PB94-142452

U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

Digest of State Alcohol-Highway Safety Related Legislation

Current as of January 1, 1994

Twelfth Edition

REPRODUCED BY:
U.S. Department of Commerce
National Technical Information Service
Springfield, Virginia 22161

This document is disseminated under the
sponsorship of the Department of Transportation,
National Highway Traffic Safety Administration,
in the interest of information exchange.
The United States Government assumes no
liability for the contents or use thereof.

CONTENTS

INTRODUCTION 1-1

ANALYSIS BY STATE - HIGH INTEREST LEGISLATION 2-1

STATE LAW SUMMARY ANALYSIS 3-1

Alabama 3-1

Alaska 3-9

American Samoa 3-17

Arizona 3-23

Arkansas 3-33

California 3-45

Colorado 3-61

Connecticut 3-71

Delaware 3-79

District of Columbia 3-89

Florida 3-97

Georgia 3-107

Guam 3-117

Hawaii 3-123

Idaho 3-133

Illinois 3-143

Indiana 3-153

CONTENTS (continued)

Iowa 3-165

Kansas 3-175

Kentucky 3-185

Louisiana 3-195

Maine 3-207

Maryland 3-217

Massachusetts 3-227

Michigan 3-235

Minnesota 3-245

Mississippi 3-257

Missouri 3-265

Montana 3-275

Nebraska 3-285

Nevada 3-295

New Hampshire 3-305

New Jersey 3-315

New Mexico 3-325

New York 3-333

North Carolina 3-343

North Dakota 3-355

CONTENTS (continued)

Ohio 3-363

Oklahoma 3-375

Oregon 3-385

Pennsylvania 3-397

Puerto Rico 3-405

Rhode Island 3-413

South Carolina 3-423

South Dakota 3-433

Tennessee 3-441

Texas 3-451

Utah 3-463

Vermont 3-473

Virginia 3-483

Virgin Islands 3-493

Washington 3-499

West Virginia 3-509

Wisconsin 3-521

Wyoming 3-533

APPENDIX - UNIFORM VEHICLE CODE A-1

INTRODUCTION

PURPOSE

This Digest is designed for use by anyone interested in State laws related to alcohol/drug use and highway safety. Except as indicated, it provides the reader with the status of such State laws as of January 1, 1994.

ORGANIZATION

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

EXPLANATIONS

The following statements clarify the contents of and/or establish certain presumptions used in the Digest.

1. The term "DWI" is a general (non legal) term that refers to <u>any</u> criminal action of driving a motor vehicle either (1) while "illegal per se", (2) while either impaired or while under the influence or while intoxicated by either alcohol or other drugs.

2. The term "illegal per se" refers to State laws that make it a criminal offense to operate a motor vehicle at or above a specified alcohol or drug concentration level in either the blood, breath or urine.

3. An "administrative per se law" refers to a statute that allows a State's driver licensing agency to either suspend or revoke a driver's license based either on a specific alcohol or drug concentration level 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 DWI criminal offense

conviction.

4. Unless otherwise stated, for illegal per se and administrative per se States, the alcohol concentration levels in either the blood, breath or urine are based on the following ratio standards. For alcohol concentration in the blood, the ratio is the number of grams of alcohol per 100 milliliters of blood. For alcohol concentration in the breath, the ratio is number of grams of alcohol per 210 liters of breath. And, for alcohol concentration in urine, the ratio is the number of grams of alcohol per 67 milliliters of urine.

5. The sanctions listed for convictions of alcohol/drug related driving offenses (e.g., driving while impaired, driving while intoxicated, illegal per se, etc.) are those specified by statute. If a sanction is not **specified** by law (e.g., community service, et al.), it is not listed.

6. The term "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; this may be accomplished by denying either the court or the administrative agency the power to either suspend or otherwise prevent the imposition of such sanction.

7. 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.).

8. Unless otherwise indicated, a "commercial motor vehicle" (CMV) is defined as one that either (1) has a gross vehicle weight of 26,001 or more pounds, (2) is designed to transport either 15/16 or more persons including the driver or (3) transports hazardous materials.

9. For each State in the Summary, in the section on "Driving After License has been Suspended or Revoked for an Alcohol Driving Offense," the general sanctions for operating a vehicle while a license is either in a suspended or revoked status are given in the absence of any specific sanctions dealing with the exact subject in the summary.

10. States without vehicle homicide laws treat deaths, which are caused by
persons while operating motor vehicles, under their general criminal homicide laws such as manslaughter.

11. A number of States have adopted the concept of a dram shop liability via case law. State courts making such decisions have used a multiplicity of legal theories in their opinions. Citations to the major decisions are given in this Digest. Note: Some States have dram shop liability via both statutory and case law.

12. A statute or regulation banning "Happy Hours" means one that prohibits the sale of alcoholic beverages below the price per quantity normally charged for such beverages.

13. 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.

14. 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.

15. The term "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 DWI 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 DWI. The results of a PBT are usually non-evidentiary. That is, the test's results cannot be admitted into evidence at a DWI trial.

16. The term "Implied Consent Law" refers to a law that 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 a test based upon the implied consent law are evidentiary. That is, the test's results can be admitted into evidence at a DWI trial.

LEGISLATIVE SUBJECT AREAS

- Basis for a DWI Charge (e.g., Blood Alcohol Concentration, Types of Drugs)
- Chemical Breath Tests
  - Preliminary
  - 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
  - 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 Criminal
  - o Administrative (Licensing Action)
  - o Rehabilitation
  - o Vehicle Impoundment
- 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

BAC = blood alcohol concentration
BrAC = breath alcohol concentration
CDL = Commercial Drivers License
cl = class
CMV = Commercial Motor Vehicle
cons = consecutive
dy = day
dys = days
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

FEEDBACK

We intend, of course, to update this publication periodically. Accordingly, the NHTSA staff would appreciate receiving any comments that you might have concerning improving any future digest's readability or accuracy.

Any comments, corrections or new information should be sent to:

National Highway Traffic Safety Administration
Office of Alcohol and State Programs - Code NTS-20
400 7th Street, S.W.
Washington, D.C. 20590
Attention: Legislative Resource Center
Telephone: (202) 366-2729

Finally, NHTSA staff hopes that this document will be useful to you. If you are interested in receiving updates to this Digest, please let us know via either telephone or letter.

TABLE 1

ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION

STATE	PBT[3]	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[13]	Anti-Consump. Law	Dram Shop[15]
		1st	2nd		1st	2nd	3rd					
AL		S-90 dys	S-1 yr	No	--	--	--	0.10	0.10			S
AK	X	R-90 dys	R-1 yr	0.10	R-30 dys	R-1 yr	R-10 yrs	0.10	0.10	X	X[14]	S
AZ	X	S-12 mos	S-12 mos	0.10	S-30 dys	S-90 dys	S-90 dys	0.10	0.10		X	S
AR		S-6 mos	S-1 yr	No	--	--	--	0.10	--		X	No
CA	X	S-1 yr[34]	R-2 yrs	0.08[30]	S-30 dys[30]	S-1 yr[30]	S-1 yr[30]	0.08	0.08	X	X	S[16]
CO	X	R-1 yr	R-1 yr	0.10	R-3 mos	R-1 yr	R-1 yr	0.10	.05,.10[47]		X	S
CT		--[39]	S-1 yr	0.10	--[39]	S-1 yr	S-2 yrs	0.10	--			S[19]
DE	X	R-6 mos[2]	R-18 mos	(.10)[3]	R-3 mos	R-1 yr	R-18 mos	0.10	(0.10[40])		X	No
DC	X	S-12 mos	S-12 mos	(.10)[4]	--	--	--	0.10	(0.05[40])	X	X	C
FL		--	S-18 mos	0.08	--	S-1 yr	S-1 yr	0.08	(0.08[40])	X		S[22]
GA		S-1 yr	S-1 yr	0.10	N/A	S-120 dys	S-2 yrs	0.10	0.08	X[14]		S
HI		R-1 yr	R-2 yrs	0.10	R-30 dys	R-1 yr	R-2 yrs	0.10	(0.10[40])	X	X	C
ID		S-180 dys	S-1 yr	0.10[32]	S-30 dys[31]	S-1 yr[34]	S-1 yr[31]	0.10	--	X	X	S
IL	X	--	S-6 mos	0.10	--	S-90 dys	S-90 dys	0.10	0.10	X		S[19]
IN		S-1 yr	S-1 yr	0.10	S-180 dys[5]	S-180 dys[5]	S-180 dys[5]	0.10	0.10[41]			S
IA	X	R-240 dys[6]	R-360 dys[6]	0.10	--	R-1 yr[49]	R-1 yr[49]	0.10	--	X	X	S
KS	X	S-1 yr	S-1 yr	0.08	S-30 dys	S-1 yr	S-1 yr	0.08	(0.08[40])	X	X	No
KY	X	--	--	A[7]	--	--	--	0.10	--		X	S
LA		S-90 dys	S-545 dys	0.10	S-30 dys[34]	S-365 dys[31]	S-365 dys[31]	0.10	0.10			S[23]

TABLE 1 (continued)
ANALYSIS BY STATES – HIGH-INTEREST LEGISLATION

STATE	PBT[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[15]
		1st	2nd		1st	2nd	3rd					
ME		S-90 dys	S-1 yr	0.08	–	–	–	0.08	–		X[14]	S[39]
MD	X	S-120 dys	S-1 yr	0.10	–	S-90 dys	S-90 dys	–	(.07,.10[24])	X[25]	X[14]	No
MA		S-120 dys	S-120 dys	A[7]	–	–	–	–	0.10		X[14]	C
MI	X	–	S-1 yr	No	–	–	–	0.10	.07,.10[17]	X	X	S
MN	X	R-15 dys	R-180 dys	0.10	R-15 dys	R-90 dys	R-90 dys	0.10	–	X	X	S
MS	X	S-90 dys[8]	S-90 dys[8]	0.10[9]	–	–	–	0.10	–			S
MO	X	R-90 dys	R-1 yr	0.10	S-30 dys	R-1 yr	R-1 yr	0.10	–		X[14]	S[26]
MT		S-90 dys	R-1 yr	No	–	–	–	0.10	(0.10[29])	X	X	S
NE	X	R-1 yr[44]	R-1 yr[44]	0.10	R-30 dys	R-1 yr	R-1 yr	0.10	–		X	No
NV	X	R-1 yr	R-3 yrs	0.10	R-90 dys[41]	R-90 dys[41]	R-90 dys[41]	0.10	0.10	X	X[14]	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	X	S
NJ		R-6 mos	R-2 yrs	No	–	–	–	0.10	–		X	S
NM		R-1 yr	R-1 yr	0.08	R-90 dys[50]	R-1 yr[35]	R-1 yr[35]	0.08	–	X	X	S
NY	X	R-6 mos	R-1 yr	A[7]	–	–	–	0.10	(.07,.10[34])		X	S
NC	X	R-6 mos	R-12 mos	0.08	R-10 dys	R-10 dys	R-10 dys	0.08	–	X[23]	X[14,35]	S[20,21]
ND	X	R-1 yr	R-2 yrs	0.10	S-30 dys	S-365 dys	S-2 yrs	0.10	–	X	X	S
OH		S-30 dys	S-90 dys	0.10[45]	S-15 dys	S-30 dys[46]	S-180 dys[47]	0.10	–	X	X	S
OK		R-90 dys	R-1 yr	0.10	–	R-1 yr	R-18 mos	0.10	(.05,.10[15])	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[28])	X	X	S

TABLE 1 (continued)
ANALYSIS BY STATES – HIGH-INTEREST LEGISLATION

STATE	PBT[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]	S
PR	X	S-6 mos	S-1 yr	No	--	--	--	--	0.10[40]			No
RI	X	S-3 mos	S-1 yr	No	--	--	--	0.10	--		X[14]	S
SC		S-90 dys	S-90 dys	No	--	--	--	--	0.10[35]	X	X	C[37,39]
SD	X	--	--	No	--	--	--	0.10	0.10	X		C
TN		--	--	No	--	--	--	--	0.10			S
TX		--	--	0.10[32]	--	S-90 dys[32]	S-90 dys[32]	0.10	--		X[14]	S[32]
UT		R-1 yr	R-1 yr	0.08	S-90 dys	S-120 dys	S-120 dys	0.08	--	X	X	S[39]
VT	X	S-6 mos	S-18 mos	0.08	S-90 dys	S-18 mos	S-2 yrs	0.08	0.08[36]		X[14]	S
VA	X	S-6 mos	S-1 yr	No	--	--	--	0.10	0.10		X[14]	No
WA		R-1 yr	R-2 yrs	No	--	--	--	0.10	--	X	X	C[30]
WV	X	R-90 dys[42]	R-1 yr[42]	0.10[11]	R-30 dys[42]	R-1 yr[42]	R-1 yr[42]	0.10	0.10[31]		X	C
WI	X	R-30 dys	R-90 dys	0.10[43]	--	--	--	0.10[43]	(0.10[44])	X	X	S[16]
WY		S-6 mos	S-18 mos	0.10	--	S-90 dys	S-90 dys	0.10	--			S[33]
TOTALS	29	S-25 R-19	S-27 R-21	36	S-13 R-10	S-19 R-13	S-19 R-13	0.10=37 0.08=10 No=5	0.08=2 0.10=16	27	40	S=36 C=8 No=8

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

TABLE 1 (continued)
ANALYSIS BY STATES – HIGH INTEREST LEGISLATION

[1]Preliminary Breath Test (Pre-arrest/nonevidentiary breath test) Law
[2]Because of a conflict in the law, this period could be 90 days.
[3]Based on probable cause of DWI. This could be a BAC level of 0.10 or more.
[4]Based on sufficient evidence of DWI. This could be a BAC level of 0.10 or more.
[5]Suspension up to 180 days or until the DWI charges have been disposed of which ever occurs first.
[6]A restricted license may be issued for an implied consent law violation provided the defendant pleads guilty to a subsequent DWI charge.
[7]Alternative pre-DWI criminal adjudication licensing action by the courts.
[8]License suspension for one (1) year if the driver has a prior DWI offense conviction.
[9]Special provisions/procedures.
[10]Applies to persons 18 years old or above.
[11]Or under the influence of alcohol.
[12]Laws prohibiting the possession of an open container of an alcoholic beverage in the passenger compartment of a motor vehicle.
[13]Seven (7) States and Puerto Rico do not have dram shop liability.
[14]Applies only to drivers.
[15]The lower of the two numbers is evidence of driving while impaired; the higher is *prima facie* evidence of driving while under the influence.
[16]Applies only to the actions of intoxicated minors.
[17]The lower of the two numbers is driving while impaired; the higher is driving while under the influence.
[18]Competent evidence of DWI.
[19]This state has a statute that places a monetary limit on the amount of damages that can be awarded in dram shop liability actions.
[20]BAC level or levels which indicate *prima facie* evidence of a driving while under the influence offense.
[21]Not mandatory in all situations.
[22]Applies only to the actions of intoxicated minors or persons known to be habitually addicted to alcohol.
[23]The statute appears to have limited actions to those committed by minors.
[24]The lower of the two numbers is *prima facie* evidence of driving while under the influence. The higher number is *prima facie* evidence of driving while intoxicated.
[25]Limited application.
[26]Cause of action limited to licensees who have been convicted of the offense of selling alcoholic beverages either to minors or to intoxicated individuals.
[27]The 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.
[28]Not less than 0.08 constitutes being under the influence of intoxicating liquor.
[29]A 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.
[30]Applies only to the actions of (1) intoxicated minors and/or (2) adults who have lost their will to stop drinking.
[31]This state has both *prima facie* and presumptive evidence laws with BAC levels of 0.10.
[32]Statutory law has limited dram shop actions.
[33]Liability limited only to the actions of persons who are under 21 years old.
[34]90 days if the person pleads guilty to a DWI charge at the time of first arraignment with counsel.
[35]Provided there is also a 2nd or sub. DWI conviction.
[36]This BAC level is an inference of DWI.
[37]Possible case law.
[38]*Prima facie* evidence of impairment.
[39]Applies to actions of intoxicated minors.
[40]0.05 for persons who operate busses, trucks or other large motor vehicles.
[41]A 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.
[42]Provided the person participates in the ignition interlock program.
[43]1st & 2nd off-0.10; 3rd or subsequent off-0.08.
[44]This revocation is based on administrative action.
[45]The Administrative Per Se Law was effective July 1, 1993.
[46]Applies only if there was a prior DWI offense conviction.
[47]Applies only if there were two prior DWI offense convictions.
[48]0.10 is *prima facie* evidence for 1st and 2nd offs. 0.08 is *prima facie* evidence for 3rd and sub. offs.
[49]A person may be issued a restricted license notwithstanding this revocation if certain conditions are satisfied.
[50]Applies only to persons 21 years old and above.
[51]Effective July 1, 1994.
[52]Effective January 1, 1995.

TABLE 2
ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION

STATE	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	20 D	60 D	--	--	--	R-30 D	R-1 R	R-10 Y
AZ	250	500	--	--	30 CD[13]	6 M	--	--	--	S-90 D[20]	R-1 Y[44]	R-3 Y
AR	150	400	900	--	7 D	90 D	--	--	--	--	S-1 Y	S-2 Y
CA	390	375	390	--	48 H[1,2]	30 D[1,3]	--	10 D[2]	--[2]	--	S-30 D	R-3 Y
CO[2]	--	--	--	5 D[51]	7 D	7 D	(48 H)[18]	(60 H)[18]	(60 H)[18]	--	R-1 Y	R-2 Y
CT[2]	--	--	--	48 CH	10 D	120 D	100 H	--	--	--[43]	--[43]	--[43]
DE	--	--	--	--	--[54]	--[54]	--	--	--	--[55]	--[55]	--[55]
DC[2]	--	--	--	--	--	--	--	--	--	R 6 M	R-1 Y	R 2 Y
FL	--	--	--	--	10 D	30 D	(50 H)[18]	--	--	--	R-12 M	R-24 M
GA	300	600	1,000	--	48 H	10 D	--	80 H	30 D	--	S-120 D	R-5 Y
HI	150[5]	500	500	48 H[5]	48 CH	48 CH	72 H[5]	80 H	--	S-30 D	S-1 Y	R-1 Y
ID	--	--	--	--	10 D[13]	30 D	--	--	--	S-30 D	S-1 Y	S-1 Y
IL	--	--	--	--	48 CH	48 CH	--	100 H	30 D	--	--	--
IN	--	--	--	--	5 D[4]	5 D[4]	--	10 D	10 D	S-30 D	S-1 Y	S-1 Y
IA	500[6]	750	750	--	7 D[7]	30 D	--	--	--	--	R-1 Y[30]	R-2 Y[30]
KS	--	500	--	48 CH	48 CH[36]	48 CH[36]	100 H	--	--	S-30 D	S-1 Y	S-1 Y
KY	200[5]	--	--	48 H[5]	7 D	30 D	48 H[5]	--	--	S-30 D	R-12 M	R-24 M
LA	--	--	--	2 D[23]	15 D[23]	6 M[23]	4 D	30 D	--	--	S-12 M[41]	S-24 M[41]

TABLE 2 (continued)
ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION

STATE	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	300	500	750	48 CH[47]	7 D	30 D	--	--	--	S-60 D[24]	S-1 Y[24]	S-2 Y[24]
MD[Y]	--	--	--	--	48 CH	48 CH	--	80 H	80 H	--	--	--
MA	--	--	--	--	14 D[8,23]	60 D[23]	--	--	--	S-45 D	R-1 Y	R-2 Y
MI[X]	100[52]	200[52]	500[3]	--	48 CH	1 Y[3]	--	10 D	--	--	R-1 Y	S-5 Y
MN	140	600	600	--	--[30]	--[30]	--	--[26]	--[26]	R-15 D	R-15 D	R-15 D
MS	200	400	500	--	--	--	--	--	--	S-30 D	S-1 Y	S-3 Y
MO	--	--	--	--	--	48 CH	--	--	--	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	--	--	--	--	48 H[58]	7 D[58]	--	--	--	R-30 D[58]	R-6 M[58]	R-1 Y[58]
NV	200	500	2,000	2 D[11]	10 D[12]	1 Y[35]	48 H	--	--	R-45 D	R-1 Y	R-1.5 Y
NH	300	500	500	--	10 D[44]	10 D[14]	--	--	--	R-90 D	R-3 Y	R-3 Y
NJ	250	500	1,000	--[15]	48 CH	90 D[27]	--	(30 D)[18]	(90 D)[18]	R-6 M[22]	R-2 Y[22]	R-10 Y[22]
NM	--	--	--	--	48 CH	48 CH	--	--	--	--	R-1 Y	R-5 Y
NY[Z]	500	1,000	1,000	--	--	--	--	--	--	--	R-1 Y	R-1 Y
NC	--	--	--	--	7 D	7 D	--	--	--	--	R-2 Y	R-3 Y
ND	250	500	1,000	--	4 D[4]	60 D[4]	--	10 D	--	S-30 D	S-365 D	S-2 Y
OH	200	300	500	--	5 CD	15 CD	--	--	--	S-15 D	S-30 D	S-180 D
OK[X]	--	--	--	--	--[28]	--[28]	--	--[28]	--[28]	--	R-1 Y	R-18 M
OR	300	300	300	48 CH	48 CH	48 CH	80 H	80 H	80 H	--	S-90 D	S-1 Y

TABLE 2 (continued)
ANALYSIS BY STATES -- HIGH-INTEREST LEGISLATION

STATE	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[57]	300[57]	300[57]	--	30 D	90 D	--	--	--	S-12 M	S-12 M	S-12 M[5]
PR	--	--	--	--	24 CH	30 D	--	10 D	--	--	--	--
RI	100	400	400	--	10 D[4]	6 M[4]	--	--	--	S-3 M	S-1 Y	S-2 Y
SC	200	1,000	3,500	48 H[45]	48 H[45]	60 D[45]	48 H[45]	10 D[45]	--	--	S 1 Y	S 2 Y
SD	--	--	--	--	--	--	--	--	--	--	R 1 Y	R 1 Y
TN	250	500	1,000	48 H	45 D	120 D	--	--	--	--	R-2 Y	R-3 Y
TX	--	--		--	72 H[16]	10 D[16]	--	--	--	--	--	--
UT	--	--	1,000	48 CH	240 CH	720 D	24 H	80 H	240 H	S-90 D	R-1 Y	R-1 Y
VT	--	--	--	--	48 CH	--	--	--	--	S-90 D	S-18 M	R-2 Y
VA	--	--	--	--	48 H	30 D	--	--	--	--	R-2 Y[24]	R-5 Y
WA	250	500	500	24 CH	7 D[4]	7 D[4]	--	--	--	S-30 D	R-1 Y	R-2 Y
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	7 D	--	--	--	--	S 1 Y	R-3 Y
TOTALS	26	26	25	16	44	44	9	14	6	S-18 R-8	S-18 R-28	S 14 R-32

[X]Mandatory sanctions for the offenses of driving while under the influence and illegal per se.
[Y]Mandatory sanctions for the offense of driving while intoxicated.
[Z]Mandatory 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

TABLE 2 (continued)
ANALYSIS BY STATES -- *HIGH-INTEREST LEGISLATION*

[1]The 48 hours (2nd off) and 30 days (3rd off) are not necessarily served consecutively. The sanctions listed are for non-injury offenses.
[2]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.
[3]The court must sentence defendants to at least one of these sanctions but may sentence them to more than one such sanction.
[4]Must serve at least 48 consecutive hours.
[5]Could be 5 yrs under the habitual offender law.
[6]Not more than 200 hours of community service in lieu of the fine.
[7]This sentence may not be suspended; however, the statute is silent as to probation.
[8]Or 14 days in a treatment facility.
[9]This sanction only applies to driving while under the influence offenses.
[10]Must serve 48 consecutive hours.
[11]One day imprisonment or 24 hrs of community service if rehabilitation is taken.
[12]48 hours must be served consecutively. However, if the defendant agrees to participate in a 1 yr treatment program, the jail term is reduced to 1 dy or, as an alternative, the offender may perform 24 hrs of community service.
[13]48 con hrs if the defendant is eligible for the work release program.
[14]Three (3) consecutive 24 hour periods in a house of correction and seven (7) consecutive 24 hour periods in a DWI detention center.
[15]Mandatory treatment of not less than 12 nor more than 48 hours; this time is to be spent in an intoxicated driver resource center.
[16]As a part of community supervision.
[17]Provided the defendant either (1) had a BAC level of 0.15 or more, (2) was driving 30 MPH over the speed and had a BAC level of 0.08 or more, (3) was eluding a police officer and had a BAC level of 0.08 or more, (4) refused to submit to a chemical test or (5) was driving a vehicle with a passenger under 16 years old.
[18]Mandatory community service regardless of whether there is a mandatory imprisonment sanction.
[19]Applies to DWI offs that are not related to injury or death.
[20]May not apply to certain offenders who have been suspended pursuant to the administrative per se law.
[21]Applies only to driving while intoxicated offenses.
[22]The law states that the right to operate a motor vehicle is "forfeited."
[23]Home incarceration is possible.
[24]Temporary restricted license may be issued only for the purpose of attending either an alcohol education or treatment program.
[25]Work release is available for this period of time.
[26]For 2nd & subsequent offs, the court may sentence a person without regard to certain mandatory sanctions if mitigating circumstances exist or if the person is assigned to intensive probation.
[27]Not more than 90 dys as an alternative to imprisonment.
[28]If there is no imprisonment sanction, the defendant must serve either 48 con. hrs. of inpatient rehabilitation/treatment or 10 dys of community service.
[29]This revocation may not be mandatory if the defendant meets certain eligibility requirements for and does participate in a driver rehabilitation or improvement program.
[30]A person may be issued a restricted license notwithstanding this revocation if certain conditions are satisfied.
[31]Applies only to a 1st illegal per se conviction.
[32]Possible
[33]Followed by a period of "house arrest" with electronic monitoring.
[34]"House arrest" or the use of an "ignition" interlock" device may be ordered in lieu of a jail sentence.
[35]It appears that a court may order the use of an "ignition interlock" device in lieu of mandatory licensing action.
[36]Followed by work release for 3 dys for a 2nd off and 88 dys for a 3rd off.
[37]Plus the following mandatory surcharges: 1st off-$50; 2nd off-$100; and, 3rd off-$200.
[38]The mandatory sanctions given are based upon a person receiving probation.
[39]30 dys imprisonment unless the court orders a probation rehabilitation program.
[40]Applies only to DWI offenses that are not related to injury or death and provided the person participates in the ignition interlock program.
[41]Not mandatory in all situations.
[42]License suspension is not mandatory in all situations. A "special permit" may be issued in cases of "significant hardship".
[43]Home detention may be used in lieu of this sanction.
[44]An amendment to the law in 1993 may have eliminated this mandatory revocation.

STATE	**ALABAMA**
General Reference:	Code of Alabama

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol[1] §32-5A-191(a)(2)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[2] §§32-5A-191(a)(1) & 32-5A-194(a)(5)
Presumption (BAC/BrAC Level):	**0.10** §32-5A-194(a)(5) & (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)
Other:	For Commercial Motor Vehicle Operators, see p. 3-3.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §32-5-192
Implied Consent Law Applies to Drugs (Yes/No):	**No**
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §32-5A-194(c)
Other Information:	**Special Note:** A person who has been arrested for a DWI charge shall not be released until their BAC Level is less than 0.10. §32-5A-191(g)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §32-5-192
Urine:	**Yes** §32-5-192
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 Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**

[1]In *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).
[2]This State's illegal per se law "appears" to make it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. §§32-5A-191(a)(1) & 32-5A-194(a)(5)

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):	1st Refusal-**Susp-90 dys**; 2nd Refusal (w/n 5 yrs)-**Susp-1 yr** **Special Note:** These susps appear to be mandatory.[1] §32-5-192
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment/Fine:	1st off-Not more than **1 yr, $250-$1,000**; 2nd Off (w/n 5 yrs)-Not more than **1 yr, $500-$2,500**; 3rd or subsequent offs (w/n 5 yrs) **60 dys to 1 yr, $1,000-$5,000** §32-5A-191(c), (d) & (e) Serious Bodily Injury related to a DWI Off (assult in the first degree-Class B felony): **2-20 yrs**[2], not more than **$10,000**[2] §§13A-5-6(a)(2), 13A-5-11(a)(2) and 13A-6-20(a)(5) & (b)
Mandatory Minimum Term:	For non-injury DWI offs: 2nd off-**48 cons hrs**[3]; 3rd & sub off-**60 dys**
Mandatory Minimum Fine ($):	**None**
Other Penalties:	
Community Service:	2nd Off (w/n 5 yrs)-Not less than **20 dys**[3] §32-5A-191(c) & (d)
Restitution (eg Victim's Fund)	**Yes** Victims' Compensation Fund; see §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.
Other:	**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 injures. Act 323, Laws 1993

[1]These suspensions periods may be reduced only if the driver is acquitted of the related DWI charge. §32-5-192(c)

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

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

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

Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	No
Other:	Under §§32-5A-195(k)(1) & (m), a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.
Post DWI Conviction Licensing Action:	See Footnote No. 3.
Type of Licensing Action (Susp/Rev) and Term of Withdrawal:	1st off-Susp 90 dys[1&3]; 2nd off-Rev 1 yr; 3rd or subsequent offs-Rev 3 yrs §32-5A-191(c), (d) & (e)
Mandatory Minimum Term of Withdrawal:	1st off-90 dys[2&3]; 2nd off-1 yr; 3rd or subsequent offs-3 yrs
Other:	
Rehabilitation:	
Alcohol Education:	1st off-Yes §32-5A-191(c)
Alcohol Treatment:	1st off-Yes §32-5A-191(c)
	Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority:	None
Terms Upon Which Vehicle Will Be Released:	
Other:	None
Miscellaneous Sanctions Not Included Elsewhere:	None

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

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

[3]A 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. Act 352, Laws 1993

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 level of 0.04 or more, (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. See §§32-6-49.3(2) & (3), 32-6-49.11, 32-6-49.12 and 32-6-49.13.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Two types of offenses (1) "Homicide by Veh"-Felony[1] §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:	**Rev**[2] §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:	**None**

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

Sanction:	
Criminal:	
Imprisonment (Term):	**Misd** Not more than **180 dys** §32-6-19
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not less than **$100** nor more than **$500** §32-6-19
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Rev** (discretionary) §32-6-19
Length of Term of License Withdrawal Action:	An **additional period** of **6 mos** §32-6-19
Mandatory Term of License Withdrawal Action:	**None**

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

[2]Applies 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.

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

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 Not specifically provided for by statute. Note: In *Lankford v. Redwing Carriers, Inc.*, 344 So.2d 515 (Ala., 1977), the BAC test law provisions were deemed to apply to dead persons.
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: (Year Eff: 1985)	21 §28-1-5 & 28-3A-25(a)(19)
Minimum Age (Years) Possession:	21 §28-3A-25(a)(19)
Minimum Age (Years) Consumption:	21 §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** §6-5-71[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** *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], *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.
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	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** §28-3-20[5]
Fine ($ Range):	Not more than **$500** §28-3-20[5]

[1]**Comment:** Sec. 6-5-71, the Dram Shop Law provision that applies to commercial servers, referrers 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 of the Dram Shop Law, §6-5-70, parents of children who have been injured 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. Recently, 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) It would seen likely this court would apply this same interpretation to §6-5-71.

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

[3]The 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)

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

[5]See §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.

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):	**Yes Susp/Rev** §§28-3A-24 & 28-3A-26
Length of Term of License Withdrawal:	1st off-susp for not more than **1 yr** or rev for **1 yr**[1]; 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:	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):	**Yes Susp/Rev** §§28-3A-24 & 28-3A-26
Length of Term License Withdrawal:	1st off **Susp-Not more than 1 yr; rev-1 yr**[1]; 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 See the Special Note below.

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

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.

Other State Laws Related To Alcohol Use: (continued)

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**

STATE:	**ALASKA**
General Reference:	Alaska Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §28.35.030(a)(1)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1] §28.35.030(a)(2)
Presumption (BAC/BrAC Level):	**0.10** §28.36.033(a)(4)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **A Controlled Substance** or (2) Intoxicating Liquor and Another Substance §28.35.030(a)(1) & (3)
Other:	For Commercial Motor Vehicle Operators, see p. 3-12.

Chemical Breath Tests for BAC/BrAC Level:

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
Implied Consent Law Applies to Drugs (Yes/No):	No
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) §28.35.032(e)
Other Information:	**Special Note:** A "chemical test" 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 BAC Level 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 §§28.35.030(d) & (i) and 28.35.032(h) & (l)

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

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): **None**

Other: 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, see §28.33.031(d).
It is a Cl. 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): Cl A misd Not more than **1 yr** imprisonment and/or **$5,000** fine §28.35.032(f) (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 offenses[1] are the same as for DWI offenses. These sanctions run concurrently with any other sanctions. §28.35.032(f) & (g)(4))

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 refusals[1] are the same as for 1st and subsequent revocations for DWI offense convictions. §§28.15.165(d)

Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment/Fine: Cl A Misd- Not more than **1 yr**; not more than **$5,000** §§12.55.035, 12.55.135 & 28.35.030(b)

Mandatory Minimum Term: 1st off-**72 cons hrs**[1]; 2nd off (w/n 10 yrs)-**20 dys**[1]; 3rd off (w/n 10 yrs)-**60 dys**; 4th off (w/n 10 yrs)-**120 dys**; 5th off (w/n 10 yrs)-**240 dys**; 6th and sub. off (w/n 10 yrs)-**360 dys** See Footnote No. 2 below. §28.35.030(b)

Mandatory Minimum Fine ($): 1st off-**$250**; 2nd off (w/n 10 yrs)-**$500**; 3rd off (w/n 10 yrs)-**$1,000**; 4th off (w/n 10 yrs)-**$2,000**; 5th off (w/n 10 yrs)-**$3,000**; 6th and sub. off (w/n 10 yrs)-**$4,000** See Footnote No. 2. §28.35.030(b)

[1]If possible, this incarceration sentence is to be served in a community residential center. §§28.35.030(l) & 28.35.032(p)
[2]**Special Note:** For either DWI offenses 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 w/n 10 yrs. §§28.35.030(k)(4)

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

Other Penalties:	
Community Service:	**Yes**[1] 1st off-At least **24 hrs**; 2nd off-At least **160 hrs** §28.35.030(l) Discretionary for subsequent offenses §12.55.055
Restitution (eg Victim's Fund)	**Yes** The court may order a defendant to pay direct compensation to a victim(s). §12.55.045
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 sill apply. §12.55.102(a) **Cost of Incarceration.** 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(l) & 28.35.032(p)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes** **0.10** (BAC/BrAC) §28.15.165(a)(1) & (d) License 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. 2 on p. 3-10.
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**

[1]This 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.

