobilized for 30 dys. The owner of the vehicle may obtain a release from this action based upon a showing that it is the only vehicle that they own and that the impoundment or immobilization of the vehicle would cause a substantial hardship. §46.2-301.1(A) Note: A person is not subjected to double jeopardy if they are prosecuted for driving on either a suspended or revoked license after the vehicle they were driving was impounded under §46.2-301.1. *Wilson v. Com.*, 477 S.E.2d 765 (Va.App. 1996)

III. A person, who violates §46.2-301 for a second time, shall be referred to the Va. Alcohol Safety Action Program. A program representative shall inform the offender concerning the legal consequences of their action and may refer such person to a driver improvement clinic. §46.2-355.1

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Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:
State Has Such a Law (Yes/No):
Grounds for Being Declared an
Habitual Offender:

Yes §§46.2-351 et seq.

Either (1) any 3 or a combination of 3 of the following offs: DWI (including DWI injury offenses), manslaughter via vehicle, driving while suspended or revoked, a felony under the motor vehicle laws, failure to stop at an accident or swearing false information or (2) 12 or more violations which either require or authorize either a suspension or a revocation of 30 dys or more or includes those offenses listed in (1).

Term of License Rev While
Under Habitual Offender Status:
Type of Criminal Off if
Convicted on Charges of
Driving While on Habitual
Offender Status:

10 yrs¹ §46.2-356 See Footnote No. 2.

1st off: Misd If driving did not endanger life, limb or property of another.

Felony If driving either (1) did endanger life, limb or property of another or (2) takes place while the offender was in violation of the DWI laws (irrespective of whether life, limb or property was endangered).

2nd or sub off: Felony Driving irrespective of whether their was endangerment of life, limb or property of another.
§§18.2-8 & 46.2-357

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:
Imprisonment (Term):

Misd-Not more than 90 dys Felony-1 to 5 yrs §46.2-357(B)(1) & (2)

¹The license may be restored in less than 10 yrs under several conditions. (1) Except as provided in (3), (4) and (5), after 5 yrs, a license may be restored (with or without restrictions) provided the offender's driving behavior will no longer constitute a threat to the safety and welfare of themselves or others. (2) For persons over 18 years old, if the one of the offenses occurred when the driver was under 18, a license may be issued (with or without restrictions) and without a waiting period. (3) If one the offenses was a DWI and the offender was addicted to alcohol, a license may be restored (with or without restrictions) after 5 yrs (or after 3 yrs, a restricted license may be issued for the purpose of driving to and from a place of employment or in the course of employment) provided the driver is no longer alcohol dependent and would not otherwise constitute a threat to the public's safety when operating a motor vehicle. In the computation of the 3 yr and 5 yr revocation periods, the offender is given credit for any period of time their license was revoked for a DWI offense. An offender may be required to undergo an alcohol evaluation before either license restoration or the issuance of restricted driving privileges. Depending upon the recommendations contained in the alcohol evaluation, an offender may not have driving privileges restored after 5 yrs. Instead, they only may be allowed restricted driving privileges that are not to exceed 5 yrs. (4) Except in situations where a DWI offense was involved, if one of the offenses concerned driving while susp or rev related to either failure to pay fines or costs, failure to furnish proof of financial responsibility or failure to satisfy a judgment, the license may be restored after 3 yrs. If DWI a offense is involved, license restoration is via (3) above. (5) If all of the offenses are related to driving while suspended or revoked based on either a failure to pay fines or costs, failure to furnish proof of financial responsibility or failure to satisfy a judgment, the license may be restored at any time after these costs, fines, judgments or failures are satisfied. §§46.2-358, 46.2-359, 46.2-360 & 46.2-361

²**Registration Suspension.** Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked, shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspended such registration if the person maintains proof of financial responsibility.

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

Misd-None Felony-1 yr¹ §46.2-357(B)(2)
Misd-Not more than \$2,500 §46.2-357(B)(1) Felony-None
None
None

Important. See the Special Note concerning vehicle impoundment or immobilization on p. 3-493.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:

No

Driver:
Vehicle Passengers:
Pedestrian:

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:
Minimum Age (Years) Possession:

21 (Year Eff: 1987) §§4.1-304 & 4.1-305

21 A special exemption to minors, for employment reasons, and at
he order of a parent. §4.1-305

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):
"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No

No For a case denying liability, see *Williamson v. Old Brogue, Inc.*,
350 S.E.2d 621 (Va. 1986)²

Dram Shop Actions-Social Hosts:
Other:

No (No Cases)
None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:
Term of Imprisonment:
Fine (\$ Range):

Class 1 Misd §§4.1-304, 18.2-11(a) & 18.2-12
No more than 12 mos
Not more than \$2,500

¹A person, who has been convicted of a felony offense, may be eligible to participate in an alternative sanction program which includes probation. This alternative may include "boot camp," detention center or diversion center incarceration programs. §46.2-357(D)

²For other cases denying liability under Virginia law, see *Webb v. Blackie's House of Beef, Inc.*, 811 F.2d 840 (4th Cir. 1987), *Corrigan v. U.S.*, 815 F.2d 954 (4th Cir. 1987) (cert. den., 484 U.S. 926), and *Byrd v. Gate Petroleum*, 845 F.2d 86 (4th Cir. 1988).

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Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Rev or susp^{1&2} §§4.1-225(a)(k)

Time period is not specified in the statute.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Class 1 Misd §§4.1-304, 18.2-11(a) & 18.2-12

Not more than 12 mos

Not more than \$2,500

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Rev or susp^{1&2} §§4.1-225(a)(k)

Time period not specified in the statute.

Anti-Happy Hour Laws/Regulations:

Yes VR 125.01-5, §16 (regulation)

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

No

Yes Drivers only §18.2-323.1

¹Note: In lieu of either suspending a license or any portion thereof, a civil penalty may be imposed as follows: 1st off-Not more than \$2,500; and, subsequent off-Not more than \$5,000. §4.1-227(B) Also, under separate provisions, a licensee may agree to an "offer in compromise" wherein they will not be subject to license suspension or revocation if they agree pay a sum not to exceed \$5,000. §4.1-227(C)

²This administrative action is based on "reasonable cause to believe" that the licensee has sold alcoholic beverages to a minor or an intoxicated person. I.e., a conviction for a violation of the law prohibiting such sales does not appear necessary. §4.1-225

JURISDICTION:

General Reference:

VIRGIN ISLANDS

Virgin Islands Code (Updated through 1994)

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC):
Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Under the influence of an intoxicating liquor 20 §493(a)(1)
≥0.10¹ 20 §493(a)(2)

None

Under the influence of (1) **A Controlled Substance** or (2) a
Combination of Intoxicating Liquor and a Controlled Substance 20
§493(a)(1)

Other:

A BAC ≥0.10¹ is *prima facie* evidence that a person is under the
influence of an intoxicating liquor 20 §493a(a)(3).

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

No

Yes 20 §493c(a)

Yes 20 §493c(a)

Yes (Criminal Cases) 20 §493c(g)

None

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:
Urine:
Other:

Yes 20 §493c(a)

Yes 20 §493c(a)

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes Alcohol Screening (Not mandatory) 20 §493(b)

Sanction for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
Administrative Licensing Action

N/A

(Suspension/Revocation):
Other:

N/A

¹Standard: Percent by weight of alcohol in the blood. 20 §§493(a)(2) & 493a(a)(3)

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Sanction for Refusal to Submit to a Chemical Test: (continued)

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

Administrative Licensing Action

(Suspension/Revocation):

Other:

None

Susp 90 dys (Appears to be mandatory.) 20 §493c(e)(2)(B)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

See Footnote No. 1.

Mandatory Minimum Term:

1st off-Misd-Not more than 1 yr; sub. off (w/n 10 yrs)-Felony-48
con hrs to 2 yrs 14 §2(b)(1), 20 §493(b) & 20 §544(b)

1st off-None; sub. off (w/n 10 yrs)-48 con hrs See Community
Service below.

Fine:

Amount (\$ Range):

1st off-Not less than \$300 If there has been an accident-Not less than
\$500; sub. off (w/n 10 yrs)-Not more than \$2,000 If there has been
an accident-\$600 20 §493(b) & 544(b)

Mandatory Min. Fine (\$):

1st off-\$300 If there has been an accident-\$500; sub. off-None if
there has been an accident-\$600 20 §493(b)

Other Penalties:

Community Service:

For a sub. off (w/n 10 yrs)-10 dys of community service in lieu of
the 48 con hrs of imprisonment. 20 §493(b)(2).

Restitution

(eg Victim's Fund):

Yes² Under 5 §3711(c)(2) & 5 §3721, a defendant may be required
to pay restitution to a victim as a condition of probation or as an
order joined with sentence. Note: This requirement applies to
persons convicted of any criminal offense.

Other:

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

None

Yes³ If the court finds, at the initial appearance, by a preponderance
of the evidence that a person has been driving with a BAC that
constitutes *prima facie* evidence of driving while under the influence
(i.e., a BAC ≥ 0.10), it suspends the driver's license for 90 days.
This suspension action appears to be mandatory. 20 §493c(e)(2)

¹Under 20 §550, the following sanctions apply to persons under 18 years old who are convicted of any violation of law related to motor vehicle use or operation (e.g., a DWI offense): Jail-None; fine-not more than \$100; licensing action-revocation for such period as fixed by the court; Miscellaneous-Impoundment of the vehicle used in the offense for not more than 60 dys.

²If the court does not order restitution, it must, nevertheless, require a defendant to pay a fee (surcharge) for court administrative expenses. This fee is to equal 5 percent of the restitution amount. 5 §3721

³Note: The police do not "pick-up" the license at the time of the DWI arrest.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Suspension/Revocation):
Term of License Withdrawal
(Days, Months, Years, etc.):
Mandatory Minimum Term of
Withdrawal:

See Footnote No. 1 on p. 3-498.

Susp/Rev¹⁴² 20 §493(c)

1st off-6 mos; sub. off-1 to 5 yrs

1st off-30 dys³; sub. off (w/n 10 yrs)-1 yr (Appears to be mandatory.)

Other:

Rehabilitation:

Alcohol Education:

For all DWI offense convictions, the court must order a defendant to participate in either a substance abuse education or treatment program. 20 §493(d)
See Alcohol Education above.

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority:

Impoundment (Limited) See Footnote No. 1 on p. 3-498. Note: For failure to appear in court on a DWI charge, a person's vehicle may be impounded for such time as the court thinks proper. 20 §544(c)

Terms Upon Which Vehicle
Will Be Released:

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

Jurisdiction Has Such a Law:

Yes⁴ Felony 14 §2(b)(1) & 20 §504

Sanctions:

Criminal Sanction:

Imprisonment (Term):
Mandatory Minimum Term:
Fine (\$ Range):
Mandatory Minimum Fine:

Not more than 5 yrs 20 §504
None
Not more than \$1,000 20 §504
None

¹Either suspension or revocation for the periods indicated.

²Under 20 §546, the court can also revoke a driver's license for either a permanent or a temporary period as determined proper by the court.

³After this 30 day period, a restricted license may be issued. This license may only be used to "operate a motor vehicle to or from [a person's] place of employment or in the course of [a person's] employment." 20 §493(c)(1)(C)

⁴Negligent homicide by motor vehicle where the driver either (1) was under the influence of alcohol, (2) was affected by alcohol, (3) was affected by narcotic drugs or (4) operated a vehicle in a reckless manner.

VIRGIN ISLANDS

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Length of Term of

Licensing Withdrawal:

Rev 20 §546

The court may revoke a driver's license either permanently or for a temporary period as determined proper by the court.

Mandatory Action--Minimum

Length of License

Withdrawal:

The above revocation is not mandatory.

Other:

See Restitution for a DWI offense on p. 3-498.

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

Note: There is no specific offense for driving while license is either suspended or revoked. However, it is an offense to operate a motor vehicle without having a valid license. A person, who has been convicted of this offense, is subject to a jail term of not more than 6 mos, a fine of not more than \$200 and license revocation. The court can revoke a driver's license either permanently or for a temporary period as determined proper by the court. 20 §§371, 544(f) & 546

Mandatory Minimum Term

of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action

(Suspension/Revocation):

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Other:

Habitual Traffic Offender Law:

Jurisdiction Has Such a Law (Yes/No):

No Note: This jurisdiction does not have a per se habitual traffic offender law. However, the licensing authority may revoke or suspend a driver's license where such driver is "guilty of habitual and persistent violations" of the traffic laws. 20 §548(a)

Grounds for Being Declared an

Habitual Offender:

Term of License Revocation While

Under Habitual Offender Status:

Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status
Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:
Imprisonment (Term):
Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

Other Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
Following Persons:

Yes (Limited) 20 §493c(m)

Driver:

Yes A blood sample must be taken w/n 4 hrs of death. The information obtained from the sample may only be used for statistical purposes. Note: Statistical reports generated from this data are not public records. 20 §493c(m)

Vehicle Passengers:
Pedestrian:

No
No

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:
Minimum Age (Years) Possession:
None
Minimum Age (Years) Consumption:

See the Special Note below.

None

Dram Shop Laws and Related Legal Actions:

Jurisdiction Has A Dram Shop Law (Yes/No):

No

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the Case (Case
Citation):

n.a.
n.a.

Dram Shop Actions-Social Hosts:
Other:

Special Note: The law prohibits persons under 18 years old from entering any night club, dance hall or bar after 9:00 p.m. where alcoholic beverages are being served unless (1) they are accompanied by adults who are legally responsible for the minors or (2) they are attending a school function where alcoholic beverages are not being sold. 14 §485 **Comment:** The general prohibition against selling alcoholic beverages (either in closed containers (packages) or by the drink) to persons under 18 years old was replaced by the present law.

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Other Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action: None
Term of Imprisonment:
Fine (\$ Range):

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): None
Length of Term of License Withdrawal:

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action: See the Special Note below.
Term of Imprisonment:
Fine (\$ Range):

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): See the Special Note below.
Length of Term License Withdrawal:

Anti-Happy Hour Laws/Regulations: No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No): No
Anti-Consumption Law (Yes/No): No

Special Note: It is a misdemeanor for a licensee to allow persons under 18 years old to enter their establishments in violation of 14 §485. See the Special Note on p. 3-501. The sanctions for this offense are a jail sentence of not more than 30 dys and/or a fine of \$25 to \$500 for each minor found on the premises. The minimum fine amount appears to be mandatory. In addition, for a 2nd or subsequent offense, the licensee is subject to having their alcoholic beverage permit suspended, revoked or denied. The law does not specify the length of such action.

STATE:
General Reference:

WASHINGTON
Revised Code of Washington Annotated

Basis for a DWI Charge:

Standard DWI Offense*:	Under the influence of or affected by intoxicating liquor ¹ §§46.61.502(1)(b) & 46.61.504(1)(b)
Illegal Per Se Law (BAC/BrAC)*:	≥0.08 ^{1,2,3} §§46.61.502(1)(a) & 46.61.504(1)(a) <u>Persons Under 21 Years Old-≥0.02 but <0.08</u> ³ §46.61.503 See the Special Note on p. 3-507.
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol*:	Under the influence of or affected by (1) Any Drug or (2) a Combination of Intoxicating Liquor and Any Drug ⁴ §§46.61.502(1)(b) & (c) & 46.61.504(1)(b) & (c)
Other:	For Commercial Motor Vehicle Operators, see p. 3-510. See the Special Note below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes ⁴ §46.20.308
Implied Consent Law Applies to Drugs (Yes/No):	Yes §46.20.308(1) See Footnote No. 1 on p. 3-504.
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §46.61.517 ⁵

¹In an Assimilative Crimes Act, 18 USC §13, case based on the State's drunk driving law for an offense committed on a Federal military reservation, a Federal appellate court has held that the State law did not apply to the operation of mopeds although it did apply to the operation of bicycles. *U.S. v. Dotson*, 34 F.3d 882 (9th Cir. 1994)

²This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

³Alc. concentration means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §46.04.015

⁴Under §46.20.308(1), a law enforcement officer may request a person under 21 years old to submit to an implied consent test if officer has arrested and has "reasonable grounds to believe" that the young person was operating a motor vehicle with an alcohol concentration ≥0.02 but <0.08 under §46.61.503.

⁵In *State v. Zwicker*, 713 P.2d 1101 (Wash. 1986), the court limited such evidence to situations where the defendant initially raises the issue of a blood alcohol test by contesting the credibility or competence of police procedures.

⁶Under §46.20.308(3), a person arrested for a DWI offense may be compelled to submit to a test for drugs as well as for alcohol if the offense involved an accident in which there was a serious bodily injury to another person.