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

Other:	
Rehabilitation:	
Alcohol Education:	Yes[1] §28.35.030(c)
Alcohol Treatment:	Yes[1] §28.35.030(c)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	Yes **State Forfeiture** of the vehicle used in subsequent DWI or refusal offenses. §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

[1]For 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)

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 level of 0.04 or more, (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 an alcohol concentration of 0.04 or more, while under the influence of any controlled substance or who refuses to submit to a breath test, is also subject to the regular DWI/implied 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. See §§28.15.165, 28.15.219, 28.33.030, 28.33.031, 28.33.130 and 28.33.140.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	No
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. 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:	
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:	$500
Administrative Licensing Actions:	
Type of Licensing Action ($usp/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

[1]Even 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)

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 §§04.16.051, .052 & .060 (Year Eff: 1983)
Minimum Age (Years) Possession:	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 & .052

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §04.21.020[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** 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:	**No** §04.16.020
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Cl A misd §§04.16.030 & 04.16.180
Term of Imprisonment:	Not more than **1 yr**
Fine ($ Range):	Not more than **$5,000**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** §04.16.180
Length of Term of License Withdrawal:	1st conviction-**45 day susp**; 2nd conviction-**90 day susp**; 3rd and/or subsequent convictions-**Discretionary** No time limit is given in the statute. Note: The susps and revs are not mandatory. §04.16.180
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	Cl A Misd §§04.16.052 & 04.16.180
Term of Imprisonment:	Not more than **1 yr**
Fine ($ Range):	Not more than **$5,000**

[1]The statute limits liability to situations where the licensee has served alcoholic beverages either (1) to a person under 21 years of age or (2) to a person in a "criminally negligent" manner. §§04.16.030, 04.21.020 & 04.080(a)(1) and *Kavorkian v. Tommy's Elbow Room, Inc.*, 694 P.2d 160 (Alaska 1985) (rehearing, 711 P.2d 521 (Alaska 1985)).

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):	**Yes** §04.16.180
Length of Term License Withdrawal:	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):	**Yes** §28.35.029
Anti-Consumption Law (Yes/No):	**Yes** Drivers only 13 Alaska Administrative Code 02.545(a)

JURISDICTION:	**AMERICAN SAMOA**
General Reference:	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 Level):	**None**
Presumption (BAC Level):	**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 BAC Level:

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 BAC Level 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 lessor 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:	

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

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

Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Suspension/Revocation):	**Susp 90 dys** (Appears to be mandatory) §22.0608
Other:	

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	**Class A Misd**-Not more than **1** yr §§22.0707 & 46.2301(5)
Mandatory Minimum Term:	**None**
Fine:	
Amount ($ Range):	Not more than **$1,000** §46.2102(a)(1)
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	
Restitution (eg Victim's Fund):	**Yes** Paid by the defendant to a victim §§46.2001 & 46.2002
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** (for all offenses) §22.0211 See Footnotes Nos. 1, 2 & 3.
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**6 mos**; 2nd off-**2 yrs**; 3rd off-**Permanently** §22.0211
Mandatory Minimum Term of Withdrawal:	1st off-**6 mos**; 2nd off-**2 yrs**; 3rd off-**Permanently**

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

[1]Sec. 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 either of these two (2) sections are the same.
[2]The suspension period may be doubled. 22 §213(b)
[3]Either suspension or revocation for the periods indicated.
[4]These 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.

Other Criminal Actions Related to DWI: (continued)

Driving While Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	
Imprisonment:	**Class D Felony** Not more than 5 yrs §§22.0233 & 46.2301(4)
Mandatory Minimum Term of Imprisonment:	**90 dys** §22.0223
Fine ($ Range):	Not more than **$5,000** §46.2101(a)(1)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Suspension/Revocation):	**Susp** §22.0219
Length of Term of License Withdrawal Action:	If convicted of driving while suspended, extend the period of susp. for a like period (unless otherwise directed) §22.0219
Mandatory Term of License Withdrawal Action:	If convicted of driving while suspended, extend the period of susp. for a like period (unless otherwise directed) §22.0219
Other:	
Habitual Traffic Offender Law:	
Jurisdiction Has Such a Law (Yes/No):	No Note: This jurisdiction does not have a per se habitual traffic offender law. However, the law does provide for permanent license revocation if a person has been convicted of 3 serious traffic offenses (e.g., DWI) w/n 10 yrs. §§22.0213(a)(3)
Grounds for Being Declared an Habitual Offender:	
Term of License Revocation While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

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):	
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.

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:	**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 Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §27.0533
Length of Term 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.
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):	**Yes** §27.0532
Anti-Consumption Law (Yes/No):	**Yes** (Driver and passengers) §27.0532

[1]For 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:	**ARIZONA**
General Reference:	Arizona Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §28-692(A)(1)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1,2] and **Any Controlled Substance in a Person's Body**[3]. §28-692(A)(2) & (3)
Presumption (BAC Level):	**0.10** §28-692(E)(3)
Types of Drugs/Drugs and Alcohol:	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. §28-692(A)(1)
Other:	For Commercial Motor Vehicle Operators, see p. 3-27.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**Yes** §28-691.01 Based on reasonable suspicion of a DWI offense.
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §28-691(A)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §28-691(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §28-692(I)
Other Information:	**Special Note:** Police officers may request persons (e.g. medical facility personnel), who collect blood, urine or other bodily substances from suspected DWI offenders, to supply samples of such substances to law enforcement authorities for testing. §28-692(J) Such samples can also be obtained via search warrants. §28-691(D)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §28-691
Urine:	**Yes** §28-691
Other:	**"Other bodily substances"** §28-691

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. §28-692(O)

[2]It is a Class 1 misdemeanor for any person under 21 years old to operate a motor vehicle with any "spirituous liquor" in their body. The sanctions for this offense are a jail term of not more than 6 mos and/or a of fine not more than $2,500. §§4-244(34), 4-246(B), 13-701, 13-707, 13-801 & 13-802

[3]Except in cases where a person was impaired in the "slightest degree," a person is not guilty of this offense if they are legally entitled to use these drugs. §28-692(B)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes §§28-692(C)[1] & 28-692.02
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol Screening §§28-692.01(A) & (D)

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):	**12 mon susp**[2] (mand) §28-691
Other:	A person may be required to attend and successfully complete a driver training course. §28-446

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment/Fine/Term:	1st off-Cl 1 misd - **Not more than 6 mos** (with 10 con dys), **Not more than $2,500**; 2nd off-Cl 1 misd (w/n 60 mos) - **Not more than 6 mos** (with 90 dys), **not more than $2,500**, 3rd & sub off (Aggravated DWI) (w/n 60 mos)-Cl 4 felony - Not more than **4 yrs**[3], **not more than $150,000** §§13-701, 13-707, 13-801, 13-802, 28-692.01 & 28-697 **Special Note:** For sanctions related to Aggravated DWI based on a DWI offense and 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.

[1]A DWI charge shall not be dismissed or changed to another misd/petty off unless there is clearly an insufficient legal basis for the DWI off charge.

[2]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.

[3]Note: Under §13-702(A), the imprisonment sanction for a Class 4 felony may be increased by 25% or reduced by 50% depending upon certain aggravating or mitigating circumstances.

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

Mandatory Minimum Term:	1st off - **24 cons hrs** (Provided the defendant completes an alcohol/drug screening, counseling, education/treatment program. §28-692.01(B))[1]; 2nd off (w/n 60 mos) - **30 con dys**[1] (Provided the defendant completes an alcohol/drug screening, counseling, education or treatment program. §28-692.01(E)); 3rd off (w/n 60 mos) - **4 mos**[2] §28-697(E); 4th and sub. off (w/n 60 mos) - **8 mos**[2] §28-697(F)
Mandatory Minimum Fine ($):	1st off Cl 1 misd-**$250**; 2nd off Cl 1 misd (w/n 60 mos)-**$500**; 3rd & sub off (w/n 60 mos) Cl 5 felony-**None**
Other Penalties:	
Community Service:	1st & 2nd offs - Not more than 40 hrs of community service[3] §28-692.01(C) 3rd and sub off - A defendant cannot be assigend community service. §§9-499.07(S) & 11-459(R)
Restitution (eg Victim's Fund):	**Yes** A victims' compensation fund; see §41-2407. Also, where a defendant's conviction was for an off that resulted in economic loss to a victim, the Court may order that all or any portion of the fine imposed on the defendant be allocated as restitution. §13-804
Other:	
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes 0.10** (BAC/BrAC) §§28-694(A) & 28-694(I) **Not less than 90** cons dys (30 cons dys mand.)[4]

[1]Under §28-692.01(I), a defendant may serve the imprisonment term on a part time basis for employment or educational purposes. However, 1st offenders must first complete 24 con hrs in jail and 2nd offenders must complete 48 con hrs in jail.
[2]A limited furlough may be granted. §31-233
[3]1st offenders are eligible of community service after they have severed 24 con hrs in jail. 2nd offenders are eligible for community after they have served 15 con dys in jail. §§9-499.07(N) & 11-459(M)
[4]See Footnote No. 1 on p. 3-26.

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

Comment: 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). However, 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 §§28-446(A)(1) and 28-448(A) & (B), it may be "possible" to susp/rev a person's license for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., a 2nd DWI off). Such action may be taken without a preliminary hearing.

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev) and Term of License Withdrawal: 1st off-**Susp-not less than 90 con dys**[1&3]; 2nd off-**Rev-not more than 1 yr**; 3rd & sub off-**Rev-3 yrs** §§28-445, 28-448(A), 28-692.01(K) & 28-697(D)[2] Driving Under the Influence of Narcotics or with Any Amount of a Controlled Substance in the Body 1st & 2nd off-**Rev-not more than 1 yr**, 3rd & sub off-**Rev-3 yrs** §§28-445(A)(2), 28-448(A) & (C) and 28-697(D)

Special Note: There appears to be no licensing sanction against a person, who is under 21 years old and who operates a motor vehicle with any "spirituous liquor" in their body in violation of §§4-244(34) & 4-246(B). See the Comment above.

Mandatory Minimum Term of Withdrawal: 1st off-**90 con dys**[1&3] 2nd off-See Footnote No. 4. 3rd & sub off-**3 yrs** Driving Under the Influence of Narcotics or with Any Amount of a Controlled Substance in the Body-1st & 2nd off-See Footnote No. 4. 3rd & sub off-**Rev-3 yrs**

[1]However, for 1st offenders (admin. per se or DWI) who did not cause serious physical injury, the license suspension period is not less than 30 cons days (mandatory) and a restricted license for not less than 60 cons days. §§28-692.01(K) & 28-694(B)

[2]In addition to any other legal sanction for a DWI off conviction (or a conviction for the offs of either possessing or consuming alc. beverages while operating a motor vehicle), a person under 18 yrs old must receive a 2 yr license suspension. However, restricted driving privileges are available for employment/education purposes. §§1-125(4), 8-201(6) and 8-249(A) & (E)

[3]Note: This suspension period does not apply to certain 1st offenders who have been suspended pursuant to the admin. per se law. §28-692.01(J)

[4]In 1993, the Arizona Legislature amended §28-448(B) by repealing the language that clearly stated that a license could not be reinstated until the "expiration" of 1 yr of the license revocation period. §21 of Ch. 178 of the Laws of 1993

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

Other:	
Rehabilitation:	
Alcohol Education:	1st off - Yes[1] §28-692.01(D)
Alcohol Treatment:	1st, 2nd & 3rd offs - Yes[1] §28-692.01(B), (D), (E) & (F)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Forfeiture.** A person's vehicle is subject to forfeiture, (1) if they are convicted of a 3rd or subsequent DWI offense or (2) if they are convicted of a DWI offense and their license is still suspended/revoked for a previous DWI conviction. §28-697.01(A)
Terms Upon Which Vehicle Will Be Released:	N/A
Other:	None
Miscellaneous Sanctions Not Included Elsewhere:	**Incarceration Costs.** A DWI offender may be assessed the costs of their incarceration. §13-814(A) **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. §28-699(A) **Home Detention (Work Release).** Only 1st and 2nd DWI 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) & (S) and 11-459(M) & (R) **Special Note:** Third and subsequent offenders are still eligible for prison furlough. §31-233

[1]If 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 "satisfactorily" completed such program. §28-454

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 are under the influence of alcohol or a controlled substance. For a subsequent violation, the "disqualification" is for life (10 yrs mand.). A CMV operator is subject to the normal DWI sanctions. Under the regular DWI law, it is it is both illegal per se and a presumption of driving while under the influence for a person to drive a CMV with a BAC/BrAC level of 0.04 or more. 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 level of 0.04 or more. See §§28-101(2), 28-101(7), 28-402(4), 28-402(7), 28-455, 28-692(A)(4), 28-692(N)(2), 28-694(A) & 28-694(I).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**No**
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	
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. §§28-445 & 28-448
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):	Cl 1 Misd-**Not more than 6 mos** Cl 4 Felony-DWI off and driving on a susp/rev lic. for a previous DWI conviction[1] (Aggravated DWI)-**Not more than 4 yrs** See Footnote No. 3 on p. 3-24. §§13-701, 13-707, 13-801, 13-802, 28-473 & 28-697
Mandatory Minimum Term of Imprisonment:	Cl 1 Misd off-**48 cons hrs** §28-473(B) Cl 4 Felony off-**4 mos** §28-697(E)
Fine ($ Range):	Cl 1 Misd off-**Not more than $2,500** §13-802 Cl 4 Felony off-**Not more than $150,000** §13-801
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Cl 1 Misd off-For driving while suspended-**Susp** For driving while revoked-**Rev** §28-473(D) Cl 4 Felony-**Rev** §28-448(C)
Length of 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 yr of rev. §28-473(D) Cl 4 Felony-**3 yrs** §28-448(C)
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 §28-473(D) Cl 4 Felony-**3 yrs** §28-448(C)

[1]See "Forfeiture" under Vehicle Impoundment/Confiscation on p. 3-27.

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 §28-668
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes §28-668
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]
"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), & *Brannigan et al. v. Ray Buck*, 667 P.2d 213 (Ariz. 1983)[2]
Dram Shop Actions-Social Hosts:	**No** §§4-301, 4-312(B) & *Estate of Hernandez v. Board of Regents*, 838 P.2d 1283 (Ariz.App. 1991)
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Cl 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 **$20,000** for businesses §13-803
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev**[3] §4-210(A)(9)
Length of Term of License Withdrawal:	Length of term not fixed
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Cl 1 Misd**[4] §§4-244(9) & 4-246(B)
Term of Imprisonment:	Not more than **6 mos** §13-707(A)
Fine ($ Range):	Not more than **$2,500** for individuals §13-802(A); not more than **$20,000** for businesses §13-803

[1]Note: 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)

[2]These cases may have been abrogated by statute. §4-312.B

[3]In 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

[4]**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)

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):	**Yes Susp or rev**[1] §4-210(A)(9)
Length of Term License Withdrawal:	Length of term not fixed
Anti-Happy Hour Laws/Regulations:	**Yes** §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):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Driver & passengers §§4-244(20), 4-244(22) & *State v. Castellano*, 784 P.2d 287 (Ariz.App. 1989)

[1]See Footnote No. 3 on p. 3-30.

STATE:	**ARKANSAS**
General Reference:	Arkansas Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Intoxicated[1] §§5-65-102(1) & 5-65-103(a) For Persons Under 21 Years Old-Under the Influence[1] §3(a) of Act 863 of 1993 See the Special Note below.
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[2] §§5-65-103(b) & 5-65-204(a) For Persons Under 21 Years Old-**0.02 but < 0.10**[2] §3(b) of Act 863 of 1993 See the Special Note below.
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	**Any Intoxicant or Controlled Substance**[1] §§5-65-102(1) & 5-65-103(a) For Persons Under 21 Years Old-Under the Influence[1] See the Special Note below.
Other:	For Commercial Motor Vehicle Operators, see p. 3-35.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	No[3] §5-65-202 & §9 of Act 863 of 1993
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)
Other Information:	None

[1]The 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. §2(1) of Act 863 of 1993

[2]In the sections establishing illegal per se offenses, the standard used is percent by weight of alcohol in the blood. §5-65-103(b) & §3(b) of Act 863 of 1993 However, under §5-65-204(a), alcohol concentration is defined as either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

[3]A 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 level of 0.10 or more. §5-65-202(a) A law enforcement officer can request a driver, who is under 21, 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 level of 0.02 but less than 0.10, (2) if the underage person has been involved in an accident or (3) if a law enforcement officer has stopped the under age person based upon "reasonable cause to believe" that the underage person has been driving while under the influence or with a BAC level of 0.02 but less than 0.10. §9(a) of Act 863 of 1993

Special Note: Under §11(a) Act 863 of 1993, 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, §11(d) provides that a person under 21 years old may be prosecuted for a regular DWI offense if they have a BAC level of greater than 0.05 but less than 0.10.

Preceding Page Blank

Chemical Tests of Other Substances for BAC Level 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 required in cases where the defendant has either plead guilty or *nolo contendere* to a DWI offense or has been found guilty via a trial without a jury. Alcohol abuse assessment is discretionary in cases where the defendant has been found guilty via a jury trial.

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 (Susp/Rev):	N/A
Other:	N/A

[1]Note: 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) & §9(a) of Act 863 or 1993

[2]Persons 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 pleaded guilty/*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 who plead guilty or *nolo contendere* to a 1st offence of "driving while under the influence" or with a BAC level 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. §8 of Act 863 of 1993

Sanction 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):	1st ref-susp. **6 mos to 1 yr**; 2nd ref (w/n 3 yrs)-susp. **1 yr-16 mos**; 3rd ref (w/n 3 yrs)-susp. **2 yrs-30 mos**; 4th ref (w/n 3 yrs)-rev. **3 yrs.** (The minimum susp/rev. periods appear to be mandatory.) §5-65-205 Note: Nonresidents of Ark. would only receive a **6 mo.** susp. §5-65-205(d) For Persons Under 21 Years Old who refuse to submit to a chemical test after being stopped for "driving while under the influnce" or with a BAC level of "0.02 but < 0.10": 1st ref-susp **90 dys (mand) to 180 dys**[1]; sub. ref-susp **1 yr (mand) to 18 mos**[1] §10 of Act 863 of 1993 **Comment:** A refusal to submit to a chemical test is considered, in and of itself, a criminal act. A person charged with this offense is entitled to a trial by jury. However, the only sanction for this criminal act is license suspension or revocation. *State v. Schaub*, 832 S.W.2d 843 (Ark. 1992)
Other:	None

[1]If the person under 21 years old is a nonresident of Ark., the suspension period is only 6 mos. §10(e)(1) Act 863 of 1993

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 level of 0.04 or more, (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. mandatory). It is a Class B Misd. to operate a CMV while intoxicated or with a BAC/BrAC of 0.04 or more; sanctions: Jail-not more than 90 dys; fine-not more than $500 (§§5-4-201(b)(2) & 5-4-401(b)(2)). In addition, a person who has any alcohol in their system must be placed "out-of-service" for 24 hours. See §§27-23-103, 27-23-111, 27-23-112, 27-23-113, 27-23-114 and 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)

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.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment Term/Fine:	1st off-**24 hrs to 1 yr/$150 to $1,000** 2nd off (w/n 3 yrs)-**7 dys-1 yr/$400 to $3,000** 3rd off (w/n 3 yrs)-**90 dys to 1 yr/$900 to $5,000** 4th and subsequent offs (w/n 3 yrs)(Felony)-**1 to 6 yrs/$900 to $5,000** §5-65-111 & 5-65-112 See Footnote No. 1. For Persons Under 21 Years Old who are conviced of "driving while under the influnce" or with a BAC level of "0.02 but < 0.10": 1st Off-**$100 to $500**; 2nd Off[2]-**$200 to $1,000**; 3rd or Sub. Off[2]-**$500 to $2,000** §5(a) of Act 863 of 1993 Note: There are no imprisonment sanctions associated with a conviction for these offenses.
Mandatory Minimum Term:	1st off-**None**; 2nd off (w/n 3 yrs)-**7 dys**; 3rd off (w/n 3 yrs)-**90 dys**; 4th & sub. off (w/n 3 yrs)-**1 yr** §5-65-111 See Footnote No. 3.
Mandatory Min. Fine ($):	1st off-**$150**; 2nd off (w/n 5 yrs)-**$400**; 3rd & sub. off (w/n 5 yrs)-**$900** §5-65-112 See Footnote No. 2. For Persons Under 21 Years Old who are conviced of "driving while under the influnce" or with a BAC level of "0.02 but < 0.10": 1st Off-**$100**; 2nd Off-**$200**; 3rd or Sub. Off-**$500** §5(a) of Act 863 of 1993 **Comment:** The law is not clear as to whether the minimum fines for underage offenders are mandatory.

Special Note: The sanctions that may be applied against a person under 21, who is convicted of "driving while under the influence" or with a "BAC level 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. §11(a) of Act 863 of 1993

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

[2]Note: a previous conviction also includes a convition under the regular DWI law. §5(b) of Act 863 of 1993

[3]Certain minimum sanctions for DWI offenses under §§5-4-104(e)(1)(D), 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 Penalties:	
Community Service:	1st off **Yes** Public Service in lieu of imprisonment §5-65-111(a) Note: If a person is unable to pay a fine, they may be given community service as an alternative sanction. §5-65-114 For Persons Under 21 Years Old, who are convicted of "driving while under the influence" or with a BAC level of "0.02 but < 0.10", the court shall order such persons to "perform public service work of the type and for the duration as deemed appropriate by the court." §6 of Act 863 of 1993
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)
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:	None
Other:	None
Post DWI Conviction Licensing Action:	See Footnote No. 1.
Type of Licensing Action (Susp/Rev) and Term of License Withdrawal Action:	1st off-**Susp 90-120 dys**; 2nd off (w/n 3 yrs)-**Susp 1 yr-16 mos**; 3rd off (w/n 3 yrs)-**Susp 2 yrs-30 mos**; 4th and sub offs (w/n 3 yrs)-**Rev 3 yrs** §5-65-104 For persons under 18, see Footnote Nos. 1 & 2 on p. 3-38.

[1]Under separate provisions of law, a person convicted of driving while under the influence of a controlled substance must have their driving privileges suspended for 6 mos. In cases of extreme hardship, restricted driving privileges may be granted. §§5-64-710(a) and 27-16-915(a) & (b)

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

For Persons Under 21 Years Old, who are conviced of "driving while under the influnce" or with a BAC level of "0.02 but < 0.10": 1st Offs-**Susp 90 dys-120 dys**; 2nd Off-**Susp 1 yr-18 mos**; 3rd and Sub. Offs-**Rev until the person reaches 21 or for 3 yrs whichever is longer** §4 of Act 863 of 1993

Mandatory Minimum Term of Withdrawal:

1st off-**None**[3]; 2nd off-**1 yr**; 3rd off-**2 yrs**; 4th or sub offs-**3 yrs** See Footnote No. 2.
For Persons Under 21 Years Old, who are conviced of "driving while under the influnce" or with a BAC level of "0.02 but < 0.10": 1st Offs-**None** (Note: A restricted license is available for reasons of employment or for attendance at an alcohol and driver education program.); 2nd Off-**Susp 1 yr**; 3rd and Sub. Offs-**Rev 3 yrs** §4 of Act 863 of 1993

Other:
Rehabilitation:
Alcohol Education:

Yes §5-65-115(a)[4]
Persons Under 21 Years Old, who are conviced of "driving while under the influnce" or with a BAC level of "0.02 but < 0.10" must complete an alcohol and driving education program. §7(a) of Act 863 of 1993 This program must be completed before a person's license can be reinstated. §7(b) of Act 863 of 1993
Special Note: This program must be completed within 6 mos of the adjucication of guilt. If the underage person fails to complete the program within this time period, they must be cited for contempt by the court and asseesed and addition court cost of $200. §7(c) Act 863 of 1993

Alcohol Treatment:

Yes §5-65-115(a)[4]
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)

---

[1]In 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

[2]The Arkansas Supreme Court has held that a defendant has a statutory right to have a jury affix a license suspension or revocation sanction. *Tharp v. State*, 745 S.W.2d 612 (Ark. 1988)

[3]Note: Sec. 5-65-104(b) provides that a restricted license is available for employment/education purposes and for attendance at a required alcohol education/treatmentprogram. However, a person is ineligible for such a license if they have a DWI offense conviction within 3 yrs of a prior DWI offense.

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

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

Terms Upon Which Vehicle Will Be Released:	N/A
Other:	**Special Note:** 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 an alcohol off conviction.[1] §5-65-106
Miscellaneous Sanctions Not Included Elsewhere:	**Ignition Interlock.** In addition to any other sanction for a DWI offense, the court may, if the defendant can afford it, 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. §5-65-118

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	Death caused while DWI (negligent homicide) - Class D Felony §5-10-105(a)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **6 yrs** §5-4-401(a)(5)
Mandatory Minimum Term:	**None**
Fine ($ Range):	**Not more than $10,000** §5-4-201(a)(2)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §27-16-905(1)
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:	**None**

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

Other Criminal Actions Related to DWI: (continued)

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

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 pp. 3-38 & 3-39.
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
Mandatory Term of License Withdrawal Action:	Same as above.

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):	

*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 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[1] §§3-3-202 & 3-3-203 (Year Eff: 1935)
Minimum Age (Years) Possession:	21[1] §§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):	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):	No Note: For 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).
Dram Shop Actions-Social Hosts:	No *Alpha Zeta Chapter of Pi Kappa Alpha Fraternity v. Sullivan*, 740 S.W.2d 127 (Ark. 1987)
Other:	None
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Misd for all offenses See Footnote No. 2 for citations.
Term of Imprisonment:	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-Premisis 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

[1]There is an exemption for serving alcoholic beverages to one's family or to use wine for religious purposes. §3-3-202

[2]Citations: §§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).

Other State Laws Related To Alcohol Use: (continued)

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-Premisis 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):	**Yes** Under certain conditions
Length of Term of License Withdrawal:	Package Sales: (1) All alcoholic beverages except those noted below-for two or more convictions-**Rev**[1] (and a possible administrative fine); (2) Beer and wine not in excess of 5% alcohol by wgt-**none**. On-Premisis Consumption Sales: (1) All alcoholic beverages except those noted below-**Susp/Rev**[1];(2) beer (all types)-**Susp/Rev**[1]; (3) wine not exceeding 14%-**Susp/Rev**[1] See the Special Note, concerning administrative fines, on p. 3-43.
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** for all offs. (except as noted) See Footnote No. 2 on p. 3-41 for citations.
Term of Imprisonment:	Package Sales: (1) All alcoholic beverages except those noted below - (a) where "knowledge" is a factor[2]-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 factor[2]-1st off-**none**; 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-Premisis 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%-**10-30 dys**

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

Other State Laws Related To Alcohol Use: (continued)

Fine ($ Range):	Package Sales: (1) All alcoholic beverages except those noted below-(a) where "knowledge" is a factor[2]-1st off.-**not more than $10,000**; 2nd off (w/n 5 yrs)-**not more than $10,000**; (b) where "knowledge" is not a factor[2]-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-Premisis 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 Alcohlic Beverages Withdrawn (Yes/No):	**Yes** Under certain conditions
Length of Term License Withdrawal:	Package Sales: (1) All alcoholic beverages except those noted below - for two or more convictions-**Rev**; (2) beer and wine not in excess of 5% alcohol by wgt.-**1 yr Rev/Susp** On-Premisis Consumption Sales: (1) All alcoholic beverages except those noted below-**Rev/Susp**[1]; (2) beer and wine not in excess of 5% alcohol by wgt-**1 yr Rev/Susp**; (3) wine not in excess of 14%-**Rev/Susp**[1] See the Special Note below concerning administrative fines.
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** Probably, but the law is not specific. Drivers and passengers §5-71-212(c)

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

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)

STATE:	**CALIFORNIA**
General Reference:	West's Annotated California Codes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an alcoholic beverage Veh. Code §§23152 & 23153
Illegal Per Se Law (BAC/BrAC Level):	**0.08**[1&2] Veh. Code §§23152(b) and 23153(b)
Presumption (BAC Level):	**0.08** Veh. Code §23155(3)
Types of Drugs/Alcohol and Drugs:	Under the influence of (1) **Any Drug** or (2) a Combination of Alcohol and Any Drug[3] Veh. Code §§23152 & 23153
Other:	For Commercial Motor Vehicle Operators, see p. 3-47. For bicycle riders, see the Special Note below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**Yes** Veh. Code §23157(h)[4] Persons under 21 years old who have been detained for operating a motor vehicle with a BAC/BrAC level of 0.01 or more. Veh. Code §23136(c)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** Veh. Code §23157
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** Veh. Code §23157(a)(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) Veh. Code §23157(a)(4)
Other Information:	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).

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** Veh. Code §23157
Urine:	**Yes** Veh. Code §23157
Other:	None

[1]Special juvenile offense at 0.05 (Standard: Percent by weight of alcohol in the blood). Veh. Code §23140(a)
[2]The regular standards for BAC and BrAC (respectively grams of alcohol per 100 milliliters of blood and grams of alcohol per 210 liters of breath) are used for the illegal per se offense.
[3]It 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
[4]A PBT may be conducted without legislative aurthoity. A.G. Opinion 88-1102, Oct. 26, 1989

Special Note: Under Veh. Code §21200.5, it is illegal to ride a bicycle on the highways while under the influence of either alcohol or drugs. This section provides that a person committing this offense may be fined not more than $250. This section 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.

Preceding Page Blank

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/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 §23212, the court must give the reasons a DWI charge either was reduced to a lesser offense or was dismissed.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes[1] Veh. Code §§23149.50 & 23249.52 et seq.

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):	Persons Under 21 Years Old. For persons under 21 years old, who refuse 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 BAC/BrAC level of 0.01 or more, susp is for not less than 1 yr. This susp is not mandatory. Restricted driving privileges are available based upon a critical need to drive. Veh. Code §§13353.3(b)(3), 13353.8 & 23136(c)
Other:	None
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	No
Administrative Licensing Action (Susp/Rev):	1st Refusal-**Susp-1 yr** (mand); 2nd Refusal (w/n 7 yrs)-**Rev-2 yrs**[2] (mand); 3rd Refusal (w/n 7 yrs)-**Rev-3 yrs**[3] (mand) Veh. Code §§13353, 13353.4(a) & 23157
Other:	See the Special Note on p. 3-49.

[1]PSI alcohol assessment programs are adopted on a county by county basis. I.e., a county elects whether to participate in such a program. The PSI program is eff. until 1/1/95.

[2]Or, 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.

[3]Or, 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:
Imprisonment/Fine.

Non-Injury DWI Off (with no previous DWI offs[1]-**96 hrs** (at least 48 hrs shall be continuous) to **6 mos, $390 to $1,000**
Non-Injury DWI Off (with one previous DWI off[1] w/n 7 yrs-**90 dys to 1 yr, $390 to $1,000**
Non-Injury DWI Off (with two previous DWI offs[1] w/n 7 yrs.-**120 dys to 1 yr, $390 to $1,000**
Non-Injury DWI Off (with three previous DWI offs[1] w/n 7 yrs-**180 dys to 1 yr[3], $390 to $1,000**
Veh. Code §§23152 et seq. Note: Under Veh. Code §4000.15, a non-injury DWI offense (a Veh. Code §23152 off) is classified as a misdemeanor.
Injury Related DWI Off[2] (with no previous DWI offs)-**90 dys to 1 yr, $390 to $1,000;**
See the Special Note below.
Injury Related DWI Off[2] (with one previous DWI off[1] w/n 7 yrs)-**120 dys to 1 yr[3], $390 to $5,000;**
Injury Related DWI Off[2,4] (with two or more previous DWI offs[1] w/n 7 yrs)-State prison **2, 3 or 4 yrs, $1,015 to $5,000**
Veh. Code §23153 et seq.
DWI 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 §23190(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.
See **Juvenile Offenses Involving Alcohol** on p. 3-49.

[1]A previous off includes Veh. Code §§23152 & 23153 (non-injury or injury DWI offs). A guilty or nolo contendere plea to reckless driving (Veh. Code §34103) instead of a DWI charge is also considered a previous DWI offense. Veh. Code §23103.5(c)
[2]If 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 §23182
[3]Or 16 mos, 2 or 3 yrs in the State prison. See also Penal Code §18.
[4]Also 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 §23190(b)

Special Note: If a defendant is sentenced to probation with the requirement that they only operate vehicles equipped with and "ignition interlock" device (See ignition interlock on p. 3-48.) under Veh. Code §23235, they are subject to a special fine which is in lieu of any other DWI fine sanction. For a 1st non-injury offense conviction, the fine is not more than $1,000. For a subsequent non-injury offense conviction or for an injury related DWI offense conviction, the fine is not more than $5,000. Veh. Code §23236

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV may be "denied" for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they are under the influence of alcohol or a controlled substance. For a subsequent violation, there is a lifetime "disqualification". A person who operates a CMV with a BAC/BrAC level of 0.04 or more is subject to criminal and licensing sanctions via the regular DWI laws. If a person refuses to submit to a chemical test while operating a CMV, they are subject to licensing sanctions (including license sanction enhancements) as if they had been convicted to a non-injury related DWI offense. A CMV operator must be placed "out-of-service" for 24 hrs if they have a BAC level of 0.01 or more (Standard: Percent by weight of alcohol in the blood.). See Veh. Code §§13353(e), 15210(b) & (d), 15300, 15302, 23252, 23253 and 34501.15.