Special Note: A person under 21 years old, unless in the presence of a parent or guardian, commits an offense if they occupy a motor vehicle in a public place "while exhibiting the effects of having consumed liquor." The sanctions for a 1st offense are a jail term of not more than 2 months and/or a fine of not more than \$500. The sanction for a 2nd offense is a jail term for not more than 6 months. The sanction for a 3rd or subsequent offense is a jail term for not more than 1 year. If the offender is under 18 yrs old, for a 1st offense, their driving privileges are revoked for 1 yr (90 dys mand) and, for a 2nd or subsequent offense, their driving privileges are revoked for 2 yrs (1 yr mand). §§13.40.020(14), 13.40.265, 46.20.265, 66.44.180, 66.44.270(2)(b) & 66.44.365 **Comment:** There is no licensing sanction for this offense if the offender is over 18 but under 21 yrs old. In addition, there appears to be no fine sanction for a 2nd or subsequent offense.

*The law defines a drunk driving offense as either driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug. The law further provides that this offense is established (or proven) if a person either (1) has a BAC/BrAC ≥0.08 w/n 2 hrs of driving or being in actual physical control of a motor vehicle, (2) was under the influence of or affected by intoxicating liquor or drugs while driving or being in actual has physical control of a motor vehicle or (3) was under the combined influence of or affected by intoxicating liquor or any drug while driving or being in actual physical control of a motor vehicle. §§46.61.502(1) & 46.61.504(1) and *State v. Crediford*, 927 P.2d 1129 (Wash. 1996), & *City of Seattle v. Norby*, 945 P.2d 269 (Wash.App. 1997)

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Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information:

A person may be administered either a breath or blood test without their consent, if they have been arrested for either (1) vehicle homicide, (2) vehicle assault or (3) any DWI offense related to an accident where there was a serious bodily injury. §46.20.308(3)⁶ & *State v. Schulze*, 804 P.2d 566 (Wash. 1991)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes-Limited ¹
Urine:	No
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No ²
Anti-Plea Bargaining Statute (Yes/No):	No ²
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol evaluation is mandatory. §§46.61.5055(5) & 46.61.5056(2)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	1st refusal-Rev/Denial 1 yr (mand) ³ ; 2nd or subsequent refusal ⁴ (w/n 7 yrs)-Rev/Denial 2 yrs or until the person reaches 21 yrs old whichever is longer (mand) ³ §§46.20.308 & 46.20.3101

¹The implied consent law provides for a blood test only in situations where a person was been arrested for either (1) vehicle homicide, (2) vehicle assault or (3) a DWI offense and where there the offense involved an accident in which there was a serious bodily injury to another person. §46.20.308(3)

²**Deferred Prosecution.** The State has a deferred prosecution program for DWI offenses. A person is eligible for this program only once. The program provides for alcohol treatment for a two year period. Upon successful completion of the program, the court shall dismiss the charges pending against the defendant. §10.05.010 et seq. The offender's license is placed on probationary status for 5 yrs. §10.05.060 In addition, as a condition for granting deferred prosecution, the court may require an offender to only operate vehicles that are equipped with ignition interlock devices. §10.05.140 Note: A deferred prosecution is treated as a prior offense for purposed of sanction enhancement for subsequent offenses. §10.05.120

³Sec. 46.20.391, concerning the issuance of occupational driving privileges, applies only to situations where licensing action is based on traffic offense convictions. **Comment.** Such provisions may not apply to licensing actions under the implied consent law.

⁴Or a 1st refusal where there has been one or more previous admin. per se violations w/n 5 yrs.

Sanctions for Refusal to Submit to a
Chemical Test: (continued)

Other:

In situations, involving 2nd or subsequent refusals (or a 1st refusal where there has been one or more previous admin. per se violations w/n 5 yrs) where the person has also been convicted of a drunk driving offense related to the same incident, the revocation/denial for the refusal is to run consecutively to any licensing action that may be imposed for the DWI offense. §46.20.3101

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,

Etc.):

On p. 3-507, see Negligent Driving and the Special Note for certain sanctions that apply to persons under 21 yrs old.

A DWI offense is a gross misd. §§46.61.502(5) & 46.61.504(5)

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-1 dy to 1 yr §46.61.5055(1)(a)

II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-2 dys to 1 yr §46.61.5055(1)(b)

III. An offense where there has been a prior offense¹ w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-30 dys to 1 yr §46.61.5055(2)(a)

IV. An offense where there has been a prior offense¹ w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-45 dys to 1 yr §46.61.5055(2)(b)

V. An offense where there has been two or more prior offenses¹ w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-90 dys to 1 yr §46.61.5055(3)(a)

VI. An offense where there has been two or more prior offenses¹ w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-120 dys to 1 yr §46.61.5055(3)(b)

Veh Assault (Drunk driving related injury Cl B felony) - Not more than 10 yrs¹ §§9A.20.021(1)(b) & 46.61.522

Important. See Mandatory Probation and Miscellaneous Sanctions on p. 3-511.

Mandatory Minimum Term:

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-24 con hrs² or, as an alternative, not less than 15 dys of electronic home monitoring⁴ which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(1)(a)

¹A prior offense includes any type of prior drunk driving offense. §46.61.5055(9)

²May be suspended only if jail would impose a risk to defendant's physical or mental well-being.

³Under the sentencing guidelines grid, the presumptive sentence is 3 to 84 mos. §§9.94A.310(1) & 9.94A.320

⁴See Footnote No. 2 on p. 3-506 concerning electronic home monitoring.

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Sanctions Following a Conviction for a DWI Offense: (continued)

Fine:
Amount (\$ Range):

II. An offense where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-**2 con dys¹ or, as an alternative, not less than 30 dys of electronic home monitoring²** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(1)(b)

III. An offense where there has been a prior offense³ w/n 7 yrs and where the offender's BAC/BrAC is < 0.15 or there was no test result (but not via a refusal to submit to a test)-**30 dys¹ and 60 dys of electronic home monitoring²** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(2)(a)

IV. An offense where there has been a prior offense³ w/n 7 yrs and where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-**45 dys¹ and 90 dys of electronic home monitoring²** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(2)(b)

V. An offense where there has been two or more prior offenses³ w/n 7 yrs and where the offender's BAC/BrAC is < 0.15 or there was no test result (but not via a refusal to submit to a test)-**90 dys¹ and 120 dys of electronic home monitoring²** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(3)(a)

VI. An offense where there has been two or more prior offenses³ w/n 7 yrs and where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-**120 dys¹ and 150 dys of electronic home monitoring²** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(3)(b)

I. An offense where the offender's BAC/BrAC is < 0.15 or there was no test result (but not via a refusal to submit to a test)-**\$350 to \$5,000** §46.61.5055(1)(a)

II. An offense where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-**\$500 to \$5,000** §46.61.5055(1)(b)

III. An offense where there has been a prior offense³ w/n 7 yrs and where the offender's BAC/BrAC is < 0.15 or there was no test result (but not via a refusal to submit to a test)-**\$500 to \$5,000** §46.61.5055(2)(a)

IV. An offense where there has been a prior offense³ w/n 7 yrs and where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-**\$750 to \$5,000** §46.61.5055(2)(b)

¹May be suspended only if jail would impose a risk to defendant's physical or mental well-being.

²**Electronic Home Monitoring.** I. The court may waive this sanction if the offender is not a State resident, does not have either a dwelling, a telephone or other items needed to operate an electronic monitoring system. §46.61.5055 II. The total time served in jail and on electronic home monitoring cannot exceed 365 dys. The jail sentence has to be served first. §46.61.5055

³A prior offense includes any type of prior drunk driving offense. §46.61.5055

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Min. Fine (\$):

V. An offense where there has been two or more prior offenses¹ w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-\$1,000 to \$5,000 §46.61.5055(3)(a)

VI. An offense where there has been two or more prior offenses¹ w/n 7 yrs and where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-\$1,500 to \$5,000 §46.61.5055(3)(b)

Veh Assault (Drunk Driving related injury Cl B felony) - Not more than \$20,000 §9A.20.021(1)(b)

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-\$350² §46.61.5055(1)(a)

II. An offense where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-\$500² §46.61.5055(1)(b)

III. An offense where there has been a prior offense¹ w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-\$500² §46.61.5055(2)(a)

IV. An offense where there has been a prior offense¹ w/n 7 yrs and where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-\$750² §46.61.5055(2)(b)

V. An offense where there has been two or more prior offenses¹ w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-\$1,000² §46.61.5055(3)(a)

VI. An offense where there has been two or more prior offenses² w/n 7 yrs and where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-\$1,500² §46.61.5055(3)(b)

Other Penalties:

Community Service:

Restitution

(eg Victim's Fund)

Possible for any offense §9.94A.101 et seq.

Yes³ Payment via a State compensation fund. §7.68.010 et seq.

¹A prior offense includes any type of prior drunk driving offense. §46.61.5055(9)

²Unless the defendant is indigent.

³Also, the court may order the defendant to pay direct compensation to a victim. For felony offenses (e.g., Vehicle Assault), the court, except in unusual circumstances, must order a defendant to pay restitution directly to a victim. §§9.94A.120(15), 9.94A.140 & 9.94A.142

Negligent Driving. A person commits 1st Degree Negligent Driving, a misdemeanor, if (1) they operate a motor vehicle in a negligent manner likely to endanger persons or property and (2) they exhibit the effects of having consumed alcohol or an illegal drug. It is a defense to this offense if the person had a valid prescription for the drug consumed. The sanctions for this offense are a jail term of not more than 90 dys and/or a fine of not more than \$1,000. In addition, there is a mandatory penalty assessment of \$250. §§7.68.035(1)(a) & (2) 9A.20.010(2), 9A.20.021(3), 46.61.050 and 46.61.5249

Special Note: A person <21 yrs old commits a misdemeanor if they operate a motor vehicle with a BAC/BrAC ≥ 0.02 but <0.08 . §46.61.503 The sanctions for this offense are an imprisonment term of not more than 90 dys and/or a fine of not more than \$1,000. §§9A.04.040(2), 9A.20.021(3) & 46.64.050

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Sanctions Following a Conviction for a DWI Offense: (continued)

Other:

Ignition Interlock. I. For a 1st offense (BAC <0.15 and there was no refusal to submit to a chemical test) the court may, after the license suspension or revocation period, require an offender to only operate motor vehicles that are equipped with an ignition interlock device. This requirement may last for as long as the court has jurisdiction. §46.20.720(1)

II. For either (1) a 1st offense (BAC ≥0.15 or there was a refusal to submit to a chemical test) or (2) any subsequent drunk driving offense (w/n 7 yrs), the court **MUST**, after the license suspension or revocation period, require an offender to only operate motor vehicles that are equipped with an ignition interlock device. If there has been no previous ignition interlock use restrictions, the usage period is not less than 1 yr; if there has been 1 previous restriction, the usage period is not less than 5 yrs; and, if there has been 2 previous restrictions, the usage period is not less than 10 yrs. §46.20.720(2) & (3)

Penalty Assessment. A defendant, who convicted of drunk driving offense under §46.61.502 or 46.61.504, is required to pay an assessment of **\$500** which is used to support the victim's compensation fund. Note: There is an assessment of **\$250** for a 1st or sub misd and **\$500** for a 1st or sub gross misd or felony. For juvenile offenders, there is an assessment of **\$75** for a 1st or sub misd and **\$100** for a 1st or sub gross misd or felony. §7.68.035(1)(a) & (b) and (2)

Laboratory Assessment Fee. An offender is assessed a **\$125** fee which is used to fund the State's toxicology laboratory. The court may suspended this fee if the defendant does not have the ability to pay it. §46.61.5054

Safety and Education Assessment. A defendant must pay an assessment equal to 60 percent of the fine imposed for the purpose of funding safety and education programs. §3.62.090(1)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Yes ≥0.08 BAC/BrAC (See Footnote No. 3 on p. 3-503.) 1st Violation-Susp-90 dys (30 dys mand. An occupational driver's license may be issued after this mand period.); 2nd or Subsequent Violation (w/n 7 yrs)-Rev/Denial-2 yrs¹ (mand) §§46.20.308, 46.20.355(2), 46.20.391(1) & 46.20.3101

Persons Under 21 Years Old-≥0.02 but <0.08 BAC/BrAC (See Footnote No. 3 on p. 3-503.)-1st Violation-Susp 90 dys (30 dys mand. An occupational driver's license may be issued after this mand period.); 2nd or Subsequent Violation (w/n 7 yrs)-Rev/Denial 1 yr or until the person reaches 21 whichever is longer. This revocation appears to be mandatory. §§46.20.308, 46.20.391(1) & 46.20.3101

¹Administrative licensing action may be stayed from 45 to 90 dys if the offender is participating in a deferred prosecution treatment program. §46.20.308(10)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Under §§46.20.291(1)(a) & 46.20.311(1), a person's license may be susp for not more than 1 yr if they have "committed" an off that requires mandatory license rev (e.g., 2nd or sub DWI offs). The law does not specifically state that such action can be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

See the Special Note below.

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**Susp** §46.61.5055(6)(a)(i)

II. An offense where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-**Rev** §46.61.5055(6)(b)(i)

III. An offense where there has been a prior offense¹ w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**Rev** §46.61.5055(6)(a)(ii)

IV. An offense where there has been a prior offense¹ w/n 7 yrs and where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-**Rev** §46.61.5055(6)(b)(ii)

V. An offense where there has been two or more prior offenses¹ w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**Rev** §46.61.5055(6)(a)(iii)

VI. An offense where there has been two or more prior offenses¹ w/n 7 yrs and where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-**Rev** §46.61.5055(6)(b)(iii)

Veh Assault-Rev §§46.04.480 & 46.20.285

Term of License Withdrawal
(Days, Months, Years, etc.):

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**90 dys** §46.61.5055(6)(a)(i)

II. An offense where the offender's BAC/BrAC is ≥ 0.15 or there was a refusal to submit to the implied consent test-**1 yr** §46.61.5055(6)(b)(i)

III. An offense where there has been a prior offense¹ w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**2 yrs** §46.61.5055(6)(a)(ii)

IV. An offense where there has been a prior offense¹ w/n 7 yrs and where the offender's BAC/BrAC is ≥ 0.15 or there was a

¹A prior offense includes any type of prior drunk driving offense. §46.61.5055

²The revocation is "tolled" during any period of incarceration. §46.20.285

Special Note: A DWI offender's driving privileges cannot be reinstated until they have enrolled in and are participating in an approved alcoholism treatment program. §46.20.311

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Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term of Withdrawal:

IV. (continued) a refusal to submit to the implied consent test-**900 dys** §46.61.5055(6)(b)(ii)

V. An offense where there has been two or more prior offenses¹ w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**3 yrs** §46.61.5055(6)(a)(iii)

VI. An offense where there has been two or more prior offenses¹ w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**4 yrs** §46.61.5055(6)(b)(iii)
Veh Assault-1 yr² §§46.04.480 & 46.20.285

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**30 dys³** §§46.20.391 & 46.61.5055(6)(a)(i)

II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**30 dys³** §§46.20.391 & 46.61.5055(6)(b)(i)

III. An offense where there has been a prior offense¹ w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**2 yrs⁴** §46.61.5055(6)(a)(ii)

IV. An offense where there has been a prior offense¹ w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**900 dys⁴** §46.61.5055(6)(b)(ii)

V. An offense where there has been two or more prior offenses¹ w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**3 yrs⁴** §46.61.5055(6)(a)(iii)

VI. An offense where there has been two or more prior offenses¹ w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**4 yrs⁴** §46.61.5055(6)(b)(iii)
Veh Assault-1 yr² §§46.04.480 & 46.20.285

¹A prior offense includes any type of prior drunk driving offense. §46.61.5055

²The revocation is "tolled" during any period of incarceration. §46.20.285

³Under §46.20.391(1), a 1st offender is eligible for occupational driving privileges after 30 dys.

⁴An offender is not eligible for an occupational license. §46.20.391(3)(b)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of alcohol or any drug or (3) refuse to submit to a chemical test for alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). Note: The implied consent provisions for CMV operators allows testing for either alcohol or drugs; however, the "disqualification" sanctions only apply to a refusal to submit to a test for an alcohol concentration. In addition, a CMV operator must be placed "out-of-service" for 24 hours if they have any amount of alcohol in their system. A person commits a gross misdemeanor if they operate a CMV with any amount of alcohol in their system: Jail-not more than 1 yr; fine-not more than \$5,000. §§9.92.020, 46.25.010(2), (6), (8) & (15), 46.25.090, 46.25.110, 46.25.120 and 46.25.170

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Yes for all offs¹ §46.61.5056(1)

Yes for all offs¹ §46.61.5056(1)

Forfeiture.² The vehicle used in the offense, in which a 2nd or sub DWI offender (w/n 7 yrs) has a financial interest, is subject to forfeiture. This action does not appear to be mandatory. §46.61.5058

Terms Upon Which Vehicle

Will Be Released:

Other:

Mandatory Probation. FOR ANY DRUNK DRIVING OFFENSE, If the court imposes <1 yr in jail, it shall suspend but not defer a period of confinement ≤5 yrs and must place an offender on probation with the following minimum conditions. (1) They cannot operate a vehicle unless they have a valid license and maintain proof of financial responsibility. (2) They cannot operate a motor vehicle with BAC/BrAC ≥0.08. And, (3) they must submit to implied consent tests. If an offender violates (1) in combination with either (2) or (3), they are subject to a mandatory 30 dy jail term and a license suspension for 30 dys. In addition, the court may order an offender to only operate motor vehicles that are equipped with an "ignition interlock" device. §46.61.5055

Vehicle Assault-Community Placement. A person, who has been convicted of Vehicle Assault, must be sentenced to "community placement" for at least 2 yrs. §9.94A.120(9)(b)

Probationary License. After either the suspension or revocation period, DWI offenders' driving privileges must be placed on probationary status for 5 yrs. §§46.20.355(2) & 46.61.5055

Miscellaneous Sanctions

Not Included Elsewhere:

Home Detention. Incarceration may include "home detention". See §§9.94A.030(18) & (28) and 9.94A.190(1). Note: It is not certain whether "home detention" can be used as an alternative for the mandatory portions of the DWI imprisonment/jail sanctions.

Special Education Program. A person convicted of a DWI offense may be required to attend an educational program that focuses on the emotional, physical and financial suffering of DWI victims. §46.61.5152

Incarceration Costs. A defendant (except an indigent) may be required to pay not more than \$50 for each day of incarceration. §10.64.130

EMS Cost. A defendant is liable for up to \$1,000 of the cost of an emergency response related to the DWI offense. §38.52.430

¹A court ordered assessment will determine whether an offender will be required to attend either an alcohol education course or treatment. §46.61.5056

²A law enforcement officer may take custody and remove to a safe place a vehicle involved in a DWI offense. §46.55.113

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Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes CI A Felony Where death is caused by the operation of a vehicle (1) while under the influence of intoxicating liquor or any drug¹, (2) in a reckless manner or (3) with disregard for the safety of others. §46.61.520

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Life Imprisonment² §9A.20.021(1)(a)

None Note: The sentencing guidelines grid would appear to require a period of incarceration.²

Fine (\$ Range):

Not more than **\$50,000** §9A.20.021(1)(a)

A Penalty Assessment of \$500 §7.68.035(1)(a) & (2)

None Note: the Penalty Assessment is mandatory.

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev §46.20.285

Length of Term of

Licensing Withdrawal:

2 yrs³ §46.20.285

Mandatory Action—Minimum

Length of License

Withdrawal:

2 yrs³ No occupational license is available. §46.20.391

Other:

(1) For felony offenses (e.g., Vehicle Homicide), the court may order a defendant to pay restitution directly to a victim. §§9.94A.120(15), 9.94A.140 & 9.94A.142 (2) Also, a victim is eligible for compensation directly from a State fund. §7.68.010 et seq. (3) A person, who has been convicted of Vehicle Homicide, must be sentenced to "community placement" for at least 2 yrs. §9.94A.120(9)(b)

EMS Cost. A defendant is liable for up to **\$1,000** of the cost of an emergency response related to a DWI vehicle homicide offense. §38.52.430

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

See Footnote Nos. 4 & 5 below.

¹The State does not have to prove that a defendant's intoxication caused the victim's death. However, the State must still prove that the defendant's driving was related to the accident that caused the fatality. *State v. Rivas*, 896 P.2d 57 (Wash. 1995)

²Under the sentencing guidelines grid, the presumptive sentences are as follows: Vehicle homicide related to a drunk driving offense-31 to 144 mos with 2 yrs added for each prior drunk driving offense; vehicle homicide related to reckless driving-21 to 116 mos; and, vehicle homicide related to vehicle operation with disregard for the safety of others-15 to 102 mos. §§9.94A.310(1) & (7), 9.94A.320 and 46.61.520(2)

³The revocation is "tolled" during any period of incarceration. §46.20.285

⁴It is a gross misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 1 yr and/or a fine of not more than \$5,000. §§9.92.020, 46.20.342(1) & 46.25.050(2) If a person operates a CMV while under an out-of-service order, they are subject to the following disqualification periods: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. If the CMV operator was driving a CDL either containing hazardous materials or designed to carry 16 or more persons, the CDL disqualification periods are as follows: 1st violation-180 dys (mand) to 2 yrs; and, sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. §46.25.90(6)

⁵Note: The vehicle used in this offense may be impounded as follows: 1st offense-Not more than **30 dys**; 2nd offense (w/n 5 yrs)-Not more than **60 dys**; and, 3rd and subsequent offense-Not more than **90 dys**. If the registered owner of the vehicle was the violator, the vehicle cannot be released until all penalties, fines or forfeitures have been satisfied. §46.55.120(a)(2) & (b)

Other Criminal Actions Related to DWI: (continued)Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense: (continued)

Sanction:

Criminal:

Imprisonment (Term):

Gross Misd Not more than 1 yr §§9.92.020, 9A.20.021 & 46.20.342(1)Mandatory Minimum Term
of Imprisonment:**None**

Fine (\$ Range):

Not more than \$5,000 §§9.92.020 & 9A.20.021

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp or Rev §46.20.342(2)

Length of Term of License

Withdrawal Action:

An additional susp/rev period of 1 yr. §46.20.342(2)(b)

Mandatory Term of License

Withdrawal Action:

The susp/rev shall not be extended if the court recommends against such extension and the driver has already obtained a valid license. §46.20.342(2)(c)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes §46.65.020

Grounds for Being Declared an

Habitual Offender:

3 serious offs w/n 5 yrs or a combination of 20 minor and/or serious offs w/n 5 yrs provided that 3 minor offs must have been committed w/n the period of 360 dys for this alternative to apply.

Term of License Rev While

Under Habitual Offender Status:

7 yrs¹ Note: There is a special stay of rev if based on DWI offs and person is attending an alcohol treatment program. Also, after 4 yrs a license may be issued upon "good and sufficient showing". §§46.65.060, 46.65.070 & 46.65.080

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Gross Misd §46.20.341(1)(a)

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

1st off-10 dys to 1 yr; 2nd off-90 dys to 1 yr; 3rd & sub. off-Not less than 1 yr §§9.92.020, 9A.20.021 & 46.20.342(1)(a)

Mandatory Minimum Term of

Imprisonment:

1st off-10 dys (if the offender has also committed a DWI off-90 dys); 2nd off-90 dys; 3rd & sub. off-180 dys §46.20.342(1)(a)

Fine (\$ Range):

Not more than \$5,000 §§9.92.020 & 9A.20.021

Mandatory Minimum Fine (\$):

None

Licensing Actions (Specify):

The original revocation for being an habitual violator is extended for an additional period of 1 yr. The court may recommend against such an extension. §46.20.342(2)(a) & (c)

¹After this 7 yr period, the revocation remains in effect until the offender petitions and receives a new license from the State licensing agency. §46.65.100

WASHINGTON

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §§46.20.308(1) & 46.52.065

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1934) §§66.44.270(1) & 66.44.290

Minimum Age (Years) Possession:

21 §§66.44.270(2) Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons and for religious services.

Minimum Age (Years) Consumption:

21 §§66.44.270(2) Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons and for religious services.

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

No¹

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes *Purchase v. Meyer*, 737 P.2d 661 (Wash. 1987)²

Dram Shop Actions-Social Hosts:

No *Reynolds v. Hicks*, 951 P.2d 761 (Wash. 1998)³ **Comment:**
This case concerned social host liability resulting from injuries
caused by a minor guest to a third party. The court did not
address the issue of social host liability resulting from injuries
caused an adult guest to a third party.

Other:

A licensee is not liable for the injuries sustained by an intoxicated
(adult) patron. *Estate of Kelly by and Through Kelly v. Falin*,
896 P.2d 1245 (Wash. 1995) See the *Hansen* case in Footnote
No. 3.

¹Note: This State's Dram Shop Law was repealed in 1955. Ch. 372 of the laws of 1955

²I. Applies to the actions of either (1) an obviously intoxicated patron or (2) a minor patron. See Footnote No. 10 of the *Purchase* case for other decisions (737 P.2d at 664), *Christen v. Lee*, 780 P.2d 1307 (Wash. 1989), and *Cox v. The Keg Restaurants U.S., Inc.*, 935 P.2d 1377 (Wash.App. 1997). II. A licensee, who sells alcohol beverages illegally to a minor, is liable for the injuries sustained by another intoxicated minor (not a purchaser) after they consumed such beverages. *Crowe v. Gaston*, 951 P.2d 1118 (Wash. 1998), & *Schoofy v. Pinch's Deli Market, Inc.*, 951 P.2d 749 (Wash. 1998) In addition, a third party, who is injured by an intoxicated minor, was able to bring a cause of action against a licensee who provided alcoholic beverages to an under age person who in turn provide such beverages to the injury causing minor. *Rinks v. Bearss*, 921 P.2d 558 (Wash.App. Div. 1 1996)

³Notwithstanding the *Reynolds* decision, an adult social host was held liable for the death of an intoxicated minor guest. *Hansen v. Friend*, 824 P.2d 483 (Wash. 1992) **Comment:** Given the language in the *Hansen* case, it appears that a commercial server of alcoholic beverage can be held liable for the injuries (or death) of an intoxicated minor patron. And, in another case, an employer was held liable for the injuries caused by an intoxicated employee to a third party. The employee became intoxicated at a company sponsored banquet. *Fairbanks v. J.B. McLoughlin Co. Inc.*, 929 P.2d 433 (Wash. 1997)

Other State Laws Related To Alcohol Use: (continued)

Note: Sec. 4.56.250(2), that limited the amount of non-economic damages a person could receive in civil (tort) action, was declared in violation of the State's constitution. *Sofie v. Fibreboard Corp.*, 771 P.2d 711 (Wash. 1989)

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd/Gross Misd §§9A.20.010(2), 66.44.180 & 66.44.200
1st off (misd) - Not more than 2 mos; 2nd off (gross misd) - Not
more than 6 mos; 3rd and subsequent offs (gross misd) - Not
more than 1 yr

For individuals: 1st off - Not more than \$500¹; 2nd and sub
off-None For corporations: 1st off - Not more than \$5,000¹;
2nd and subsequent offs - Not more than \$10,000¹ (and/or
forfeiture of its corporate license.)

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Susp/Cancel (Rev) §§66.24.010 & 66.44.200

Not specified in the statute

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Gross Misd §66.44.270(1)

Not more than 1 yr §9A.20.021(2)

Not more than \$5,000¹ §9A.20.021(2)

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp/Cancel (Rev)

Not specified in the statute §§66.24.010, 66.44.180, 66.44.320
& 66.44.325

¹There is an assessment of \$250 for a 1st or sub misd and \$500 for a 1st or sub gross misd. For juvenile offenders, there is an assessment of \$75 for a 1st or sub misd and \$100 for a 1st or sub gross misd. §7.68.035(1)(a) & (b)

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Other State Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes §46.61.519(2)^{1&2}

Anti-Consumption Law (Yes/No):

Yes Driver and Passengers² §46.61.519(1)¹

Note: Under §66.44.100, "no person shall open the package containing liquor or consume liquor in a public place." The law allows for exceptions (e.g. licensed establishments).

¹A violation is a traffic infraction.

²Does not apply to passengers in commercially chartered vehicles or in the living quarters of a motor home or camper.

STATE

General Reference:

WEST VIRGINIA

West Virginia Code

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Other:

Under the influence of alcohol §17C-5-2

≥0.10¹ §17C-5-2Persons Under 21 Years Old ≥0.02 but <0.10¹ §17C-5-2(h)≥0.10¹ §17C-5-8

Under the influence of (1) Any Drug, (2) Controlled Substance or (3) a Combination of Alcohol and Any Other Controlled Substance or Any Other Drug §17C-5-2 Habitual users of narcotic drugs, amphetamine or any derivative thereof §17C-5-2

An alcohol concentration ≥0.10¹ is also *prima facie* evidence of driving under the influence of alcohol. §17C-5-8An alcohol concentration >0.05 but <0.10¹ is "relevant evidence" (but not *prima facie* evidence) of driving while under the influence of alc. §17C-5-8

For Commercial Motor Vehicle Operators, see p. 3-518.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

Yes §§17C-5-4 (¶1), 17C-5-5 & 17C-5-6a(a)

Yes §§17C-5-4 & 17C-5-6a(b)

No

Yes (Criminal Cases) *State v. Cozart*, 352 S.E.2d 152 (W.Va. 1986)

None

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:

Urine:

Other:

Yes §§17C-5-4 & 17C-5-6a(c)

Yes §§17C-5-4 & 17C-5-6a(c)

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea Bargaining Statute (Yes/No):

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

No

No

No

¹The standard for alcohol concentration is percent by weight of alcohol in the blood. §§17C-5-2, 17C-5-8 & 17C-5A-1 However, this standard is based upon a formula of (1) grams of alcohol per one hundred cubic centimeters of blood, (2) grams of alcohol per 210 liters of breath and (3) grams of alcohol per 67 milliliter of urine. §17C-5-8

WEST VIRGINIA

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	

1st Refusal-Rev-1 yr (mand¹ *Kimes v. Bechtold*, 342 S.E.2d 147 (W.Va. 1986)); 2nd Refusal²-Rev-10 yrs (5 yrs mand³); 3rd Refusal²-Rev-life (10 yrs mand³) §§17C-5-4 & 17C-5-7 These revocations are to run concurrently with any other susp/rev resulting from the same incident. §17C-5-7(a) See Footnote No. 1 on p. 3-522. **Special Note:** A refusal to submit to chemical test based on a blood sample does not result in license revocation. §§17C-5-4 & 17C-5-6a(c) **Note:** Under §17C-5-6a(c), a child (a person under 18 yrs old §§49-1-3 & 49-5-8) may be taken into custody if a law enforcement officer has reasonable grounds to believe that they have been operating a motor vehicle with any amount of alcohol in their body. The law requires that the child be warned that, if they refuse to submit to the implied consent test, their license could be suspended from 30 dys to life.⁴

Other:

¹Thirty (30) dys mandatory if the person participates in the ignition interlock program (see p. 3-522)) §17C-5A-3a(c)(2)

²A previous admin. per se violation is also considered a prior refusal for licensing sanction enhancement purposes. §17C-5-7(b)

³Eighteen (18) mos mandatory rev if the person participates in the ignition interlock program. §17C-5A-3a(c)(4) & (e)(3) **Comment:** For a 2nd refusal, the law appears to require a mand rev period of 18 mos before a person is eligible to participate in the ignition interlock program. However, the regulations (which have also been enacted into law via §64-8-1(b)) that implement this program seem to indicate that only a 9 mo mand revocation is required prior to participation. §91-9-3.4.3 (regulation) **Note:** Certain subsequent violators are not eligible for this program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program" on p. 3-522.

⁴**Comment:** The licensing sanctions provisions of the implied consent law, §17C-5-7, do not provide for a 30 dy license suspension for such a refusal by these persons.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (mand) (not less than 3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of either alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. (Note: The CMV implied consent provision, §17E-1-15(a), applies to the testing of both alcohol and drugs; however, the disqualification provision, §17E-1-13(a)(5), applies only to refusal to submit to a test for an alcohol concentration.) For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who either (1) refuses to take a PBT or (2) has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. Unless the law provides for another sanction, it is a misdemeanor to violate any of the provisions of the CMV/CDL law: Jail-not more than 6 months; fine-\$100 to \$1,000. However, there are special criminal sanctions in two circumstances. (1) A person, who operates a CMV with any measurable amount of alcohol in their system is subject to the following sanctions: 1st off-jail-none; fine not more than \$100; 2nd off-jail-not more than 30 dys; fine-\$100 to \$300; 3rd and sub. off-jail-24 hrs to 30 dys; fine-\$500 to \$1,000 and (2) a person, who operates a CMV with any a BAC/BrAC/UrAC ≥ 0.04 is subject to the following sanctions: 1st off-jail-24 hrs to 6 mos; fine-\$100 to \$500; 2nd and sub. off (misd)-jail-6 mos to 1 yr; fine-\$1,000 to \$3,000. §§17E-1-3, 17E-1-13, 17E-1-14, 17E-1-15 & 17E-1-25

Sanctions Following a Conviction for a DWI Offense:**Criminal Sanctions:****Imprisonment:**Term (Day, Month, Years,
Etc.):

See Child Endangerment and Persons Under 21 Years Old below.