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

Mandatory Minimum Term:	Non-Injury DWI off (with no previous DWI offs)-**None**[1]; Non-Injury DWI off (with one previous DWI off w/n 7 yrs)-**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 dys**[2]; Injury related DWI off (with two or more previous DWI offs w/n 7 yrs)-**30 dys**[2] See Special Note No. 2 below, the Special Notes on pp. 3-47 & 3-49 and **Home Detention** on p. 3-51.
Mandatory Min. Fine ($):	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.

[1]**Child Endangerment.** For non-injury offs where a minor under 14 year 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. However, 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 §23194
[2]In 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 grant funds under 23 USC §408: One period of 48 con. hours of imprisonment (jail, minimum security facility or inpatient rehabilitation facility) or 10 days of community service. Veh. Code §23206.5

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 §23182

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 20 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 §23208

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

Other Penalties:	
Community Service:	Yes See Footnote No. 2 on p. 3-48.
Restitution (eg Victim's Fund)	Yes Injury related DWI offs Gov't. Code §13959 (Victims' Assistance Fund) and Veh. Code §§23153 et seq. & 23191(a) The court may also order direct compensation by the defendant to the victim(s). Gov't. Code §13967 & Penal Code §1203.1
Other:	**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 drugs[1]. Gov't. Code §§53150 et seq. **Alcohol Program Assessments.** 1. 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 §23196(a)

Juvenile Offenses Involving Alcohol. Under Veh. Code §§23140, 23141 and 23142, it is unlawful for a person under 18 years old to operate a motor vehicle if they have a BAC level of 0.05 or more. The only sanctions for this offense are participation in either (1) an alcohol education program or (2) a community service program with an alcohol education component. Note: A person under 18 years old who violates the regular DWI laws must also participate in either an alcohol education or rehabilitation program. Veh. Code §23142 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 §23144

Special Note: A person, who has been convicted of any DWI offense and who has also refused to submit to a chemical test, is subject to the follwing sanctions: DWI non-injury offs: 1st off, if probation is granted, the court must use the follwing 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 §23159

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

Other (continued):

Alcohol Program Assessments. (continued) 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 §§23249.53 & 23249.55

Special State Penalty (Fine). Under Penal Code §1464(a), 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.[2]

Special County Penalty (Fine). Under Gov't. Code §76000, 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.[2]

Ignition Interlock. Under Veh. Code §23235, a defendant may be required to use a vehicle equipped with an "ignition interlock" device during probation. Also, under Veh. Code §23239, a DWI defendant may be required to use a vehicle equipped with an "ignition interlock" device irrespective of whether their driving privileges have been restricted. **Special Note:** Under separate statutory provisions, if a person has been convicted of two or more DWI (non-injury or injury) offenses w/n 7 yrs, the court must require (for a period of from 1 to 3 yrs) that a person only operate motor vehicles equipped with "ignition interlock" devices. The court, "in the interest of justice", may waive this requirement if a written statement for the reasons are entered into the record. Veh. Code §23246(a) & (b)

Drunk Driver Visitation Program. For a 1st DWI non-injury offense, a violation of Veh. Code §23140 See Juvenile Offenses Involving Alcohol on p. 3-49 and violations of the Anti-Consumption or Open Container laws (see p. 3-59), a person, with their consent and as part of their probation, may be ordered by the court to visit trama or hospital facilities to observe victims of accidents where alcohol was involved. Veh. Code §23145 et seq. **Note:** In order to participate in this program, persons under 21 must agree not to drink alcoholic beverages under they are 21. Veh. Code §23145.5(c) DWI offenders less than 21 years old may, as a part of probation for a 1st off, participate in a visitation program of an emergency medical care facilitie, coroner's office or an alcoholism treatment center. Veh. Code §23145.2 et seq.

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

[2]I.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)

Other (continued):	**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 §23206.5 (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).
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	Yes Persons 21 Years Old and Above. **0.08**[1] 1st violation-**Susp 4 mos** (30 dys mand.) Under Veh. Code §13353.7, following the mandatory susp. period, a driver may be granted restricted driving privileges only for the purpose of participating in an alc. education/treatment program. If the person successfully completes the program, they may be granted "unrestricted" driving privileges 60 dys after the restricted lic. was issued. 2nd & sub. violations[2&3] (w/n 7 yrs)-**Susp 1 yr** (mand.) Veh. Code §§13353.2, 13353.3 & 13353.4(a) See Footnotes No. 4, 5, 6 & 7 below. Persons Under 21 Years Old. If a "preliminary breath test" result indicates a BAC/BrAC level of 0.01 or more, **susp is for not less than 1 yr.** This susp is not mandatory. Restricted driving privileges are available based upon a critical need to drive. Veh. Code §§13353.3(c), 13353.8 & 23136
Other:	**None**

[1]Standard: Percent by weight of alcohol in the blood. Veh. Code §13353.2(a)

[2]For 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. Veh. Code §13353.3(h)(2)

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

[4]If 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. *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)

[5]Admin. per se suspensions and DWI susps/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(e)

[6]Note: 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)

[7]Administrative 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)

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

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	Non-Injury DWI Off (with no previous DWI offs)-Susp (Veh. Code §23161); Non-Injury DWI Off (with one previous DWI off w/n 7 yrs)- Susp (Veh. Code §23161(b)(3)); Non-Injury DWI Off (with two previous DWI offs w/n 7 yrs)-Rev (Veh. Code §23171(a)); Non-Injury DWI Off (with three or more previous DWI offs w/n 7 yrs)-Rev (Veh. Code §23175) Injury Related DWI Off (with no previous DWI offs)-Susp (Veh.§23181(a)); Injury Related DWI Off (with one previous DWI off w/n 7 yrs)-Rev (Veh. Code §23185); Injury Related DWI Off (with two or more previous DWI offs w/n 7 yrs)-Rev-(Veh. Code §23191(a)) See Footnote No. 1 and the Special Note below.
Term of License Withdrawal (Days, Months, Years, etc.):	Non-Injury DWI Off (with no previous DWI offs)-6 mos; Non-Injury DWI Off (with one previous DWI off w/n 7 yrs)-18 mos;

[1]If a person is involved in an accident and they have a BAC level of 0.08 or more 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, supension 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. (1) Under Veh. Code §13352.3 persons, under 18 years old, who are convicted of an alcohol driving offense have their licenses revoked (1) until they are 18, (2) for 1 yr or (3) per Veh. Code §13352 whichever period is longer. And, (2) under Veh. Code §13202.5, a person under 21 years old, who is convicted either of a DWI (alcohol or drugs) offense or of a vehicle manslaughter offense, must have their driver's license suspended 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)

Non-Injury DWI Off (with two previous DWI offs w/n 7 yrs)-**3 yrs**;
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 See Special Note on p. 3-50 and Footnote Nos. 2 & 3 below.

Mandatory Minimum Term of Withdrawal:

Non-Injury DWI Off (with no previous DWI offs)--[2];
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)-**3 yrs or 24 mos**[4];
Non-Injury DWI Off (with three or more previous DWI offs w/n 7 yrs)-**4 yrs or 24 mos**[4];
Injury Related DWI Off (with no previous DWI offs)-**1 yr**;
Injury Related DWI Off (with one previous DWI off w/n 7 yrs)-**1 yr susp**[5];
Injury Related DWI Off (with two or more previous DWI offs w/n 7 yrs)-**5 yrs or 24 mos**[4]

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 imprisonment has been served. Veh. Code §23199
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

[1]Note: A license cannot be reinstated unless the defendant has completed either an 18 or 30 month alcohol treatment program. Veh. Code §13352(a)(5)
[2]Driving privileges may be resticted for 90 days (Veh. Code §§13352, 13352.5 & 23161) under certain probation conditions.
[3]Restricted driving privileges may be granted 30 days after a defendant consents to participate in an alcohol rehabilitation program. Veh. Code §§13352(a)(3) and 13352.5(a) & (d) Does not apply to persons who have participated in an alcohol program w/n 4 yrs. Veh. Code §13352.5(c)
[4]Restricted driving privileges may be granted after 24 months of the revocation period have passed provided the defendant (1) has completed or is continuing to participate in respectively an 18 or a 30 month alcohol treatment program and (2) only uses vehicles equipped with an "ignition interlock" device. Veh. Code §13352(a)(5), (6) & (7)
[5]One (1) yr suspension and 2 yrs restricted driving privileges if the court grants probation. Veh. Code §§13352.5(b) & 23186 Does not apply to persons who have participated in an alcohol program w/n 4 yrs. Veh. Code §13352.5(c)

Sanctions Following a Conviction for a DWI Offense
(continued)

Other:

Rehabilitation:	See Special Note No. 2 on p. 3-53.
Alcohol Education:	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. 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
Alcohol Treatment:	Yes See Alcohol Education above.
Vehicle Impoundment/Confiscation Authorized by Specific Statutory Authority:	**Impoundment.** 1st DWI off - (1) The veh may be impounded for a DWI off from **1 to 30 dys**; 2nd and subsequent DWI offs (w/n 5 yrs) - The veh. may be impounded from **1 to 90 dys** Veh. Code §23195.[1] **Forfeiture.** 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 §23198[1]
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 §23195
Other:	
Miscellaneous Sanctions Not Included Elsewhere:	**None**

[1]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.

STATE - California

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Vehicle Manslaughter[1] Penal Code §§17 191.5, 192(c) & 193. 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.
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 §§23152 and 23153: a. with gross negligence - **4, 6, or 10 yrs**; b. without gross negligence - Not more than **1 yr** in the county jail (or **16 mos, 2 or 4 yrs** in the State prison)[2].
Mandatory Minimum Term:	**None**
Fine ($ Range):	**None**
Mandatory Minimum Fine:	**None**
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 §§23152 and 23153: a. with gross negligence - **Rev - 3 yrs** (mand); b. without gross negligence - Same lic susp/rev 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.
Length of Term of Licensing Withdrawal:	See above.
Mandatory Action--Minimum Length of License Withdrawal:	See above.
Other:	A defendant's vehicle may be subject to forfeiture. Veh. Code §23198

[1]**Special Note:** A person, who kills another while operating a motor vehicle in an intoxicated condition, may be convicted of second degree murder. The act of voluntary intoxication may be considered "implied malice". *People v. Whitfield*, 15 Cal.Rptr.2d 4 (Cal.App. 4 Dist. 1992), review granted by the California Supreme Court 847 P.2d 559 (Cal. 1993)

[2]If 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

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	1st off-**10 dys-6 mos**; 2nd and subsequent offs (w/n 5 yrs)-**30 dys-1 yr** Veh. Code §14601.2 See Habitual Traffic Offender Law on p. 3-57.
Mandatory Minimum Term of Imprisonment:	1st off-**10 dys**[1]; 2nd and subsequent offs (w/n 5 yrs)-**30 dys**[1]; For a 2nd or subsequent off (w/n 7 but more than 5 yrs)-**10 dys**[1] see Veh. Code §14601.2(g) See Habitual Traffic Offender Law on p. 3-57.
Fine ($ Range):	1st off-**$300-$1,000**; 2nd and subsequent offs (w/n 5 yrs)-Not more than **$500-$2,000** See Habitual Traffic Offender Law on p. 3-57.
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**None** See Footnote No. 2.
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 license suspended or revoked where the basis of the licensing action was either an implied consent refusal or an admin. per se violation. 1st off: Jail-Not more than 6 mos; fine-$300[3] to $1,000 Sub. off. w/n 5 yrs)[4]: Jail-10 dys[5] to 1 yr; fine-$500[3] to $2,000 Veh. Code §14601.5

[1]If a defendant injuries 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

[2]A vehicle may be impounded following a conviction for this offense: 1st off-6 mos impoundment; sub. off-12 mos impoundment. Veh. Code §14602

[3]This fine is mand. However, the court may reduce this fine in the "interests of justice".

[4]A previous offense includes a violation of Veh. Code §14602.2.

[5]This jail term is mand. but may be waived by the court with reasons.

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** Penal Code §193.7 and Veh. Code §§13350(b), 14601.3(a), 23170(b), 23175(b) & 23190(d)
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 vehicle homicide (Penal Code §192(c)(2)) and they have two previous[1] convictions or a combination of two prior convictions[1] 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 offs[1] (injury or non-injury or a combination thereof). (3) 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**[3&4] For "habitual traffic offender" status based on vehicle operation while susp/rev and after accumulating a "driving record": 1st off-**30 dys**[1&2]; 2nd off-**180 dys**[3&4]
Mandatory Minimum Term of Imprisonment:	**None**

[1]w/n 7 yrs

[2]A "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.

[3]Imprisonment is in the county jail.

[4]This penalty is "consecutive" to any other sanction(s) imposed by law. Veh. Code §14601.3(e)(3)

Other Criminal Actions Related to DWI: (continued)

Fine ($ Range):	For "habitual traffic offender" status based on veh. homicide or DWI offenses: **$2,000**[1] For "habitual traffic offender" status based on vehicle operation while susp/rev and after accumulating a "driving record": 1st off-**$1,000**[1]; 2nd off-**$2,000**[1]
Mandatory Minimum Fine ($):	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):	Yes Govt. Code §27491.25
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 Bus. & Prof. Code §§25658 & 25662 (Year Eff: 1933)
Minimum Age (Years) Possession:	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
Minimum Age (Years) Consumption:	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):	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
"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: See Bus. & Prof. Code §25602(c) & 25602.1, Civil Code §1714 and *Cory v. Shierloh*, 629 P.2d 8, 174 Cal. Rptr. 500 (1981).

[1]See Footnote No. 4 on p. 3-57.

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, 174 Cal. Rptr. 500 (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 **$1,000** Bus. & Prof. Code §25617
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** susp or rev Bus. & Prof. Code §24200
Length of Term of License Withdrawal:	The length of susp/rev is not fixed by statute.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** Bus. & Prof. Code §25658
Term of Imprisonment:	Not more than **6 mos** Bus. & Prof. Code §25617
Fine ($ Range):	Not more than **$1,000**[1] Bus. & Prof. Code §25617
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
Length of Term License Withdrawal:	The length of susp/rev is not fixed by 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** Veh. Code §§23222, 23223, 23225 & 23226
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers Veh. Code §§23220 & 3221

[1]A defendant must pay either a minimum fine of at least $250 or, in lieu of such a fine, they must serve from 24 to 32 hours doing community service. Bus. & Prof. Code §25658(d)

STATE:	**COLORADO**
General Reference:	Colorado Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	I. Under the influence of alcohol §42-4-1202(1)(a) II. Impaired by the consumption of alcohol §42-4-1202(1)(b)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1] §42-4-1202(1.5)(a)
Presumption (BAC Level):	**> 0.05**-Driving while impaired **0.10**-Driving under the influence §42-4-1202(2)(b) & (c)
Types of Drugs/Drugs and Alcohol:	(1) **Any Drug** or (2) a Combination of Alcohol and Drugs[2] (applies to both driving under the influence and driving while impaired) §§42-4-1202(1)(a) & 42-4-1202(1)(b)
Other:	For Commercial Motor Vehicle Operators, see p. 3-65.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §42-4-1202(2.5)
Implied Consent Law:	
Arrest Required (Yes/No):	No Only probable cause is required; an actual arrest is not necessary. §42-4-1202(3)(a)(II) & III
Implied Consent Law Applies to Drugs (Yes/No):	Yes §42-4-1202(3)(a)(III)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §42-4-1202(3)(e)
Other Information:	A persons'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. §42-4-1202(3)(a)(IV)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes (Alc. & Drugs) §42-4-1202(3)(a)(II) & (III)
Urine:	Yes (For Drugs only) §42-4-1202(3)(a)(III)
Other:	Saliva (For Drugs only) §42-4-1202(3)(a)(III)

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

[2]A "drug" is defined as either a substance, that is intended to cure or prevent disease, listed in the U.S. Pharmacopoeia, or a controlled substance. §§12-27-303(7) & (13) and 42-4-1202(1)(d)

Preceding Page Blank

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes[1] §42-4-1202(3.7)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §42-4-1202(5)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	No
Administrative Licensing Action (Susp/Rev):	No
Other:	None
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	**Rev 1 yr** (Mandatory) §§42-2-122.1(1.5)(a)(II), 42-2-122.1(5)(b)(III)and 42-4-1202(3)(d) Note: If a person is also convicted of a DWI offense arising our of the same incident, the license revocation or suspension periods for refusal and conviction are not to run concurrently. §§42-2-122.1(5)(c)(II) & 42-4-1202(3)(d).
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Months, Years Etc.):	Driving under the influence/illegal per se, 1st Off (Misd)-**5 dys to 1 yr**; 1st Off[2]-**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 Off[3]-**60 dys to 1 yr**; 2nd or subsequent off (w/n 5 yrs)-**45 dys to 1 yr** §42-4-1202 Injury Related DWI Off (Vehicle Assult) (Class 5 Felony)-**1 to 4 yrs** §§18-1-105 & 18-3-205

[1]One may not plead guilty to non-alcohol or non-drug related traffic off if charged with DWI unless the prosecutor makes a good faith allegation that he/she could not establish a *prima facie* case on the original charge.
[2]But where there has been w/n 5 yrs a conviction for a driving while impaired off.
[3]But where there has been w/n 5 yrs a conviction for a driving while under the influence off/illegal per se.

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

Mandatory Minimum Term:	Driving Under the Influence-1st off- **5 dys**[3]; Illegal per se-1st off-**5 dys**; Driving under the Influence/Illegal per se-1st off[1]-**70 dys (7 dys**[4]**)**; Driving under the Influence/Illegal per se-2nd or sub. off (w/n 5 yrs)-**90 dys (7 dys**[4]**)**; Driving While Impaired-1st off-**2 dys**[3]; Driving While Impaired-1st off[2]-**60 dys (6 dys**[4]**)**; Driving While Impaire-2nd or sub. off-**45 dys (5 dys**[4]**)**
Fine:	
Amount ($ Range):	Driving under the influence/illegal per se, 1st Off-**$300 to $1,000**; 1st Off[1]-**$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 Off[2]-**$450 to $1,200**; 2nd or subsequent off (w/n 5 yrs)-**$300 to $1,000** Injury Related DWI Off (Vehicle Assult) (Class 5 Felony)-**$1,000 to $100,000** See Miscellaneous Sanctions on p. 3-65.
Mandatory Minimum Fine ($):	**None**
Other Penalties:	
Community Service:	Driving under the influence/illegal per se, 1st Off-**48 to 96 hrs** (48 hrs. mandatory); 1st Off-**56 to 112 hrs** (56 hrs mandatory); 2nd or subsequent off (w/n 5 yrs)-**60 to 120 hrs** (60 hrs mandatory), Driving While Impaired, 1st Off-**24 to 48 hrs** (24 hrs mandatory), 2nd or subsequent off-**48 to 96 hrs** (48 hrs mandatory) §42-4-1202 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. §42-4-1202(4)(g)(v)
Restitution (eg, Victim's Fund):	**Yes** A victims' compensation fund; see §24-4.1-100.1 et seq. Also, as a condition of probation for a DWI offense, a defendant **shall** be requried to make restitution. §42-4-1202(4)(f) DWI offenders must pay a fee of $25 which is deposited into the crime victims compensation fund. §24-4.1-119(c)
Other:	

None

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

[2]But where there has been w/n 5 yrs a conviction for a driving while under the influence off./Illegal per se.

[3]There is no mandatory imprisonment sanction if the defendant participates in an alcohol education/treatment program. §42-4-1202(4)(a)(I) & (b)(II)

[4]The mandatory imprisonment sanction is reduced to this number of days of confinement if the defendant participates in an alcohol education/treatment program. §42-4-1202(4)(a)(II) & (III)

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

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:	**Yes 0.10** (BAC/BrAC The standard is the same as for illegal per se.) 1st Violation-**Rev 3 mos** (mandatory); 2nd & Subequent Violations-**Rev 1 yr** (mandatory) §§42-2-122.1(1.5)(a)(I) and 42-2-122.1(5)(b)(I) & (III) 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 and the total revocation period shall not exceed the longer of the two (2) periods. §§42-2-122(4) & 42-2-122.1(5)(c)(I)
Other:	**None**

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	Driving while under the influence and illegal per se, 1st off - **Susp/Rev**; Driving while impaired - **Susp/Rev**[1,2] Injury Related DWI Off (Vehicle Assult) - **Rev**
Term of License Withdrawal (Days, Months, Years, etc.):	Driving while under the influence and illegal per se, 1st off-**Susp**[1] Not less than **1 yr**; Driving while impaired, 1st off-**1 yr**[1,2,3,4&5] §§42-2-122, 42-2-123(8.5) & 42-2-124 Injury Related DWI Off (Vehicle Assult) - **1 yr** §§42-2-122(1)(a) & 42-2-124

[1]For 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. §§42-2-123(1)(a), (5) & (11) and 42-2-124(1)

[2]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 within a 5-yr period -- Rev §§42-2-122(1)(g) & 42-2-124(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 §42-2-122(1)(i))

[3]**Special Note:** If the first offender is a minor, a person under 21 yrs of age (§2-4-402(b)), their license must be revoked for a 1 yr period. §§42-2-122(g) & 42-2-124(2)

[4]A 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. 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.

[5]A 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. §§42-2-122(1)(b) & 42-2-124

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 -None[1]; Driving while impaired, 1st off-None See Footnote Nos.2 and 3 below. Injury Related DWI Off (Veh. Assault)-1 yr
Other:	
Rehabilitation:	
Alcohol Education:	Yes §42-4-1202(4)
Alcohol Treatment:	Yes §42-4-1202(4)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	None
Terms Upon Which Vehicle Will Be Released:	
Other:	
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. §42-4-1202(4)(f) 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 a $60 fee for alc./drug evaluation and supervision services. §42-4-1202(5)(d)

[1]A probationary-restricted license may be issued for reasons of employment/alcohol education, et al. §42-2-123(11) & (13)
[2]**Special Note:** If the first offender is a minor, a person under 21 yrs of age (§2-4-402(b)), their license must be revoked for a 1 yr period. §§42-2-122(i)(j) & 42-2-124(2)
[3]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. 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. §41-2-122(1)(g) & (4) and *Rogers v. Dept. of Revenue,* 841 P.2d 369 (Colo.App. 1992)

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 cancelled/revoked for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (2) are under the influence of a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration. 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/revoked for life (10 yrs. mandatory). (Note: For 1st offs., the above licensing sanctions may apply to the regular license as well.) In addition, a person who has any alcohol in their system is placed "out-of-service" for 24 hours. See §§42-2-122, 42-2-122.1(1.5)(a)(III), (5)(b)(III), (5)(b)(IV) & (5)(b)(V), 42-2-502(2) & (6) and 42-2-505(B).

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

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)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:	**Yes Felony** §§18-3-106 & 42-4-1201
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**2 to 4 yrs**
Mandatory Minimum Term:	**None**
Fine ($ Range):	**None**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev**
Length of Term of Licensing Withdrawal:	**1 yr**
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr**
Other:	**None**

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

Sanction:	
Criminal:	
Imprisonment (Term):	**Misd.** 1st off-**30 dys to 1 yr**; 2nd and subsequent offs-**90 dys to 2 yrs** §42-2-130(f)
Mandatory Minimum Term of Imprisonment:	1st off-**30 dys**; 2nd and subsequent offs-**90 dys** §42-2-130(f)
Fine ($ Range):	1st off-**$500 to $1,000**; 2nd and subsequent offs-**$500 to $3,000** §42-2-130(f)
Mandatory Minimum Fine:	**None**
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. §42-2-130(g)
Length of Term of License Withdrawal Action:	**4 yrs** §42-2-130(g)
Mandatory Term of License Withdrawal Action:	**4 yrs** §42-2-130(g)

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §42-2-201
Grounds for Being Declared an Habitual Offender:	(1) 3 or more serious offs in 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** §42-2-205
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Cl 6 Felony** §42-2-206
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**1 to 2 yrs** §18-1-105(1)(a)(IV)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$1,000 to $100,000** §18-1-105(1)(a)(III)(A)
Mandatory Minimum Fine ($):	**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):	**Yes** §42-4-1211
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** §§12-46-112 & 12-47-128 (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. §§12-46-112 & 12-47-128 & 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

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §§12-46-112.5, 12-47-128.5 & 13-21-103 Note: Damage awards are limited to $150,000.
"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):	Note: Dram shop case law (e.g., *Kerby v. Flamingo Club, Inc.*, 532 P.2d 975 (Colo. 1974)) may have been abrogated by legislation. §§12-46-112.5 & 12-47-125.5 and *Sigman v. Seafood Ltd. Partnership*, 817 P.2d 527 (Colo. 1991).
Dram Shop Actions-Social Hosts:	**Yes** §§12-46-112.5 & 12-47-128.5 Limited to the actions of those under the legal drinking ages. Note: Damage awards are limited to $150,000.
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Class 2 Misd**[1] (Alcoholic Beverages); **Misd**[1] (Fermented Malt Beverages)
Term of Imprisonment:	Cl 2 Misd-**3-12 mos**; Misd-Not more than **1 yr**
Fine ($ Range):	Cl 2 Misd-**$250 to $1,000**; Misd-Not more than **$300**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or Rev**[3] See the Special Note on p. 3-69.
Length of Term of License Withdrawal:	**Susp**-Not more than **6 mos**[4]; **Rev**-Period not specified in the statutes
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Class 2 Misd**[1] (Alcoholic Beverages); **Misd**[2] (Fermented Malt Beverages)
Term of Imprisonment:	Cl 2 Misd-**3-12 mos**; Misd-Not more than **1 yr**
Fine ($ Range):	Cl 2 Misd-**$250 to $1,000**; Misd-Not more than **$300**

[1]For alcoholic beverages (except for fermented malt beverages of 3.2% alcohol), see §§12-47-128(1)(a) & 12-47-130. For a Class 2 Misd, see §18-1-106.
[2]For fermented malt beverages from 0.05% to 3.2% alcohol, see §§12-46-103(1.5), 12-46-112(1)(b)(I) & 12-46-114(1).
[3]See Footnote No. 1 on p. 3-69.
[4]See Footnote No. 2 on p. 3-69.

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):	**Yes Susp** or **Rev**[1] See the Special Note below.
Length of Term License Withdrawal:	**Susp**-Not more than **6 mos**[2]; **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 passengers §12-47-128(1)(h) The law states that "it is unlawful for any person: to consume malt, wines, or spiritous liquor in a public place." Of course, licensed premises are excepted.

[1]For alcoholic beverages (except fermented malt beverages from 0.05% to 3.2% alcohol), see §12-47-110. For fermented malt beverages of 3.2% alcohol, see §§12-46-103(1.5), 12-46-107 & 12-46-114(1).
[2]Summary suspension is allowed for not more than 15 days. §§12-46-107(3) & 12-47-110(2)

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. §§12-46-107(5)(a) & 12-47-(3)(b)

STATE:	**CONNECTICUT**
General Reference:	Connecticut General Statutes Annotated

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[3] §14-227a(b)
Illegal Per Se Law (BAC Level):	**0.10**[2] §14-227a(a)(2) Driving while impaired[3] if BAC is greater than **0.07** but less than **0.10** §14-227a(b)
Presumption (BAC Level):	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:	For Commercial Motor Vehicle Operators, see p. 3-73.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §14-227b
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 BAC Level 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):	No[4]
Anti-Plea Bargaining Statute (Yes/No):	No Note: The law requires the State to give to the court in open session the reasons why a criminal DWI charge was reduced or dismissed. §14-227a

[1]The sanctions listed below for driving "under the influence" apply to driving under the influence of either alcohol or drugs.
[2]Standard: Ratio of alcohol in the blood is 0.10% or more by weight. §14-227a(a)
[3]Driving while impaired is an infraction. §14-227a(i)
[4]A pre-trial diversion program is available only for first DWI offenders. §§54-56g & 54-56e See the Rehabilitation Section on p. 3-74.

Preceding Page Blank

Adjudication of DWI Charges: (continued)

Pre-Sentencing Investigation Law (PSI) (Yes/No):	No[1]

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 for **6 mos**[2]; 2nd action (refusal)[3]-Susp for **1 yr**; Subsequent action (refusal)[3]-Susp for **2 yrs** §14-227b(h) Under §54-56g(b), a person's participation in an alc. or treatment program does not effect the mand. lic. susp.
Other:	**Special Note:** If a driver has a BAC level 0.10 or more or refuses to submit to the chemical test, the police dept. must temporarily rev the driver's license for 24 hrs. §§14-227a(F) & 14-227b(c)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	Under the Influence/Illegal per se: 1st Off-Not more than **6 mos**; 2nd Off (w/n 5 yrs)-Not more than **1 yr**; 3rd Off (w/n 5 yrs)-Not more than **2 yrs**; 4th or sub off (w/n 5 yrs)-Not more than **3 yrs** §14-227a(h) Driving While Impaired (Infraction)-**None** Veh Assault-Cl D felony 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-**10 con dys**; 3rd off-**120 con dys**; 4th and subsequent offs-**1 yr**

[1]A 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

[2]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. §3 Public Act No. 93-371 **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.

[3]A previous action includes a prior administrative per se action. §14-227b(h)

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

Fine:	
Amount ($ Range):	Under the Influence/Illegal per se: 1st Off - **$500 to $1,000**; 2nd Off (w/n 5 yrs)- **$500 to $2,000**; 3rd Off (w/n 5 yrs) - **$1,000 to $4,000**; 4th or subsequent off (w/n 5 yrs) - **$2,000 to $8,000** §14-227a(h) Driving While Impaired (Infraction) - Fines are via a schedule established by the courts. §51-164m Veh Assault - Cl D felony-Not more than **$5,000** §§53a-41 & 53a-60d
Mandatory Minimum Fine ($):	**None**
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 the alternative, the entire jail sentence is suspended and the required community service is to be performed as a part of probation.)
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)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes 0.10** (BAC) Note: The BAC standard is the as for illegal per se. §14-227b(c) 1st action-susp-**90 dys**[1]; 2nd action[2]-susp-**1 yr** (mand.); sub. action[2]-susp **2 yrs** (mand.) §14-227b(b) & (h) Under §54-56g(b), a person's participation in an alc. or treatment program does not effect the mandatory license suspension.
Other:	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 he length of this susp. **Special Note:** The police may take and hold a driver's license for 24 hrs if the driver has a BAC level of 0.10 or more. §14-227a(b)

[1]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. §3 Public Act No. 93-371 **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.

[2]A previous action includes a prior refusal to submit to a chemical test. §14-227b(h)

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 level of 0.04 or more (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. See §§14-1(a)(11), (16) & (18) and §14-44k and §3 of Public Act. No. 93-371.

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, 2nd and 3rd offs-**Susp**; 4th or subsequent 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-**2 yrs**; 3rd off-**3 yrs**; 4th or subsequent off-**Permanently** Driving While Impaired-**None** Veh Assault (DWI off)-**1 yr**
Mandatory Minimum Term of Withdrawal:	Under the Influence/Illegal per se: 1st off-**1 yr**[1&2]; 2nd off-**2 yrs**[1&2]; 3rd off-**3 yrs**[1&2]; 4th or subsequent off-**Permanently**[1&2] Driving While Impaired-**None** Veh Assault (DWI off)-**1 yr**
	Persons Under Years Old 18. [Under §14-227a(j), 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. In addition, persons under 18 years old could also have their driver's license revoked under §14-38 for a drunk driving offense conviction.
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** For all DWI criminal offs §14-227a(k)
Alcohol Treatment:	**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
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**None**
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**None**

[1]Note: The law does not specifically prohibit a court from reducing these susp periods.
[2]**Special Note:** These suspensions 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. §3 Public Act No. 93-371

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** I. If DWI Related, **Cl C felony**[1] 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-57 III. Causing the death of another person while operating a motor vehicle with negligence. **Misd** §§53a-26 & 14-222a
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Cl C felony: **1 to 10 yrs**; Cl D felony: **1 to 5 yrs** §§53a-35a & 53a-56b Misd: **Not more than 6 mos** §14-222a
Mandatory Minimum Term:	None
Fine ($ Range):	Cl C felony: **Not more than $10,000**; Cl D felony: **Not more than $5,000** §§53a-41 & 53a-56b Misd: **not more than 1,000** §14-222a
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Cl C felony: **Susp** §53a-56b Cl D felony/Misd: **Susp** §14-111(c)
Length of Term of Licensing Withdrawal:	Cl C felony: **1 yr** §53a-56b Cl D felony/Misd: **Not less than 1 yr** §14-111(c)
Mandatory Action--Minimum Length of License Withdrawal:	Cl C felony: 1 yr[1] §53a-56b Cl D felony/Misd: **None** 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. §14-111(c) & §3 Public Act No. 93-371§14-111(c)
Other:	**None**

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	
Imprisonment (Term):	**Not more than 1 yr** §14-215(c)
Mandatory Minimum Term of Imprisonment:	**30 con dys** §14-215(c)
Fine ($ Range):	**$500 to $1,000** §14-215(c)
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	

[1]**Special Note:** A person is not eligible for a "special permit" based on an occupational hardship. §3 Public Act 93-371

Other Criminal Actions Related to DWI: (continued)

Type of Licensing Action (Susp/Rev):	1st off - **Susp**; Subsequent offs - **Susp** §14-111(b)
Length of Term of License Withdrawal Action:	1st off - **Not less than 1 yr**; Subsequent offs - **Not less than 5 yrs** §14-111(b)
Mandatory Term of License Withdrawal Action:	Licensing action appears to be mandatory. However, the licensing agency may have some authority to modify or cancel a suspension or revocation. §14-111(k) 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):	

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**

[1]**Special Note:** A person is not eligible for a "special permit" based on an occupational hardship. §3 Public Act 93-371

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §§30-86 & 30-1(12) (Yr Eff: 1985)
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** §30-102 Note: Damages are limited to $50,000. Note: Statutory limits on damages were held to be constitutional. *Sanders v. Officer's Club of Connecticut*, 493 A.2d 184 (Conn. 1985)
"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. Hish*, 517 A.2d 624 (Conn. 1986).
Dram Shop Actions-Social Hosts:	**Yes** *Kly v. Murphy*, 540 A.2d 54 (Conn. 1988) This case applied to the actions of an intoxicated minor guest. See the above cases where there has been wanton and reckless misconduct in the furnishing of alcoholic beverages.
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

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** §30-86[1]
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/Regualtions:	**No**[2]
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**

[1]**Special 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

[2]The 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. §4(c) Public Act 93-139

STATE:	**DELAWARE**
General Reference:	Delaware Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol 21 §4177(a)
Illegal Per Se Law (BAC Level):	**0.10**[1] 21 §4177(b)
Presumption (BAC Level):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** or (2) a Combination of Alcohol and a Drug 21 §4177(a)
Other:	A BAC of 0.10[1] is *prima facie* evidence that a person was under the influence of intoxicating liquor. 11 §3505 For Commercial Motor Vehicle operators, see below.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	Yes 21 §2741
Implied Consent Law:	
Arrest Required (Yes/No):	Probably not 21 §§2740 & 2742(e)
Implied Consent Law Applies to Drugs (Yes/No):	Yes 21 §2740
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) 21 §2749
Other Information:	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)

[1]Standard: Percent of alcohol by weight in the blood. 11 §3505 & 21 §4177(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. (1yr mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (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. 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. In addition, a CMV operator who has any measurable amount of alcohol (defined as having BAC/BrAC of 0.02 but less than 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. See 21 §§2603(b), (f), (h), (i) & (r), 2612(a), 2613(a) & (b), 2614(a) & (b) and 2622.