See Footnote No. 3.

DWI not related to death or bodily injury, 1st off-1 dy¹ to 6 mos; 2nd off-6 mos to 1 yr; 3rd and Sub offs²-1 to 3 yrs; DWI resulting in death where there is reckless disregard of the safety of others²-1 to 10 yrs; DWI resulting in death where there is an illegal act or a failure to perform a legal duty, 1st off-90 dys to 1 yr; 2nd off-6 mos to 1 yr; 3rd and Sub offs²-1 to 3 yrs; DWI resulting from bodily injury where there is an illegal act or a failure to perform a legal duty, 1st off-1 dy¹ to 1 yr; 2nd off-6 mos to 1 yr; 3rd and Sub offs²-1 to 3 yrs §17C-5-2

See Footnote No. 4 below and Home Confinement on p. 3-520.

See Footnote No. 3.

Mandatory Minimum Term:**Fine:**

Amount (\$ Range):

DWI not related to death or bodily injury, 1st off-\$100 to \$500; 2nd off-\$1,000 to \$3,000; 3rd and Sub offs²-\$3,000 to \$5,000; DWI resulting in death where there is reckless disregard of the safety of others²-\$1,000 to \$3,000; DWI resulting in death where there is an illegal act or a failure to perform a legal duty, 1st off-\$500 to \$1,000; 2nd off-\$1,000 to \$3,000; 3rd and Sub offs²-\$3,000 to \$5,000; DWI resulting from bodily injury where there is an illegal act or a failure to perform a legal duty, 1st off-\$200 to \$1,000; 2nd off-\$1,000 to \$3,000; 3rd and Sub offs²-\$3,000 to \$5,000 §17C-5-2

Sec. 17C-5-21(p) provides that the above minimum fine sentences are mandatory and are not subject to either suspension or probation.

Mandatory Min. Fine (\$):**Other Penalties:****Community Service:**

Yes §62-11A-1a See Alternative Sentences below.

¹Actual confinement of not less than 24 hrs.²Felony

³It is a misdemeanor for a person to drive a vehicle if they are an habitual user of narcotic drugs, an amphetamine or any derivative thereof. The sanctions for this offense are as follows: Imprisonment from 1 day to 6 months with actual confinement of not less than 24 hours and/or a fine of from \$100 to \$500. §17C-5-2(e)

⁴Sec. 17C-5-2(p) provides that the DWI sanctions are mandatory and are not subject to either susp or probation. I.e., the minimum imprisonment sanction, it appears, must be served. However, this section does provide that, for jail sentences of one (1) yr or less (misdemeanors), the provisions of either §62-11A-1 et. seq. or §62-11B-1 et seq. may be applied by the court. In brief, §62-11A-1 et seq. provide for a defendant's temporary release from confinement for employment, educational, medical, or family needs or reasons. *State v. Kerns*, 394 S.E.2d 532 (W.Va. 1990) And, §§17C-5-2(p) and 62-11B-1 et seq. provide for electronically monitored "home incarceration" for certain drunk driving law offenders in lieu of confinement in either a jail or the State penitentiary. *State v. York*, 504 S.E.2d 158 (W.Va. 1998)

Child Endangerment. A person, who violates the drunk driving law while transporting a child <16 yrs old, commits a misd and is subject to a jail term of 2 dys to 12 mos (with 48 hrs of actual confinement mand) and/or a fine of \$200 (mand) to \$1,000. §17C-5-2(i)

Persons Under 21 Years Old. Persons under 21 years old, who operate a motor vehicle with an alcohol concentration ≥ 0.02 but < 0.10 , are subject to the following sanctions: 1st off (misd)-Jail-None; fine-\$25 (mand) to \$100 A first offender may have the charges dismissed and their record expunged if the successfully complete an alcohol safety/treatment and interlock program. Sub off (misd)-Jail-24 hrs (mand); fine-\$100 (mand) to \$500 A person charged with a regular DWI offense cannot be charged with this offense for the same occurrence. §17C-5-2(h)

Alternative Sentences. In lieu of either a fine or incarceration sanction (except mandatory incarceration via statute), a court may impose one of the following sentences: Either (1) a weekend jail program where the offender spends weekends or "other days normally off from work" in confinement; (2) first one or two days in confinement followed by work assignments either within the jail or on other public works projects outside of the jail; or, (3) a community service program with either government entities, charitable or other non-profit organizations which have been approved by the court. §62-11A-1a(a) & (c)(1)

WEST VIRGINIA

Sanctions Following a Conviction for a DWI Offense: (continued)

Restitution

(eg Victim's Fund):

Yes Victims' Compensation Fund. §14-1-1 et seq. & §14-2A-3 et seq. Direct compensation by the defendant to the victim via court order is also possible. §14-2A-3(b)(1)

Other:

Home Confinement. Under §62-11B-4 et seq., the court has the authority to order the use "electronically monitored home confinement" in lieu of incarceration for a drunk driving off. *State v. Kerns*, 394 S.E.2d 532 (W.Va. 1990), & *State v. York*, 504 S.E.2d 158 (W.Va. 1998)

Assessments. A fee of 20% of the fine imposed is assessed against each DWI offender. Felony offenders are also assessed a fee of \$50. These assessments are deposited into the Crime Victims Compensation Fund. §§14-2A-4 & 62-5-10

Alternative Sentences. See Alternative Sentences on p. 3-519.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Child Endangerment and Persons Under 21 Years Old on p. 3-521. **Yes** >0.10 (BAC/BrAC/UrAC See Footnote No. 1 on p. 3-517.) or **Driving While Under the Influence of Alcohol¹, a Controlled Substance or Other Drugs** Admin actions where there is neither a death nor a bodily injury: 1st action-6 mos rev (90 dys mand²); 2nd action³-10 yrs rev (5 yrs mand³); Sub action⁴-Rev for life (10 yrs mand⁵). Admin. actions where there is a death and the driver has also acted in reckless disregard for the safety of others 1st action-10 yrs rev (5 yrs mand), Sub action⁴-Rev for life (10 yrs mand). Admin actions where there is a death of a person but no recklessness on the part of the driver: 1st action-5 yrs rev (2 1/2 yrs mand); Sub action⁴-Rev for life (10 yrs mand). Admin actions where there is bodily injury: 1st action-2 yrs rev (1 yr mand); 2nd action³-10 yrs rev (5 yrs mand) Sub action⁴-Rev for life (10 yrs mand) §§17C-5A-1, 17C-5A-2 & 17C-5A-3. See Special Note Nos. 1 & 2 on p. 3-521. The admin. per se law appears to apply to both residents and nonresidents. §17B-3-2

¹An alcohol concentration >0.05 but <0.10 is "relevant evidence" of driving while under the influence of alcohol. §17C-5-8 Note: The State can revoke a person's license administratively for driving while under the influence of alcohol without the necessity of establishing an alcohol concentration. Constitutional principles of due process of law do not require that a person be administered a test for blood alcohol concentration before their driving privileges can be withdrawn administratively for driving while under the influence of alcohol. *Albrecht v. State*, 314 S.E.2d 859 (W.Va. 1984), & *Dean v. W.Va. Dept. of Motor Vehicles*, 464 S.E.2d 589 (W.Va. 1995)

²Thirty (30) dys mandatory if the person participates in the **ignition interlock** program. §17C-5A-3a(c)(1) & (e) For more details, see "Ignition Interlock Program" on p. 3-522.

³Nine (9) mos mandatory if the person participates in the **ignition interlock** program. §17C-5A-3a(c)(3) However, certain subsequent offenders are not eligible for this program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program" on p. 3-522.

⁴w/n 10 yrs A prior action includes any suspension or revocation under the admin. per se law.

⁵Eighteen (18) mos mandatory if the person participates in the **ignition interlock** program. §17C-5A-3a(c)(4) **Comment:** Although the ignition interlock law does not provided for it, the regulations that implement the ignition interlock program provide that, if a person has had more than 3 admin per se or drunk driving offense related revocations, their license must be revocation for an additional 6 mos "for each offense greater than three" before they are eligible to participate in this program. §91-9-3.4.5 (regulation) Note: Certain subsequent offenders are not eligible for this program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program" on p. 3-522.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Special Note No 1: I. Vehicle operation by an habitual user of a narcotic drug, an amphetamine or any derivative thereof: 1st action-Rev 6 mos; 2nd action-Rev 10 yrs; Sub action-Rev for life See Footnote No. 4 on p. 3-520. §17C-5A-2(i)

II. A previous implied consent refusal is also considered a prior admin. per se action for licensing sanction enhancement purposes. §17C-5A-2(j)

III. For an admin. per se action based on driving while under the influence of alcohol where there was no alc. concentration evidence, see *W.Va. Div. of Motor Vehicles v. Cline*, 423 S.E.2d 882 (W.Va. 1992).

IV. For cases upholding mand admin. per se action revocations, see *Wagoner v. Sidropolis*, 399 S.E.2d 183 (W.Va. 1990), and *Dept. of Motor Vehicles v. Sanders*, 399 S.E.2d 455 (W.Va. 1990).

Special Note No 2: I. The minimum mandatory license revocation periods above apply only if the person is participating in an alcohol/drug treatment program. Otherwise, the person has to have their driving privileges revoked for the entire revocation period. §17C-5A-3

II. A person, under 21 years old, who has violated the admin. per se law, must have their license revoked until they are 21 or for the applicable statutory period whichever is longer. §17C-5A-2(n) However, there is a only 1 yr mand. revocation if the person under 21 years old participates in the ignition interlock program. §17C-5A-3a(c)(3) & §91-9-3.4.5 (Regulation 91 CSR 9)

Under §§17B-3-6 & 17B-3-8, license susp for not more than 1 yr if a person has "committed" an off that requires mandatory license rev (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

Persons Under 21 Years Old. Admin. per se actions taken against persons under 21 years old, who operate a vehicle with an alcohol concentration ≥ 0.02 but < 0.10 (BAC/BrAC/UrAC See Footnote No. 1 on p. 3-517.): 1st & sub action-60 dys susp (mand) 30 dys mand if the person participates in the ignition interlock program. For persons under 18 yrs old, 30 dys mand or until they are 18 whichever is the longer susp period. Admin. actions where there is a death and the driver has also acted in reckless disregard for the safety of others: 1st action-10 yrs rev (5 yrs mand); sub action¹-Rev for life (10 yrs mand). Admin actions where there is a death of a person but no recklessness on the part of the driver: 1st action-5 yrs rev (2 1/2 yrs mand); sub action¹-Rev for life (10 yrs mand). Admin actions where there is bodily injury: 1st action-2 yrs rev (1 yr mand); 2nd action¹-10 yrs rev (5 yrs mand); sub action¹-Rev for life (10 yrs mand) §§17C-5-2(h), 17C-5A-1, 17C-5A-2 & 17C-5A-3.

Other:

¹w/n 10 yrs A Prior action includes any suspension or revocation under the admin. per se law.

Child Endangerment. A person, who violates the admin. per se law while transporting a child <16 yrs old, is subject to a 2 yr revocation (mand). If the person has had a previous admin. per se license suspension or revocation (w/n 10 yrs), the revocation period is 10 yrs (mand). And, if the person has more than one previous admin. per se license suspension or revocation (w/n 10 yrs), the revocation period is for life (mand). §17C-5A-2(m)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

The same licensing sanctions as for an admin per se violation.
§17C-5A-1a

Term of License Withdrawal
(Days, Months, Years, etc.):
Mandatory Minimum Term of
Withdrawal:

Other:

Rehabilitation:

Alcohol Education:

Yes¹ §17C-5A-3 After (1) the period of mandatory rev has elapsed and (2) the driver has successfully completed an approved program of either alcohol/drug education or alcohol/drug treatment, a defendant's license may be reissued with or without conditions. Also, a person who participates in the "Ignition Interlock Program" must complete a safety and treatment program. §17C-5A-3a(b)(1)

Alcohol Treatment:

Yes See above.

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

None

¹A person, who has refused to submit to a chemical test, must successfully complete an alcohol education or treatment program before their license can be reinstated. §17C-5A-3

Ignition Interlock Program (Available Only to Persons ≥18 Years Old). The driver licensing agency may reduce the mandatory and regular revocation periods of certain implied consent, admin. per se and DWI law offenders, if they agree to operate motor vehicles equipped with ignition interlock devices. A person must either be participating in or have successfully completed a safety and treatment program to be eligible to participate in the ignition interlock program. However, a person is not eligible for this program if (1) they have been involved in either death related admin. per se or DWI law violation (**Comment:** The law provides that only offenders, who have committed a death related drunk driving offense are ineligible for this program. However, under the regulations that implement the program, offenders who have committed an injury related admin per se or drunk driving offense are also excluded from the program. §91-3-3.6 (regulation)), (2) they have been involved in a violation of the implied consent, admin. per se or DWI laws while participating in the program, or (3) they have previously been in the program. 1st admin. per se violation/DWI off: The ignition interlock must be used for 5 mos. 1st refusal: The ignition interlock must be used for 9 mos. 2nd admin. per se violation or DWI off: The ignition interlock must be used for 18 mos. Sub admin. per se violation or DWI off and 2nd or sub refusal: The ignition interlock must be used for 2 yrs. **Comment:** Although the ignition interlock law does not provided for it, the regulations that implement the ignition interlock program provide that, if a person has had more than 3 admin per se, refusal, or drunk driving offense related revocations, they must use an ignition interlock for an additional 1 yr "for each offense greater than three." §91-9-3.4.5 (regulation) Persons <21 yrs old-vehicle operation with an alcohol concentration ≥0.02 but <0.10: The law appears to require that the ignition interlock be used for 6 mos. First time participants have their driver licensing records expunged. §17C-5A-3a(c),(e) & (f) and §91-9-3 (Regulation 91 CSR 9) The regulations were adopted via legislation; see §64-8-1(b).

Other Criminal Actions Related to DWI:Homicide by Vehicle:

State Has Such a Law:

Yes Misd¹ Negligent homicide §17C-5-1 Note: For the details on deaths related to DWI, see DWI sanctions on pp. 3-519 & 3-520.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than 1 yr §17C-5-1(b)

Mandatory Minimum Term:

None

Fine (\$ Range):

\$100 to \$1,000 §17C-5-1(b)

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev §§17B-1-1(q), 17B-3-5 & 17C-5-1(c)

Length of Term of

Licensing Withdrawal:

1 yr

Mandatory Action—Minimum

Length of License

Withdrawal:

1 yr

Other:

See Alternative Sentences on p. 3-519.

Driving While License Suspended or RevokedWhere the Basis Was a DWI Offense:

See Footnote No. 2 and the Special Note below.

See Alternative Sentences on p. 3-519.

Sanction:

Criminal:

Imprisonment (Term):

1st off (misd)-6 mos³; 2nd off (misd)-1 yr³; 3rd and subsequent offs (felony)-1 to 3 yrs³ (penitentiary) §17B-4-3(b)

Mandatory Minimum Term

of Imprisonment:

1st off-6 mos³; 2nd off-1 yr³; 3rd and sub offs-1 yr³

Fine (\$ Range):

1st off-\$100 to \$500; 2nd off-\$1,000 to \$3,000; 3rd and sub offs-\$3,000 to \$5,000 §17B-4-3(b)

Mandatory Minimum Fine:

1st off-\$100; 2nd off-\$1,000; 3rd and sub offs-\$3,000¹This offense is a misdemeanor via §17C-18-1(a).²I. It is a misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. For a 1st offense, a person is subject to an imprisonment term for not more than 6 mos and/or a fine of \$100 to \$1,000. For a 2nd offense, a person is subject to an imprisonment term of 6 to 9 mos and/or a fine of \$500 to \$2,000. And, for a 3rd or subsequent offense, a person is subject to an imprisonment term of 9 mos to 1 yr and/or a fine of \$1,000 to \$2,500. §§17E-1-7(b) & 17E-1-25 II. A person, who violates an out-of-service order, is subject to the following mandatory CDL disqualifications: (1) 1st offense-90 dys; 2nd offense (w/n 10 yrs)-1 yr; and, 3rd or subsequent offense (w/n 10 yrs)-3 yrs. The following mandatory CDL disqualifications apply if the CMV operator was driving on an out-of-service order while transporting hazardous materials or operating a vehicle designed to carry 16 or more persons including the driver: 1st offense-180 dys; and, 2nd or subsequent offense-3 yrs. §7E-1-13(f)³Home detention may be used as an alternative to incarceration. §17B-4-3(e)

Special Note: A person under 21 years old, who operates a vehicle after their license has been either suspended or revoked for driving with an alcohol concentration ≥ 0.02 but < 0.10 , commits a misdemeanor and is subject to a jail term of 24 hrs (mand) and/or a fine of \$50 (mand) to \$500 §17B-4-3-(d) **Comment:** There appears to be no additional licensing action (suspension or revocation) for this offense.

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp/Rev

Length of Term of License

1 yr extension of the original licensing action §17B-4-3(c)

Withdrawal Action:

Mandatory Term of License

Same as above.

Withdrawal Action:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §17C-5B-1

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes (Adult pedestrians)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1986)¹

Minimum Age (Years) Possession:

21 §§11-16-19(a), 60-3A-24(A) & 60-8-20a(a)

Minimum Age (Years) Consumption:

21 §§11-16-19(a), 60-3A-24(A) & 60-8-20a(a)

¹§§11-16-18(a)(3), -16-19(a) and 60-3-12(3), -3-22(1), -3-22a, -3A-24(A), -6-8(4), -7-12(a)(3), -7-12a, -8-20(c) & -8-20a

Other State Law Related to Alcohol Use: (continued)Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No

Yes *Bailey v. Black*, 394 S.E.2d 58 (W.Va. 1990), *Anderson v. Moulder*, 394 S.E.2d 61 (W.Va. 1990), & *Walker v. Griffith*, 626 F.Supp. 350 (W.D. Va. 1986)

Dram Shop Actions-Social Hosts:

No* *Overbaugh v. McCutcheon*, 396 S.E.2d 153 (W.Va. 1990)

Other:

A licensee may be liable for the injuries sustained by an intoxicated patron (adult or minor). *Bailey v. Black*, 394 S.E.2d 58 (W.Va. 1990), & *Anderson v. Moulder*, 394 S.E.2d 61 (W.Va. 1990)

Criminal Action Against Owners or Employees
of Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Misd For all offenses See Alternative Sentences on p. 3-519.

Alcoholic Liquor^{1&6}: Private Pkg Retail Sales²-30 dys to 1 yr; Special Licensees³-30 dys to 1 yr; Private Clubs⁴-not more than 1 yr; Wines⁵-30 dys to 6 mos. Nonintoxicating Beer^{1&7}: Class A & B Licensees-30 dys to 6 mos. Footnotes are on p. 3-526.

Fine (\$ Range):

Alcoholic Liquor^{1&6}: Private Pkg Retail Sales²-\$100-\$5,000; Special Licensees³-\$50 to \$500; Private Clubs⁴-\$100 to \$500; Wines⁵-\$25 to \$500. Nonintoxicating Beer^{1&7}: Class A & B Licensees-\$25 to \$500. Footnotes are on p. 3-526.

Administrative Actions Against Owners of
Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes Discontinued, suspended or revoked

Alcoholic Liquor^{1&6}: Private Pkg Retail Sales² (also, a civil penalty of not more than \$1,000); Special Licensees³-Rev time period is not specified but normal licensing period is one (1) year; Private Clubs⁴-Rev/susp-Licenses are usually revoked for up to one (1) year (in lieu of rev, a monetary penalty of not more than \$1,000); Wines⁵-Rev/susp time period is not specified in the statute. Nonintoxicating Beer^{1&7}: Class A & B Licensees-Rev/susp-If the license is revoked, no new license shall be issued for two (2) years; the statute does not state a specific time period for a suspension. There is also, a monetary penalty of not more than \$1,000. Footnotes are on p. 3-526.

***Comment:** Generally, social hosts are not liable for the actions of their intoxicated guests. This is especially true in cases where the guests serve alcoholic beverages to themselves. However, there may be extenuating circumstances where liability could result. In *Price v. Halstead*, 355 S.E.2d 380 (W.Va. 1987), 64 ALR4th 255, the court held that a passenger, who was riding in a vehicle driven by a drunken driver, could be held liable for the injuries sustained by a third party as a result of the driver's actions provided "the passenger's conduct substantially encouraged or assisted the driver's alcohol or drug impairment." 355 S.E.2d at 389, 64 ALR4th at 271.

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Other State Law Related to Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Misd For all offenses See Alternative Sentences on p. 3-519.

Alcoholic Liquor^{1&6}: Private Pkg Retail Sales²-30 dys to 1 yr; Special Licensees³-30 dys to 1 yr; Private Clubs⁴-not more than 1 yr; Wines⁵-30 dys to 6 mos. Nonintoxicating Beer^{1&7}: Class A & B Licensees-30 dys to 6 mos.

Alcoholic Liquor^{1&6}: Private Pkg Retail Sales²-\$100 to \$5,000; Special Licensees³-\$50 to \$500; Private Clubs⁴-\$100 to \$500; Wines⁵-\$25 to \$500. Nonintoxicating Beer^{1&7}: Class A & B Licensees-\$25 to \$500.

Yes Discontinued, suspended or revoked

Alcoholic Liquor^{1&6}: Private Pkg Retail Sales²; Special Licensees³ (also a civil penalty of not more than \$1,000)-Rev time period is not specified but normal licensing period is **one (1) year**; Private Clubs⁴-Rev/susp-Licenses are usually revoked for **up to one (1) year** (in lieu of rev, a monetary penalty of not more than \$1,000); Wines⁵-Rev/susp time period is not specified in the statute. Nonintoxicating Beer^{1&7}: Class A & B Licensees-Rev/susp-If the license is revoked, no new license shall be issued for **two (2) years**; the statute does not state a specific time period for a suspension. There is also, a monetary penalty of not more than \$1,000.

¹Alcoholic Liquor-all alcoholic beverages except nonintoxicating beer; nonintoxicating beer-all cereal malt beverages and malt coolers containing at least 0.5% alcohol by volume but not more than 4.2% alcohol by weight or 6% by volume whichever is greater. §§11-16-3 & 60-1-5.

²The sale of packaged alcoholic liquor is via licensed private retail outlets. Under previous law, the State had a monopoly on such sales. §60-3A-2 et seq.

³Special Licensees-E.g., manufacturers of alcoholic liquor, wholesale and retail druggists, users of alcohol for scientific purposes, users of wine for sacramental purposes, etc. §60-4-1 et seq.

⁴Private Clubs, which are not open to the public, may be licensed to sell alcoholic liquor by the drink. §60-7-1 et seq.

⁵Licenses may be granted for the "off premises" consumption of wine by any retailer. Licenses may be granted for the "on premises" consumption of wine to restaurants which are not open to the public. §60-8-1 et seq.

⁶Alcoholic Liquor-citations: Private Pkg Retail Sales-§§60-3A-25, 60-3A-26 & 60-3A-27; Special Licensees-§§60-3-22, 60-4-1, 60-4-1 & 60-6-8; Private Clubs-§§60-7-12 & 60-7-13; Wines-§§60-8-18, 60-8-20 & 60-8-25

⁷Nonintoxicating Beer-citations: §§11-16-9, 11-16-18, 11-16-23 & 11-16-25 **Special Note**: Class A Licenses ("on and off premises" sales) are issued (1) to retail businesses (profit) and (2) to social, fraternal, private clubs, etc. (non-profit); Class B Licenses ("off premises" sales only) are issued to retail food stores.

Other State Law Related to Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No:

Yes Driver and passengers¹ §60-6-9(a)(3)

¹The law does not apply to the consumption of non-intoxicating beer.

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STATE:
General Reference:

WISCONSIN
Wisconsin Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):

Under the influence of an intoxicant §346.63(1)(a) & (2)(a)
I. If a person has had one or no prior DWI offense convictions or implied consent test refusals, it is illegal for them to operate a vehicle with a "prohibited alcohol concentration" ≥ 0.10 .¹
II. If a person has had two or more DWI offense convictions or implied consent test refusals, it is illegal for them to operate a vehicle with a "prohibited alcohol concentration" ≥ 0.08 .¹
§§340.01(46m), 343.307(1), 346.63(1)(b) & (2)(a)(2) and 940.25
Persons Under 21 Years Old, Alcohol Concentration > 0.00 but < 0.10 ¹ §346.63(2m)

Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

None
Under the influence of (1) **Any Drug**, (2) an Intoxicant, (3) a Controlled Substance, (4) a Combination of an Intoxicant and a Controlled Substance or (5) a Combination of an Intoxicant and Any Other Drug §§346.63(1)(a) & (2)(a)(1), 450.01(1) (definition of the term "drug") and 885.235(5)(b) & (c)

Other:

I. 1st or 2nd off-An alcohol concentration ≥ 0.10 ¹ is *prima facie* evidence of driving either (1) while under the influence of an intoxicant or (2) with an alcohol concentration ≥ 0.10 ¹ §885.235(1)(c)
II. 3rd or subsequent off-An alcohol concentration ≥ 0.08 ¹ is *prima facie* evidence of driving either (1) while under the influence of an intoxicant or with an alcohol concentration ≥ 0.08 ¹ §885.235(1)(cd)
Persons Under 21 Years Old, Under §885.235(1)(1m), an alcohol concentration > 0.00 but < 0.10 ¹ is *prima facie* evidence of such concentration.
For Commercial Motor Vehicle Operators, see p. 3-534.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes §§343.303 & 343.305(3)(am) (CMV operators)

Implied Consent Law:

Yes §343.305(3)

Arrest Required (Yes/No):

Yes §343.305(2)

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) *State v. Bolstad*, 370 N.W.2d 257 (Wis. 1985)
However, if the implied consent law's provisions are not followed, a refusal cannot be admitted into evidence. *State v. Algaier*, 478 N.W.2d 292 (Wis.App. 1991)

Other Information:

The State supreme court has held that a blood sample may be obtained via force if done in a constitutional manner.² *State v. Bolhing*, 494 N.W.2d 399 (Wis. 1993) **Special Note:** This case was only concerned with obtaining a blood sample for the purpose of testing such sample for alcohol concentration.

¹"Prohibited alcohol concentration" or "alcohol concentration" is based either on percent by weight of alcohol in the blood or on "grams of alcohol in 210 liters of breath". §§340.01(46m) & 346.63(2m) These standards also apply to the administrative per se law.

²Note: The implied consent law, §343.305, does not specifically prohibit or authorize the taking of a blood sample by force. Under §343.305(3)(c), a law enforcement officer has the right to obtain evidence "by any lawful means."

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes
Urine:	Yes
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No ¹
Anti-Plea Bargaining Statute (Yes/No):	No Note: However, the court must approve dismissals of or amendments to DWI charges. §967.055
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (Limited) Alcohol Assessment I. Discretionary alcohol assessment for two (2) or more DWI offenses w/n 1 year. II. Mandatory alcohol assessment where there has been an injury related DWI offense. III. The licensing agency may require an applicant for a driver's license to submit to an alcohol assessment. §§343.16(5)(a) & 343.30(1q)(c)1

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	<u>1st refusal</u> ² - 1 yr rev, after 30 dys of the rev period, the driver is eligible for an occupational license; <u>2nd refusal</u> (w/n 10 yrs) ² - 2 yr rev, after 90 dys of the rev period, the driver is eligible for occupational license; <u>3rd and subsequent refusal</u> ² - 3 yr rev, after 120 dys of rev period, the driver is eligible for an occupational license; Note: Previous DWI convictions and admin. per se actions are considered to be prior refusals. §§343.10, 343.305(9) & (10) and 343.307(2)
Other:	I. If a person, under 21 years old has been arrested for a violation of §346.63(2m), driving with an alcohol concentration >0.00 but <0.10, refuses to submit to a chemical test, their license is revoked for six (6) months (Child Endangerment : 12 mo revocation if the driver was transporting a person <16 yrs old). After the first 15 days of this revocation period have passed, an occupational license can be issued.

¹Deferred prosecution for DWI offenders is generally prohibited. §§967.055(3) & 971.39 Note: Deferred prosecution is only available in counties having a population of less than 100,000. §971.39

²**Child Endangerment.** If the driver was transporting a person <16 yrs old at the time of the drunk driving arrest and refusal, the minimum and maximum license revocation periods are double. §343.305(10)(b)(4m)

Sanctions for Refusal to Submit to a
Chemical Test: (continued)

Other: (continued)

A refusal based only on this offense is not considered a prior refusal for enhanced sanctioning purposes for either DWI convictions or other chemical test refusals. §§343.305(10)(em) & 346.63(2m)

II. For a 3rd refusal, a person's vehicle may be immobilized, forfeited or equipped with an ignition interlock device Note: The court can only order the use of an ignition interlock device for ≤2 yrs. §346.65(6)(m)) A vehicle is not to be immobilized or equipped with an ignition interlock device if it would cause undue hardship, extreme inconvenience or endanger the health or safety of a person. §§343.305(10m) & 346.65(6) See Footnote No. 1 on p. 3-534.

III. 4th or sub refusal-Mandatory Vehicle Forfeiture. §§343.305(10m) & 346.65(6) See Footnote No. 1 on p. 3-534.

IV. A person is required to submit to an alcohol assessment and comply with a driver safety plan. §343.305(10)(d) See Alcohol Education on p. 3-534.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Double Jeopardy below and Child Endangerment on p. 3-535.

Imprisonment:

Term (Day, Month, Years,
Etc.):

Non-injury related DWI off: 1st off-None¹; 2nd off (w/n 10 yrs)-5 dys to 6 mos; 3rd off-30 dys to 1 yr; 4th off-60 dys to 1 yr; 5th and sub offs-6 mos to 5 yrs; Injury related DWI offs, Without great bodily harm-30 dys to 1 yr; With great bodily harm (including great bodily harm to an unborn child) (C/D felony)-Not more than 10 yrs² (Not more than 20 yrs if transporting a person < 16 yrs old or an unborn child) See "Other" on p. 3-534. §§346.63(1) & (2), 346.65(2), 346.65(3m), 939.50 & 940.25

Mandatory Minimum Term:

Non-injury related DWI off: 1st off-None; 2nd off-5 dys³; 3rd off-30 dys³; 4th off-60 dys³; 5th and sub offs-6 mos⁴; Injury Related DWI off (without great bodily harm)-30 dys³

¹A first DWI conviction is a "civil conviction". *Racine County v. Smith*, 362 N.W.2d 439 (Wis.App. 1984), & *State v. Lanton*, 482 N.W.2d 142 (Wis.App. 1992).

²In lieu of a continuous prison sentence, a defendant may serve a series of periods of confinement of not less than 48 hrs nor more than 3 dys. §§969.08(10)(b) & 973.03(5)

³*State v. Meddaugh*, 435 N.W.2d 269 (Wisc.App. 1988) (review denied 439 N.W.2d 143), *State v. Duffy*, 194 N.W.2d 624 (Wis. 1972) & 71 Op. Atty. Gen. Wis. 41 **Comment:** Despite the *Meddaugh* case, that interprets the DWI statutes as requiring these mandatory jail/fine sanctions, it is not clear whether such sanctions are mandatory given other statutory provisions. As a result, it may be possible for a defendant to receive either (1) community service in lieu of fine/jail or (2) "home detention" in lieu of imprisonment. See Footnote No. 4 below and "Other" on p. 3-532.

⁴Community service may be imposed (1) in lieu of certain fines/forfeitures or (2) in addition to other penalties. See §346.65(2g) for details. If a court sentences a defendant to imprisonment in the county jail, the court may provide that the defendant perform community service instead of jail. Three (3) days of community service is considered one (1) day in jail. Both the defendant and the organization receiving the service must agree to any community service order issued by the court. §973.03(3) The law is not clear as to whether the defendant is able to serve community in place of any minimum mandatory period of confinement (jail).

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. McMaster*, 543 N.W.2d 499 (Wisc.App. 1995)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:

Amount (\$ Range):

See Footnote No. 4 on p. 3-531.

Non-injury related DWI offs: 1st off-\$150 to \$300 (See Footnote No. 1 on p. 3-531.); 2nd DWI off (w/n 10 yrs)-\$300 to \$1,000; 3rd off-\$600 to \$2,000; 4th off-\$600 to \$2,000; 5th and sub offs-\$600 to \$2,000; Injury related DWI offs, Without great bodily harm-\$300 to \$2,000; With great bodily harm (CI D felony)-Not more than \$10,000 (Not more than \$20,000 if transporting a person < 16 yrs old or an unborn child)

Persons Under 21 Years Old. Sec. 346.63(2m) prohibits any person under 19 years old from operating a motor vehicle with a BAC/BrAC >0.00 but <0.10. There is a forfeiture of \$10 for a violation of this provision. (**Child Endangerment:** The forfeiture is \$20 if the driver was transporting a child < 16 yrs old.) §346.65(2q)

Mandatory Min. Fine (\$):

Non-injury related DWI off: 1st off-\$150; 2nd off-\$300; 3rd off-\$600; 4th off-\$600; 5th and sub. offs-\$600; Injury Related DWI off (without great bodily harm)-\$300 See the Comment in Footnote No. 3 on p. 3-531.