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** 21 §2740
Urine:	**Yes** 21 §2740
Other:	**Saliva** A 0.10 level of alcohol in saliva may be admitted into evidence as *prima facie* evidence of driving under the influence. 11 §2505

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 Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	1st Refusal - **Rev 1 yr** (90 dys/6 mos mand.[1]); 2nd Refusal[2] (w/n 5 yrs) - **Rev - 18 mos** (Mand[3]); 3rd and subsequent Refusals[2] (w/n 5 yrs) - **Rev - 24 mos** (Mand[3]) 21 §§2742(b) & 2743(a) See Vehicle Impoundment/Confiscation on p. 3-83.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	Unclassified Misd. 11 §4202(c) 1st Off - **60 dys-6 mos**; 2nd or subsequent off (w/n 5 yrs) - **60 dys-18 mos** 21 §4177(d)

[1]**Comment:** A person, who for the 1st time refuses to submit to a chemical test and who is also eligible and accepted into a 1st DWI probation before judgment program under 21 §4177B, may be issued a conditional license under 21 §4177E. However, there appears to be a conflict in the law as to how long a person's driving privileges must be denied before a conditional license can be issued. Under 21 §2743(e), the denial period must be 6 mos. However, under 21 §4177(a), the denial period is only 90 dys.

[2]For the purpose of license sanction enhancement for refusing to submit to a chemical test, a prior DWI offense is considered the same as a prior refusal. 21 §2742(b)

[3]For 2nd and 3rd refusals, the driver would probably not be eligible for a conditional hardship license. 21 §§2741, 2742, 2743 & 4177E

Special Note: Under 21 §4177E, a person is eligible to receive a conditional license based on (1) extreme hardship, (2) not having a conditional license w/n the preceding 12 mos, (3) not having a prior license revocation and (4) having met all of the requirements of 21 §§2743 & 4177C including any mandatory license revocation period.

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

Imprisonment: (continued)	(1) Veh Assault-2nd degree-Cl B misd-A DWI related injury where there has been negligent driving-Not more than **6 mos** 11 §§628 & 4206 (2) Vehicle Assault-1st degree-Cl F felony-A DWI related serious injury where there has been negligent driving -Not more **than 3 yrs** 11 §§629 & 4205(b)(6)
Mandatory Minimum Term:	**Comment:** The minimum incarceration periods for a DWI offense conviction on p. 3-80 under 21 §4177(a) & (b) may not be mandatory. Under 21 §4177(e), the court, in lieu of **any** penalty, may order the defendant only to operate vehicles equipped with an "ignition interlock" device. **Special Note:** The above provision as well as "house arrest" may be possible in lieu of incarceration despite the fact that, under 21 §4177(g), a person convicted of a second or subsequent DWI off may not receive a suspended sentence. See the Misc. sanctions on p. 3-83.
Fine:	
Amount ($ Range):	1st Off-**$230 to $1,150**; 2nd or subsequent off (w/n 5 yrs)-**$575 to $2,300** 21 §4177(d); (1) Veh Assault-2nd degree-Cl B misd-Not more than **$1,500** 11 §4206 (2) Veh Assault-1st degree-Cl F felony-The court may impose a fine as it deems appropriate 11 §4205(k)
Mandatory Minimum Fine ($):	None
Other Penalties:	
Community Service:	**Yes**[1] Discretionary 11 §4333A
Restitution (eg Victim's Fund)	**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)
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 **Ignition Interlock.**[2] In addition to any other sanction or in lieu of just a fine for a 2nd or sub. DWI offense conviction, the court may order that the defendant only operate motor vehicles that are equipped with an "ignition interlock" device. This requirement must remain in effect for not less than 1 yr. 21 §§4177(e) & 4177F

[1]The total number of community service hrs that may be imposed cannot exceed the maximum term of incarceration for the offense.
[2]**Special Note:** The provisions of the ignition interlock law do not become effective statewide until the first February 1 after the Division of Motor Vehicles has completed a 3 year pilot program in all 3 counties of the State. Public Act 445 of 1992

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

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 off[2]- **Rev - 1 yr** (mand); 3rd or subsequent offs- **Rev - 18 mos** (mand)[2] 21 §§2742 & 2743
Other:	Under 21 §§2733(a)(1) & (e), a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

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.
Term of License Withdrawal (Days, Months, Years, etc.):	1st Off-**1 yr**; 2nd Off (w/n 5 yrs)-**1 yr**; 3rd or subsequent off (w/n 5 yrs)-**18 mos** Veh Assault (2nd degree)-**1 yr**; Veh Assault (1st degree)-**2 yrs**
Mandatory Minimum Term of Withdrawal:	1st Off-**90 dys**[3] A conditional license[4] may be issued after the first 90 dys of the rev period 21 §§4177B & 4177C; 2nd and subsequent offs - **6 mos**[2&3] 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**

[1]Under 21 §2742(f)(2) with reference only to an admin. per se violation, a BAC level of 0.10 or a "positive indication of drugs" is conclusive evidence of a DWI (21 §4177) offense.
[2]2nd, 3rd, and subsequent offs include implied consent violations as well as DWI offs and are those occuring within five yrs of a first off.
[3]This minimum license revocation period for a DWI offense conviction under 21 §4177(a) & (b) may not be mandatory. Under 21 §4177(e), the court, in lieu of any 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.
[4]See the Special Note in Footnote No. 3 on p. 3-80 concerning the eligibility requirements for a conditional license.

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. See 1 §302(2) & (12) and 10 §§927(a)(6) & 937(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)

Other:	
Rehabilitation:	
Alcohol Education:	For any DWI off-Course of instruction and rehabilitation required for convicted persons prior to having their licenses/driving privileges reinstated[1].
Alcohol Treatment:	See Alcohol Education above.
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 (for 90 dys for a 1st off and 1 yr for a sub off) 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)
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:	**Yes**[2] 1st degree (death caused by criminally negligent driving while DWI) **Cl E felony** 11 §630A; 2nd degree (death caused by (1) criminally negligent driving or (2) negligent driving while DWI) **Cl F felony** 11 §630

[1]Subsequent offs within 5 yrs of a first - "Ordered 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 (21 §4177 & 4177D). Persons violating either the implied consent or admin per se laws must complete an alcohol education/alcohol rehabilitation program (21 §2743(c)).
[2]A defendant may be required to pay restitution to a victim of a vehicle homicide offense. 11 §4202(c)(9)

Other Criminal Actions Related To DWI: (continued)

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	1st degree-Not more than **5 yrs**; 2nd degree-Not more than **3 yrs** 11 §4205
Mandatory Minimum Term:	1st degree-**2 yrs**; 2nd degree-**1 yr** 11 §§630 & 630A
Fine ($ Range):	1st & 2nd degrees-As deemed appropriate by the court. 11 §4205(k)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	1st degree-**Rev**; 2nd degree-**Rev** 21 §2732
Length of Term of Licensing Withdrawal:	1st degree-**4 yrs**; 2nd degree-**3 yrs**
Mandatory Action--Minimum Length of License Withdrawal:	1st degree-**4 yrs**; 2nd degree-**3 yrs**
Other:	**None**

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	
Sanction:	
Criminal:	
Imprisonment (Term):	1st off-**30 dys-6 mos**; 2nd and subsequent offs-**60 dys-1 yr** 21 §2756[1]
Mandatory Minimum Term of Imprisonment:	1st off-**30 dys**[2]; 2nd and subsequent offs-**60 dys** 21 §2756
Fine ($ Range):	1st off-**$230-$575**; 2nd and subsequent offs-**$575-$1,150** 21 §2756
Mandatory Minimum Fine:	1st off-**$230 or $575**[2]; 2nd and subsequent offs - **$575** 21 §2756
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**None**
Length of Term of License Withdrawal Action:	
Mandatory Term of License Withdrawal Action:	

[1]See Vehicle Impoundment/Consication on p. 3-83.
[2]This sanction is mandatory where rev was based on a DWI related death or injury.

*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)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** 21 §2801 et seq. See Footnote No. 1.
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** (Unspecified Misd. 11 §4202(c))
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**1 to 5 yrs** 21 §2810
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):	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**[2] (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)

[1]Under 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.

[2]It 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)

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, see *Wright v. Moffitt*, 437 A.2d 554 (Del. 1981)[1], *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**[2]
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Not specified 4 §706
Term of Imprisonment:	**No**[3]
Fine ($ Range):	Not more than **$100**[4] 4 §903(4)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp** 4 §561(b)(1)
Length of Term of License Withdrawal:	Not specified by statute
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** 4 §§708(a)(1) & 904(a)
Term of Imprisonment:	**No**[3]
Fine ($ Range):	Not more than **$100**[4] 4 §904(a)

[1]In the Wright case, note especially the statements made by the court on the liability for third party injury (437 A.2d at 559).
[2]**Special Note:** A "business invitee" on the premises of a social host 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)
[3]A person may be imprisoned for 30 dys for failure to pay the fine. 4 §§903 & 904(a)
[4]Under 4 §902, also authorized is a fine of $500 to $1,000; failure to pay this fine fine will subject a violator to 3 to 6 months in jail.

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):	**Yes Susp** 4 §561(b)(1)
Length of Term License Withdrawal:	Not specified by 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):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Applies only to drivers[1] 21 §4177G

[1]Applies 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:	**DISTRICT OF COLUMBIA**
General References:	D.C. Code and D.C. Municipal Regulations (DCMR)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence/while impaired[1] §40-716
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[2A3] §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 Urine[4] §40-716(b)(1) Eff. until 2/25/94[5]
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Driving under the influence of (1) **Any Drug** or (2) a Combination of Any Drug and Alcohol[1] §40-716(b)(1)
Other:	A BAC of more than **0.05** (a UrAC of 0.06 percent by wgt. or 0.24 micrograms of alc. in 1 milliliter of breath) constitutes *prima facie* evidence of either driving while under the influence or driving while impaired. §40-717.1(2) For Commercial Motor Vehicle Operators, see p. 3-91.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**Yes**[6] §40-716(b-1)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[6] §40-502
Implied Consent Law Applies to Drugs (Yes/No)	**Yes**[6] §40-502(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §40-505(c)
Other Information:	A person is required to submit to 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 a DWI offense when the law enforcement officer believes that the person has an alcohol concentration of 0.10. §40-502(b) and the concurring opinion in *Marshall v. District of Columbia,* 498 A.2d 190 (D.C.App. 1985)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §40-502
Urine:	**Yes** §40-502
Other:	**None**

[1]The impaired offense applies only to the use of alcohol. The sanctions given for driving "while under the influence" apply to the use of alcohol or drugs.

[2]This jurisdiction's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a BrAC level of 0.48 micrograms or more of alc. in 1 milliliter of breath or (2) a UrAC level of 0.13 or more (percent by weight).

[3]The following standards are used to determine alcohol concentrations for blood and breath. One tenth of one percent (0.10%) or more by weight of alcohol in the blood or when an equivalent quantity of alcohol is contained in 2,000cc of breath. §40-716(b)(1)

[4]The sanctions (criminal and administrative) for this offense are the same as for the offenses either (1) of illegal per se at a either a BAC, BrAC or UrAC or 0.10 or (2) driving while under the influence.

[5]**Special Note:** The D.C. City Council is considering both emergency legislation to extend this date and permanent legislation.

[6]The 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.

Preceding Page Blank

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 §23-103

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):	**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:	Illegal per se/Under the Influence: 1st Off-Not more than **90 dys**; 2nd Off[1]-(w/n 15 yrs)-Not more than **1 yr**; 3rd and subsequent offs[2] (w/n 15 yrs)-Not more than **1 yr**; Impaired: 1st Off-Not more than **30 dys**; 2nd Off[3] (w/n 15 yrs)-Not more than **90 dys**; 3rd or sub. off[4] (w/n 15 yrs)-Not more than **1 yr** §40-716(b)(1) & (2)
Mandatory Minimum Term:	None
Fine:	
Amount ($ Range):	Illegal per se/Under the Influence: 1st Off-Not more than **$300**; 2nd Off[1] (w/n 15 yrs)-**$1000 to $5,000**; 3rd off and subsequent offs[2] (w/n 15 yrs)-**$2,000 to $10,000**; Impaired: 1st Off-**$200 to $300**; 2nd Off[3] (w/n 15 yrs)-**$300 to $500**; 3rd or sub. off[4] (w/n 15 yrs)-**$1,000 to $5,000**
Mandatory Minimum Fine ($):	None

[1]or a 1st offense where there has been a previous impaired offense (w/n 15 yrs).
[2]or a 2nd offense where there has been a previous impaired offense (w/n 15 yrs).
[3]or a 1st offense where there has been previous illegal per se/under the influence offense (w/n 15 yrs).
[4]or 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)

Other Penalties:	
Community Service:	None
Restitution (eg Victim's Fund)	Yes A defendant may be required to pay restitution to a victim. §16-711
Other:	None
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	Yes[1]
Other:	None
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	Driving under the influence/illegal per se: **Rev** for all offs §40-716(d)(1); Driving while impaired for any off: Either **susp or rev** at the discretion of D.C. officials §40-302(a)
Term of License Withdrawal (Days, Months, Years, etc.):	Driving under the influence/illegal per se (See Footnote No. 4 on p. 3-87.): 1st off - **6 mos**; 2nd off - **1 yr**; 3rd and subsequent offs - **2 yrs** §§40-302(a) & (b), 40-716(d) and 18 DCMR §§301.1 & 306.5; Driving while impaired: 1st off - **susp from 2 to 30 dys** or **rev for 6 mos**; Subsequent offs - **susp from 15 to 90 dys** 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:	Driving under the influence/illegal per se (See Footnote No. 4 on p. 3-87.): 1st off - **6 mos**; 2nd off - **1 yr**; 3rd and subsequent offs - **2 yrs** (Note: No occupational hardship licenses shall be issued. 18 DCMR §310.5(a)); 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.

[1]Under 18 DCMR §302.5, the licensing agency may suspend/revoke a driver's license on its own without a DWI conviction if there is sufficient evidence to indicate that a person was operating a motor vehicle while under the influence of intoxicating liquor. For a 1st Admin. Action - Susp 2 to 30 dys; for subsequent Admin Actions - Susp 15 to 90 dys. 18 DCMR §306.1

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 a BAC level of 0.04 or more or (2) while under the influence of alcohol or a controlled substance. For either (1) a second violation/a third violation or (2) a combination of two/three violations of any of the above listed items, the "disqualification" (suspension) is from 10 yrs (mand.) to life/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. See §§40-1801(3) & (4) and 40-1806.

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

Other:	
Rehabilitation:	
Alcohol Education:	
Alcohol Treatment:	
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	**Limited Impoundment.** Under §40-716(c-1), a vehicle driven by a DWI offender 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 DWI arrest, may take immediate possession of the vehicle. Also, after authorization by the arrested person, the vehicle may be released to another person 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

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
Jurisdiction Has Such a Law:	Yes Felony Negligent Homicide §40-713
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than 5 yrs
Mandatory Minimum Term:	None
Fine ($ Range):	Not more than $5,000
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Rev §40-716(d)(12) 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 ans subsequent offs - 2 yrs
Other:	None

Other Criminal Actions Related to DWI (continued)

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

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
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)

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):	

*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 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)
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 Jurisdication 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
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[1] §25-118
Length of Term of License Withdrawal:	For rev, no new license shall be issued for 1 yr.

[1]Under §25-118(a), "an offer in compromise" may be made by the licensing authority in lieu of a suspension.

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:	Unspecified but would probably be considered to be a misd.[1] §§25-121 & 25-132
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 Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev**[2] §§25-118 & 25-121
Length of Term License Withdrawal:	For rev, no new license shall be issued for **1 yr**.
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** 18 DCMR §2219a.1 et seq.
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §25-128(a)

[1]Anyone who offers, gives, provides or otherwise makes available alcoholic beverages to a person under 21 years old is subject not only 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)
[2]Under §25-118(a), "an offer in compromise" may be made by the licensing authority in lieu of a suspension.

STATE:	**FLORIDA**
General Reference:	Florida Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic beverages[1] §316.193(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	**0.08**[1&2] §§316.193(1)(b) & 316.1932(b)1
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of a **Controlled Substance/Chemical Substance** listed in §877.111 §§316.193(1)(a) & 316.1931
Other	1) A BAC/BrAC level of **0.08**[3] is *prima facie* evidence of driving under the influence §316.1934(2)(c) 2) See the Special Note below. 3) For Commercial Motor Vehicle Operators, see p. 3-101. 4) A person arrested for a DWI offense cannot be released from custody until (1) they are no longer under the influence of alcohol or other chemical substance, (2) their BAC level is less than 0.05 or (3) eight (8) hrs have elapsed from the time of their arrest. §316.193(9)

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §316.1932(1)(a) Note: 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):	Yes §316.1932(1)(a) See Footnote No. 4.
Refusal to Submit to Chemcial Test Admitted into Evidence:	Yes (Criminal Cases) §§316.1932(1)(a) & 316.1932(1)(b)
Other Information:	A blood test may be given a driver without their consent <u>only</u> if they have been involved in an accident resulting in either death or serious bodily injury. §316.1933(1), *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).

[1]The 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)
[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with a <u>breath</u> alcohol concentration level of 0.08 or more. The standard definitions of BAC and BrAC are used. §316.1932(b)1
[3]Standard: Percent by weight of alcohol in either the blood or breath. §316.1934(2)(c)
[4]The implied consent law, as applied to driving while under the influence of durgs, provides only for the testing of urine.

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)

Preceding Page Blank

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes Limited** A blood test, for the purposes of implied consent, may be 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 only to DWI manslaughter/veh homicide offs. §316.656.
Anti-Plea Bargaining Statute (Yes/No):	**Yes** Only applies if BAC level is 0.20 or more or for DWI manslaughter/veh homicide offs. §316.656
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** A person convicted of a DWI offense may be referred to substance abuse evaluation. §316.193(5)

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 **1 yr** (A hardship license is available.); Subsequent refusals-Susp for **18 mos** (Mandatory) §§322.2615(8)(a) & (10) and 322.271(2)(a)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	1st Off-Not more than **6 mos**; 2nd Off-Not more than **9 mos**; 3rd Off-Not more than **12 mos**; 4th or sub. Off (3rd degree felony)-**Not more than 5 yrs**[1] See the Special Note below.
Mandatory Minimum Term:	2nd Off-**10 dys** if 2nd off was w/n 3 yrs of a previous DWI conviction §316.193(6); 3rd Off-**30 dys** if 3rd off was w/n 5 yrs of a previous DWI off §316.193(6) See the Special Note below.
Fine:	
Amount ($ Range):	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 $5,000** See Footnote No. 1.
Mandatory Minimum Fine ($):	None
Other Penalties:	
Community Service:	1st off-**50 hrs** 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 compenstion 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) **Surcharge. A 5% surcharge** is levied on all fines. This surcharge is paid into a crimes compensation trust fund. §960.25 **Fee for EMS Fund.** Also, **$100** shall be added to any fine imposed (one-quarter of this amount is deposited into the Emergency Medical Services Trust Fund, one-quarter is deposited into the Impaired Drivers and Speeders Trust Fund and one-half is deposited into the Admin. Trust Fund of the Dept. of Law Enforcement). §316.193(6) **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

[1]Also under §316.193, for under the influence offenses where there has been: (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**; (3) For a DWI offense where either there was BAC/BrAC level of 0.20 or more or where there was 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(6), 775.082, 775.083 & 775.084

Special Note: The 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)

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

Other: (continued)	**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 Assessment 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:	**Yes 0.08 BAC** §322.2615(1)(a) Note: The law appears to apply only to BAC levels not BrAC ones. A violation-**susp. 6 mos** (A restricted hardship license may be issued.); A violation (where there has been a previous susp/rev. for a DWI offense)-**susp. 1 yr** (mand.) §§316.193, 322.2615(1)(a), (1)(b), (8)(b) & (10) and 322.271(12)(a)
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" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	1st Off[1&2]-**Rev**; 2nd Off[1&2] (w/n 5 yrs)-**Rev**; 3rd Off[1&2] (w/n 10 yrs)-**Rev**; 4th off[1&2]-**Rev** §322.28 **Special Note:** Rev is permanent if there is an alcohol off in connection with a veh manslaughter/homicide off. §§322.26 & 322.28(2)(e)
Term of License Withdrawal (Days, Months, Years, etc.):	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-**None**[3]; 2nd Off (w/n 5 yrs)-**12 mos**[4]; 3rd Off (w/n 10 yrs)-**24 mos**[4]; 4th Off-**5 yrs**[5] §§322.271(2)(b) & 322.28

[1]Under §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.

[2]This revocation applies to both non-injury and injury related DWI offense convictions. §322.28(2)

[3]A 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)

[4]After 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)

[5]After 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)

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

Other:	
Rehabilitation:	
Alcohol Education:	Yes Under §§316.193(5) and 322.291, a substance abuse course/alcohol treatment program is required for a defendant convicted of any DWI off. 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(1)(b)
Alcohol Treatment:	See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	No
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 3 yrs)-90 dys. This action may not be concurrent with probation or imprisonment. The court may decided not to order the action if the family of the vehicle owner "has no other public or private means or transportation." §316.193(6)(d)
Miscellaneous Sanctions Not Included Elsewhere:	**Special Note:** Under §322.291, a defendant may be required to complete a driver training course prior to having their license reinstated. **Medical Facility Visitation Requirement.** A person under 18 years old, who is convicted of a DWI offense, may be ordered by the court to visit medical facilities that treat victims of traffic accidents. §322.0602

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 level of 0.04 or more; (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, 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.) A CMV operator, who has any amount of alcohol in their system, must be placed "out-of-service" for 24 hours. A conviction for these offenses is a 2nd degree misdemeanor: Jail-not more than 60 dys; fine-not more than $500. See the general penalty provisions for Ch. 322. See §§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) and Ch. 90-253.

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

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. As part of its general powers in proscribing conditions of probation, a court 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 offenders, who operate 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:	See Footnote No. 1.
State Has Such a Law:	**Yes** Manslaughter via Veh and DWI manslaughter §316.193(3)(c)(3) Felony 2nd degree §782.07; Veh. Homicide Felony 3rd degree §782.071
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Manslaughter via veh and DWI manslaughter-Not more than **15 yrs**; Vehicle Homicide, Felony 3rd degree-Not more than **5 yrs**; §775.082(c) & (d)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Manslaughter via veh and DWI manslaughter-Not more than **$10,000**; Veh. Homicide-Not more than **$5,000**; §775.083(1)(b) & (c)
Mandatory Minimum Fine:	**None**

[1]Under §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 susp/rev where the basis of the susp/rev 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)

Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Manslaughter via veh, DWI manslaughter and Veh Homicide-**Rev**; §322.28(5)
Length of Term of Licensing Withdrawal:	Manslaughter via veh/Veh Homicide-**3 yrs**; For DWI Manslaughter-**Permanent** §322.28(2)(e) & (5)(a).
Mandatory Action--Minimum Length of License Withdrawal:	Manslaughter via veh, DWI manslaughter and Veh Homicide-**3 yrs** §322.28(5)(a)
Other:	A defendant may be required to pay restitution to a victim. §775.089
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd**[1] §322.34(1) 1st off-Not more than **60 dys** (Misd 2nd degree); 2nd and subsequent offs-Not more than **1 yr** (Misd 1st degree) §775.082
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	1st off-Not more than **$500**; 2nd and subsequent offs-Not more than **$1,000** §775.083
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	1st off-**Susp/Rev**; 2nd and subsequent offs-**Susp/Rev** §322.28(3)
Length of Term of License Withdrawal Action:	1st off-An additional **3 mos**; 2nd and subsequent offs-An additional **3 mos** §322.28(3)
Mandatory Term of License Withdrawal Action:	**No** A rest/hardship lic. may be issued. §322.271

[1]A person, who has had their license susp/rev for a DWI/vehicle homicide offense and who causes either a death or a serious bodily injury while operating vehicle while still suspended/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 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.

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:	
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)
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Misd of the 1st degree §322.34(2)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **1 yr** §775.082
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$1,000** §775.083
Mandatory Minimum Fine ($):	**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):	**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**[1] (Year Eff: 1985) §562.11(1)(a) & (2)
Minimum Age (Years) Possession:	**21** Except for employment purposes §562.111
Minimum Age (Years) Consumption:	**None**[2]

[1]It 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)

[2]Under §562.11(1)(a), it is illegal for a licensee to allow a minor to consume alcoholic beverages on their premises.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes Limited** §768.125 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 State (Case Citation):	No[2]
Dram Shop Actions-Social Hosts:	No *Bankston v. Brennan*, 507 So.2d 1385 (Fla. 1987)
Other:	None
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	None[3]
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[3]
Length of Term of License Withdrawal:	N/A

[1]This law limits liability to damages caused by selling alcoholic beverages (1) to persons under the legal drinking or (2) to persons habitually addicted to alcohol. *Peoples Restaurant v. Shbo*, 591 So.2d 907 (Fla. 1991) Note: For injuries caused by a minor, the injured party must prove that alcoholic beverages were "knowingly 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)

[2]Note: The Dram Shop Law places certain limits on 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)

[3]Note: Sec. 562.50 makes it illegal to sell or dispose of, in any way, intoxicating liquors to an individual when the individual, who is selling or disposing of such intoxicating liquor, has written notice that the person receiving such intoxicating liquor is an habitual drunkard. Such an offense is a misdemeanor of the second degree: Jail-not more than 60 days and fine-not more than $500. §§775.082 & 775.083 A licensee is also subject to license suspension under §561.29(1)(a) & (b).

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** 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 Alcohlic Beverages Withdrawn (Yes/No):	**Yes Susp or rev**[1] §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

[1]Admin. 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:	**GEORGIA**
General Reference:	Code of Georgia Annotated (Code of 1981)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §40-6-391(a)(1) See the Special Note below.
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1] or **Any Amount of a Controlled Substance/Marijuana**[2] §§40-1-1(1), 40-6-391(a)(4) & (5) and 40-6-392(b)(4) See the Special Note below. Persons Under 18 Years Old-**0.06**[1&3] §§40-6-391(k) & 40-6-392(c)(2)
Presumption (BAC Level):	**0.08** §40-6-392(b)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** or (2) a Combination of Any Drug and Alcohol §40-6-391(a)(2) & (3)
Other:	For Commercial Motor Vehicle Operators, see p. 3-113.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes[4] §40-5-55(a)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §40-5-55(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §40-6-392(d) & *Mendoza v. State*, 396 S.E.2d 576 (Ga.App. 1990)
Other Information:	None

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes[5] §40-5-55(a)
Urine:	Yes[5] §40-5-55(a)
Other:	"**Other Bodily Substance**" §40-5-55(a)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 (0.06 for persons under 18 years old) or more.
[2]This applies in situations where the driver was not legally entitled to use the controlled substance(s)/marijuana. §40-6-391(a)(5)
[3]A court cannot except a *nolo contendere* plea for this offense. §40-6-391(k)
[4]**Comment:** 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 either in serious injury or death. §40-5-55(a)
[5]The 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)

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)(4), the 0.10 (formally 0.12) illegal per se offense, represent two (2) different methods of proving this "one" offense. *Kuptz 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))

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 1st and 2nd DWI offense convictions §40-5-1(14)

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):	Susp 1 yr[1] (mand.) §40-5-67.1
Other:	

Sanctions Following a Conviction for a DWI Offense:	See Footnote Nos. 2 & 3.
Criminal Sanctions:	
Imprisonment:	1st off (Misd)-**10 dys-12 mos**; 2nd off (w/n 5 yrs) (Misd)-**90 dys-12 mos**; 3rd and subsequent offs (w/n 5 yrs) (High and Aggravated Misd)-**120 dys-12 mos** §40-6-391(c) & (k)
Mandatory Minimum Term:	2nd off (Misd)-**48 hrs**; 3rd and subsequent offs (w/n 5 yrs) (High and Aggravated Misd)-**10 dys** Note: See Community Service on p. 3-109.

[1]For persons under 18, suspension for 1 yr or until they reach 18 which ever is the longer suspension period. **Comment:** This suspension period for young persons is in that part of the code, §40-5-67.1(b)(2), that requires a law enforcement office to give a person notice of the consequences of refusal. However, there is no parallel provision in that part of the code, §40-5-67.1(d), that actually authorizes a license suspension for a refusal.

[2]DWI, 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 5 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

[3]**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) & 40-6-39(l)

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

Fine:	
Amount ($ Range):	1st off (Misd)-**$300-$1,000**; 2nd off (w/n 5 yrs) (Misd)-**$600-$1,000**; 3rd and subsequent offs (all w/n 5 yrs)(High and Aggravated Misd)-**$1,000-$5,000** §40-6-391(c) & (k)
Mandatory Minimum Fine ($):	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)) **Special Note:** The court may allow the defendant to pay the fine in installments if they can show that it would be an "extreme hardship" to pay the entire amount at once. §40-6-391(g)(1)
Other Penalties:	
Community Service:	2nd off (Misd.)-**80 hrs**; 3rd and subsequent offs (w/n 5 yrs)(High and Aggravated Misd.)-**30 dys** (alternative sanction to the 48 hr/10 day minimum imprisonment terms) §40-6-391(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; see §17-14-1 et seq. (2) A victim may also receive payment from the State's victims' compensation fund. See §17-15-1 et seq. Awards are limited to a maximum amount of $1,000; see §17-15-8(c).
Other:	3rd off-Defendant's name, address and photograph shall be published in the "legal organ of the appropriate county." The defendant is chaged a $25 fee to cover the cost of this publication. §40-6-391(j) **Assessment.** A DWI offender must pay 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 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.
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes 0.10 BAC/BrAC** (0.06 for persons under 18 yrs old) See Footnote No. 1 on p. 3-110. §40-5-67.1(c) I. Admin. Action where the person has had a previous DWI offense conviction w/n 5 yrs-**Susp 3 yrs** (120 dys mand. with lic. reinstatement after 120 dys.) II. Admin. Action where the person has for the 2nd time had a BAC/BrAC at or above the legal level-**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.

Sanctions Following a Conviction for a DWI Offense:

Administrative Licensing Actions: Pre-DWI Conviction Licensing Action: Administrative Per Se Law: (continued)	III. Admin. Action where the person has had a previous admin. action w/n 5 yrs-**Susp 5 yrs** (2 yrs mand) After 2 yrs, a person may be issued "probationary" driving privileges with the stitulation that they only operated vehicles equipped with an **ignition interlock** device. **Special Note:** Important. The law pertaining to the use of **ignition interlock** devices does not apply to those courts that are located in counties which do not have appropriate facilities to install these devices. §42-8-110(c) §§40-5-67.1, 40-5-67.2 & 42-8-112 See Miscellaneous Sanctions on p. 3-111.
Other:	None
Post DWI Conviction Licensing Action: Type of Licensing Action (Susp/Rev):	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. 2. §§40-5-62(a)(1), 40-5-63 & 42-8-112 DWI-Serious Injury-**Susp.** §40-5-63(d) See Miscellaneous Sanctions on p. 3-111.
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**12 mos**[3]; 2nd offs-**3 yrs**[3]; 3rd off (w/n 5 yrs)-**5 yrs** (See Habitual Traffic Offener Law on p. 3-114.) DWI-Serious Injury-**3 yrs**
Mandatory Minimum Term of Withdrawal:	1st off[4]-**None**; 2nd off-**120 dys** 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.

[1]**Comment:** There appears to be conflict between the license suspension "notice" provisions of the code and the those provisions that "actually" authorize license suspensions. Sec. 40-5-67.1(b)(3) requires a law enforcement officer to notify an arrested person that their license will be suspended for at least 1 yr or, if the person is under 18, for 1 yr or until they reach 18 whichever is the longer suspension period. However, the license suspension provision, §40-5-67.2, as given above, which authorizes admin. suspension periods (including mand. periods) does not conform to this notice requirement.