Other Penalties:

Community Service:

Restitution

(eg Victim's Fund):

Yes¹ §346.65(2g) See Footnote No. 4 on p. 3-531.

Yes Direct compensation by the defendant to a victim for some types of "pecuniary losses". §346.65(2r)(a) In addition, the State has a victims' compensation fund. §949.01 et seq. Awards are limited to \$40,000 for any one injury or death. §949.06(2)

Special Note: An adult passenger may not receive an award from this fund if they knew the driver they were riding with was intoxicated or had an illegal per se level. §949.08(2)(e)

Other:

Surcharges. Persons convicted of a DWI offense must pay a driver improvement surcharge of \$340 in addition to any other fine, forfeiture or assessment that may be imposed. §346.655(1) In addition, under §§814.60 & 973.045, a defendant must pay a crime victim and witness assistance surcharge of \$30 for a misdemeanor conviction and \$50 for a felony conviction.

Home Detention. In lieu of imprisonment in the county jail, a defendant may be sentenced to "home detention". This detention is to be monitored by an electronic device worn by the defendant. §973.03(4)(a) The law is not clear as to whether this would apply to that portion of a sentence for which the person is to serve a minimum mandatory period of time in jail.

Traffic Safety School. A defendant may be required to attend a "traffic safety school". §345.60(3)

Visitation Program. Offenders, who have been convicted of an injury related drunk driving offense under §346.63(2), may be required to visit places that are concerned with the care and treatment of persons who have a substance abuse problem or who are being treated for drunk driving related injuries (e.g., alcoholism treatment facilities, hospital emergency rooms, etc.). §346.65(2i)

¹If the defendant was transporting a person < 16 yrs old, community service may consist of service benefiting children or demonstrations concerning the adverse effects that drunk driving offenses have on children. §346.65(2g)(c)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Double Jeopardy on p. 3-531.

Yes I. If the person has had one or no prior DWI offense convictions or refusals, the admin. action is based on a "prohibited alcohol concentration" ≥ 0.10 . **Susp 6 mos** (not mand)¹

II. If the person has had two or more previous DWI offense convictions or refusals, the admin. action is based on a "prohibited alcohol concentration" ≥ 0.08 . **Susp 6 mos** (not mand)¹

Note: For alcohol concentration standards, see Footnote No. 1 on p. 3-529.

§§340.01(46m) & 343.305(7) & (8)

Other:

A person is referred to the licensing agency after two or more DWI arrests. §343.16(2)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

See Child Endangerment on p. 3-535.

1st off-Rev; 2nd and sub. offs-Rev; DWI injury related offs, with or without great bodily harm-Rev §§343.10, 343.30 & 343.31

Persons Under 19 Years Old. BAC/BrAC > 0.00 but < 0.10 -Susp §§343.30(1q) & 346.63(2m)

Term of License Withdrawal

(Days, Months, Years, etc.):

Non-injury related DWI offs; 1st off-Rev 6 to 9 mos; 2nd off (w/n 10 yrs)-Rev 1 yr-18 mos; sub off (w/n 10 yrs)-Rev 2 to 3 yrs Note: A previous conviction includes refusals. Injury related DWI offs Without great bodily harm - Rev 1 to 2 yrs; With great bodily harm - Rev 2 yrs (Child Endangerment/Unborn Child: Rev for 4 yrs if the driver was transporting a person < 16 yrs old or an unborn child. §343.31(3)(f))

Persons Under 21 Years Old. BAC/BrAC > 0.00 but < 0.10 -Susp-3 mos (Child Endangerment: Susp for 6 mos if the driver was transporting a person < 16 yrs old.) §§343.30(1q) & 346.63(2m)

Mandatory Minimum Term of

Withdrawal:

Non-injury related DWI offs; 1st off - None¹; 2nd off - 60 dys²; sub off - 90 dys² Injury related DWI offs Without great bodily harm - 60 dys; With great bodily harm - 120 dys

Persons Under 21 Years Old. BAC/BrAC > 0.00 but < 0.10 -None (An occupational license is available.) §346.63(2m)

¹A restricted occupational license is available via the courts at any time. §§343.10(4), 343.30(1q)(b)(2) & 343.305(8)(d) This license is valid for the duration of the suspension or revocation period and, after such license expires, the persons may obtain a regular license. §§343.10(5) & 343.38 A person is not eligible for an occupational license if their license has been either suspended or revoked for another offense within one (1) year. §343.10(2)(a)1

²A restricted occupational license may be issued after this period of time. For subsequent offenses, the restricted license shall prohibit the person from operating vehicle with any alcohol concentration (BAC/BrAC=0.00). §343.10(5)(a)2 Note: Under §343.30(1q)(h), the license susp/rev period for a DWI offense conviction is reduced by any susp time imposed for a refusal (based on the same incident/occurrence). Also, license suspensions/revocations for DWI, refusal or admin. per se which are based on the same incident/occurrence must run concurrently. §343.305(10)(g)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:
Rehabilitation:
Alcohol Education:

Yes Persons who are either convicted of a DWI related injury offense (without great bodily harm) or refuse to submit to a chemical test under the implied consent law must submit to an alcohol assessment and comply with a driver safety plan. This plan may include a component concerning the effect that DWI offenses have had on either victim or a victim's family. License suspension if a person does not comply with an alcohol/drug assessment (DWI screening), education or treatment program. §§343.30(1q)(c) & (d) and 343.305(10)(d)
Yes See above.

Alcohol Treatment:
Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Forfeiture. For a 3rd drunk driving offense, a person's vehicle may be forfeited. For a 4th or sub. offense, a person's vehicle shall be forfeited. §§343.305(10m) & 346.65(6)¹

Terms Upon Which Vehicle
Will Be Released:
Other:

If a 3rd offender has had 2 prior drunk driving convictions, any vehicles owned by them may be immobilized or equipped with an ignition interlock device². A vehicle cannot be immobilized for a period longer than the period of license revocation. However, a vehicle is not to be immobilized or equipped with an ignition interlock device if it would cause undue hardship, extreme inconvenience or endanger the health or safety of a person. §§346.65(6)(a)¹ & 940.25(1d)

¹The forfeiture law, §346.65(6), has been held constitutional on both double jeopardy and due process of law grounds. *State v. Konrath*, 577 N.W.2d 601 (Wis. 1998) In this case, the court emphasized that its decision was limited to vehicles that were used in the offense. 577 N.W.2d at 614

²The court can only order the use of an ignition interlock device for ≤2 yrs. §346.65(6)(m)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of an intoxicant (an alcohol concentration, based on percent by wgt. of alc. in the blood and grams of alc. per 210 liters of breath, ≥0.04 is *prima facie* evidence), any drug, a controlled substance or any combination of them, (3) under the influence of any drug which render them incapable of driving safely or (4) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has an alcohol concentration >0.0 must be placed "out-of-service" for 24 hours and pay a forfeiture of \$10. Any person who operates a CMV with an alcohol concentration of between 0.04 and 0.10 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.) is subject to the following criminal sanctions. For non-injury offs: 1st off-forfeiture of \$150 to \$300; 2nd off (w/n 10 yrs)-jail 5 dys to 6 mos, fine-\$300 to \$1,000; 3rd or sub off-jail 30 dys to 1 yr, fine-\$600 to \$2,000. (**Child Endangerment:** If the CMV operator was transporting persons < 16 yrs old, the minimum and maximum incarceration, forfeiture and fine sanctions for non injury offenses are **doubled**. §346.65(2j)(d) For an injury off: Jail-30 dys to 1 yr; fine-\$300 to \$2,000. For an off where there has been "great bodily" injury (Class D felony): Jail-not more than 10 yrs; fine-not more than \$10,000 (**Child Endangerment/Unborn Child:** The maximum jail and fine sanctions are double if the offender was transporting either a person < 16 yr old or an unborn child.) Note: The minimum jail and fine sanctions may be mandatory. See Footnote No. 3 on p. 3-531. §§340.01(1v), 340.01(8), 340.01(13m), 340.01(9r)(intro.), 343.305(2), 343.305(3)(a), 343.305(4), 343.305(7)(b), 343.31, 343.315, 346.63(5)(a), 346.63(6)(a), 346.63(7)(a), 346.65(2j), 346.65(3m), 346.65(2u)(a), 885.235(1)(d) & (5)(a), 939.50(3)(d) and 940.25

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

Ignition Interlock. For a 3rd offense where there has been two prior drunk driving offenses w/n 10 yrs, a person with a restricted license is **required** to operate vehicles equipped with an "ignition interlock" device. Such a device cannot be required longer than 2 yrs after the period of license revocation. A vehicle cannot be immobilized for a period longer than the period of license revocation. However, a vehicle is not to be equipped with an ignition interlock device if it would cause undue hardship, extreme inconvenience or endanger the health or safety of a person. §§343.10(5)(a)(3), 343.38(5), 343.39(3), 343.305(10m) & 346.65(6)

Child Endangerment. I. For either non-injury or injury (without great bodily harm) drunk driving offenses, the maximum and minimum imprisonment, forfeiture and fine sanctions are **doubled**. §346.65(2)(f) & (3) II. For a drunk driving offenses related to great bodily injury, the maximum, imprisonment and fine sanctions are **doubled**. §§940.25(1b) III. For either non-injury or injury (without great bodily harm) drunk driving offenses, the maximum and minimum license revocation periods are **doubled**. §§343.30(1q)(b)(4m) & 343.31(3)(e)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Cl E felony Where a death, including a death to an unborn child, is caused by operating a veh with negligence; Cl B felony Where a death, including a death to an unborn child, is caused by operating a veh while under the influence of an intoxicant or with illegal per se levels (including operating a CMV ≥0.04). §§343.10, 343.31(1)(a), (3)(a) & (c), (3m)(a), 939.50, 940.09 and 940.10

Sanctions:
Criminal Sanction:
Imprisonment (Term):

Cl E felony-Not more than 5 yrs; Cl B felony-Not more than 60 yrs¹
§§343.10, 343.31, 939.50, 940.09 & 940.10

Mandatory Minimum Term:
Fine (\$ Range):
Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and
Type of Action:
Length of Term of
Licensing Withdrawal:
Mandatory Action—Minimum
Length of License
Withdrawal:

None
Cl E felony - Not more than \$10,000; Cl B felony -None
None

For Cl E & B felonies - Rev §§343.10 & 343.31

Cl E felony - 1 yr; Cl B felony - 5 yrs¹ §§343.10 & 343.31

Cl E felony - 15 dys; Cl B felony - 120 dys A restricted occupational license may be issued after these periods. §§343.10 & 343.31

Special Note: In lieu of a continuous prison sentence, a defendant

Other:

¹**Child Endangerment/Unborn Child:** If the driver was transporting a person <16 yrs old or an unborn child, the maximum imprisonment and fine sanctions are doubled and the revocation period is 10 yrs. §§343.31(3)(c) & 940.09(1b)

Other Criminal Actions Related to DWI: (continued)

Other: (Continued)

may serve a series of periods of not less than 48 hrs nor more than 3 dys. §969.08(10)(b) & 973.03(5)

I. Cl B felony off. For an offense where there has been two prior refusals or drunk driving offenses (any type) w/n 10 yrs, a person's vehicle may be immobilized, forfeited or equipped with an ignition interlock device. However, a vehicle is not to be immobilized or equipped with an ignition interlock device if it would cause undue hardship, extreme inconvenience or endanger the health or safety of a person. §§343.305(10m), 346.65(6) & 940.09(1d) See Footnote No. 1 on p. 3-534.

II. Cl B felony off. For a 4th or sub. offense (a prior offense includes refusals and DWI offenses (any type) (w/n 10 yrs), a person's vehicle shall be forfeited. §§343.305(10m), 346.65(6) & 940.09(1d) See Footnote No. 1 on p. 3-534.

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense*:

Sanction:

See Footnote No. 1.

Criminal:

Imprisonment (Term):

Operating While Suspended-None

Operating While Revoked-Not more than 1 yr §343.44(2)(b)

Mandatory Minimum Term

of Imprisonment:

None

Fine (\$ Range):

Operating While Suspended-\$50 to \$200 (forfeiture) §343.44(2)(a)

Operating While Revoked-Not more than \$2,500 §343.44(2)(b)

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp/Rev² §343.30(1g)

Length of Term of License

Withdrawal Action:

1st, 2nd or 3rd offense-Not more than 6 mos (Rev or Susp)

4th or subsequent offense-6 mos (Rev)

Mandatory Term of License

Withdrawal Action:

None³

¹The criminal sanctions that apply for driving while revoked also apply to operating a CMV either after a CDL disqualification or after the issuance of a CDL out-of-service order. §343.44(1)(c), (1) (d) & (2)(b)

²These licensing actions only apply in situations where a person was driving while suspended, revoked or in violation of a CDL disqualification. §343.30(1q)(a) & (b) Out-of-Service Order. A person, who drives a CMV after they have received an out-of-service order, is subject to the following CDL disqualifications: 1st violation-90 dys; 2nd violation (w/n 10 yrs)-1 yr; and, 3rd or subsequent violation (w/n 10 yrs)-3 yrs. If the violation occurred while either transporting hazardous materials or driving a vehicle designed to carry 16 or more persons including the driver, the offender is subject to the following disqualifications: 1st violation-180 dys; and, 2nd or subsequent violations (w/n 10 yrs)-3 yrs. Note: These disqualifications appear to be mandatory. §343.315(2)(h) & (i)

³For either a 1st, 2nd or 3rd offense, licensing action is discretionary with the court. However, even for a 4th or subsequent offense, the court may order a period of revocation of less than 6 mos provided it "places its reasons for ordering the lesser period of revocation on the record." §343.30(1q)(a) & (b)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked. **Historical Note:** The law concerning driving while suspended or revoked was revised in 1998. As part of this revision, the provision that provided for special sanctions for driving while suspended or revoked based on a drunk driving offense conviction was repealed. §§67 through 72 of 1997 Wisconsin Act 84 (enacted in 1998)

Other Criminal Actions Related to DWI: (continued)

Vehicle Impoundment. A vehicle owned by the offender may be impounded. The length of such impoundment is determined by the court. §344.44(4)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):
Grounds for Being Declared an
Habitual Offender:

Yes §§351.01 to .11

Four or more serious offs or 12 or more minor moving violations w/n
5 yrs

Term of License Rev While
Under Habitual Offender Status:

5 yrs §351.025(1) A hardship license¹ may be issued after 2 yrs of
the rev period have passed. §351.07

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status:

Misd

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term):

Not more than 180 dys² §351.08

Mandatory Minimum Term of
Imprisonment:

See Footnote No 3.

Fine (\$ Range):

Not more than \$5,000² §351.08

Mandatory Minimum Fine (\$):

See Footnote No 3.

Licensing Actions (Specify):

None

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on
Persons Killed in TrafficAccidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:

Yes §346.71(2)

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes (14 years or older)

¹If an habitual offender is issued a hardship license, they are subject special sanctions if they commit a traffic offense while driving on such a license. For the traffic offense committed, the violator is subject to a fine that cannot exceed 200% of the maximum fine and/or not more than two (2) times the maximum jail sentence for such offense. §§351.07

²These sanctions are in addition to any other sanction that may be imposed for driving while license is suspended or revoked under §343.44. See also §351.11.

³Although there is no minimum sentence, the law states that no portion of the sentence is to be suspended. §351.08 Certain work privileges may, however, be allowed. §56.08

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Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1986) §§125.02(8m), 125.07(1) & 125.07(4)

Minimum Age (Years) Possession:

21 Applies to either possession or consumption in public places unless accompanied by a parent or guardian §§125.07(1) & 125.07(4)

Minimum Age (Years) Consumption:

21 Applies to either possession or consumption in public places unless accompanied by a parent or guardian §125.07(4)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes (Limited) §125.035^{1&2} Under this law, only a person, who provides alcoholic beverages to minors, is liable for the injuries caused by these minors to third parties. The case law noted below may have been abrogated in part.^{3&4}

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Sorenson v. Jarvis, 350 N.W.2d 108 (Wis. 1984)⁵

Dram Shop Actions-Social Hosts:

Yes §125.035^{1&2} As noted above, under this law, only a person, who provides alcoholic beverages to minors, is liable for the injuries caused by these minors to third parties. See also, *Koback v. Crook*, 366 N.W.2d 859 (Wis. 1985), which also limited liability to the actions of intoxicated minors.