[2]If 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

[3]See Footnote No. 1 on p. 3-111.

[4]For a 1st DWI offense conviction, a defendant may receive for limited driving privileges in cases of "extreme hardship." §40-5-64 Also for a 1st offense, where the court has accepted a *nolo contendere* plea, a defendant may be issued a temporary permit for not more than 120 dys provided they complete an "alcohol or drug use risk reduction program." If they fail to complete this program, the temporary permit is declared invalid and the regular license shall remain suspended until the program is completed. §40-6-391.1(d)

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

Mandatory Minimum Term of Withdrawal: (continued)	3rd off (w/n 5 yrs)-2 yrs After 2 yrs, an offender may be issued "probationary" driving privileges 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 See the Special Note concerning **ignition interlock** devices on p. 3-110.
Other:	
Rehabilitation:	
Alcohol Education:	Yes[1,2] See Footnote No. 4 on p. 3-110.
Alcohol Treatment:	Yes[1,2] See Footnote No. 4 on p. 3-110.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Yes Forfeiture** A person's veh is subject to forfeiture if they are convicted of a 4th DWI offense and such off occurred while they were operating a veh in habitual offender status based on 3 prior DWI convictions. §40-6-391.2 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).
Terms Upon Which Vehicle Will Be Released:	None
Other:	None
Miscellaneous Sanctions Not Included Elsewhere:	For a 1st or 2nd DWI conviction and for an admin. action listed under I or II on p. 3-110, a person's license cannot be reinstated until (1) they have completed an alcohol or drug risk reduction program and (2) they have paid a reinstatement fee of $210 ($200 if processed by mail). §§40-5-63(a)(1) & (2) and 40-5-67.2(a)(1)

[1]For 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.
[2]For 2nd and 3rd DWI offense convictions, a defendant must complete an "alcohol or drug use reduction program" before their license can be restored. §§40-5-62(b) & 40-5-63(a)(2)

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)[1] & 40-6-393
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	I. **2-15 yrs** (§40-6-393); II. Not more than **12 mos** (§17-10-3(a)(2)); III. **3-15 yrs** (§40-6-393)
Mandatory Minimum Term:	I. **None**; II. **None**; III. **1 yr** (§40-6-393)
Fine ($ Range):	I. **None**[2]; II. Not more than **$1,000** (§17-10-3(a)(2)); III. **None**[2]
Mandatory Minimum Fine:	**None** (This applies to all veh. homicide offs.)
Administrative Licensing Action:	
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:	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)-"Habitutal Violator"-**Rev-5 yrs** III. **Rev-5 yrs** See the Comment below.
Mandatory Action--Minimum Length of License Withdrawal:	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)-"Habitutal Violator"-**Rev-2 yrs** III. **Rev-2 yrs** See the Comment below.
Other:	**None**

[1]This section defines a felony.

[2]Under §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 must 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)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	
Sanction:	
Criminal:	
Imprisonment (Term):	1st off-**2 dys-6 mos** (misd.); 2nd and sub. off (w/n 5 yrs)(high and aggravated misd.)-**10 dys-12 mos** §40-5-121(a)
Mandatory Minimum Term of Imprisonment:	1st off-**2 dys**; 2nd and sub. off (w/n 5 yrs)-**10 dys** §40-5-121(a) & Op. Atty. Gen. U92-4
Fine ($ Range):	1st off-**$500-$1,000**; 2nd and sub. off (w/n 5 yrs)-**$1,000-$2,500** §40-5-121(a)
Mandatory Minimum Fine:	1st off-**$500**; 2nd and sub. off (w/n 5 yrs)-**$1,000** §40-5-121(a) & Op. Atty. Gen. U92-4
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**

*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 level of 0.04 percent or more by weight of alcohol or more in the blood, breath or urine (Note: The usual standards for alcohol concentrations in the blood, breath or urine are listed in the CMV law but such standards may not apply.), (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 level of 0.04 or more; 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. See §§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).

Other Criminal Actions Related to DWI: (continued)

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 yrs**[1] §40-5-62(c)(1)
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Felony**[2] §§16-1-3(5) & 40-5-58(c)(1) & (2)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**1-5 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 **$1,000** §40-5-58(c)(2)
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

[1]A 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 an alcohol or drug related offense (§40-5-58(e)(1)(D)).

[2]It 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 and Ops. Att. Gen. U79-10 & U80-56 Indrect chemical test via 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:	**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)[1] 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):	**No**[2]
Dram Shop Actions-Social Hosts:	**Yes**[2] §51-1-40(b) See the Special Note below.
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** §§3-1-2(2), 3-3-9, 3-3-22 & 17-10-3
Term of Imprisonment:	Not more than **12** mos
Fine ($ Range):	Not more than **$1,000**

[1]Also, 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.

[2]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 (1985); *Bishop v. Fair Lanes Bowling, Inc.*, 633 F.Supp. 1195 (1985); 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."

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):	**Yes Susp or cancellation** §3-2-3
Length of Term of License Withdrawal:	**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:	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
Term of Imprisonment:	For 1st and subsequent off-Not more than **12 mos**
Fine ($ Range):	1st off- Not more than **$1,000**; Subsequent off- 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 Susp or cancellation** §3-2-3
Length of Term License Withdrawal:	**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):	**Yes Limited** Applies only to drivers §40-6-253
Anti-Consumption Law (Yes/No):	**No**

JURISDICTION:	**GUAM**
General References:	Government and Penal Codes of Guam (Updated through 1974)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor Govt. Code §§23405(a) & 23406
Illegal Per Se Law (BAC Level):	None
Presumption (BAC Level):	
Types of Drugs/Drugs and Alcohol:	
Other:	

Chemical Breath Tests for BAC Level:

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

Chemical Tests of Other Substances for BAC Level 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):

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:

Refusal to Take Implied Consent Chemical Test:
Criminal Sanction (Fine/Jail):
Administrative Licensing Action (Suspension/Revocation):
Other:

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-**10 dys to 1 yr** Govt. Code §23405 (2) Injury Related DWI off-Felony-**1 to 5 yrs** Govt. Code §23406
Mandatory Minimum Term:	(1) Non-Injury Related DWI Off-1st & sub. off-**10 dys to 1 yr** Govt. Code §23405 (2)Injury Related DWI off-**None**
Fine:	
Amount ($ Range):	(1) Non-Injury Related DWI Off-1st & sub. off-**$100 to $1,000** Govt. Code §23405 (2) Injury Related DWI off-**$200 to $5,000** Govt. Code §23406
Mandatory Min. Fine ($):	(1) Non-Injury Related DWI Off-1st & sub. off-**$100 to $1,000** Govt. Code §23405 (2) Injury Related DWI off-**None**
Other Penalties:	
Community Service:	
Restitution (eg Victim's Fund):	
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):	**Rev** Govt. Code §23102(e)(2)
Term of License Withdrawal (Days, Months, Years, etc.):	**1 yr**
Mandatory Minimum Term of Withdrawal:	**1 yr**
Other:	
Rehabilitation:	
Alcohol Education:	
Alcohol Treatment:	
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	
Terms Upon Which Vehicle Will Be Released:	
Other:	

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

Miscellaneous Sanctions Not Included Elsewhere:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

Jurisdiction Has Such a Law:	**Yes** **Felony** Penal Code §§17, 192(3) and 193(3) & (4)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	(1) Vehicle Homicide without Gross Negligence-Not more than **1 yr** (2) Vehicle Homicide with Gross Negligence-Not more than **3 yrs**
Mandatory Minimum Term:	**None**
Fine ($ Range):	(1) Vehicle Homicide without Gross Negligence-Not more than **$1,000** (2) Vehicle Homicide with Gross Negligence-Not more than **$3,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** Govt. Code §23102(e)(1)[1]
Length of Term of Licensing Withdrawal:	**1 yr**
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr**
Other:	

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

Sanction:	
Criminal:	
Imprisonment (Term):	**Misd**-Not more than **6 mos** Govt. Code §23101.1
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$500**
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Suspension/Revocation):	**Susp/Rev** Govt. Code §23102(k)
Length of Term of License Withdrawal Action	(1) For Operating While Suspended-Extend period of suspension for a like period (2) For Operating While Revoked-An additional **1 yr** period of revocation

[1]Revocation for manslaughter resulting from the operation of a motor vehicle.

Other Criminal Actions Related to DWI: (continued)

Mandatory Term of License Withdrawal Action:	(1) For Operating While Suspended-Extend period of suspension for a like period (2) For Operating While Revoked-An additional 1 yr period of revocation
Other:	

Habitual Traffic Offender Law:

Jurisdiction Has Such a Law (Yes/No):	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:	
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 Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	18 (Year Eff: n.a.) Govt. Code §25318
Minimum Age (Years) Possession:	
Minimum Age (Years) Consumption:	

Other Laws Related To Alcohol Use: (continued)

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:	n.a.
Other:	
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** Govt. Code §§25317 & 25517
Term of Imprisonment:	Not more than **1 yr** Govt. Code §25517
Fine ($ Range):	Not more than **$1,000** Govt. Code §25517
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** Govt. Code §25511(b)(1)
Length of Term of License Withdrawal:	(1) Susp-Time period is not specified in the statute. (2) Rev-**1 yr** Govt. Code §25206
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** Govt. Code §25318
Term of Imprisonment:	Not more than **90 dys** Govt. Code §25318
Fine ($ Range):	Not more than **$500** Govt. Code § 25318
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** Govt. Code §25511(b)(1)
Length of Term License Withdrawal:	(1) Susp-Time period is not specified in the statute. (2) Rev-**1 yr** Govt. Code §25206
Anti-Happy Hour Laws/Regulations:	**No** However, Govt. Code §25329 prohibits the service of more than 1 drink at a time to any person.

Other 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):	No
Anti-Consumption Law (Yes/No):	Yes Driver and Passengers Govt. Code §23405.1

STATE:	**HAWAII**
General Reference:	Hawaii Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor[1&2] §291-4(a)(1)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1&3] §291-4(a)(2)
Presumption (BAC Level):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of a **Controlled Substance** §291-7[4]
Other:	**0.10** or more is considered competent evidence of driving under the influence if the chemical test was taken within 3 hrs of a DWI violation. §291-5(a) For Commercial Motor Vehicle Operators, see p. 3-126.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §286-155.5 Note: An arrest is needed before licensing action can be taken for a refusal to submit to a chemcial test.
Implied Consent Law Applies to Drugs (Yes/No):	**No**
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:** It appears that either a blood or breath test may be given a driver without their consent in order to obtain evidence of their intoxication if they are involved in an accident resulting in either injury or death to another person; see §286-163. The law does not require that there be "probable cause" of a DWI offense before such a test can be administered.

[1]The offense of driving while under the influence of intoxicating liquor includes operating a motor vehicle with a BAC level of 0.10 or more. *State v. Grindles*, 777 P.2d 1187 (Hawaii 1989)

[2]Under 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)

[3]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. §291-4(a)(2)

[4]*State v. Engcabo*, 784 P.2d 865 (Hawaii 1989)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes
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/substance abuse assessment (screening) is required for all persons who have been convicted of a 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):	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-**Rev-1 yr** (mand.); 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. §§286-257(b) & 286-261(b)(5) See "Ignition Interlock" under Miscellaneous Sanctions on p. 3-127.
Other:	None

[1]The offender pays the cost for this assessment. §§286-261(d), 291-4(c) & 291-7(c)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note below.
Imprisonment:	1st off (alcohol off)-**48 hrs**[1]-**5 dys**; 1st off (drug off)-**48 hrs**[1]; 2nd off (alcohol off) (w/n 5 yrs)-**48 con hrs-60 dys**; 2nd off (drug off) (w/n 5 yrs)-**48 con hrs**; 3rd off (alcohol & drug off) (w/n 5 yrs)-**10-180 dys** §§291-4 & 291-7
Mandatory Minimum Term:	2nd off (alcohol & drug off) (w/n 5 yrs)-**48 cons hrs**; 3rd off (alcohol off) (w/n 5 yrs)-**10 dys** (with at least 48 cons hrs); 3rd off (drug off)-**10 dys** §§291-4(b)(2)(B)(ii) & (3)(C) and 291-7(2)(B(ii)
Fine:	
Amount ($ Range):	1st off-**$150 to $1,000**[1]; 2nd off (w/n 5 yrs)-**$500 to $1,000**; 3rd off (w/n 5 yrs)- **$500 to $1,000** §§291-4 & 291-7 These fine sanctions apply to both alcohol and drug offs.
Mandatory Minimum Fine ($):	2nd & 3rd offs-**$500**[2]
Other Penalties:	
Community Service:	1st off-**72 hrs**[1]; 2nd off (w/n 5 yrs)-**80 hrs** as an alternative to imprisonment §§291-4 & 291-7
Restitution (eg Victim's Fund)	**Yes** Direct compensation by defendants to the victims; see §706-605(d).[3]
Other:	**Home detention** may be assigned as a condition of probation; see §706-624(2)(p). **Ignition Interlock.** See Footnote No. 4. §§286-253(c) & 286-261(e)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See the Special Note on p. 126.
Administrative Per Se Law:	**Yes 0.10 BAC/BrAC** or **Under the Influence of Intoxicating Liquor**[5] §§286-251 & 286-258(d) 1st action-**Rev-3 mos**[4] (30 dys mand.); 2nd action (w/n 5 yrs)-**Rev-1 yr** (mand.); 3rd action (w/n 7 yrs)-**Rev-2 yrs** (mand.); 4th & sub. actions (w/n 10 yrs)-**Rev-For Life** (mand.)

[1]The 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.

[2]*State v. Auakuelo*, 683 P.2d 400 (HawaiiApp. 1984)

[3]Note: The payment of restitution shall have priority over the payment of the fine. §706-605(b)

[4]For a first admin. per se action, a conditional (restricted) license for hardship purposes may be issued after 30 dys of revocation period have passed. The licensing agence may order that the person use an "ignition interlock" device when operating their vehicle. §§286-264(c) & 286-261(e) In fact, the licensing agency may order the use of these devices even after re-licensing following the the revocation period. §286-261(e)

[5]If 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)

Special Note: "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)

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

	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)
Other:	**None**
Post DWI Conviction Licensing Action:	See the Special Note below.
Type of Licensing Action (Susp/Rev):	1st off-**Susp**[1]; 2nd off-**Susp**; 3rd off-**Rev** §§291-4 & 291-7 The sanctions below apply to both alcohol and drug offs. See Footnote No. 5 on p. 3-125.
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**90 dys**[1]; 2nd off-**1 yr**; 3rd off-**1-5 yrs**
Mandatory Minimum Term of Withdrawal:	1st off-**30 dys** with a restricted license for 60 dys[1]; 2nd off-**1 yr**; 3rd off-**1 yr**
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)

[1]Note: For certain serious traffic law violations, e.g., an alcohol driving offense, a person recieves points on their driving record. A license is suspended from 1-6 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 recieve 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

Special Note: If a person's license has been revoked for an administrative per se violation, their driving privileges cannot be suspended or revoked for a subsequent DWI offense conviction based on the same incident. However, if the administrative action is reversed, a person's diving privileges must be suspended or revoked based on the conviction. §291-4(b)(5)

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 (3 yrs mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (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 level or between 0.01 and 0.03 must be placed "out-of-service" for 24 hours. See §§286-231, 286-240, 286-242 & 286-243.

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

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:	**Ignition Interlock.** Persons, who have refused to submit to a chemical test for the first time or who have been convicted of a 1st DWI offense, may be required to use vehicles equipped with "ignition interlock" devices. §286-264(d) **DWI Bodily Injury Offenses.** I. Serious bodily injury caused by negligent veh operation (negligent injury in the 1st degree)-Cl 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. Substantial bodily injury caused by negligent veh operation (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

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 Cl B felony; (2) death caused by negligent veh operation (negligent homicide in the second degree) a Cl 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

Other Criminal Actions Related to DWI: (continued)

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Death caused by negligent veh operation while DWI (negligent homicide in the 1st degree) a Cl B felony-Not more than **10 yrs**; death caused by negligent veh operation (negligent homicide in the 2nd degree) a Cl 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 Cl B felony-Not more than **$25,000**; death caused by negligent veh operation (negligent homicide in the 2nd degree) a Cl 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**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Death caused by negligent veh operation while DWI (negligent homicide in the first degree) a Cl B felony-**Rev**[1]; death caused by negligent veh operation (negligent homicide in the second degree) a Cl C felony-**Rev**[1]; death caused by simple negligence-(negligent homicide in the third degree) a misd-**Rev**[1]
Length of Term of Licensing Withdrawal:	Death caused by negligent veh operation while DWI (homicide in the first degree) a Cl B felony-Not less than **1 yr**; death caused by negligent veh operation (homicide in the second degree) a Cl 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:	**1 yr**[1]
Other:	**None**

[1]Note: Mandatory rev applies to a conviction of the driver for "manslaughter". §§286-124 & 286-126

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-**3 con days[1] - 30 days**; 2nd off (w/n 5 yrs)-**30 dys[1]**; 3rd and sub. off (w/n 5 yrs)-**1 yr[1]** §291-4.5
Mandatory Minimum Term of Imprisonment:	See Footnote No. 1.
Fine ($ Range):	1st off-**$250[1]-$1,000**; 2nd off (w/n 5 yrs)-**$1,000[1]**; 3rd and sub. off (w/n 5 yrs)-**$2,000[1]** §291-4.5
Mandatory Minimum Fine:	See Footnote No. 1.
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev** §291-4.5
Length of Term of License Withdrawal Action:	1st off-For an additional susp/rev period of **1 yr**; 2nd off (w/n 5 yrs)-For an additional susp/rev period of **2 yrs**; 3rd and sub. off (w/n 5 yrs)-**Permanent Revocation** See Footnote No. 2. §291-4.5
Mandatory Term of License Withdrawal Action:	The above suspensions or revocations appear to be mandatory.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

[1]This sanction may not be mandatory. The law is not clear on this point.

[2]The period of suspension or revocation shall commence upon the person's release from imprisonment. §291-4.5(a)

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 Note: There is an 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:	**21** (Year Eff: 1986) §§281-1, 281-78 & 281-101.5
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**
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** *Ono v. Applegate*, 612 P.2d 533 (Hawaii 1980)
Dram Shop Actions-Social Hosts:	**No** *Johnston v. KFC Nat. Management Co.*, 788 P.2d 159 (Hawaii 1990), & *Faulk v. Suzuki Motor Co., Ltd.*, 851 P.2d 332 (HawaiiApp. 1993)
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
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**
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**
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

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]
Term of Imprisonment:	Not more than **6 mos**[1]
Fine ($ Range):	Not more than **$1,000**[1] §§281-78, 281-91 & 281-102
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**
Length of Term 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
Anti-Happy Hour Laws/Regulations:	**No** Note: Under §281-78.5, the liquor commission is required to promulgate regulations which prohibit practices which promote excessive consumption of alcoholic beverages.
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**[2] §§291-3.1(a) & 291-3.2(a)
Anti-Consumption Law (Yes/No):	**Yes**[2] Driver and passengers §§291-3.1(b), 291-3.2(b) & 291-3.3

[1]Under §712.1250.5, it is a misdemeanor to promote intoxicating liquor to a minor: Jail-not more than 1 yr (§706-663) and fine-not more than $2,000 (§706-640(4)).
[2]There is an exception in the case of motor vehicles for hire. §291-3.4

STATE:	**IDAHO**
General Reference:	General Laws of Idaho Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §18-8004(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1] §18-8004(1)(a)
Presumption (BAC Level):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**, (2) Intoxicating Substance (3) Any Narcotic Drug, (4) a Combination of Any Drug and Alcohol §§18-8004(1)(a) & 18-8004(5)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[2]
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §18-8002(1)
Refusal to Submit Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *State v. Bock,* 328 P.2d 1065 (1958)
Other Information:	Under §18-8002(6)(b), a law enforcement officer may order a "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 BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §§18-8002(1) & 18-8004
Urine:	**Yes** §§18-8002(1) & 18-8004
Other:	**None**

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol concentration of 0.10 or more.

[2]The 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.

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/"Bodily Substance" level of 0.04 or more, (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 (mand.). A person, who operates a CMV with an alcohol concentration of 0.04 or more or while under the influence of alcohol/drugs, commits a DWI offense and is subject to same criminal sanctions as other DWI offenders. In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§49-105(6), 49-104(9), 49-335 (Reference is made to 49 CFR part 383.), 18-8002(3)(a), 18-8004(1)(b) & (6), 18-8004(4) and 18-8005(2) & (3).

Preceding Page Blank

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) §18-8005(9)

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):	**No**
Administrative Licensing Action (Susp/Rev):	1st Refusal-**180 dys susp** (mand); 2nd Refusal (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 below.
Imprisonment:	1st off Misd-Not more than **6 mos**; 2nd off (w/n 5 yrs) Misd-**10 dys to 1 yr**; 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs) Felony-Not more than **5 years** Aggravated DWI where there is bodily harm/disfigurement-Not more than **5 years** §§18-8005 & 18-8006
Mandatory Minimum Term:	1st off Misd-**None**; 2nd off (w/n 5 yrs) Misd- **10 dys** (must serve 48 con hrs)[1]; 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs) Felony-**30 dys**[1] Aggravated DWI off where there is bodily harm/disfigurement-**30 dys**[1] §§18-8005 & 18-8006

[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.

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)

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

Fine:	
Amount ($ Range):	1st off Misd-Not more than **$1,000**[1]; 2nd off (w/n 5 yrs) Misd-Not more than **$2,000**[1]; 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs) Felony-Not more than **$5,000**[1]; Aggravated DWI off where there is bodily harm/disfigurement-Not more than **$5,000**[1] §§18-8005 & 18-8006 See Footnote No. 2.
Mandatory Minimum Fine ($):	**None**
Other Penalties:	
Community Service:	**Possible** Although not specifically authorized by statute, community service could be a condition of probation. §19-2601
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. 1.
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:	
Administrative Per Se Law:	**Yes**[3] (1) **0.10** 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

[1]A defendant is also assessed a special fine of $10 which is paid into a crime victims' compensation account. §72-1025
[2]Under §18-8010, a surcharge of $15 is added to all fines for the purpose of purchasing ignition interlock and electronic monitoring devices.
[3]The admin. per se law is effective July 1, 1994.

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

Other:	Under §49-326(a)(1) & (5), a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., veh. homicide)[1]. Such action may be taken without a preliminary hearing.
Post DWI Conviction Licensing Action:	See the Special Note on p. 3-134.
Type of Licensing Action (Susp/Rev):	1st off-**Susp**[2]; 2nd off-**Susp**[2]; 3rd & sub off-**Susp**[2] Aggravated DWI off-**Susp** §§18-8005 & 18-8006
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**30 to 150 dys**; 2nd off-**1 yr** 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 §§18-8005 & 18-8006
Mandatory Minimum Term of Withdrawal:	1st off-**30 dys**[3]; 2nd off-**1 yr** after release from confinement; 3rd & sub off-**1 year** after release from confinement Aggravated DWI off-**1 year** after release from confinement §§18-8005 & 18-8006
Other:	
Rehabilitation:	
Alcohol Education:	
Alcohol Treatment:	A DWI offender may be required to participate in an alcohol treatment program by the court. §18-8005(12)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**None**

[1]These provisions do not apply to DWI offense convictions since such convictions result in license suspension not revocation.
[2]If the offender is a person under 18 years old, their license is suspended or denied for either an additional 1 yr or until the person reaches 18 which ever period is longer or following the end of any period of susp or rev; this licensing action appears to be mand. §18-8005(11)
[3]After 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).

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:	**None**
Fine ($ Range):	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)
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 year** §§49-325(a) & 49-326(5)
Other:	Note: A temporary restricted license cannot be issued following revs based on veh manslaughter; see §49-325(2).

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

Sanction:	
Criminal:	
Imprisonment (Term):	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 (w/n 5 years)(felony)-Not more than **3 yrs** §18-8001

*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)

Mandatory Minimum Term of Imprisonment:	1st off Misd-**2 dys**; 2nd off Misd (w/n 5 years)-**20 dys**; 3rd and subsequent offs (w/n 5 years)(felony)-**30 dys**
Fine ($ Range):	1st off Misd-Not more than **$500**; 2nd off Misd (w/n 5 years)-Not more than **$1,000**; 3rd and subsequent offs (w/n 5 years)(felony)-Not more than **$3,000**
Mandatory Minimum Fine:	**None** **Special Note:** If a person is convicted of an alcohol driving off and such person had no driving privileges at the time of arrest, the penalties imposed under §18-8001 are in addition to any penalties imposed for an alcohol driving off conviction. §18-8001(7)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	1st off-**Susp**; 2nd off (w/n 5 years)-**Susp**; 3rd and subsequent offs (w/n 5 years)-**Susp** §18-8001
Length of Term of License Withdrawal Action:	1st Off (Misd)-License susp for an additional **6 mos**[1]; 2nd Off (Misd) (w/n 5 yrs)-License susp for an additional **1 yr**; 3rd and subsequent offs (w/n 5 yrs) (felony)-License suspended for an additional **3 yrs** §18-8001
Mandatory Term of License Withdrawal Action:	1st off-**None**[1]; 2nd off (w/n 5 yrs)-An additional susp for **1 yr**; 3rd and subsequent offs (w/n 5 yrs)-An additional susp for **3 years** §18-8001
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	No
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

[1]Restricted licenses available for employment reasons or family health needs. §18-8001(3)(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):	Yes §49-1016
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, 23-929, 23-1023 & 23-1334
Minimum Age (Years) Possession:	21 §23-949 There is an employment exemption for persons who are at least 19 years old. §§23-1013 & 23-1334
Minimum Age (Years) Consumption:	21 §23-949
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.
"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: Case law (e.g., *Alegria v. Payonk*, 619 P.2d 135 (1980)) may have been abrogated by legislation enacted in 1986. §23-808
Dram Shop Actions-Social Hosts:	Yes §23-808 See the Note above.
Other:	No
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	State liquor dispensary employees (pkg. sales)-Misd §§23-312 & 23-601; State authorized vendors (State liquor stores)/distributors (pkg. sales)-Misd §§18-113 & 23-605; Retail liquor by the drink[1]-Misd §§23-929 & 23-935; Retail sale of beer (not more than 6% alc. by weight)-no sanctions; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-no sanctions[2]

[1]These retailers may also sell wine (of not more than 14% alc. by volume) by the drink. §23-1332

[2]Probably covered by the provisions of §23-605 which generally prohibits persons from selling "alcoholic liquor" to intoxicated persons-Misd-jail: not more than 6 mos; fine: not more than $300. §18-113

Other State Laws Related To Alcohol Use: (continued)

Term of Imprisonment:	State liquor dispensary employees (pkg. sales)-**3 mos-1 yr**; State authorized vendors (State liquor stores)/distributors (pkg. sales)-**not more than 6 mos**; Retail liquor by the drink[1]-**30 dys-6 mos**; Retail sale of beer (not more than 6% alc. by weight)-**none**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**none**[2]
Fine ($ Range):	State liquor dispensary employees (pkg. sales)-**$300-1,000**; State authorized alc. vendors (State liquor stores)/distributors (pkg. sales)-**not more than $300**; Retail liquor by the drink[1]-**$100-300**; Retail sale of beer (not more than 6% alc. by weight)-**none**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**none**[2]
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Retail liquor by the drink-**Susp or Rev**; Retail sale of beer (not more than 6% alc. by weight)-**Susp or Rev**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**Susp or Rev** §§23-933, 23-1037 & 23-1331
Length of Term of License Withdrawal:	For revs for all licensees, no stated rev period in the law. For susps for liquor by the drink and retail sale of wine licensees, no stated susp period in the law. For retail sale of beer licensees, susp not more than 6 mos. See the Special Note 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:	State alc. liquor dispensary employees (pkg. sales)-**Misd** §§23-312 & 23-601; State authorized alc. vendors/distributors (pkg. sales)-1st off. **Misd**; Sub. off.-**Felony** §§18-112, 18-113 & 23-603[3]; Retail alc. liquor by the drink[1&3] -**Misd** §§23-929 & 23-935; Retail sale of beer (not more than 4% alc. by volume)-**Misd** §§18-113, 23-1013 & 23-1020; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**Misd**[1] §§18-113, 23-1334(b) & 23-1335

[1]May also sell wine (of not more than 14% alc. by volume) by the drink. §23-1332

[2]Probably covered by the provisions of §23-605 which generally prohibits persons from selling "alcoholic liquor" to intoxicated persons-Misd-jail: not more than 6 mos; fine: not more than $300. §18-113

[3]Sec. 23-603 appears to apply generally to any person selling "alcoholic liquor" to a minor. 1st off-Misd.-jail: not more than 6 mos; fine: not more than $300 (§18-113); 2nd and sub. off-Felony-prison: not more than 5 yrs; fine: not more than $5,000 (§18-112)

Special Note: In cases where a suspension has been authorized, the licensee may agree to pay a penalty of not more than $5,000 in lieu of the suspension. §§23-933, 23-1037 & 23-1331

Other State Laws Related To Alcohol Use: (continued)

Term of Imprisonment:	State liquor dispensary employees (pkg. sales)-**3 mos-1 yr**; State authorized vendors (State liquor stores)/distributors (pkg. sales)-1st off.-**not more than 6 mos**, Sub. off.-**not more than 5 yrs**[2]; Retail liquor by the drink[1&2]-**30 dys-6 mos**; Retail sale of beer (not more than 6% alc. by weight)-**not more than 6 mos**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**not more than 6 mos**[2]
Fine ($ Range):	State liquor dispensary employees (pkg. sales)-**$300-1,000**; State authorized vendors (State liquor stores)/distributors (pkg. sales)-1st off.-**not more than $300**, Sub. off.-**not more than 5,000**[2]; Retail liquor by the drink[1&2]-**$100-300**; Retail sale of beer (not more than 6% alc. by weight)-**not more than $300**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**not more than $300**[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):	Retail liquor by the drink-**Susp or Rev**; Retail sale of beer (not more than 6% alc. by weight)-**Susp or Rev**; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-**Susp or Rev** §§23-933, 23-1037 & 23-1331
Length of Term License Withdrawal:	For revs for all licensees, no stated rev period in the law. For susps for liquor by the drink and retail sale of wine licensees, no stated susp period in the law. For retail sale of beer licensees, susp not more than 6 mos. See the Special Note on p. 3-140.
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**[3] §§23-505 & 23-1333
Anti-Consumption Law (Yes/No):	**Yes**[3] §23-505 Applies to both driver and passengers

[1]These retailers may also sell wine (of not more than 14% alc. by volume) by the drink. §23-1332
[2]Sec. 23-603 appears to apply generally to any person selling "alcoholic liquor" to a minor. 1st off-Misd.-jail: not more than 6 mos; fine: not more than $300 (§18-113); 2nd and sub. off-Felony-prison: not more than 5 yrs; fine: not more than $5,000 (§18-112)
[3]Does not include beer. §§23-505 & 23-105

STATE:	**ILLINOIS**
General Reference:	West's Smith-Hurd Illinois Compiled Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol 625 ILCS 5/11-501(a)(2)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1] or **Any Amount of Cannabis/Controlled Substance**[2] 625 ILCS 5/11-501(a)(1) & (5)
Presumption (BAC Level):	**0.10** 625 ILCS 5/11-501.2(b)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** or (2) a Combination of Any Drug and Alcohol 625 ILCS 5/11-501(a)(3) & (4)
Other:	For Commercial Motor Vehicle Operators, see p. 3-148.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**Yes**[3] 625 ILCS 5/11-501.5
Implied Consent Law:	Important. See the Historical Note on p. 3-144.
Arrest Required (Yes/No):	**Yes** 625 ILCS 5/11-501.1
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** 625 ILCS 5/11-501.1(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) 625 ILCS 5/11-501.2(c) & 11-501.6(f) & *People v. Thomas*, 558 N.E.2d 656 (Ill.App. 2 Dist. 1990)
Other Information:	A BAC (blood test) test 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)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** 625 ILCS 5/11-501.1
Urine:	**Yes** 625 ILCS 5/11-501.1
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**[4]
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol or Drug Evaluation (screening) 625 ILCS 5/11-501(e)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. 625 ILCS 5/11-501.2(a)(5)

[2]As found in the blood or urine "resulting from unlawful use or consumption." 625 ILCS 5/11-501(a)(5)

[3]Before 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.

[4]Note: 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 5/5-6-1(c) & (d))

Preceding Page Blank

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 **6 mos** Note: A Judicial Driving Permit is available. See Footnote No. 2 (under Admin. per se) on p. 3-146 for details. Also, restricted driving privileges are available under 625 ILCS 5/6-206(c)(3); subsequent refusals[1] (w/n 5 yrs)-Susp for **2 yrs (6 mos mandatory** A restricted license may be issued after this 6 month period.) See Footnote No 4 on p. 3-146. 625 ILCS 5/6-206(c)(3), 6-206.1, 6-208.1 & 11-501.1
Other:	**Special Note:** Under a separate and independent implied consent law, 625 ILCS 5/11-501.6, 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. 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.

[1]Or 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

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 no requirement that there be "probable cause" of an offense (e.g. DWI). Because of this deficiency, the Illinois Supreme Court declared 625 ILCS 5/11-501.6 unconstitutional under both the State and Federal constitutions. *King v. Ryan, Secretary of State,* 607 N.E.2d 154 (Ill. 1992)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 2.
Imprisonment:	1st & 2nd offs (Class A misd)-Less than **1 yr**; 3rd & subsequent offs[1] (Class 4 felony)-**1 to 3 yrs** 730 ILCS 5/5-8-1(a)(7) & 5-8-3(a)(1) and 625 ILCS 5/11-501.
Mandatory Minimum Term:	2nd off (w/n 5 yrs)-**48 cons hrs**; 3rd & subsequent off[1] (w/n 5 yrs)-**48 cons hrs** (if probation or conditional discharge is granted) 730 ICLS 5/5-5-3(c)(3) & 5-6-1(d) and 625 ILCS 5/11-501(c), (d) & (h) See Community Service below.
Fine:	See Footnote No. 2.
Amount ($ Range):	1st & 2nd offs-Not more than **$1,000**; 3rd & subsequent offs[1]-Not more than **$10,000** 730 ICLS 5/5-9-1(a)(1) & (2)
Mandatory Minimum Fine ($):	**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 or younger. 625 ILCS 5/11-501(c)
Other Penalties:	
Community Service:	I. 2nd off (w/n 5 yrs)-A minimum of **100 hrs**[3] (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 at the time of the offense the driver was transporting a person 16 years old or younger, the driver is 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.** There is a pilot "ignition interlock" program for 2nd and subsequent DWI offenders. 625 ILCS 5/11-501(i) **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]This offense is defined as "Aggravated Driving Under the Influence of Alcohol or Drugs or a Combination of Both". 625 ILCS 5/11-501(d)

[2]**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 Cl 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 ICLS 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)

[3]**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.

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

Other: (continued)

Visitation Program. (continued) (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 ICLS 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)

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

Yes 0.10 (BAC/BrAC) or **Any Amount of Cannabis/Controlled Substance**[1] 1st Action-**3 mos. susp.**[2] (not mand.) subsequent action[3] (w/n 5 yrs)[4]-**1 yr. susp.** (90 dys. mand.; a restricted lic. may be issued after this 90 dy. period.[5]) 625 ILCS 5/6-206(a)(3), 6-206.1, 6-208.1(h) & 11-501.1 See Footnote No. 6.
Important. See the Special Note on p. 3-147.

[1]As found in the blood or urine "resulting from unlawful use or consumption." 625 ILCS 5/11-501.1

[2]A Judicial Driving Permit (JDP) may be issued after the first 30 days of the susp. period have passed. However, the lic. 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.

[3]Or 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

[4]If 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 level of 0.10 or more), 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

[5]**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 at or above 0.10. I.e., such restricted driving privileges may not be available in situations where the driver has "unlawfully" used drugs.

[6]For 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).

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

Special Note: Under a 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 resulted in either an injury or fatality and (3) the driver submits to a chemical test that indicates a BAC/BrAC level of 0.10 or more 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 susps under both admin. per se laws.
See the Historical Note on p. 3-144.

Other:

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" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action 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.

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): **Rev** 625 ILCS 5/6-205, 6-208 & 11-501

Term of License Withdrawal (Days, Months, Years, etc.): 1st off-1 yr; 2nd off (w/n 20 yrs)-3 yrs; subsequent off-6 yrs 625 ILCS 5/6-208(b)(1), (2) & (3) Note: A hardship license may be issued. 625 ILCS 5/6-205(c)

Mandatory Minimum Term of Withdrawal: 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.[1] 625 ILCS 5/6-205(d)

[1]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)

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:
Authorized by Specific Statutory Authority:

Limited Impoundment. Following a DWI arrest, a person's vehicle may be impounded for not more than **6 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)

Terms Upon Which Vehicle Will Be Released:
Other:

None

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.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Reckless homicide-Cl 3 felony or Cl 2 felony if the defendant was under the influence of alc. or drugs at the time of the offense 720 ILCS 5/9-3
Note: Death must be the result of reckless action of the accused driver. 720 ILCS 5/9-3(b) 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.

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 level of 0.04 or more, (2) have any amount of cannabis/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 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 amount of alcohol or other drug(s) in their system must be placed "out-of-service" for 24 hours. See 625 ILCS 5/6-500(1), (6), (8) & (9), 6-514, 6-515 and 6-517.

Other Criminal Actions Related to DWI: (continued)

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Cl 3 felony-**2 to 5 yrs** 730 ILCS 5/5-8-1(a)(6); Cl 2 felony-**3 to 14 yrs** 730 ILCS 5/9-3(e)
Mandatory Minimum Term:	None
Fine ($ Range):	Cl 3 & 2 felonies-Not more than **$10,000** 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-**1 yr**; 2nd off (w/n 20 yrs)-**3 yrs**; subsequent offs-**6 yrs** 625 ILCS 5/6-208(b)(1), (2) & (3)
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. 3-146.

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

Sanction:	
Criminal:	
Imprisonment (Term):	1st off-Cl A misd-Less than **1 yr**; 730 ILCS 5/5-8-3(a)(1), & 625 ILCS 5/6-303(a); subsequent off-Cl 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)
Fine ($ Range):	1st off-Not more than **$1,000**; Sub off not more than **$10,000** 730 ICLS 5/5-9-1(a)(1) & (2) See Court Costs (Fees) on p. 3-146.
Mandatory Minimum Fine:	None
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 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 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)

Laws Establishing the Minimum Ages Concerning 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

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes**[1] 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):	**No**[2]
Dram Shop Actions-Social Hosts:	**Possible** (1) In *Cravens v. Inman*, 586 N.E.2d 367 (Ill.App. Dist. 1 1991), the court held that a social host was liable for the injuries sustained by a minor guest in an automobile accident while ridding with another minor guest who was intoxicated. The court held that the dram shop law was not the exclusive remedy and, therefore, this type of action was not prohibited. (2) However, there is other case law to the contrary. *Zamiar v. Linderman*, 478 N.E.2d 534 (Ill.App. 1st Dist. 1985), & *Heldt v. Brei*, 455 N.E.2d 842 (Ill.App. 1st Dist. 1983)[3]
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Cl A Misd** 235 ILCS 5/6-16(a)
Term of Imprisonment:	Not more than **1 yr** 730 ICLS 5/5-8-3(a)(1)
Fine ($ Range):	Not more than **$1,000** 730 ICLS 5/5-9-1(a)(2) See Court Costs (Fees) on p. 3-146.
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages 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 "will violation of the law. 235 ILCS 5/7-12
Length of Term of License Withdrawal:	Not specified in the statute.[4&5]

[1]Damages for personal injuries or to property is limited to $30,000. Loss of means of support is limited to $40,000.

[2]In *Cunningham v. Brown*, 174 N.E.2d 153 (Ill. 1961), and *McKeon v. Homya*, 568 N.E.2d 528 (Ill.App. 5 Dist. 1991), the Dram Shop Law was held to be the exclusive remedy. However, in *Cravens v. Inman*, 586 N.E.2d 367 (Ill.App. Dist. 1 1991), which concerned social host liability, an intermediate appellate court has recently held otherwise.

[3]*Miller v. Moran*, 421 N.E.2d 1046 (Ill.App. 4th Dist. 1981), & *Lowe v. Rubin*, 424 N.E.2d 710, (Ill.App. 5th Dist. 1981)

[4]Note: 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

[5]If a license has been revoked, the formally licensed premises cannot be re-licensed for 1 yr. 235 ILCS 5/7-13

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:	**Cl A Misd** 235 ILCS 5/6-16(a)
Term of Imprisonment:	Not more than **1 yr** 730 ICLS 5/5-8-3(a)(1)
Fine ($ Range):	**$500** (mand) but not more than **$1,000** 730 ICLS 5/5-9-1(a)(2) See Court Costs (Fees) on p. 3-146.

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
Length of Term License Withdrawal:	Not specified in the statute. See Footnote Nos. 4 & 5 on p. 3-151.
Anti-Happy Hour Laws/Regulations:	**Yes** 235 ILCS 5/6-28

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** 625 ILCS 5/11-502
Anti-Consumption Law (Yes/No):	**No** Note: A person cannot consume alcoholic beverages while operating a limousine. 625 ILCS 5/11-502(c)

STATE:	**INDIANA**
General Reference:	Burn's Indiana Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense	Operating a vehicle while intoxicated IC9-30-5-2 Note: The term "intoxicated" is defined as under the influence of alcohol, drugs, etc. IC9-13-2-86
Illegal Per Se Law (BAC Level)	**0.10**[1] IC9-30-5-1(a) or **Any Amount of a Controlled Substance**[2] IC9-30-5-1(b)
Presumption (BAC Level):	**0.10**[3]
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**, (2) a Controlled Substance or (3) Any Combination of Alcohol and Drugs IC9-30-5-2 & IC9-13-2-86
Other:	**0.10** BAC is also *prima facie* evidence of intoxication. IC9-13-2-131 See Footnote No. 4 concerning school bus operators. For Commercial Motor Vehicle Operators, see p. 3-156.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	**No** Note: PBT law, formally IC9-4-4.5-3, repealed by P.L. 143 enacted in 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
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) IC9-30-6-3(b)
Other Information:	In accidents where there has been either a fatality or a serious injury, a blood sample may be obtained from a driver suspected of DWI via force. IC9-30-6-6(g) & (h)

[1]Standard: Percent by weight of alcohol in the blood. IC9-30-5-1(a)

[2]This State's illegal per se law also makes in an offense (Cl C misd) for a person to operate a motor vehicle with <u>any</u> amount of a controlled substance in their blood. <u>Exception:</u> 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)

[3]Under IC9-30-5-15(b)(2), a chemical test indicating a BAC level of 0.10 is to be taken as a presumption of such BAC level.

[4]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

Chemical Tests of Other Substances for BAC Level Which Are Authoized Under the Implied Consent Law:

Blood:	Yes[1]
Urine:	Yes[1]
Other:	**Any other bodily substance**[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

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):	**Yes Limited**[2]
Administrative Licensing Action (Susp/Rev):	**1 yr susp**[2&3] May not be mandatory if there is a DWI conviction.[3] IC9-30-6-9(a) See Footnote No. 3 on p. 3-157. Note: A driver's license may be reinstated if the DWI charges are dismissed. IC9-30-6-11(a)(1)
Other:	**None**

[1]The 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)

[2]Refusal 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 class 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

[3]This 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)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1. Illegal per se (Cl C misd) - Not more than **60 dys** 2. Intoxicated off (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 felony[1]) - A fixed term of **1½ yrs** 4. Violation of either 1 or 2 above where there has been a serious injury, (Cl D felony[1]) - A fixed term of **2 yrs** 5. Violation of either 1 or 2 above where there has been a death (Cl C felony) - A fixed term of **5 yrs** IC9-30-5-1, -2, -3 -4 & -5, IC35-50-2-6 & -7 and IC35-50-3-2 & -4
Mandatory Minimum Term:	A conviction for **ANY** alcohol related driving off, where there has been a previous conviction of such an off (regardless of type) (w/n 5 yrs), there is either a mandatory imprisonment term of 5 dys (of which 48 con. hrs must be served) or mandatory community service of 10 dys. IC9-30-5-15 See Miscellaneous DWI Sanctions on p. 3-158.
Fine:	
Amount ($ Range):	1. Illegal per se off (Cl C misd) - Not more than **$500** IC35-50-3-4; 2. Intoxicated off (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. Violation of either 1 or 2 above where there is serious injury (Cl D felony) - Not more than **$10,000** IC35-50-2-6; 5. Violation of either 1 or 2 above where there is a death (Cl C felony) - Not more than **$10,000** IC35-50-2-6
Mandatory Min. Fine ($):	None
Other Penalties:	
Community Service:	For subsequent alcohol offs (w/n 5 yrs), mandatory community service of **80 hrs** in lieu of imprisonment. IC9-30-5-15
Restitution (eg Victim's Fund)	Yes The court may order a defendant to pay direct compensation to a victim. IC9-30-5-17 & IC35-50-5-3 There is also a victims' compensation fund IC16-7-3.6-1 et seq.

[1]A 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

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

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

Yes 0.10 *prima facie* evidence BAC level 1st and sub offs-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. 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. 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[1]. IC9-30-6-11

[1]If 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

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 level of 0.04 or more (by weight of alcohol in the blood), (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 level of 0.04 to 0.10. The sanction of this offense is a fine of not more than $500. See IC9-24-6-8 et seq. and IC34-4-32-4(c).

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

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:

Other: 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:

Type of Licensing Action (Susp/Rev): **Susp All offs** 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/Death Related off (Illegal per se/Intoxicated)-**2 to 5 yrs** IC9-30-5-10[1]

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 dys**[3]; 2nd or subsequent off (Illegal per se/Intoxicated) (w/n 5 yrs)-**1 yr**[3]; Injury/Death Related off (Illegal per se/Intoxicated)-**2 yrs**[3] IC9-24-15-9, IC9-30-5-10 & IC9-30-5-12

Other:
Rehabilitation:
Alcohol Education: **Yes**[4]
Alcohol Treatment: **Yes**[4]

[1]IC9-13-2-130 defines the phrase "previous conviction of operating while intoxicated" to include any DWI offense under IC9-30-5.
[2]A 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
[3]A 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)
[4]For a first DWI off, the defendant may, as a condition of probation, be evaluated and treated for alcohol-realted problems. The law does not specifically extend such evaluation and treatment to subsequent DWI offenders. In addition, for any misd. in which alcohol abuse is a factor, the Court may take judicial notice that an alcohol training/rehabilitation program may reduce antisocial behavior. If a defendant satisfactorily completes such a program the charges against him/her shall be dismissed. However, licensing susps. still apply. A defendant is eligible to participate only once in this type of program. IC9-30-9-1 et seq. (expires on 12/31/96)

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

Vehicle Impoundment/Consfiscation:	
Authorized by Specific Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	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 Elswhere:	**"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 that only operate vehicles that are equipped with ignition interlock devices. IC9-30-5-10(c) & (d)

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 be susp. a defendant's licenes 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 participated in an alcohol treatment program. And, (2) DWI charges may 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 1st DWI offense may be placed on probation and referred to an alcohol abuse deterrent program. As part of 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 under the admin. per se law. 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

Homicide by Vehicle:	
State Has Such a Law:	Note: For a death related to a DWI offense, see "Sanctions Following a Conviction for a DWI Offense" above.
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. 1 below.
Length of Term of Licensing Wighdrawal:	
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):	Cl A Misd - **60 dys to 1 yr** IC9-24-18-5(b)
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-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)

[1]Even though this State does not have a vehicle homicide statute, it either suspends or revokes the license (and registration "certificates") 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. It appears that these suspensions or revocations are mandatory. IC9-24-15-1-2 & IC30-4-6(b)(1) & (d)(2)

*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)

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	Yes IC9-30-10
Grounds for Being Declared an Habitual Offender:	I. 2 convictions (w/n 10 yrs) for very severe 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) 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:	For 2 very serious off convictions under IC9-30-10-4(a) - **10 yr Susp**; For 3 major off convictions under IC9-30-10-4(b) - **10 yr susp**[1]; For 10 convictions of moving violations under IC9-30-10-4(c) - **5 yr susp** A probationary restricted license may be issued under certain limited conditions for habitual offenders whose status is based on moving violations. IC9-30-10-9(a) See Footnote No. 2.
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 sentened for a Class A Misd. See Footnote No. 1 on p. 3-155.
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**

[1]A probationary restricted license may be issued after 5 yrs of the susp period have passed under certain limited conditions. IC9-30-10-9(b)

[2]An habitual offender cannot obtain hardship driving privileges under IC9-24-15. IC9-24-15-9

Other Criminal Actions Related to DWI: (continued)

Licensing Actions (Specify):	For a Cl. D Felony conviction-**Forfeiture of license for life** IC9-12-3-1(b) (After 10 years, a person may petition the court for reinstatement of their license. IC9-12-2-10) 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 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 those susps already imposed above.

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Taffic Accidents:	
State Has Such a Law (Yes/No):	No
BAC Chemical Test Is Given to the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedertrian:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	21[1] (Year Eff: 1934) IC7.1-1-3-25, 7.1-5-7-1 & 7.1-5-7-8
Minimum Age (Years) Possession:	21 IC7.1-5-7-7
Minimum Age (Years) Consumption:	21 IC7.1-5-7-7
Dram Shop Laws and Related Legal Actions:	
State has a Dram Shop Law (Yes/No):	Yes IC7.1-5-10-15.5[2] **Comment:** This statute may have abrogated, at least in part, the case law noted below.

[1]It 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

[2]Under 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. 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.

Other State Laws Related To Alcohol Use: (continued)

"Dram Shop Law" Cocept 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** *Picadilly, Inc. v. Colvin,* 519 N.E.2d 1217 (Ind. 1988)[1], *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**[1] *Gariup Const. Co. v. Foster,* 519 N.E.2d 1224 (Ind. 1988)[1], *Ashlock v. Norris,* 475 N.E.2d 1167 (Ind. App. 3 Dist., 1985), & IC7.1-5-10-15.5[1]
Other:	**None**
Criminal Action Against Owners or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Cl B Misd** IC7.1-5-1-8, 7.1-5-10-15 and 35-50-3-3
Term of Imprisonment:	Not more than **180 dys**
Fine ($ Range):	Not more than **$1,000** Note: An administrative fine of not more than $1,000 may also be imposed. IC7.1-3-23-3
Administrative Actions Against Owners or Establishements that Serve Alcoholic Beverages to Intoxicate Patrons:	
License of Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** IC7.1-3-23-2 and 7.1-3-23-5
Length of Term of License Withdrawal:	For revs, no period is specified in the statute IC7.1-3-23-6 For susps, not more than 30 dys IC7.1-3-23-7
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Drinking Age:	
Type of Criminal Action:	**Cl C Misd**[2] IC7.1-5-7-8 and 35-50-3-4
Term of Imprisonment:	Not more than **60 dys**
Fine ($ Range):	Not more than **$500** Note: An administrative fine of not more than $1,000 may also be imposed. IC7.1-3-23-3

[1]After April 1, 1986, common law dram shop actions were restricted by IC7.1-5-10-15.5. This decision was based on a factual situation that occurred prior to this date.

[2]IC7.1-5-7-8(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."

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):	Yes IC7.1-3-23-2, 7.1-3-23-5 and 7.1-3-23-26.1
Length of Term License Withdrawn:	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):	No
Anti-Consumption Law (Yes/No):	No

STATE:	**IOWA**
General Reference:	Iowa Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol[1] §321J.2
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1,2] §§321J.1(1) & 321J.2(1)(b)
Presumption (BAC Level):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** or (2) Any Combination of Drugs Including Alcohol[1] §321J.2(1)(a)
Other:	For Commercial Motor Vehicle Operators, see below

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**Yes** §321J.5
Implied Consent Law:	
Arrest Required (Yes/No):	**No** Note: A law enforcement officer only needs "reasonable grounds" and any one of the following: (1) A DWI arrest; (2) an accident resulting in injury or death; (3) a PBT refusal; (4) a PBT reading of 0.10 or (5) a PBT reading of less than 0.10 but the officer has reasonable grounds that the driver was under the influence of drugs or a combination of drugs and alcohol. §321J.6(1)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §321J.6
Refusal to Submit a Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §321J.16
Other Information:	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

[1]A DWI offense is described as "operating while intoxicated". However, "operating while intoxicated" is defined as operating a vehicle while under the influence of alcohol.

[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol concentration of 0.10 or more.

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 level of 0.04 or more, (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. See §§321.1(32), (90) & (92), 321.208, 321.208A, 321J.6 and 321J.8(3).

Preceding Page Blank

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §321J.6(2)
Urine:	Yes §321J.6(2)
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 A substance abuse evaluation must be ordered if the defendant had a BAC level of 0.20 or more or they have been convicted of a 2nd or subsequent DWI offense. §321J.3 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):	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 1st refusal-240 dys; 2nd and subsequent refusals (w/n 6 yrs)-540 dys (360 dys are mandatory) For both 1st and sub. refusals and a defendant is subject to license rev under the implied consent law but pleads guilty to a DUI charge, they may be issued a restricted lic. for the implied consent law rev.; the restricted lic. may only be used for treatment/employment purposes. §§321J.9 & 321J.20

Sanctions Following a Conviction for a DWI Offense.

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off (Serious misd)-**Not more than 1 yr**; 2nd off (w/n 6 yrs) (aggravated misd)-**Not more than 2 yrs**; 3rd and sub off (w/n 6 yrs) (Cl D felony)-**Not more than 5 yrs** (or up to 1 yr in the county jail §902.9); Serious Injury related to DWI where BAC is 0.10 or more (aggravated misd)-**Not more than 2 yrs** §§321J.2, 707.6A(3), 902.9 & 903.1
Mandatory Minimum Term:	1st off (Serious misd)-**None**[1]; 2nd off (w/n 6 yrs) (aggravated misd)-**7 con dys**[2&3] §321J.2(2); 3rd and sub offs (w/n 6 yrs) (Cl D felony)-**30 con dys**[3]; Serious Injury related to DWI where BAC is 0.10 or more (aggravated misd)-**None**
Fine:	
Amount ($ Range):	1st off (Serious misd)-**$500 to $1,000**; 2nd off (w/n 6 yrs) (Aggravated misd)-**$750 to $5,000**; 3rd and sub offs (w/n 6 yrs) (Cl D felony)-**Not more than $7,500**; Serious Injury related to DWI where BAC is 0.10 or more (aggravated misd)-**Not more than $5,000** See Civil Penalty on p. 3-168.
Mandatory Min. Fine ($):	1st off (serious misd)-**$500** (See community service below.); 2nd off w/n 6 yrs (Aggravated misd)-**$750**; 3rd and sub offs w/n 6 yrs (Cl D felony)-**$750**; Serious Injury related to DWI where BAC is 0.10 or more (aggravated misd)-**None**
Other Penalties:	
Community Service:	I. 1st off (serious misd)-**Not more than 200 hrs** in lieu of the fine. §321J.2(2)(a) II. For 1st or sub offs, the court may order a person 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 DWI off, the court may order the defendant to make restitution for any damages resulting from the off.[4]. §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; if a defendant is allowed such deferment their license is to be revoked from 30-90 dys; however, a restricted hardship license may be issued. §§321J.4(2) & 907.3

[1]There is a minimum 48 hr sentence which may be suspended.

[2]This sentence may not be suspended. However, the statute is silent as to probation.

[3]For 2nd and subsequent offenders the 7 dy and 30 dy minimum jail sanctions respectively must be served consecutively. However, if these minimum jail terms would cause a hardship on the defendant or if there is insufficient jail space, these minimum terms may be reduced to 48 con 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(2)(c)

[4]The maximum amount of restitution damages that can be assessed under §321J.2(8) is $2,000.

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

Ignition interlock. The defendant may be required to install an "ignition interlock" system on their vehicle(s) §321J.4(7)
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
Civil Penalty. A separate (i.e., additional) civil penalty of **$200** is assessed against a defendant who has had their license revoked as a result of a DWI conviction. Part of the money collected from these penalties is placed in a victim reparation fund. §321J.17

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

Yes 0.10 (BAC/BrAC/UrAC) 1st violation-Rev **180 dys** (or until the person reaches the age of 18 whichever period is longer; see §321J.4(6); 2nd and sub violation (w/n 6 yrs of any other DWI rev)-Rev **1 yr** (mandatory) Note: A restricted hardship license may be issued for a 1st Admin. Per Se rev. See the Special Note on p. 3-169. §§321J.12 & 321J.20

Other:

Under §§321.210 & 321.212, a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

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

1st off-**Rev**; 2nd off-**Rev**; 3rd and subsequent offs-**Rev**; Any DWI off conviction where there has been a serious injury-**Rev** §321J.4

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

1st off-**180 dys**; 2nd off (w/n 6 yrs)[1]-**1 yr**; 3rd and sub. off (w/n 6 yrs)-**6 yrs** DWI off involving serious injury-**1 yr**[2] See Footnote No. 3 below. §321J.4

Mandatory Minimum Term of Withdrawal:

2nd off-**1 yr**; 3rd and sub. offs-**2 yrs** §§321J.4 & 321J.20[4] See the Special Note on p. 3-169.

[1]A previous off includes either an admin. per se action or an implied consent law violation.
[2]In addition to any other revocation or suspension.
[4]Except as indicated, a person may obtain a temparory restricted license under §321J.20.
[3]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)

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

Special Note: A person, who has had their license revoked for a DWI offense/admin. per se violation and who is not otherwise eligible for a restricted license, may, nevertheless, receive such a license on two (2) conditions: (1) Such a license is needed in order for the person to remain employed and (2) the person installs an "**ignition interlock**" system in their vehicle(s). §321J.4(8) & *Dept. of Transp. v. Iowa Dist. Court*, 458 N.W.2d 1 (Iowa 1990).

Other:

Rehabilitation:

Alcohol Education: Yes 1st or sub. off §§321J.3 & 321J.22

Alcohol Treatment: Yes If a defendant's BAC is .20 or more or if the defendant has been convicted of a 2nd or sub. DWI off, treatment may be ordered per the recommendations of the evaluation conducted under §321J.3(1). §321J.3(2) Note: Under other provisions of law, the court may also order a defendant to complete a treatment program pursuant to the evaluation for alcohol or drug abuse conducted under §901.4A. §901.5(8) In addition, as part of a suspended sentence, for defendants convicted of a 2nd, 3rd or subsequent DWI offense, the court may commit such persons to an inpatient treatment program in lieu of incarceration. §321J.3(2)

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: No

Terms Upon Which Vehicle Will Be Released:

Other: **Registration/Plate Impoundment.** For a 3rd or subsequent DWI offense conviction, the registration certificate and plates of all vehicles owned by the defendant shall be impounded. New registration plates shall not be issued until the defendant's license has been reissued or reinstated. However, if a member of the household has a valid license, "special registration plates" with distinctive numbers and letters, that are "readily identifiable" by law enforcement officers, may be issued for such vehicles. The law states that "[a]pplication for and acceptance of special plates constitutes implied consent for law enforcement officers to stop the vehicle bearing special plates at any time." §321J.4A

Miscellaneous Sanctions Not Included Elsewhere: Persons sentenced to the county jail may be assigned to "**home detention**" instead of incarceration. §356.26

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Class D felony If death is related to DWI/reckless driving-Class C felony §707.6A(1) & (2)
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)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Class D felony-Not more than **$7,500**[1] §902.9(4) Class C felony-Not more than **$10,000**[1] §902.9(3)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §706.6A(1)(a)
Length of Term of Licensing Withdrawal:	**6 yrs**
Mandatory Action--Minimum Length of License Withdrawal:	**6 yrs**
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	
Imprisonment (Term):	Serious misd - Not more than **1 yr** §§321J:21 and 903.1(1)(b)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$1,000**[1] §903.1(1)(b)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp or rev** §321J.21
Length of Term of License Withdrawal Action:	Original period of Susp or Rev extended an additional like period §321J.21
Mandatory Term of License Withdrawal Action:	Original period of Susp or Rev extended an additional like period §321J.21

[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

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** 321.55 and 321.560
Grounds for Being Declared an Habitual Offender:	3 serious offs (w/n 6 yrs) or 6 minor offs (w/n 2 yrs)
Term of License Rev While Under Habitual Offender Status:	If based on serious offs-**2 to 6 yrs**; if based on minor offs-**1 yr** **Special Note:** A person, who has had their license revoked as an habitual offender based only on DWI offense convictions and who is not otherwise eligible for a restricted license, may, nevertheless, receive such a license on two (2) conditions: (1) Such a license is needed in order for the person to remain employed and (2) the person installs an "**ignition interlock**" system in their vehicle(s). §321J.4(8)
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Aggravated misd §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):	Not more than **$5,000**[1]
Mandatory Minimum Fine ($):	**None**
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** (Year Eff: 1986) §§123.47, 123.47A & 123.59
Minimum Age (Years) Possession:	**21** There are exemptions for medical reasons, employment and home use with parental consent. §§123.47 & 123.47A
Minimum Age (Years) Consumption:	**None**

[1]See Footnote No. 1 on p. 3-170.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
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 *Lewis v. State*, 256 N.W. 2d 181 (Iowa 1977), & *Haafke v. Mitchell*, 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 served alcoholic beverages by social hosts. *Bauer v. Dann*, 428 N.W.2d 658 (1988)[2&3], & §123.49(1)
Other:	None
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Simple misd** §§123.49(1), 123.50(1) & 903.1(1)(a) See the Special Note on p. 3-173.
Term of Imprisonment:	Not more than **30 dys**
Fine ($ Range):	Not more than **$100**[4]
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**[5] §§123.39, 123.40 & 123.50(2)
Length of Term of License Withdrawal:	Susp not more than **1 yr** Rev **2 yrs** Civil Penalty[4] (Fine): Not more than **$1,000** §123.39(1)(a)

[1]The 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 be 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)

[2]In the Bauer case, 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.

[3]*Fullmer v. Tague*, 500 N.W.2d 432 (Iowa 1993)

[4]See Footnote No. 1 on p. 3-170.

[5]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 (fine). §123.39(1)(c)

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:	**Simple misd** §§123.3(33), 123.47, 123.47A, 123.49(2)(h), 123.50 & 903.1(1)(a)[1&3] See Footnote No. 6 and the Special Note below.
Term of Imprisonment:	Not more than **30 dys**[1]
Fine ($ Range):	Not more than **$100**[1&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** 1st off - **Susp**[4]; 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)[5]
Length of Term License Withdrawal:	1st off - **14 dys**[4]; 2nd off w/n 2 yrs - **30 dys**; 3rd off w/n 3 yrs - **60 dys**; 4th off w/n 3 yrs - **2 yrs**[5] **Special Note:** Under §123.39(1)(a), it may also be possible to suspend the license for not more than 1 yr. Civil Penalty (Fine): Not more than **$1,000** §123.39(1)(a) Important: See Footnote No. 4 on p. 3-172.

[1]If the person who receives the alcoholic beverage is either 19 or 20, the only penalty that can be assessed against a licensee is a fine of not more than $50 for a simple misd. §123.47A

[2]See Footnote No. 1 on p. 3-170.

[3]Note: A "legal age" person is defined as one who is 19 years or older. §§123.3(33) & 123.47

[4]For a 1st offense, the license is not suspended but the violator is assessed a "civil penalty" of $300. If the violator does not pay this assessment, the license is suspended for 14 dys. §123.50(3)(a)

[5]These licensing sanctions do not apply to licensees if the person who receives the alcoholic beverage is either 19 or 20 years old. §123.47A

[6]Note: In addition the provisions of §123.49(h) making it an offense to sell alcoholic beverages to a person under 19 years old, §123.59 also makes is an offense to sell alcoholic beverages to such persons. 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)). See the Special Note below.

Special Note: Sec. 123.49 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)).

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** §123.28 The law states that "a person driving a motor veh. shall not knowingly possess in a motor veh. upon a public street or highway an open or unsealed bottle, can, jar or other receptacle containing an alc. bev., wine, or beer with the intent to consume..."
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..."

STATE:	**KANSAS**
General Reference:	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 Level):	**0.08**[1] §8-1567(a)(1), (a)(2) & (q)(1)
Presumption (BAC Level):	**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:	**0.08** 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. 3-179.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**Yes** §8-1012
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[2] §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:	**None**

Chemical Tests of Other Substances for BAC Level 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.[3]
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** §§8-1008(c) & (d), 8-1567, 21-4603 and 21-4604

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.08 or more.

[2]No arrest is required if the person has been involved in a motor vehicle accident resulting in property damage, personal injury or death.

[3]A 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 BAC level 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.

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): **None**

Other: **None**

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): **No**

Administrative Licensing Action (Susp/Rev): **Susp 1 yr** (Mandatory) §§8-255(b), §§8-256(a), 8-1001, 8-1002(a) & 8-1014(a)

Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment: 1st off (Cl B nonperson misd)-**48 con hrs to 6 mos**[1]; 2nd off (w/n 5 yrs) (Cl A nonperson misd)-**90 dys to 1 yr**; 3rd and subsequent offs (w/n 5 yrs) (Severity Level 9 Nonperson Felony)-**90 dys to 1 yr**[2] §§8-1567(d), (e), (f) & (k)(3) and 21-4502(1)(a)

Mandatory Minimum Term: 1st off-**48 con hrs**[1]; 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. 3-179.

Note: Under the DWI law, "imprisonment" includes "any restrained environment" under the control of a court and law enforcement agency. §8-1567(q)(2)

[1]Under §§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 & Comment:** For this type of felony offense, the sentencing guidelines gird provides for sanctions which are different from than those given in the DWI law (as noted above). See Sentencing Guidelines on p. 3-177. As a result, a conflict on sentencing may exist in the law. However, neither the DWI law nor the statutory provisions related to the sentencing guidelines grid appear to provide any guidance as to how this potential conflict should be resolved.