Other:

None

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd §§125.07(2)(a) & (b) and 939.60

Term of Imprisonment:

Not more than 60 dys

Fine (\$ Range):

\$100 to \$500

Administrative Actions Against Owners of Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp/Rev §125.12

Length of Term of License Withdrawal:

Susp-Not more than 90 dys; Rev-at least 12 mos

¹The Wisconsin Supreme Court has held that §125.035 does not violate the equal protection clauses of either the Federal or State constitutions. *Doering v. Wea Insurance Group*, 532 N.W.2d 432 (Wis. 1995)

²Under §125.035, a person (an adult in the case considered by the court), who gives alcoholic beverages to an adult, is not liable for the injuries caused by the person, who received and consumed such beverages, while intoxicated. *Greene by Schoone v. Farnsworth*, 525 N.W.2d 107 (Wis.App. 1994)

³Under the dram shop law, a person, even a minor, can be held liable for the damages caused by another minor while in an intoxicated condition, if they provide money for the purchase alcoholic beverages which were given to the injury causing minor. The act of providing money for the purchase of alcoholic beverages for a minor is considered an act of procuring such beverages for minor. *Miller v. Thomack*, 563 N.W.2d 891 (Wis. 1997)

⁴Under §125.035, a minor, who was injured after consuming alcoholic beverages, has no cause of action against the provider of such beverages. *Kwiatkowski v. Capitol Indem. Corp.*, 461 N.W.2d 150 (Wis.App. 1990)

⁵The holding in this case applied only to the actions of intoxicated minors.

Other State Laws Related To Alcohol Use: (continued)Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Civil Forfeiture/Misd¹ §125.07(1)(a) & (b)

1st off (Forfeiture)-None; 2nd off (w/n 30 mos) (Misd)-Not more than 30 dys; 3rd off (w/n 30 mos) (Misd)-Not more than 90 dys; sub off (w/n 30 mos) (Misd)-Not more than 9 mos §§125.07(1)(b)2 & 939.60
1st off (Forfeiture)-Not more than \$500; 2nd off (w/n 30 mos) (Misd)-Not more than \$500; 3rd off (w/n 30 mos) (Misd)-Not more than \$1,000; sub off (w/n 30 mos) (Misd)-Not more than \$10,000 §125.07(1)(b)2

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes for 2nd and subsequent offs §125.07(1)(b)

1st offs - None; 2nd offs (w/n 12 mos) - Susp not more than 3 dys; 3rd offs (w/n 12 mos) - Susp 3 to 10 dys; 4th off (w/n 12 mos) - Susp 15 to 30 dys (Also, possible Susp/Rev under §125.12; Susp-Not more than 90 dys; Rev-at least 12 mos)

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes (alcohol or nitrous oxide) §346.935(2) & (3)

Yes Driver and passengers §346.935(1) Note: Does not apply to a motor bus.

¹A person, who sells alcoholic beverages to a minor under 18 yrs old and where the minor either dies or suffers great bodily harm as a result of consuming such beverages, is subject to the following sanctions: Jail-not more than 5 yrs; fine-not more than \$10,000. §125.075

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STATE:
General Reference:

WYOMING
Wyoming Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC):
Presumption (BAC):
Types of Drugs/Drugs and Alcohol:

Under the influence of alcohol §31-5-233(b)(ii)(A)
≥0.10^{1&2} §31-5-233(b)(i)
None
Under the influence of (1) a **Controlled Substance**³ or (2) a
Combination of Alcohol and Any Controlled Substance
§31-5-233(b)(ii)(B) & (C)
For Commercial Motor Vehicle Operators, see p. 3-545.

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):

No⁴

Yes §§31-6-102(a)(i) & 31-6-108(a) (Implied consent to test for
alcohol. concentration for persons under 21 yrs old where there is
probable cause that they are driving with a BAC/BrAC/UrAC ≥0.02.)

Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:
Other Information:

Yes §31-6-102(a)(i)

Yes (Criminal and Civil Cases) §§31-6-105(f) & 31-6-108(k)
For any DWI offense, a test may be required in cases where serious
bodily injury or death has resulted. §31-6-102(d)

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:
Urine:
Other:

Yes
Yes
None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):

No

Yes §31-5-233(j) A DWI charge may not be reduced or dismissed,
unless the State in open court moves or files a statement containing
supporting facts to indicate that there is insufficient evidence to
support the original DWI charge.

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or urine alcohol concentration of 0.10 or more. §31-5-233(a) & (b)(i)

²Alcohol concentration is defined as either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 75 milliliters of urine. §§31-5-233(a)(i) & 31-6-101(a)(i)

³Includes glue, aerosol or other toxic vapor. §§31-5-233(a)(ii) & 31-6-101(a)(ii)

⁴Preliminary breath test (PBT) devices are being used by State law enforcement officers even though there is no statutory authorization for such use. The State supreme court has noted the use of PBT devices by the police but the issue of whether their use requires statutory authorization has not been presented to the court for a decision. *Nellis v. Wyoming Dept. of Transportation*, 932 P.2d 741 (Wyo. 1997)

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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	

1st Refusal-Susp 6 mos (Mandatory); 2nd or Sub. Refusal¹-Susp 1 yr & 6 mos (18 mos) (Mandatory) §§31-6-102(c), 31-6-107(a) & 31-7-105(d)(iv)(D)

Special Note: If a person refuses to submit to chemical test but, nevertheless, pleads guilty to a DWI offense w/n 10 dys of arraignment, the susp. for refusal shall not take effect. §31-6-107(a)(iii)

Other:

Persons Under 21 Years Old. A person under 21 yrs old, who is arrested for driving with an alcohol concentration ≥ 0.02 under §31-5-234 and who refuses to submit to a chemical test under §31-6-108 is subject to a **mand license susp of 45 dys**. §31-6-108(n)(i) Limited driving privileges based on "undue hardship" are not available. §31-7-105(f)(v)(H)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Double Jeopardy below.

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off Misd - Not more than 6 mos; 2nd off (w/n 5 yrs) Misd - 7 dys to 6 mos²; 3rd or subsequent off (w/n 5 yrs) Misd - 30 dys to 6 mos; Serious bodily injury off: 1st off Misd - 6 mos to 1 yr; Subsequent offs Felony - Not more than 20 yrs §§6-10-101 and 31-5-233(e), (h) & (g)

Mandatory Minimum Term:

2nd off (w/n 5 yrs) - 7 dys; 3rd or subsequent off (w/n 5 yrs) - 30 dys or 15 dys if the offender completes an inpatient treatment program §31-5-233(e)

Special Note: Under §31-5-233(g), a defendant may be allowed out of jail long enough to complete actual hrs of employment or education and a reasonable time to travel to and from his place of employment or school (i.e., work/school release program).

¹A person is also subject to this enhanced licensing sanction if they have been convicted of a previous DWI offense. §31-6-107(a)(ii)(B)

²The discretionary portion of a jail sentence may be suspended if the defendant agrees to pursue and complete an alcohol education and treatment program. §31-5-233(e)

Double Jeopardy. Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Glasrud v. City of Laramie*, 934 P.2d 1242 (Wyo. 1997)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:

Amount (\$ Range):

1st off - Not more than \$750; 2nd off - \$200 to \$750; 3rd or subsequent off - \$750 to \$3,000; Serious bodily injury DWI off - 1st off - \$2,000 to \$5,000; subsequent off - not more than \$10,000 §§6-10-101 & 6-10-102 Note: A surcharge of \$100 is assessed against convicted DWI offenders. This surcharge is used to help finance the Victims' Compensation fund. §1-40-119(a)(ii)

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

Possible Community service may be required as a condition of probation. §7-13-304

Restitution

(eg Victim's Fund)

Yes (1) The defendant may be ordered to pay restitution to a victim. §7-9-102 (2) The State has a Victims' Compensation Act. §1-40-102 et seq.

Other:

Cost of Incarceration. A DWI offender, who has been sentenced to confinement, may be required to pay the local government for the cost of their incarceration. This requirement does not apply if the offender does not have the ability to pay for such cost. §7-13-109

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Double Jeopardy on p. 3-542.

Yes ≥0.10 BAC/BrAC/UrAC (For standards, see Footnote No. 2 on p. 3-541.) Susp 90 dys^{1&2} (For a subsequent action w/n 5 yrs, this susp is mandatory.) §§31-5-1205(k), 31-6-101(a)(i), 31-6-102(e), 31-6-103(b), 31-7-105(d) & 31-7-138

Special Note: There appears to be a conflict between §§31-6-103(b) and 31-7-105(d). Section 31-6-103(b) (See the last sentence.) seems to grant the licensing agency (hearing examiner) the authority to provide for limited driving privileges in hardship situations to persons who have submitted to an implied consent test and who are found to be in violation of the admin. per se provisions (§31-6-102(e)). However, §31-7-105(f)(iv)(D) clearly states that no such limited privileges are to be granted to a person who has had their driver's license suspended under §31-6-102.

Other:

Persons Under 21 Years Old. A person, who is under 21 years old, is subject to administrative suspension of their driver's license, if they operate a motor vehicle with an alcohol concentration ≥0.02. (See Footnote No. 2 on p. 3-541.) §31-5-234 1st violation-30 dy susp; 2nd violation³ (w/n 3 yrs)-60 dy susp; 3rd or subsequent violation³ (w/n 3 yrs)-90 dy susp §31-7-128(h) An offender is eligible for hardship driving privileges. However, such privileges can only be granted once w/n a 5 yr period. §31-7-105(f) Nevertheless, such privileges cannot be granted if the offender refused to submit to a chemical test under §31-6-108. §31-7-105(f)(v)(H)

¹For a 1st admin. per se action, the 90 day suspension may be modified to allow for limited driving privileges in hardship situations. §§31-6-103(b) & 31-7-105(d)(ii)

²See Footnote No. 1 on p. 3-544.

³For purposes of license sanction enhancement, a previous violation includes a drunk driving conviction. §31-7-128(h)

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Sanctions Following a Conviction for a DWI Offense: (continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off-Susp; 2nd off (w/n 5 yrs)-Susp; 3rd & Sub. offs (w/n 5 yrs)-Rev; DWI Serious bodily Injury offs-Rev §§31-7-105(d), 31-7-127(a)(ii) & 31-7-128(b)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off - 90 dys¹; 2nd off (w/n 5 yrs) - 1 yr¹; 3rd & subsequent offs - 3 yrs¹; DWI Serious bodily injury offs - See the comment below.

Mandatory Minimum Term of

Withdrawal:

1st off - Hardship driving privileges are available²; see Rehabilitation; 2nd off (w/n 5 yrs) - 1 yr²; 3rd & subsequent offs (w/n 5 yrs) - 3 yrs²; DWI Serious bodily injury offs - See the Comment below.

Comment on DWI Serious Bodily Injury Offenses: A conviction for a DWI serious bodily injury offense results in mandatory license revocation action. §31-5-233(h)(iii) However, Wyoming law does not provide specific guidance as to the revocation periods for either first or subsequent offenses.

I. For a first offense, the law establishes no clear period of mandatory license revocation. The mandatory one (1) year license revocation provisions of §31-7-127(a)(i) & (b) would not apply to a first conviction for a DWI serious bodily injury offense as such offenses are not felonies. This section provides for a one (1) year mandatory license revocation for any felony conviction related to the operation of a motor vehicle. However, a felony is defined as any offense for which a person may be sentenced to serve more than one (1) year in prison. §6-10-101 But, a first DWI serious bodily injury offense conviction, the maximum prison term is only one (1) year. §31-5-233(h)(i) Thus, this offense is not a felony. Of course, the three (3) year mandatory license revocation for DWI convictions (§31-5-233 convictions) under §31-7-127(a)(ii) would only occur if this is a third or subsequent offense committed within a five (5) year period. See II below. As a result, the law does not appear to provide for a specific license revocation period for a first DWI serious bodily injury offense.

¹A person convicted of a DWI offense shall have the suspension period for this offense reduced by 90 days if such person was also subject to a suspension under the admin. per se law. §31-6-102(e)

²**Limited Driving Privileges.** A person, who has had their license suspended, may be granted limited driving privileges based on "undue hardship". Such privileges can only be granted once in a 5 yr period. In addition, such privileges cannot be granted to anyone either who has been convicted of a drunk driving offense w/n a 5 yr period or who has had their driving privileges revoked. For drunk driving law violators, these privileges can only be granted on the condition that the offender agrees to pursue and complete either an alcohol education or treatment program. §31-7-105(f)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Comment (continued):

II. As far as mandatory license revocations for subsequent offenses are concerned, the issue is whether a conviction for such an offense will result in either a one (1) year or a three (3) year period of revocation. Subsequent convictions for DWI serious bodily injury offenses are felony convictions since a defendant may be sentenced to serve up to 20 years in prison. §§6-1-101 & 31-5-233(h)(ii). Consequently, a license would be revoked for at least one (1) year as noted above under §31-7-127(a)(i) & (b). However, as also noted above, if three (3) or more subsequent DWI convictions occur within a five (5) year period, a license could, it appears, be revoked for three (3) years. Note: Section 31-7-127(a)(ii) does not distinguish between subsequent "regular" and subsequent serious bodily injury DWI offenses for license revocation purposes. As such, it appears that the three (3) year license revocation period applies to both types of offenses.

Other:

Rehabilitation:

Alcohol Education:

Yes 1. The court may suspend part or all of the discretionary portion of an imprisonment sentence under §31-5-233(e) if the defendant agrees to pursue and completes an alcohol education or treatment program as prescribed by the court.

2. The mandatory incarceration sanction for a 3rd or subsequent DWI offender may be reduced from 30 dys to 15 dys if they complete an inpatient treatment program. §31-5-233(e)

3. In order to obtain hardship driving privileges, the defendant must agree to pursue and complete an alcohol education and treatment program as the driver licensing agency prescribes. §31-7-105(d)

Yes See Alcohol Education above.

Alcohol Treatment:

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 75 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration. Note: The disqualification provision (§31-17-111) applies only to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent provision (§31-17-113) applies to refusals to submit to chemical tests for both an alcohol concentration and the presence of controlled drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any alcohol in their system must be placed "out-of-service" for 24 hours. Note: It appears to be a misdemeanor offense for a person to operate a CMV while having any alcohol in their system. The sanctions for this offense would seem to be an imprisonment term of not more than 90 dys and/or a fine of not more than \$750 for a 1st offense and an imprisonment term of not more than 6 mos and/or a fine of not more than \$750 for a subsequent one. §§31-7-102(a)(ii), (vi), (viii), (xiii) & (xxxii), 31-7-136, 31-7-305, 3-7-306 and 31-7-307

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Sanctions Following a Conviction for a DWI Offense: (continued)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

No

For a subsequent DWI conviction (w/n 2 yrs), a defendant's veh registration shall be suspended for the same period as their license rev/susp. §31-7-128(c)

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes There are two types of offenses. 1.) Death caused by operation of a veh in violation of the motor vehs laws regulating traffic control Misd 2.) Aggravated veh homicide if death caused via DWI Felony §§6-2-106 & 6-10-101

Sanctions:

Criminal Sanction:

Imprisonment (Term):

1.) Death by a violation of the motor veh laws - Not more than 1 yr;
2.) Aggravated veh homicide if death caused via DWI - Not more than 20 yrs

Mandatory Minimum Term:

None

Fine (\$ Range):

1.) Death caused by a violation of the motor veh laws - Not more than \$2,000 2.) Aggravated veh homicide via DWI - None

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev §§6-2-106(c), 31-7-105(d)(iv)(A), 31-7-127(a)(vii) & 31-7-127(b)

Length of Term of

1 yr

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

1 yr See Limited Driving Privileges under Footnote No. 2 on p. 3-544.

Other:

Surcharge. An offender is assessed a surcharge of \$100. This surcharge is in addition to any other sanction. §1-40-119(a)(i)

Other Criminal Actions Related to DWI: (continued)Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term

of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

See Footnote No. 1.

Misd - Not less than 7 dys not more than 6 mos §31-7-134(c)

7 dys² §31-7-134(c)

Not less than \$200 nor more than \$750 §31-7-134(c)

\$200 §31-7-134(c) Note: The minimum fine appears to be mandatory.