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

Fine:	
Amount ($ Range):	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 $2,500**[1] §8-1567(d), (e) & (f) See Footnote No. 2.
Mandatory Minimum Fine ($):	DWI Offenses-2nd off-**$500**[3] §21-3405b(b)(1)
Other Penalties:	
Community Service:	1st off-**100 hrs** (in lieu of imprisonment) §8-1567(d), ; 2nd and subsequent offs (w/n 5 yrs)-May be ordered in lieu of fine. A $5 credit is allowed on the fine for every hr of community service. §8-1567(i)
Restitution (eg Victim's Fund)	**Yes** (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. 3 on p. 3-175 and Special Note No. 1 on p. 3-178.
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes 0.08** (BAC/BrAC) §8-1013(a) & (h) 1st occurance[4]-Susp **30 dys** (Mandatory) and 60 dys restricted driving privileges (Same restrictions as for the first 60 day restriction period for a 1st DWI off.); sub. occurance[4]-Susp **1 yr** (Mandatory) §§8-1001, 8-1002 & 8-1014(h)
Other:	None

[1]**Special Note:** This fine sanction is listed in the DWI law. However, §179(a) of Ch. 291, Session Laws 1993, provides for a possible fine of up to $100,000 for the conviction of a Severity Level 9 Felony offense.
[2]An "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)
[4]An "occurance" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction. §8-11013(e)

Sentencing Guidelines. For felony offenses committed after 7/1/93, imprisonment sanctions 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 5 Person Felony, there is a "presumed" incarceration sanction of **50 to 55 mos**. The imprisonment periods listed in the grid (and noted above) may be increased (by not more than twice the maximum sentence listed in the grid) depending upon the aggravating circumstances. However, especially in cases involving Severity Level 5 Person Felonies, 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. §§254, 263 & 265 Ch. 291, Session Laws 1993

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

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): 1st off (occurance)[1]-**Susp/Restriction**;sub. off (occurance)[1]-**Susp** §§8-254, 8-1014(c), 8-1567(l) & 21-3405b(b)(4)

Term of License Withdrawal (Days, Months, Years, etc.): 1st off (occurance)[1]-**30 dys susp and 330 dys restriction**[2] See Special Note No. 1 below. sub off (occurance)[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 (occurance)[1]-**30 dys**; sub off (occurance)[1]-**1 yr** §8-255(b))

Special Note No. 1: Under §§§8-292 and 8-1015, the following restrictions are placed on a person's driving privileges during the 330 day period. (1) For the first 60 days, the person may only drive (a) to and from either a place of employment or an alcohol education (or treatment program) or (b), for certain specified exceptional circumstances, the court may require the person to operate only vehicles equipped with an "**ignition interlock**" device. (2) For the remaining 270 days, the person may drive (a) for the purposes indicated above, (b) in the course of employment, (c) for medical reasons, (d) for purposes of complying with probation requirements and (e) as ordered by the court. In **lieu of** or **in addition** to any of the above restrictions, the court may order that during this 270 period that a person not operate a motor vehicle unless it is equipped with an "**ignition interlock**" device.

Special Note No. 2: For a 2nd or subsequent conviction where the offender had a BAC/BrAC level of 0.15 or more, a defendant must be restricted to only operating vehicles that are equipped with and "**ignition interlock**" device. §8-1015(b)(4) **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.

[1]An "occurance" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction. §8-1013(e)
[2]The license is suspended for 30 days and thereafter restricted driving privileges are granted for 330 days. §§8-1014(c)(1) & 8-1567(d)

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

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
Alcohol Treatment:	See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	**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. However, 2nd and sub. DWI offenders must, nevertheless, serve at least 48 con. hrs. of imprisonment. §8-1567(g)

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 level of 0.04 or more, (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 of 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. See §§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 and 8-2,144.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	Yes Involuntary Manslaughter unintentional death associated with a DWI or other driving offenses-Severty Level 5 Person Felony §21-3404 Vehicle Homicide Death caused by operation of a vehicle in a manner which causes unreasonable risk-Class A Person Misd. §21-3405
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Severity Level 5 Person Felony-50 to 55 mos[1,2&3]; Class A Misd-Not more than 1 yr §21-4502 and §254 of Ch. 291, Session Laws 1993
Mandatory Minimum Term:	None[3]
Fine ($ Range):	Severity Level 5 Person Felony-Not more than $300,000[2]; Class A Misd-Not more than $2,500 §179(a) & (b) of Ch. 291, Session Laws 1993
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	DWI Related Involuntary Manslaughter-Susp Vehicle Homicide-Rev §8-254
Length of Term of Licensing Withdrawal:	DWI Related Involuntary Manslaughter-Sincethis offense is DWI related the suspensions are the same as for DWI offenses. Vehicle Homicide-1 yr §8-256(b)
Mandatory Action--Minimum Length of License Withdrawal:	DWI Related Involuntary Manslaughter-Mandatory suspensions are the same as for DWI offenses. Vehicle Homicide-None Restriced driving privileges may be granted. §8-254(b)
Other:	None

[1]For 2nd or 3rd convitions, the incarceration sanction may be increased by twice or three times these time periods respectively. §21-4504(a) & (b)
[2]This sanction applies to offenses committed after 7/1/93.
[3]See Sentencing Guidelines on p. 3-177.

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 (Cl B Nonperson Misd)-Not more than **6 mos**; 2nd off (Cl A Nonperson Misd)-Not more than **1 yr**; 3rd and subsequent off (Severity Level 9 Nonperson Felony)-**7 to 9 mos**[1] §§8-262 & 21-4502 and §254 Ch. 291, Session Laws 1993
Mandatory Minimum Term of Imprisonment:	2nd and sub. off-**5 dys**[2A3] §8-262(a)(3)
Fine ($ Range):	1st off-Not more than **$1,000**; 2nd off-Not more than **$2,500**; 3rd and subsequent off-Not more than **$100,000**[1] §179(a) & (b) Ch. 291, Session Laws 1993
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.
Habitual Traffic Offender Law:	
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**
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] §254 Ch. 291, Session Laws 1993
Mandatory Minimum Term of Imprisonment:	**None**

[1]This sanction applies to offenses committed after 7/1/93. See Sentencing Guidelines on p. 3-177.
[2]*State v. Harpool*, 788 P.2d 281 (Kan. 1990)
[3]A 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.

Other Criminal Actions Related to DWI: (continued)

Fine ($ Range):	Not more than $100,000[1] §179(a) Ch. 291, Session Laws 1993
Mandatory Minimum Fine ($):	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):	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:	Yes
Vehicle Passengers:	No
Pedestrian:	Yes Note: A test is not required for persons under 14 years old.
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:	21[2] §§41-715, 41-727(a) & 41-2721(a) There is an employment exception.
Minimum Age (Years) Consumption:	21[2] §§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:	No *Thies v. Cooper*, 753 P.2d 1280 (Kan. 1988)[3]
Other:	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)

[1]This sanction applies to offenses committed after 7/1/93.
[2]Except 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
[3]This 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.

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 §41-715[1]
Term of Imprisonment:	Not more than **30 dys**[1] §41-715
Fine ($ Range):	**$100 to 250**[1] §41-715
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev**[2] §§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 **$1,000** may also be imposed. §41-328(a)
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	See the Special Note below.
Type of Criminal Action:	Cl B Person Misd (Furnishing alcoholic beverages to any person under 21 yrs of age) §§21-3610 & 21-3610a
Term of Imprisonment:	Not more than **6 mos** §21-4502(1)(b)
Fine ($ Range):	Not more than **$1,000**[3] §21-4503(2)(b)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	See the Special Note below.
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or Rev** §§41-2611(f), 41-2626 & 41-2708(a)
Length of Term License Withdrawal:	Not specified for alcoholic beverages with an alcoholic content of more than 3.2%. For cereal malt beverages (alcoholic beverates with an alcoholic content below 3.2%), license revocation for 6 mos.

[1]These 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

[2]Appears only to apply to the service of alcoholic beverages containing more than 3.2% alcohol.

[3]There is a mand. min. fine of $200. §§21-3610 & 21-3610a(b)

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)

Other State Laws Related To Alcohol Use: (continued)

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):	Yes §§41-804 & 41-2719
Anti-Consumption Law (Yes/No):	Yes Driver and passengers §§41-719(a) & 41-2720(a)

STATE:	**KENTUCKY**
General Reference:	Kentucky Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the Influence of Alcohol §189A.010(1)(b)[1]
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[2] §§189A.010(1)(a) & 189A.005(1)
Presumption (BAC Level):	None[3]
Types of Drugs/Drugs and Alcohol:	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)
Other:	For Commercial Motor Vehicle Operators, see p. 3-189.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §§189A.100 & 281A.230 (Commercial Motor Vehicle Operators)
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §189A.103(1)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §189A.103(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) *Commonwealth v. Hager*, 702 S.W.2d 431 (Ky. 1986)
Other Information:	The law provides that no person shall be compelled to submit to a chemical test. However, the law does allow a court to issue a search warrant requiring either a blood or a urine sample for a chemical test for BAC if a person has been arrested in connection with either a DWI related death or physical injury. §189A.105(2)(b) **Special Note:** If a person has a BAC level of 0.15, they must be detained at least 4 hrs following their arrest. §189A.110

[1]The 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).

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

[3]Sec. 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 level of 0.10 or more.

Chemical Tests of Other Substances for BAC Level 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** If a defendant's BAC/BrAC is **0.10** or more or if they have 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 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. 6 mos**; 2nd Refusal (w/n 5 yrs)-**Susp. 18 mos**; 3rd Resusal (w/n 5 yrs)-**Susp. 36 mos**; 4th and Sub. Refusals (w/n 5 yrs)-**Susp. 60 mos** 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:	1st off (Cl B misd)-**48 hrs-30 dys**; 2nd off (w/n 5 years) (Cl A misd)-**7 dys-6 mos**; 3rd off (w/n 5 years) (Cl A misd)-**30 dys-12 mos**; 4th and subsequent off (w/n 5 yrs)(Cl D Felony)-**1 to 5 yrs** §§189A.010(4), 532.020 & 532.060 **Special Note:** For 1st and 2nd offenses, 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.
Mandatory Minimum Term:	1st off-**48 hrs**[1]; 2nd off (w/n 5 years)-**7 dys** (with 48 con. hrs); 3rd off-**30 dys** (with 48 con. hrs); 4th and subsequent offs-**120 dys** (with 48 con. hrs) §189A.010(5) **Special Note:** A person may be able to serve the mandatory jail sanction via "home incarceration". §§189A.010(5) & 532.230
Fine:	
Amount ($ Range):	1st off-**$200-$500**; 2nd off (w/n 5 years)-**$350-$500**; 3rd off-**$500-$1,000** §189A.010(2); 4th and subsequent offs-**$1,000 to $10,000** (§534.030) §189A.010(4)
Mandatory Minimum Fine ($):	**None**[1]
Other Penalties:	
Community Service:	1st off-**48 hrs to 30 dys**[1]; 2nd off (w/n 5 years)-**10 dys to 6 mos**[2]; 3rd and subsequent offs (w/n 5 years)-**10 dys to 12 mos**[2] §189A.010(4)
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:	**Home Incarceration.** For misdemeanor offenses, a defendant could be sentenced to "home incarceration". §532.210 **Service Fee.** A DWI offender must pay a **$150** service fee in addition to any other fine. §189A.050.

[1]For 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. §189A.010(4)(a) & (6)

[2]A defendant may be sentenced to community service in addition to any other sanctions imposed. It appears that, if the court imposes a community service sanction, the minimum term noted must be served. §189A.010(5)

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

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

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. Also, after the first 30 dys of this suspension, a person may be issued a hardship license (§189A.410). 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)

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

1st and subsequent offs-Rev §189A.070(1) For persons under 18 years old, see Footnote No. 1.

[1]Under §189A.070(4), a person, 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.

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. 3-191.
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. **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)

[1]See also §§186.560(5) & 189A.070(1)(a).

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 level of 0.04 or more, (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.). 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)). See §§281A.010(2), (8), (10) & (11), 281A.190, 281A.210 and 281A.220.

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

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:

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 Cl C felony. §507.040(2) See Footnote No. 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 manslaughter[1] 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:	

[1]This could include either (1) manslaughter in the second degree (§507.040) or reckless homicide (§507.050).

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 (Cl B misd)-Not more than **90 dys**; 2nd off (Cl A misd)-Not more than **12 mos**; 3rd and subsequent offs (Cl D felony)-**1-5 yrs** §§189A.090(2), 532.060 & 532.090
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	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
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	1st off-**Rev**; 2nd off-**Rev**; 3rd and subsequent offs-**Rev** §189A.090
Length of Term of License Withdrawal Action:	The driver's license shall be revoked for twice the original period of rev §189A.090(3)
Mandatory Term of License Withdrawal Action:	**Yes** As indicated above.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §186.641 et seq.
Grounds for Being Declared an Habitual Offender:	**3 or more serious offs** (w/n 5 yrs) (including DWI offs); **15 moving violations** (w/n 5 yrs) §§186.641 & 186.642
Term of License Rev While Under Habitual Offender Status:	**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
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Misd** §§186.992 & 431.060(2)

[1]This could include either (1) manslaughter in the second degree (§507.040) or reckless homicide (§507.050).

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
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):	Possible[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 §§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):	Yes[2] §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)

[1]Language 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

[2]This 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.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:	No[1]
Other:	None
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	1st off-Misd; 2nd and subsequent off-Misd §§241.010(2), 244.080(2) & 244.990(1)
Term of Imprisonment:	1st off-Not more than 6 mos; 2nd off-Not more than 6 mos
Fine ($ Range):	1st off-$100 to $200; 2nd off-$200 to $500
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes Susp or Rev[2] §§243.480, 243.490 & 243.500
Length of Term of License Withdrawal:	2 yrs §243.100(5)
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	1st off-Misd; 2nd off-Misd §§241.010(2), 244.080(1) & 244.990(1)
Term of Imprisonment:	1st off-Not more than 6 mos; 2nd off-Not more than 6 mos
Fine ($ Range):	1st off - $100-200; 2nd off-$200-500
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 Susp or Rev[2] §§243.480, 243.490 & 243.500
Length of Term License Withdrawal:	2 yrs §243.100(5)

[1]See the "caveat" in the *Grayson* case 736 S.W.2d at 335.

[2]Note: For a first violation, in leiu 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 $25 per day the license would have been suspended; for reatil been licensees such fine is $10 per day. §243.480(1) For a second violation (w/n 2 yrs), the license must be revoked or suspended. §243.500(4)

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 §244.020 The law states that "no person shall drink any alcoholic beverage in any public place in or upon any passenger coach, street car or other vehicle commonly used for the transportation of passengers." .

STATE:	**LOUISIANA**
General Reference:	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:	Under the influence of alcohol[1] §14:98(A)(1)
Illegal Per Se Law (BAC Level):	**0.10** §14:98(A)(2)[1]
Presumption (BAC Level):	**0.10** §32:662(A)(1)(c)
Types of Drugs/Drugs and Alcohol:	Under the influence of **Any Controlled Dangerous Substance** §14:98(A)(3)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §32:661
Implied Consent Law Applies to Drugs (Yes/No):	Yes §32:661(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal cases only; prohibited in civil cases except admin. lic. actions) §32:666(A)(3)
Other Information:	Under §32:666(A), a driver 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. 1990)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §32:661
Urine:	Yes §32:661
Other:	Other bodily substance §32:661

[1]Note: All DWI offenses are classified as the crime of operating a vehicle while intoxicated.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from 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 level of 0.04 or more, (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 level of 0.04 or more 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 any "measurable" or "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§32:401(14), 32:414.2 & 32:427(A)(2).

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Optional §14:98(G)**

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 for **180 dys** (90 dys mand.); 2nd and subsequent refusals-Susp for **545 dys** (Mandatory) §§32:667(B)(2) and 32:668(B)(1), (2), & (3) and *Dixon v. Department of Public Safety and Corrections*, 570 So.2d 130 (La.App. 3 Cir. 1990)
Other:	**Special Note:** A hardship license is only available to drivers for a 1st refusal after the first 90 dys of the susp period have passed. *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).

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off-**10 dys to 6 mos**; 2nd off (w/n 10 yrs)-**30 dys to 6 mos**; 3rd off-felony (w/n 10 yrs)-**1 to 5 yrs** (with or without hard labor)[3]; 4th off felony (w/n 10 yrs)-**10 to 30 yrs** (w/hard labor) §14:98 Note: Periods served in incarceration do not "count" toward the 5 yr period for determining the sanctions for 2nd or subsequent offs. (§14:98(F)). DWI related injury-Not more than **6 mos** §§14:2(4) & 14:39.1
Mandatory Minimum Term:	1st off-[1]; 2nd off (w/n 10 yrs)-[2]; 3rd off-felony (w/n 10 yrs)-**6 mos**[3]; 4th off-felony (w/n 10 yrs)-**1 yr**[4] §14:98(E) See Miscellaneous Sanctions on p. 3-200.
Fine:	
Amount ($ Range):	1st off-**$125-$500**; 2nd off (w/n 10 yrs)-**$300-$1,000**; 3rd off (w/n 10 yrs) felony-Not more than **$2,000**; 4th off (w/n 10 yrs) felony - None; DWI related injury (veh. negligent injury)-Not more than **$500** See Footnote No. 5.
Mandatory Min. Fine ($):	**None**

Special Note: The time periods used to determine whether enhanced sanctions will be imposed on 2nd or subsequent offenders is 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.

[1]Alternatives to the imposition of sentence. The imposition of sentence is mandatory unless one of these alternatives is taken: (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.

[2]Alternatives to the imposition of sentence. The imposition of sentence is mandatory unless one of these alternatives is taken: (a) Serve a minimum of 15 dys in jail and participate in substance abuse and driver improvement programs or (b) 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.

[3]If 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.

[4]Three (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.

[5]Defendants 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)

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

Other Penalties:	
Community Service:	See Footnotes Nos. 1 & 2 on p. 3-197.
Restitution (e.g. Victim's Fund)	None[1]
Other:	**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 admistering 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** in jail and **$125** fine; 2nd off-**30 dys** in jail and **$300** fine; 3rd off-**6 mos** in jail; 4th off-**2 yrs** in jail §14:98(J)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes** BAC level of **0.10** 1st Off-Susp for **90 dys** (30 dys mand. followed by 60 dys of restricted driving privileges. For exceptions, see Footnotes Nos. 2 & 3) 2nd and subsequent offs (w/n 5 yrs)-**Susp for 365 dys** (mand) See Footnote No. 3. §§32:667(B)(1) & 32:668(B)(3) See the Special Note on p. 3-197.
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" (but have not necessarily been convicted of) 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.

[1]A 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)

[2]When 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)

[3]**Special Note:** A person, who has been convicted of and placed on probation for a DWI offense, may be allowed unrestricted 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** notwithstanding the fact they may also be subject to mandatory licensing action under the administrative per se law. §32:378.2(G)

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

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	1st & subsequent offs-**Susp**[1] §§32:401(18), 32:414 & 32:430
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**90 dys** (hardship driving privileges are available); 2nd off (w/n 5 yrs)-**12 mos**; 3rd & and subsequent offs (w/n 5 yrs)-**24 mos** §§32:414, 32:415 & 32:415.1 See Footnote No. 1.
Mandatory Minimum Term of Withdrawal:	1st off-**None**[2] (hardship driving are available); 2nd offs (w/n 5 yrs)-**12 mos**[2]; 3rd and subsequent offs (w/n 5 yrs)-**24 mos**[2]

Important. See the Special Note on p. 3-197.

[1]I. 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 provides for no 30 dy waiting period.

[2]For either a 1st, 2nd or 3rd offense, restricted driving privileges are available at any time, notwithstanding other provisions of law related to mandatory licensing action, provided the person has been (1) placed on probation and (2) they agree to only operate motor vehicles equipped with an **ignition interlock device**. §§15:306(A), 32:378.2(A), (B) & (G)

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:	**No**
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.** The court may require a person, who has been place on probation for a 1st, 2nd or 3rd DWI offense, to only operate motor vehicles equipped with **ignition interlock devices**. §32:378.2

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes Felony/Misd**[1] Restricted to death caused by a driver while DWI, or under the influence of "controlled dangerous substances". §14:32.1
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**2 to 15 yrs**[2] §14:32.1(B)
Mandatory Minimum Term:	**1 yr**
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:	The offender may be required to participate in a substance abuse and/or driver improvement program. §14:32.1(B)

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

Sanction:	
Criminal:	
Imprisonment (Term):	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.
Fine ($ Range):	Not more than **$500** (if CDL/CMV related, not more than $5,000) 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** (if CDL/CMV related, not more than $2,500) §32:415
Mandatory Minimum Fine:	**None**

[1]If the defendant is imprisoned with hard labor, the conviction is considered a felony; otherwise it is a misdemeanor. §§14:2(4) & (6) and 14:32.1(B)

[2]As 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).

Other Criminal Actions Related to DWI: (continued)

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 (mandatory) (Note: A hardship license is available for first offenders. §32:415.1)
Habitual Traffic Offender Law:	
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 5 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** §§32:1477 & 32:1479 (Note: A 1st time habitual offender may apply for a hardship license under §32:1477(B). See also §32:1477(C)(3).) **Special Note:** A driver's license may be restored after 3 yrs. provided certain conditions are satisfied. (1) The driver must petition a court and show "good cause" why their driving privileges should be restored. And, (2) the driver must met certain financial responsibility requirements. §32:1479(2)
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Misd** §14:2(4) & (6)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**1 to 5 yrs** §32:1480 See Footnote No. 2 on p. 3-201.
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):	Yes §32:398(E) & (F) (A report is made by the cornor.)
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] §§14:91, 14:91.1, 14:91.2 & 14:91.5 (Year Eff: 1987)
Minimum Age (Years) Possession:	21 §§14:91.1, 14.91.2 & 14:91.5 (For persons 18 to 21 years old, there are exemptions for religious, medical purposes, private residence or private club.)
Minimum Age (Years) Consumption:	21 §14:91.5 Note: The term "public possession" in §14:91.5(A) appears to include the consumption of alcoholic beverages in a public place. Applies only to persons 18 to 21 years old. (There are exemptions for religious, medical purposes, private residence or private club.)
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	No Under §9:2800.1, neither a commercial server nor a social host can be held liable for the actions of an intoxicated patron or guest who is over the legal drinking age. *Bourgeois v. Puglisi*, 615 So.2d 1047 (La.App. 1 Cir. 1993) This statute does not address the liability of commercial servers or social hosts with regards to the actions of intoxicated minors who have been served alcoholic beverages.

[1]It is illegal for a person under 21 years old to purchase alcoholic beverages. §§14:91.1, 14:91.2 & 14:91.5 Commercial dispensers of alcoholic beverages and their employees, however, are not criminally liable for selling such beverages to minors unless they are less than 18 years old. §§26:90(A)(1) & 26:286(A)(1) and *Mills v. Harris*, 615 So.2d 533 (La.App. 3 Cir. 1993)

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):	**Liability Limited.** A licensee is liable to an injured third party (or an injured patron) only if the licensee commits an "affirmative act" toward the intoxication of the patron. The mere serving of alcoholic beverages is not such an "affirmative act". *Mills v. Harris*, 615 So.2d 533 (La.App. 3 Cir. 1993), *Bertrand v. Kratzner's County Mart*, 563 So.2d 1302 (La.App. 3 Cir. 1990), & *Pence v. Ketchum*, 326 So.2d 831 (La. 1976) **Special Note:** However, liability does apply to the actions of intoxicated minors. §9:2800.1 & *Edson v. Walker*, 573 So.2d 545 (La.App. 1 Cir 1991)[1] Note: This case concerned actions of a person under 18 yrs old.
Dram Shop Actions-Social Hosts:	**Limited Liability.** Sec. 9:2800.1 prohibits liability actions against social hosts for injuries sustained by or caused by an intoxicated adult guest. *Hollis v. City of Baton Rouge*, 593 So.2d 388 (La.App. 1 Cir. 1991). However, see *Garcia on behalf of Garcia v. Jennings*, 427 So.2d 1329 (La.App. 2 Cir. 1983)[2], & *Gresham v. Davenport*, 542 So.2d 48 (La.App. 2 Cir. 1988)[3].
Other:	**None**

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 1/2 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 1/2 of 1% to 6%-**30 dys-6 mos** §26:521

[1]See also *Pence v. Ketchum*, 326 So. 2d 831 (La. 1976), *Chausee v. Southland*, 400 So.2d 1199 (La. App. 1 Cir. 1981) (writ denied 404 So.2d at 278, 497 & 498), & *Farrington v. Houston's Inc.*, 750 F.2d 492 (5th Cir. 1985).

[2]This 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.

[3]In 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 ridding in. Passengers ridding in the rear seats of the vehicle were injured in the accident. These passengers were able to maintain a common law dram shop action against the minor social host.

Other State Laws Related To Alcohol Use: (continued)

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 1/2 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 $2,500** §26:292)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Rev or Susp** Not mandatory §§26:90(I) & 26:286(I)[1]
Length of Term of License Withdrawal:	**Not specified**
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	See Footnote No. 1 on p. 3-203.
Type of Criminal Action:	A. For alcoholic beverages with an alcoholic content of 6% or above - **Misd** §§ 26:2(1) & 26:90(A)(1) B. For alcoholic beverages with an alcoholic content of 1/2 of 1% to 6% - **Misd** §§26:241(1) & 26:286(A)(1)[2]
Term of Imprisonment:	Same as for serving alcoholic beverages to an intoxicated person above.
Fine ($ 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:	See Footnote No. 1 on p. 3-203.
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Rev or Susp** Not mandatory §§26:90(I) & 26:286(I)[1]
Length of Term License Withdrawal:	**Not specified**

[1]Under §§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.

[2]Under §14:91, it is an offense for persons over 17 yrs old, who are not licensees or employees thereof, to sell alcoholic beverages to persons under 18 yrs old. The sanctions for this offense are as follows: Jail-not more than 6 mos; fine-not more than $300.

Other State Laws Related To Alcohol Use: (continued)

Anti-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

STATE:	**MAINE**
General Reference:	Maine Revised Statutes Annotated (MRSA)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor 29 MRSA §1312-B(1)(A)
Illegal Per Se Law (BAC Level):	**0.08**[1] 29 MRSA §1312-B(1)(B)
Presumption (BAC Level):	**No**[2]
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Drugs**[3] or (2) a Combination of Liquor and Drugs[3] 29 MRSA §1312-B(1)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No Note: A PBT may be conducted by law enforcement officers without legislative authority. *State v. Pinkham*, 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 MRSA §1312
Implied Consent Law Applies to Drugs (Yes/No):	Yes 29 MRSA §1312
Refusal to Submit Chemical Test Admitted into Evidence:	Yes (Criminal Cases) 29 MRSA §1312(8) & *State v. Allen*, 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 MRSA §1312(11)(D)

[1]There are several statutory provisions concerning the standard for BAC. Twenty-nine (29) MRSA §§1311-A(1-A) and 1312-B(1)(B) define BAC in terms of percent by weight of alcohol in the blood. However, 29 MRSA §1213(5)(D) states that percent by weight is based upon grams of alcohol per 100 milliliters of blood.

[2]For purposes of evidence in proceedings other than those arising under §1312-B (DWI offenses), it shall be presumed that a person was under the influence of intoxicating liquor when he has a blood-alcohol level of 0.08 or more by weight. 29 MRSA §1312(5)(C)

[3]"Drugs" are defined to mean "scheduled drugs" (i.e., controlled substances). 29 MRSA §1310

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person shall not operate or attempt to operate a CMV if they (1) have a BAC level of 0.04 or more (percent by weight of alcohol in the blood) or (2) are under the influence of either alcohol or drugs. For a 1st violation, a person' privilege to operate a CMV is suspended for 1 yr (mand.) (3 yrs (mand.) if transporting hazardous materials); for a subsequent violation or a combination of two violations of the above listed items, this suspension is for life. Note: Maine law provides that the suspension periods (i.e., those given) shall be the same as those proscribed for such offenses under the Federal Commercial Motor Vehicle Safety Act of 1986 (P.L. 99-570). 49 USC Appx §§2707(a) & 2708(a)(15) and 49 CFR §383.51 If a person refuses to submit to a chemical test for either blood or breath where there is probable cause to believe that they were operating a CMV with a BAC level of 0.04 or more, their privilege to operate a CMV is suspended for a mandatory period of 1 yr (3yrs if transporting hazardous materials) for a 1st refusal and permanently for a 2nd or subsequent refusal. See 29 MRSA §1(1-K); 29 MRSA §530-B(2) & (6); 29 MRSA §1312; 29 MRSA §1312-D(5); and, 29 MRSA §2241(O).

Chemical Breath Tests for BAC Level: (continued)

Other Information: (continued)	II. There is case law that appears to hold that a "forced" test may be administered if their is probable cause to believe that a driver has committed a DWI offense and they have refused to submit to a chemical test. *State v. Baker*, 502 A.2d 489 (Me. 1985)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes 29 MRSA §1312[1]
Urine:	Yes 29 MRSA §1312[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 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-180 dys**[2] (A restricted license may be issued after the first 90 dys which are mandatory 29 MRSA §1312-D(5)); Subsequent refusal (w/n 6 yrs)-**Susp for 1 yr**[3] (mandatory) 29 MRSA §1312(2) For failure to submit to a mandatory chemical test-**Susp-1 yr**[3] (mandatory) 29 MRSA §1312(11)(D)

[1]A breath test is administered unless it is unreasonable to give such test. 29 MRSA §1312 However, under 29 MRSA §1312(6-A), a person has a "duty" to submit to either a blood or urine test to determine a category of drug in the person's system and the concentration of such drug, if a law enforcement officer has probable cause to believe that the person was under the influence of a specific category of drug.

[2]A person under 21 years old, who refuses to submit to a chemical test, where there is probable cause that they were driving with a BAC level of 0.02 or more, is subject to mandatory suspension for 1 year. 29 MRSA §2241-G(2)(C)

[3]If 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 MRSA §1313-B

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

Other:	For a refusal to submit to a mandatory chemical test, a person's vehicle's registration/certerficate of title may be suspended. 29 MRSA §2241(1)(N)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off, 2nd off (w/n 6 yrs) and 3rd off (w/n 6 yrs) Cl D Crime-Not more than than **1 yr** 29 MRSA §1312-B & 17-A MRSA §1252 4th or sub. off (w/n 6 yrs) Cl C Crime-Not more than **5 yrs** 17-A MRSA §1252 & 29 MRSA §1312-B(2-A) See the Special Note below.
Mandatory Minimum Term:	1st off-**Not less than 48 hrs**[1] 2nd off (w/n 6 yrs)-**7 days**; sub. offs (w/n 6 yrs)-**30 dys** 29 MRSA §1312-B(2) & 29 MRSA §1312-B(2-A)
Fine:	
Amount ($ Range):	1st off, 2nd off (w/n 6 yrs) and 3rd off (w/n 6 yrs) Cl D Crime-Not more than **$2,000** 17-A MRSA §1301 4th or sub. off (w/n 6 yrs) Cl C Crime-Not more than **$5,000** 17-A MRSA §1301 & 29 MRSA §1312-B(5)
Mandatory Min. Fine ($):	1st off-**$300**[1]; 2nd off (w/n 6 yrs)-**$500**; 3rd off (w/n 6 yrs)-**$750**; 4th or sub. off (w/n 6 yrs)-**$1,000** 29 MRSA §1312-B(2) & (2-A)
Other Penalties:	
Community Service:	Yes as a condition of probation 17-A MRSA §1204(2-A)(L)
Restitution (eg Victim's Fund)	**Yes** I. Direct compensation by the defendant to a victim usually as a condition of probation. 17-A MRSA §§1204(2-A)(B), 1252 & 1321 et seq. II. Also via a victims' compensation fund. Claims cannot exceed $5,000. 5 MRSA §3360 et seq.
Other:	**Surcharge.** A **$30** surcharge must also be paid. However, if the offense was for driving while under the influence of drugs or a combination of liquor and drugs, the surcharge is **$125**. These surcharges are paid into the Highway Fund for the purpose of covering the administration and analysis of chemical tests. 29 MRSA §1312-B(5)

[1]This mandatory sanction applies only when at least one of the following conditions is satisified. The defendant either (1) had a BAC level of 0.15 or more, (2) was driving 30 MPH over the speed limit with a BAC level of 0.08 or more, (3) was eluding a police officer and had a BAC level 0.08 or more, (4) refused to submit to a chemical test or (5) was operating a vehicle with a passenger under 16 years old (**child endangerment**).

Special Note: Under 29 MRSA §1312-B (2-A), 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 $2,500; minimum period of license suspension is 18 mos. 17-A MRSA §§1252 & 1301 In addition, the minimum jail/fine sanctions for a DWI offense apply. 29 MRSA §1312-B(2-A)

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

Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	Yes **0.08** BAC level[1&2] (For BAC standards, see Footnote No. 1 on p. 3-207.) The periods of license susp for 1st and subsequent offs are the same as Post DWI Conviction Licensing Actions (below).[3] 29 MRSA §1311-A **Child Endangerment.** A person, who violates the admin. per se law while transproting a passenger under 16 year old, may have their license suspended for an additional 275 days. 29 MRSA §1311-A(5)(B-1)
Other:	Under 29 §2241(1)(A), a person's license (or certificate of registration/title) may be rev/susp if they have "committed" (but have not necessarily been convicted of) 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.
Post DWI Conviction Licensing Action:	See Footnote Nos. 1 and 4.
Type of Licensing Action (Susp/Rev):	For all offs - **Susp** See the Special Note on p. 3-209 concerning serious bodily injury DWI offenses.
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**90 dys**; 2nd off (w/n 6 yrs.)-**1 yr**; Subsequent offs (w/n 6 yrs)-**2 yrs.** 29 MRSA §§1312-B & 1312-D(1) Note: The licensing agency may increase the above susp. periods up to 275 dys. 29 MRSA §1312-D(1-A)

[1]Under 29 MRSA §2241-G(2)(B), persons, who are under 21 yrs of age (provisional licensees) and who operate a motor vehicle either while in violation of the regular DWI law or while having a BAC level of 0.02 but less than 0.10, have their licenses suspended for 1 yr. After 6 mos of the suspension period, a provisional licensee may be re-issued provided the offender has satisfactorily completed any required alcohol educational or treatment program. 29 MRSA §2241-G(2)(I) However, if the suspension is based on operating a motor vehicle with a BAC level of 0.02 but less than 0.10, a restricted hardship license for either employment or education purposes may be issued without a waiting period. 29 MRSA §2241-G(2)(H)

[2]The 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 while DWI or with a BAC level of 0.08 or more. 29 MRSA §1313-B

[3]A work restricted license may be issued provided that person has not w/n 6 yrs (1) been convicted of a DWI off, (2) had a previous admin. per se suspension or (3) refused to submit to a chemical test. 29 MRSA §1311-A(5-A)

[4]A person's endorsement to operate a school bus is permanently revoked if they drive such a vehicle while DWI. For non-school bus related DWI offenses, a school bus operator's endorsement is suspended for 3 yrs. for a 1st offense and for 6 yrs for a 2nd or subsequent offense (w/n 6 yrs). 29 MRSA §1312-D(12)

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

Mandatory Minimum Term of Withdrawal:

1st off-60 dys (90 dys are mand. if the conditions listed in Footnote No. 1 on p. 3-209 are satisfied.); 2nd off-1 yr; sub. off-2 yrs These are not mandatory in all situations. See the Special Note on p. 3-212.