Susp or rev

The original susp or rev period is extended 1 yr. §31-7-134(b)

The original susp or rev period is extended 1 yr.³ §31-7-134(b)Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

No

¹There appears to be no specific statutory provision that prohibits a person from operating a CMV during either a CDL disqualification or a CDL out-of-service order. However, the general statutory prohibition (§31-7-134) against driving while license is suspended or revoked may apply. Notwithstanding, a person, who has been convicted of violating a CDL out-of-service order, is subject to the following disqualification periods: 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub off (w/n 10 yrs)-3 yrs (mand) to 5 yrs. However, the following disqualification periods apply if the violation occurred while operating a CMV which is transporting hazardous materials or which is designed to carry > 15 persons: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 yrs (mand) to 5 yrs. §31-7-305(g)

²If the offender is under 21 yrs old and their alcohol concentration for the drunk driving offense was between 0.02 and 0.10, they are not subject to the mand 7 dy jail term but, are instead subject to a mand administrative license susp for 30 dys. §31-7-134(c)

³Comment: A person, who has had their suspension period extended, may be eligible for hardship driving privileges. See Limited Driving Privileges under Footnote No. 2 on p. 3-544.

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Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:
Driver:
Vehicle Passengers:
Pedestrian:

No

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:
Minimum Age (Years) Possession:

Minimum Age (Years) Consumption:

21 §12-6-101(a) & (c) (Year Eff: 1988)
21 Applies to possession in a public place. There are exemptions for
either employment or by order of a parent. §12-6-101(b)
None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):
"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes Limited^{1&2} §12-8-301

Dram Shop Actions-Social Hosts:

No Note: Case law, *McClellan v. Tottenhoff*, 666 P.2d. 408 (Wyo. 1983), was apparently indirectly abrogated by §12-8-301¹

Yes Limited Social hosts who serve alcoholic beverages illegally, such as to persons who are under 21 years old and who are not their child or ward, etc., may be liable for the resulting damages. §12-8-301(c)¹

Other:

None

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd Limited Application³ Under §§12-5-301(a)(v) & 12-8-101, it is illegal for licensees to sell sealed packages of alcoholic beverages to intoxicated persons in certain "drive-in areas."

Term of Imprisonment:

Not more than 6 mos

Fine (\$ Range):

Not more than \$750

¹Sec. 12-8-301(a) specifically prohibits dram shop type actions against anyone (e.g., licensees and social hosts) who has legally served or furnished alcoholic beverages to another person. Dram shop liability only applies if the person serving or furnishing such beverages violates Title 12, Alcoholic Beverages, of the Wyoming Statutes.

²Under §12-5-502, a licensee, who serves alcoholic beverages to an habitual drunkard after having been notified not to do so, may be held liable for the support of the habitual drunkard's spouse or dependant.

³Previous law, §12-5-501, concerning the selling of alcoholic beverages to intoxicated persons generally, was repealed.

Other State Laws Related to Alcohol Use: (continued)Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes §12-7-101 Limited Application¹ See §12-5-301(a)(v) and the statement above under criminal sanctions.

A susp is not to exceed the balance of the term for which the license was issued; as for rev, no time period is specified in the statute. §12-7-102

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd §§12-5-301, 12-6-101 and 12-8-101Not more than **6 mos**Not more than **\$750**Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes **Susp** or rev where there is gross violation of the law

A susp is not to exceed the balance of the term for which the license was issued; as for rev, no time period is specified in the statute. §12-7-102

Anti-Happy Hour Laws/Regulations:**No**Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No¹See Footnote No. 3 on p. 3-548.

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APPENDIX

ITEM:

Reference:

UNIFORM VEHICLE CODE (UVC)

The UVC as revised by the National Committee on Uniform Traffic Laws and Ordinances in 1992.

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Provision (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Other:

Under the influence of alcohol §11-902(a)(2)

≥0.08^{1,2} §§11-902(a)(1) & 11-903(a)(5)

≥0.08² §11-903(b)(2)

Under the influence of (1) **Any Drug**³, (2) a Combination of Drugs³ or (3) a Combination of Alcohol and Drugs³ §11-902(a)(3) & (4)

For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Provision:

Implied Consent Provision:

Arrest Required (Yes/No):

Yes §6-209

No A formal arrest is not required in all DWI situations. A request for a chemical test under the implied consent provisions may be made under the following conditions where there is evidence showing probable cause of a DWI offense and one of the following exists: (1) an arrest for a DWI offense; (2) an accident; (3) a refusal to submit to preliminary breath test; or, (4) a preliminary breath test was administered and indicates an alcohol concentration ≥0.08² (for persons under 21 years old, an alcohol concentration ≥0.02³). §§6-207(a) and 6-208(a) & (b)

Implied Consent Provision Applies to
Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

Yes §§6-207(a) & 6-208(b)

Yes (Criminal & Civil Cases) §11-903(c)

A driver may be compelled to submit to a chemical test if they are involved in an accident resulting in either death or serious personal injury to another person and there is reason to believe that they are guilty of a DWI offense. §6-210

¹The UVC's illegal per se provision also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

²Under §§6-500(1) and 11-903(a)(5), "alcohol concentration" means "either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath."

³Which renders such a person incapable of safely driving.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥0.04 (For alcohol concentration standards, see Footnote No. 2 above.), (2) are under the influence of alcohol or any drug or (3) refuse to submit to a chemical test for either an alcohol concentration or the presence of drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§6-500, 6-514, 6-516 & 6-517

UNIFORM VEHICLE CODE

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Provision:

Blood:	Yes §§6-207(a) & 6-208(b)
Urine:	Yes §§6-207(a) & 6-208(b)
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Provision (Yes/No):	No
Anti-Plea Bargaining Provision (Yes/No):	No However, the prosecution must state for the record the factual basis for substituting another charge for a DWI one and whether an alcoholic beverage or any drug has been ingested by or administered to the defendant in connection with the offense. §11-905
Pre-Sentencing Investigation Provision (PSI) (Yes/No):	Yes Alcohol & Drug Screening Required §11-904(a) Special Note: Prior to sentencing, either an oral or a written victim's impact statement may be made to the court. §11-1502(d)

Sanctions for Refusal to Submit to a BAC Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Suspension/Revocation):	None
Other:	None

Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Suspension/Revocation):	

Other:	Rev 6 mos/1 yr §§6-207(c), 6-208(d) & 6-214(a)(1) The UVC recommends that either a 6 month or a 1 year revocation period be adopted by the States as a licensing sanction for an implied consent law refusal. See Footnote No. 3 on p. A-3. None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off-Misd ¹ -10 dys to 1 yr; 2nd & sub. off-Misd ¹ -90 dys to 1 yr §11-902(c)
Mandatory Minimum Term:	None ²

¹Since §11-902 does not declare that a DWI offense (either a 1st or a subsequent offense) is a felony, it is a misdemeanor via the provisions of §17-101.

²Under §17-103(c), a court may probate or suspend sanctions for any misdemeanor traffic offense unless such penalties are made specifically mandatory by other provisions.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:

Amount (\$ Range):

1st off-Misd-\$100 to \$1,000; 2nd & sub. off-Misd-Not more than \$1,000 §11-902(c)

Mandatory Min. Fine (\$):

None¹

Other Penalties:

Community Service:

Possible as a condition of either probation or suspension of a DWI imprisonment sanction. §17-103(b)

Restitution

(eg Victim's Fund):

Yes Paid by the defendant to a victim via a court order. §11-1502(e) Such payment is also possible as a condition of either probation or suspension of a DWI imprisonment sanction. §17-103(b)

Other:

Attendance and satisfactory completion of a driver improvement course may be ordered by the court. §17-103(a)(3)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Provision:

Yes **BAC/BrAC** ≥ 0.08 (≥ 0.02 for persons under 21 years old²) (For alcohol concentration standards, see Footnote No. 2 on p. A-1.)-Rev 3 mos/6 mos^{3,4} The UVC recommends, that for an admin. per se violation, the States revoke a license for either 3 or 6 mos. §§6-207(d), (e) & (f), 6-208(d), (e) & (f) and 6-214(a)(2)

Other:

Under §§6-211(a)(1) & 6-216, a person's license may be **suspended** for **not more than 1 yr** if they have "committed" an off that requires mandatory license revocation (e.g. DWI). **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Suspension/Revocation):

Rev (1st and subsequent offenses) §6-206(2)

Special Note: If a person receives revocations for both an admin. per se violation and for a DWI conviction based on the same occurrence, the total revocation period that shall be imposed cannot exceed the longer of the two revocation periods. §6-214(d)

Term of License Withdrawal
(Days, Months, Years, etc.):

1 yr (1st and subsequent offenses) §6-214(a)(3), (4) or (5)

¹Under §17-103(c), a court may probate or suspend sanctions for any misdemeanor traffic offense unless such penalties are made specifically mandatory by other provisions.

²Sec. 6-208(e) & (f) provides that a person under 21 years old is subject to administrative license revocation if they operate a motor vehicle with "any measurable or detectable amount" of alcohol. Sec. 6-208(a) defines "any measurable or detectable amount" of alcohol as an alcohol concentration ≥ 0.02 .

³Under §6-215, a limited license may be issued after 30 days of the revocation period have passed. The limited license can only be issued if (1) no prior limited license has been issued within the preceeding 12 months and (2) there have been no prior revocations. This section imposes no specific restrictions on a person's use of this license. However, it does grant the licensing agency the authority to impose any conditions or limitations on the use of such license as it deems are needed for the public's safety.

⁴**Comment:** It may be possible for persons under 21 years old, who have violated the administrative per se law, to receive a 1 yr revocation. Sec. 6-214 does not list a special licensing sanction for the violation of the administrative per se provisions of persons under 21 years old via §6-208; likewise, §6-208 does not by itself provide for any specific period of license revocation. Thus, the general 1 yr license revocation provision of §6-214 may apply.

UNIFORM VEHICLE CODE

Sanctions Following a Conviction for a DWI Offense: (continued)

Mandatory Minimum Term of Withdrawal:	See Footnote No. 3 on p. A-3 and Miscellaneous Sanctions below.
Other:	
Rehabilitation:	
Alcohol Education:	
Alcohol Treatment:	Yes (1st and sub. off) §11-904(b)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Provisions:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	Following a conviction for "driving or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug", a defendant may have their vehicle(s) registration(s) suspended. Note: The UVC does not specify a length of time for such suspension. §17-301(2)
Miscellaneous Sanctions Not Included Elsewhere:	After the revocation period, a new license shall not be issued until the person satisfies the State licensing agency that it is reasonably safe to permit them to drive. §6-214(b)

Other Criminal Actions Related to DWI:

<u>Homicide by Vehicle:</u>	
UVC Has Such a Provision:	Yes Misd or Felony ¹ §11-906(a)
Criminal Sanction:	
Imprisonment (Term):	3 mos to 1 yr in the county jail or not less than 1 yr nor more than 5 yrs in the penitentiary §11-906(b)
Mandatory Minimum Term:	None See Footnote No. 1 on p. A-5.
Fine (\$ Range):	\$500 to \$2,000 §11-906(b) Note: The fine sanction does not apply if the penitentiary imprisonment sanction is imposed.

¹**Comment:** It appears that a UVC vehicle homicide offense could be classified as either a misdemeanor or a felony depending upon whether respectively a defendant is given the county jail sanction (3 mos to 1 yr) or the penitentiary one (1 to 5 yrs). At first impression, it would seem that a vehicle homicide offense should be classified as a misdemeanor under §17-101(a) since §11-906 is silent as to such classification. However, if certain general principles of criminal law as well as other UVC provisions are applied, UVC vehicle homicide could be classified as either a misdemeanor or a felony depending upon how long and where a defendant is to be incarcerated. In brief, using these general principles, a crime is classified as a misdemeanor if an incarceration sanction does not exceed one year and/or such is to be served in a county (or local) jail. A crime is classified as a felony if an incarceration sanction is greater than one year and/or such must be served in a State penitentiary. Thus, under these principles, it is possible that an offense, such as UVC vehicle homicide, could have a dual classification (misdemeanor or felony) depending upon the type of incarceration sanction imposed by the court. See 21 Am Jur 2d, Criminal Law, §29 and the definitions of misdemeanor and felony in Black's Law Dictionary, Sixth Edition, 1990. Further support for dual classification comes from the UVC itself. Under §17-201, the UVC's general felony penalty provision, a person convicted of a felony is to be sentenced to a term of imprisonment of not less than 1 yr nor more than 5 yrs. This sanction is identical to one of the sanctioning options under §11-906(b). Thus, although there is no specific language on this matter, it seems only reasonable to conclude that the UVC would classify a vehicle homicide offense as a felony if a defendant is given such an incarceration sanction. To classify a vehicle homicide as a misdemeanor when the sanction imposed on a defendant is the same as for a general UVC felony offense would render the UVC inconsistent in sanctioning and classification matters. Such a result does seem warranted if a more logical classification/sanctioning scheme can be justified.

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine:	None ¹
Fine (\$ Range):	\$500 to \$2,000 §11-906(b) Note: The fine sanction does not apply if the penitentiary imprisonment sanction is imposed.
Mandatory Minimum Fine:	None ¹
Administrative Licensing Action:	
Licensing Authorized and	
Type of Action:	Rev §6-206(1)
Length of Term of	
Licensing Withdrawal:	1 yr §6-214(a)(3), (4) or (5)
Mandatory Action--Minimum	
Length of License	
Withdrawal:	1 yr §§6-206 & 6-214(a)(3), (4) or (5) See Footnote No. 3 on p. A-3.
Other	For a vehicle homicide conviction, a defendant may have their vehicle(s) registration(s) suspended. Note: The UVC does not specify a length of time for this suspension. §17-301(1)

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense*:

Sanctions:	See Footnote No. 2.
Criminal:	
Imprisonment (Term):	Misd 2 dys to 6 mos §6-303(a)
Mandatory Minimum Term	
of Imprisonment:	None ¹
Fine (\$ Range):	Not more than \$500 §6-303(a)
Mandatory Minimum Fine:	None ¹
Administrative Licensing Actions:	
Type of Licensing Action	Susp/Rev §6-303(b)
(Suspension/Revocation):	1 yr from and after the date the period of suspension or revocation would otherwise have terminated. §6-303(b)
Withdrawal Action:	
Mandatory Term of License	None The additional period of suspension or revocation is discretionary. §6-303(b)
Withdrawal Action:	Following a conviction of driving while their license is suspended or revoked, a defendant may have their vehicle(s) registration(s) suspended. Note: The UVC does not specify a length of time for this suspension. §17-301(6)
Other:	

Habitual Traffic Offender Provision:
UVC Has Such a Provision (Yes/No):
Grounds for Being Declared an
Habitual Offender:

No

¹Under §17-103(c), a court may probate or suspend sanctions for any misdemeanor traffic offense unless such penalties are made specifically mandatory by other provisions.

²The UVC appears to make it a misd to operate a CMV either following CDL disqualification or while under a CDL out-of-service order. However, the UVC makes no recommendations as to either the types of or the severity of the sanctions that should be imposed for this offense. §§6-508(b) & 17-101

*There is no specific provision in the UVC on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

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Other Criminal Actions Related to DWI: (continued)

Term of License Revocation While
Under Habitual Offender Status:
Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status
Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:
Imprisonment (Term):
Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

Other UVC Provisions Related To Alcohol Use:

Provisions Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

UVC Has Such a Provision (Yes/No):

Yes §10-116

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes §10-116(a)

Vehicle Passengers:

No

Pedestrian:

Yes For persons at least 16 years old §10-116(a) & (b)

Provisions Establishing the Minimum Ages Concerning Alcoholic Beverages:

See Footnote No. 1.

Minimum Age (Years) Sale/Purchase:

Minimum Age (Years) Possession:

Minimum Age (Years) Consumption:

Dram Shop Provisions and Related Legal

Actions:

UVC Has a Dram Shop Provision (Yes/No):

See Footnote No. 1.

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the Case (Case
Citation):

N/A

Dram Shop Actions-Social Hosts:

See Footnote No. 1.

Other:

¹This area of the law is not normally covered by UVC.

Other UVC Provisions Related To Alcohol Use:
(continued)

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

See Footnote No. 1.

Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

See Footnote No. 1.

Length of Term of License Withdrawal:

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

See Footnote No. 1.

Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

See Footnote No. 1.

Length of Term License Withdrawal:

Anti-Happy Hour Provisions:

See Footnote No. 1.

Provisions Prohibiting (1) the Possession
of Open Containers of Alcoholic
Beverages and (2) the Consumption
of Alcoholic Beverages in the Passenger
Compartment of a Vehicle:

Open Container Provision (Yes/No):

No

Anti-Consumption Provision (Yes/No):

No

¹This area of the law is not normally covered by UVC.

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