Special Note: 29 MRSA §1312-D(10) provides that for 1st offenders a lic. susp. action may be stayed and a restricted work related license may be issued "to the extent not in conflict with federal law or federal grant criteria for highway safety programs."

Conditional License. Under 29 MRSA §1312-D(11), 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 6 yrs)-for a period of 6 yrs (after conviction) the driver cannot operate a motor vehicle after having consumed any alcohol.
Under 29 MRSA §2241-J, 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 1 yr either if they (a) are convicted of any alcohol or drug driving offense or (b) have operated a motor vehicle with a BAC level of 0.05 or more Note: If licensing action is based on operationg a motor vehicle with a BAC level of 0.05 or more, a "work-restricted" license may be issued upon a showing of necessity and is contingent upon completion of an alcohol treatment (rehabilitation) program. (2) For refusal to submit to a chemical test where there is probable casuse to believe that the driver has a BAC level of 0.05 or more, susp for not less than 2 yrs.

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

Other:
Rehabilitation:
Alcohol Education: See the Special Note below.
Alcohol Treatment: **Weekend Intervention Program.** A defendant must participate in a weekend intervention program unless they have completed a residential treatment program. 29 MRSA §1312-B(2)(D-1)

Special Note: For 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. If the actual license susp period which has expired is less than 90 dys, the license issued must be restricted to going either to employment or to an alcohol education/treatment program. The time period the license was actually suspended plus the time period for the restricted license must equal at least 90 dys. 29 MRSA §1312-D(2) & (3)
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 MRSA §1312-D(4)

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: (1) For a sub off w/n 6 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 MRSA §2241-H 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 MRSA §1312-I

Terms Upon Which Vehicle Will Be Released:
Other:

Miscellaneous Sanctions Not Included Elsewhere: None

[1]Notwithstanding 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.
[2]The 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)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:	**Yes** **Manslaughter** (1) Cl B Crime[1]-Death caused by either the reckless or criminally negligent operation of a veh. where the traffic offense committed was a civil violation or infraction (2) Cl A Crime[1]-Death caused by criminal negligence or reckless conduct. This includes a DWI offense. *State v. McConvey*, 459 A.2d 562 (Me. 1983) 17-A MRSA §§203(3), 1252 & 1303
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Cl B Crime-Not more than **10 yrs** 17-A MRSA §1252 Cl A Crime-Not more than **40 yrs** 17-A MRSA §1252
Mandatory Minimum Term:	See Footnote No. 2 below.
Fine ($ Range):	Cl B Crime-Not more than **$20,000** 17-A MRSA §1301 Cl A Crime-Not more than **$50,000** 17-A MRSA §1301
Mandatory Minimum Fine:	See Footnote No. 2.
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** 29 MRSA §1313
Length of Term of Licensing Withdrawal:	**5 yrs** 29 MRSA §1313
Mandatory Action--Minimum Length of License Withdrawal:	**5 yrs** 29 MRSA §1313
Other:	**Special Note:** 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 MRSA §1313-A, para. 3

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

Sanction:	
Criminal:	
Imprisonment (Term):	Cl E crime-29 MRSA §2184 Not more than **6 mos** 17-A MRSA §1252 See Vehicle Impoundment/Confiscation under sanctions for a DWI offense on p. 3-212.
Mandatory Minimum Term of Imprisonment:	**7 dys** 29 MRSA §2184, subs. 1-A
Fine ($ Range):	Not more than **$1,000** 17-A MRSA §1301, subs. 1-A
Mandatory Minimum Fine:	**$350** 29 MRSA §2184, subs. 1-A

[1]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 either a Class A or Class B crime without further identifing it as a misdemeanor or a felony. It appears, however, that either a Class A or Class B crime would be considered a felony in most States.
[2]If death is DWI related (Class A Crime), the minimum mandatory sanctions provided for a DWI offense also apply. See p. 3-209. 29 MRSA §1312-B(2-A)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp 29 MRSA §2184, subs. 1-A
Length of Term of License Withdrawal Action:	1-3 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 MRSA §2291 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.)
Term of License Rev While Under Habitual Offender Status:	The rev period is indefinite but relief from such rev may be granted after 1 yr[1]. 29 MRSA §§2293, 2295 & 2296
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	1st off-Cl D crime; sub. off (w/n 5 yrs)-Cl C crime 29 MRSA §§2292, 2298 and 2299
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	1st off-Not less than 1 yr; sub. off (w/n 5 yrs)-Not more than 5 yrs 17-A MRSA §1252(2)(C) & (D)
Mandatory Minimum Term of Imprisonment:	None
Fine ($ Range):	1st off-Not more than $2,000; sub. off (w/n 5 yrs)-Not more than $5,000 17-A MRSA §1301, subs. 1-A
Mandatory Minimum Fine ($):	None
Licensing Actions (Specify):	Relief from habitual offender status shall not be granted for at least 3 yrs from the date the offender would have been eligible. 29 MRSA §2298(2) See Footnote No. 1 below.

[1]A work-restricted license is available at any time. 29 MRSA §2296-B, sub. §1 However, a person is not eligible for this type of license, if one of the offenses used to determine habitual offender status was vehicle homicide. In addition, a person is not eligible for this type of license, if one of the offenses used to determine habitual offender status was an alcohol driving offense, until they (1) complete the required license suspension periods under 29 MRSA §§1311-A & 1312-B and (2) complete any mandatory driver education and/or drug abuse treatment programs. 29 MRSA §2296-B(4)

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 §§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 §2501(1)(E)
Minimum Age (Years) Consumption:	21 Except at home in the presence of either parents or legal guardians 28-A MRSA §§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 $250,000 per single accident or occurance. 28-A MRSA §2509[1]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	No[2]
Dram Shop Actions-Social Hosts:	Yes Liability is limited to situations where the social host served alcoholic beverages (1) to a minor or (2) to a minor or a visibly intoxicated person in a "reckless manner". 28-A MRSA §§2503(5), 2505(2), 2506(1) & 2507
Other:	N/A
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Class E Crime 28-A MRSA §§1, 62(8), 354, 705(2)(A) & 705(3)(A)
Term of Imprisonment:	Not more than 6 mos 17-A MRSA §1252(2)(E)
Fine ($ Range):	For a person, not more than $1,000; for an organization, not more than $10,000 17-A MRSA §1301(1)(C) & (3)(E)

[1]This damage limitation provision has been held constitutional under both the Federal and State constitutions. *Peters v. Saft*, 597 A.2d 50 (Me. 1991)

[2]The 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 now the exclusive remedy for such actions.

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):	Yes Susp or rev 28-A MRSA §§801 & 803(5)
Length of Term of License Withdrawal:	For susp-not specified in the statute; for rev.-1-5 yrs.[1]
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 E Crime 28-A MRSA §§1, 2(20), 62(8), 354, 705(2)(E), 705(3)(E), 1901 & 1902
Term of Imprisonment:	Not more than 6 mos. 17-A MRSA §1252(2)(E)
Fine ($ Range):	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):	Yes Susp or Rev 28-A MRSA §§801 & 803(5)
Length of Term License Withdrawal:	For susp-not specified in the statute; for rev.-1-5 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):	No
Anti-Consumption Law (Yes/No):	Yes Applies only to drivers 29 MRSA §1312-F

[1]An 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)

[2]An 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:	**MARYLAND**
General References:	Annotated Code of Maryland Most references are either to the (1) Transportation Article (Tran.), (2) Courts and Judicial Proceedings Article (C&JP) or to (3) Art. 2B.

Basis for a DWI Charge:

Standard DWI Offense:	I. While intoxicated Tran. §21-902(a)[1] II. Under the influence of alcohol Tran. §21-902(b)
Illegal Per Se Law (BAC Level):	**No**[2]
Presumption (BAC Level):	**No**
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[1] Tran. §21-902(c)(1) & (d)
Other:	A BAC/BrAC of **0.07** is *prima facie* evidence of driving while under the influence. A BAC/BrAC of **0.10** is *prima facie* evidence of intoxication. C&JP §10-307 & Trans. §21-902 For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	**Yes** Tran. §16-205.2
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[3] Tran. §16-205.1
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** Tran. §16-205.1
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) C&JP §10-309(a) The law provides that this evidence establishes no inference or presumption of guilt or innocence of a DWI offense. Accordingly, the courts have held that evidence of a refusal can only be admitted if it is "material and relevant" to collateral issues related to the DWI offense. I.e., such evidence cannot be admitted alone as evidence of the guilt of such offense. *Krauss v. State*, 587 A.2d 1102 (Md. 1991)

[1]The law states that it is an offense to drive a motor vehicle while "intoxicated". The law does not specify any particular substance to be associated with such intoxication.

[2]Under Tran. §16-113(b)(1), a person under 21 years old must have a restriction placed on their license that prohibits them from operating a motor vehicle with a BAC/BrAC level of 0.02 or more. Under C&JP §10-307(f), it is *prima facie* evidence of a violation of Tran. §16-113(b) if a person under 21 years old operates a motor vehicle with a BAC/BrAC level of 0.02 or more.

[3]The law uses the term "detained" instead of "arrested".

Special Note: Alcohol concentrations in the blood (BAC) and the breath (BrAC) are defined using the standard definitions. C&JP §10-307(a)(2) & Tran. §11-103.2

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 level of 0.04 or more, (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 diving 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. See C&JP §10-307(a) and Tran. §§11-103.1, 11-103.2, 11-109, 11-111.1, 16-205, 16-205.1, 16-208.1, 16-812 & 16-813.

Chemical Breath Tests for BAC Level: (continued)

Other Information:	**Special Note:** If a driver is involved in a DWI related accident which resulted in the death of another person, the driver shall be required to submit to a chemical test of their blood or breath. Tran. §16-205.1(c)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes Tran. §16-205.1
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):	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 dys (mand.); 2nd and subsequent refusals-Susp for 1 yr (mand.) Tran. §16-205.1
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 1.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1.) Driving while under the influence (of alcohol)[2] (Misd), 1st off-Not more than **2 mos**; Subsequent off[3]-Not more than **1 yr**; 2.) Driving while intoxicated (Misd), 1st off-Not more than **1 yr**; 2nd off-Not more than **2 yrs**; 3rd & sub. off-not more than **3 yrs** Trans. §§21-902 & 27-101; 3.) A person under 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 Off. conviction (w/n 3 yrs.)-**48 con hrs**[4] Tran. §27-101(j)
Fine:	
Amount ($ Range):	1.) Driving while under the influence (of alcohol)[2], 1st off-Not more than **$500**; Subsequent off[3]-Not more than **$500**; 2.) Driving while intoxicated, 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 under 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 Off. conviction (w/n 3 yrs.) in lieu of the mand. 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 (not to exceed $45,000) under the Criminal Injuries Compensation Act. Art. 26A
Other:	(1) 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 (2) See Alcohol Education on p. 3-220.

[1]Probation before judgment cannot be granted by a court for a subsequent alcohol 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)

[2]For driving under the influence of drugs/controlled substances, the sanctions for 1st and subsequent offenses are the same as for a 1st off of driving under the influence of alcohol. Tran. §§21-902(c) & (d) and 27-101(b)

[3]A previous offense includes a prior "driving while intoxicated" offense. Tran. §27-101(f)(2)

[4]Imprisonment includes confinement in an inpatient rehabilitation or treatment center. Tran. §27-101(j)

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

Administrative Licensing Actions
Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:	**Yes** **0.10** (BAC/BrAC) 1st violation-Susp **45 dys**; 2nd or sub. violation-susp. **90 dys**. These susps. are mandatory if the licensee has had a previous admin. per se violation (w/n 5 yrs), DWI[1] conviction or implied consent law refusal. Otherwise, a restricted hardship license can be issued. C&JP §10-307(a)(2) & Tran. §16-205.1
Other:	**None**

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	1) Driving while under the influence (of alcohol or alcohol and drugs), 1st off-**Susp**; 2nd off (w/n 3 yrs)-**Susp**; 3rd & sub. off (w/n 3 yrs)-**Rev** 2) Driving while intoxicated (or under the influence of a controlled substance)-**Rev** See the Special Note on p. 3-222. 3) A person under 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)
Term of License Withdrawal (Days, Months, Years, etc.):	1) For Driving while under the influence, 1st off-Not more than **60 dys**; 2nd off (w/n 3 yrs)-Not more than **120 dys** 2) For Driving while under the influence 3rd & sub. off (w/n 3 yrs) **and** for all Driving while intoxicated offs. (or under the influence of a controlled substance), the period of rev. is based on the **number of previous revs.** a person has regardless of the basis[2]; the periods are as follows: **6 mos** for a 1st rev; **1 yr** for a 2nd rev; and, **18 mos** for 3rd and subsequent revs. 3) A person under 21 years 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 2.) above.
Mandatory Minimum Term of Withdrawal:	**None** Tran. §§16-205, 16-208 & 16-405
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** Alcohol education or treatment required as a condition of probation. A DWI[1] 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, Art. 27, §639(b) & Art 27, §641(a)(1)(ii)(1).

[1]A conviction for either Driving While Intoxicated or Driving While Under the Influence.
[2]I.e., the previous revocations do not have to be alcohol driving offense related.

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

Alcohol Treatment:	Yes See Alcohol Eduction above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	If a person drives a motor veh while his or her license is suspended or revoked for an alcohol off, the registration of the motor veh he or she was driving may be suspended for not more than 120 dys. Tran. §13-705.1
Miscellaneous Sanctions Not Included Elsewhere:	**License Restrictions.** I. If a person has been convicted of any combination of two or more driving while intoxicated or driving while under the influence offenses, 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 could apply to persons who have been convicted of either a first driving while intoxicated or a first driving while under the influence offense. 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. Tran. §16-113(a)(2) Note: If at the time of an implied consent test, the person has a BAC/BrAC level of 0.02 or more, such level 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 driver license are as follows: Jail-**None**; fine-Not more than **$500**; licensing action-**Susp or Rev**-If susp, not more than **1 yr**; if rev, the period of is based on the **number of previous revs.** 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 revs. Tran. §§16-208, 27-101(b) & 27-102.

[1]Driving While Under the Influence or Driving While Intoxicated.

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

Special Note: (1) A person who has been convicted of an alcohol driving off can have their license suspended/revoked either directly under Tran. §16-205 or via the point system under Tran. §16-401 et. seq. Under the point system, a driver is assessed the following points for alcohol driving off convictions: Driving While Under the Influence (of alcohol or drugs and alcohol) - 8 points and Driving While Intoxicated (or under the influence of a dangerous controlled 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 either eight (8) or 12 points at any time may have their license either suspended or revoked. (2) Under certain circumstances a person could have their license revoked via the point system for a second Driving While Under the Influence (of alcohol or drugs and alcohol) off conviction instead of suspended. However, if such a Driving While Under the Influence (of alcohol or drugs and alcohol) conviction occurred within two (2) years of a prior one, the driver would have accumulated 16 points on their record (8 points assessed for each conviction) and would, be subject to license rev under the point system. Thus, the 120 dy susp period may only apply if the second DUI off conviction is more than two (2) but less than three (3) years after a prior off. (3) And, license susp periods for first and second off convictions appear to be limited to 60 and 120 dys respectively via the provisions of Tran. §16-205(b). This is despite the fact that under Tran. §16-208(a), if a person accumulates eight (8) points, they could have their license suspended for up to one (1) yr.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **Yes** 1) Death caused by the operation of a veh "In a grossly negligent manner"- Misd Art. 27, §388 2) Death caused by operation of a motor veh while intoxicated-Misd Art. 27, §388A

Sanctions:
Criminal Sanction:
Imprisonment (Term): 1) Operating "in a grossly negligent manner"-Not more than **10 yrs** 2) Operating while intoxicated-Not more than **5 yrs**

Mandatory Minimum Term: **None**
Fine ($ Range): 1) Death caused by the operation of a veh "in a grossly negligent manner"-Not more than **$5,000** 2) Death caused by operation of a motor veh while intoxicated-Not more than **$3,000**

Mandatory Minimum Fine: **None**

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** via the point system Tran. §§16-402(a)(23), 16-404(a)(3)(ii) & 16-405(b) Twelve (12) points are assessed for this offense. Under 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.
Length of Term of Licensing Withdrawal:	**6 mos** rev, if this is a 1st rev; **1 yr** rev, if this is a 2nd rev; and, **18 mos** rev, if this is a 3rd rev.
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**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	
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)(24), 16-404 & 16-405(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.

Other Criminal Actions Related to DWI: (continued)

Twelve (12) points are assessed for this offense. Under 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.
See Vehicle Impoundment/Confiscation on p. 3-221. Tran. §§16-303 & 27-101

Length of Term of License Withdrawal Action: 6 mos if a first rev; 1 yr if a second rev; 18 mos if this is a third or sub rev 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.

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:

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	21[1], Art. 2B, §118(a) and Art. 27, §§400 & 403 (Year Eff: 1982)
Minimum Age (Years) Possession:	21 Art. 2B, §118(d) & Art. 27, §400A There is an employment exception.
Minimum Age (Years) Consumption:	21[2] Art. 2B, §118(d) provides that no one under 21 years old shall possess/consume alcoholic beverages in a licensed establishment.
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, §§69, 69A, 118 & 200 See Footnote No. 1 on p. 3-226.
Term of Imprisonment:	Not more than 2 yrs
Fine ($ Range):	Not more than $1,000

[1]It 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 statment" about their age in order to obtain alcoholic beverages. Art. 27, §400(a)

[2]Under 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.

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):	**Yes Susp or rev** Note: For licenses issued by the Comptroller a monetary compromise of not more than $2,000 may be paid in lieu of susp or rev. Art. 2B, §69A
Length of Term of License Withdrawal:	Generally **6 mos**, but for certain counties it may be longer
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** Art. 2B §§69, 69A, 118 & 200 See Footnote No. 1.
Term of Imprisonment:	Not more than **2 yrs**
Fine ($ Range):	Not more than **$1,000**
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev** Note: For licenses issued by the Comptroller, a monetary compromise of not more than $2,000 may be paid in lieu of susp or rev. Art. 2B, §69A
Length of Term License Withdrawal:	Generally **6 mos** but for certain counties it may be longer
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** However, this law is limited to certain public parking areas. Art. 2B, §§207-214
Anti-Consumption Law (Yes/No):	**Yes** Applies only to drivers Tran. §21-903

[1]In addition to these sanctions, Maryland law also provides for additional sanctions (jail terms, fines or administrative actions) in certain local jurisdictions. See Art. 2B, §203 for details.

STATE:	**MASSACHUSETTS**
General Reference:	Massachusetts General Laws Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor Ch. 90 §24(1)(a)(1)
Illegal Per Se Law (BAC Level):	None
Presumption (BAC Level):	**0.10**[1] Ch. 90 §24(1)(e)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Marihuana, Narcotic Drugs, **Depressants** or **Stimulant Substances** all as defined in Ch. 94C §1[2] or (2) Vapors of Glue Ch. 90 §24(1)(a)(1)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes Ch. 90 §24(1)(f)
Implied Consent Law Applies to Drugs (Yes/No):	No
Refusal to Submit to Chemical Test Admitted into Evidence:	No Specifically prohibited by statute in both criminal and civil cases. Ch. 90 §24(1)(e) In addition to this statutory prohibition, such evidence is also prohibited by the State's constitution. *Opinion of the Justices to the Senate*, 591 N.E.2d 1073 (Mass. 1992)
Other Information:	If a person refuses to submit to a chemical test after being arrested, the police officer immediately prepares a written report which is forwarded to the register who then suspends the person's license for 120 dys. Ch. 90 §24(1)(f)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	None Unless the defendant is brought in for treatment. Ch. 90 §24(1)(f)
Urine:	None
Other:	None

[1]Standard: Percent by weight of alcohol in the blood. Ch. 90 §24(1)(e) Note: "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)
[2]See *Com. v. Green*, 556 N.E.2d 387 (Mass. 1990), for situations concerning DWI offenses that are based upon a "narcotic" drug that is a derivative of one listed in the code.

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 level of 0.04 or more 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 level of 0.04 or more. 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. See Ch. 90F §§1, 9, 10 and 11.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**Yes** Ch. 90 §24(1)(g)
Anti-Plea Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Ch. 90 §24(1)(a)(4)

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):	**Susp** of license for **120 dys** Ch. 90 §24(1)(f) (Mandatory)
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off-Not more than **2 yrs**; 2nd off (w/n 6 yrs)-**14 dys-2 yrs**; 3rd off - **90 dys-2 yrs**; 4th and subsequent offs (w/n 6 yrs) - **6 mos-2 yrs** Ch. 90 §24(1)(a)(1) See Footnote No. 2.
Mandatory Minimum Term:	1st off-No; 2nd off-**14 dys**[1]; 3rd-**60 dys**[1]; 4th and subsequent offs-**6 mos**[1]
Fine:	
Amount ($ Range):	1st off-**$100-$1,000**; 2nd off -**$300-$1,000**; 3rd off-**$500-$1,000**; 4th and subsequent offs-**$500-$1,000** Ch. 90 §24(1)(a)(1) See Footnote No. 2.
Mandatory Min. Fine ($):	**None**

[1]Work release is available for this period. See Rehabilitation on p. 3-230. Ch. 90 §24(1)(a)(1)
[2]DWI serious bodily offs Ch. 90 §24L: Imprisonment-**not more than 2½ yrs**; fine-**not less than $3,000**. Ch. 90 §24L(2) If recklessness is involved in the off: Imprisonment-**2½-10 yrs** or **6 mos-2½ yrs** in a house of correction; fine-not more than **$5,000**. Ch. 90 §24L(1)

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

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:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**No**
Other:	I. At the time of arraignment on a DWI charge, the court shall suspend a defendant's license until the case is disposed of (but in no case more than 90 dys), provided the State establishes a *prima facie* showing that the defendant was operating a motor vehicle with a BAC level of 0.10 or more. Ch. 90 §24N[1] 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)
Post DWI Conviction Licensing Action:	
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.):	1st off-**1 yr**; 2nd off (w/n 6 yrs)-**2 yrs**; 3rd off (w/n 6 yrs)-**5 yrs**; 4th and subsequent offs (w/n 6 yrs)-**10 yrs**
Mandatory Minimum Term of Withdrawal:	1st off-**45 dys susp**[2] (If the defendant is placed on probation and agrees to participate in an alcohol education program; otherwise the license is revoked a mandatory 1 yr period; see Ch. 90 §24D); 2nd Off (w/6 yrs)-**1 yr rev**; 3rd off (w/n 6 yrs)-**2 yrs rev**; 4th and subsequent offs (w/n 6 yrs)-**5 yrs rev**

[1]This provision was held to be constitutional on due process of law grounds. *Com. v. Crowell*, 529 N.E.2d 1339 (Mass. 1988)
[2]If the person is under 21 years old, the mandatory license suspension period is 180 dys provided they participate in a specifically designed program for the education and treatment of underage DWI offenders. Ch. 90 §24D

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

Other:	
Rehabilitation:	
Alcohol Education:	**Yes** 1st off-If the defendent consents, he may be placed on 1-yr probation conditioned on attending an alcohol education treatment or rehabilitation program. At the court's discretion such persons must pay $400 in fees for placement in the program. Ch. 90 §24D; 2nd off - In lieu of imprisonment, defendant may serve at least 14 dys in a residential alcohol treatment program and be placed on 2 yrs probation. Ch. 90 §24
Alcohol Treatment:	**Yes** See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**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)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Misd. (Homicide by motor veh) Ch. 90 §24G See Footnote No.1.
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**30 dys to 2½ yrs** Ch. 90 §24G(b)
Mandatory Minimum Term:	**None**
Fine ($ Range):	**$300 to 3,000** Ch. 90 §24G(b)
Mandatory Minimum Fine:	**None**

[1]Homicide by motor vehicle while under the influence of an intoxicating substance and where there is recklessness-Felony (Ch. 274 §1): 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)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** Ch. 90 §24G(c)
Length of Term of Licensing Withdrawal:	1st off-**10 yrs**; subsequent off-**life**
Mandatory Action--Minimum Length of License Withdrawal:	1st off-**10 yrs**; subsequent off-**life**
Other:	None

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

Sanction:	
Criminal:	
Imprisonment (Term):	**60 dys to 2½ yrs** Ch. 90 §23
Mandatory Minimum Term of Imprisonment:	**60 dys** However, a work release program is available.
Fine ($ Range):	**$1,000 to $10,000** Ch. 90 §23
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev**[1] 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

Other Criminal Actions Related to DWI: (continued)

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):	Rev[1] 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 Limited[2] 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:	No[2]
Laws Establishing the Minimum Ages Concerning 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)

[1]If 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
[2]Historical 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)

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 No. 1.
Other:	An intoxicated patron may bring an action for personal injury damages against a licensee, if the damages were the result of the patron's having become intoxicated by the licensee. *O'Hanley v. Ninety-Nine, Inc.*, 421 N.E. 2d 920 (1981) (modified by Ch. 231 §85T) However, a social host will not be liable for the injuries sustained by an intoxicated guest. *Manning v. Nobile*, 582 N.E.2d 942 (Mass. 1991), and Ch. 231 §85T.
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd** Ch. 138 §§62 & 69
Term of Imprisonment:	Not less than **1 mo** and not more than **1 yr**
Fine ($ Range):	Not less than **$50** and not more than **$500**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Susp, rev or cancellation Ch. 138 §64
Length of Term of License Withdrawal:	If rev. is imposed, a licensee is disqualified from receiving a license for **1 yr** after the expiration of the term of the revoked license. Note: There is no established period for either a suspension or a cancellation.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** Ch. 138 §34
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$2,000**

[1]However, 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. *Aliota v. Marnell*, 520 N.E.2d 1284 (Mass. 1988), & *Ulnick v. DeChristopher*, 582 N.E.2d 954 (Mass. 1991)

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 Alcohlic Beverages Withdrawn (Yes/No):	Yes Susp, rev or cancellation Ch. 138 §64
Length of Term License Withdrawal:	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.
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):	No
Anti-Consumption Law (Yes/No):	Yes This law applies only to drivers. Ch. 90 §24I

STATE:	**MICHIGAN**
General Reference:	Michigan Compiled Laws Annotated

Basis for a DWI Charge:

Standard DWI Offense:	1) Under the influence of intoxicating liquor 2) Visibly impaired by intoxicating liquor §257.625(1)(a) & (3)
Illegal Per Se Law (BAC Level):	**0.10**[1] §257.625(1)(b)
Presumption (BAC Level):	A BAC > **0.07** but < **0.10** is a presumption of impairment. A BAC of **0.10** or more is a presumption of driving while under the influence. §257.625a(9)(b) & (c)
Types of Drugs/Drugs and Alcohol:	Under the influence of or visibly impaired 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. 3-239.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	**Yes** §257.625a(2) For CMV operators, see §§257.319d and 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) §257.625a(10) In driving while under the influence/illegal per se cases, evidence of a refusal to submit to a chemical test may be admitted but only "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."
Other Information:	**Special Note:** A test can be required via a court order; i.e. consent by the driver is not required. §§257.625a(6)(b)(ii),257.625(d)(1)& *People v. Wurm*, 404 N.W.2d 235 (Mich.App. 1987)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §257.625c(1)
Urine:	**Yes** §257.625c(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**[2] Alcohol & Drugs §257.625b(4)

[1]Standard: Percent by weight of alcohol in the blood. §257.625(1)(b)

[2]For 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

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:	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. 3-239. §§257.319d & 257.625a(4)

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	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)
Other:	**None** See "Other" under Pre-DWI Conviction Licensing Action on p. 3-238.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1) Driving while visibly impaired: Misd-Not more than **90 dys**; Where there has been a previous DWI offense of any type w/n 7 or 10 yrs-Misd-Not more than **1 yr** §257.625(10) 2) Driving while under the influence/Illegal per se: 1st off-Misd-Not more than **90 dys**; 2nd off (w/n 7 yrs)-Misd-Not more than **1 yr**; 3rd and Subsequent offs (w/n 10 yrs)-Felony-**1 to 5 yrs** Where there is "long-term incapacitating injury"[1]-Felony-not more than **5 yrs**[2] §257.625(5) & (6)

[1]A "long-term incapacitating injury" means one that puts a person either in a comatose state, a quadriplegic state, a hemiplegic state or a paraplegic state which is likely to continue for one (1) year or more. §257.625(5)

[2]A person, who commits a 2nd felony driving while under the influence or illegal per se offense (i.e., a 4th off w/n 10 yrs), 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 1½ times the longest term prescribed for a 1st felony off. §769.10(1)(a) & *People v. Bewersdorf*, 475 N.W.2d 231 (Mich. 1991)

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

Mandatory Minimum Term:	1) Driving while visibly impaired: Where there has been a previous DWI offense of any type w/n 7 or 10 yrs, the court has the option of either (1) imposing some type of mand. jail term (length is not specified in the statute) plus a discretionary period of community service not to exceed 90 dys or (2) a mandatory period of community service (10 dys) plus a discretionary jail term. §257.625(10) 2) Driving while under the influence/illegal per se: 1st off-**None**; 2nd off (w/n 7 yrs)-either (1) jail for not less than **48 con. hrs.** or (2) community service of 10 dys §257.625(6) See Footnote No. 2.
Fine: Amount ($ Range):	1) Driving while visibly impaired-Not more than **$300**; Where there has been a previous DWI offense of any type w/n 7 or 10 yrs-**$200** to **$1,000** §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 and subsequent off (w/n a 10-yrs) - **$500** to **$5,000** Where there is "long-term incapacitating injury"-**$1,000** to **$5,000** §257.625(5) & (6)
Mandatory Min. Fine ($):	1) Driving while visibly impaired-Where there has been a previous DWI offense of any type w/n 7 or 10 yrs-**$200** (possible)[1] 2) Driving while under the influence/illegal per se: 1st off-**$100** (possible)[1]; 2nd off-**$200** (possible)[1]; 3rd off-**$500**[2]
Other Penalties: Community Service:	1) Driving while visibly impaired-Not more than **45 dys**; Where there has been a previous DWI offense of any type w/n 7 or 10 yrs-**10 to 90 dys** §257.625(10) 2) Driving while under the influence/illegal per se : 1st off-Not more than **45 dys**; 2nd off-**10 to 90 dys**; 3rd off-**None** §257.625(6) See Imprisonment-Mandatory Minimum Term above.

[1]See *Wayne City Prosecutor v. Wayne Circuit Judge*, 397 N.W.2d 274 (Mich.App. 1986).

[2]Persons who have been convicted of a 3rd offense of driving while under the influence/illegal per se appear to be subject to certain minimum sanctions. See *Wayne City Prosecutor v. Wayne Circuit Judge*, 397 N.W.2d 274 (Mich.App. 1986), where under a previous statutory sanctioning scheme identical to the present one (compare §§257.902 & 257.625(6) respectively), the court held that a defendant must be sentenced to either a minimum period of 1 yr in jail or fined at least $500.

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

Restitution (eg Victim's Fund)	Yes[1]
Other:	
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	None
Other:	**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 a BAC/BrAC level of 0.10 or more, their license is confiscated and destroyed by the police and they are issued a temporary license that is valid until the DWI criminal proceedings are completed.
Post DWI Conviction Licensing Action:	See Footnote No. 3.
Type of Licensing Action (Susp/Rev):	1) Driving while visibly impaired: 1st off-**Susp** If there has been a prior DWI offense conviction of any type w/n 7 yrs-**Susp** If there have been two prior DWI offense convictions of any type w/n 10 yrs-**Rev** §§257.319(3) & 257.625b(5) 2) Driving while under the influence/illegal per se: 1st off-**Susp**; 1st off where there has been a prior impaired off w/n 7 yrs-**Susp**; 2nd off-**Rev**; 3rd and subsequent offs-**Rev** Where there is "long-term incapacitating injury"-**Rev** §257.625b(5)
Term of License Withdrawal (Days, Months, Years, etc.):	1) Driving while visibly impaired: 1st off-**90 dys-1 yr** If there has been a prior DWI offense conviction of any type w/n 7 yrs-**6mos to 2 yrs** If there have been two prior DWI offense convictions of any type w/n 10 yrs-**1 yr** (5 yrs[2]) §§257.319(3) & 257.625d(5) 2) Driving while under the influence/illegal per se: 1st off-**6 mos-2 yrs**; 1st off where there has been a prior impaired off w/n 7 yrs-**6 mos-2 yrs**; 2nd off-**1 yr**; 3rd and subsequent offs-**5 yrs** Where there is "long-term incapacitating injury"-1st off-**1 yr**; 2nd or sub. off (w/n 7 yrs)-**5 yrs** §§257.52, 257.319(3) & 257.625b(5)

[1]The State has a victims' compensation fund and, in addition, provides for direct compensation to victims by the defendant via court oredered restitution. §§18.351 et seq. and 771.3(2)(d)

[2]If there has been a previous rev of any type within 7 yrs, the rev period is 5 yrs.

[3]Licensing 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)

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

Mandatory Minimum Term of Withdrawal:	1) Driving while visibly impaired: **None** (1st off) (A restricted/hardship license may be issued. §257.625b(2)) If there has been a prior DWI offense conviction of any type w/n 7 yrs-**60 dys** (A restricted license may be issued after the 60 dy period.) If there have been two prior DWI offense convictions of any type w/n 10 yrs-**1 yr** (5 yrs[1]) §§257.625b(5) & 257.52 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.); 1st off where there has been a prior impaired off w/n 7 yrs-**60 dys** (A restricted hardship license may be issued after this period of time.); 2nd off-**1 yr**; 3rd and subsequent off (felony)-**5 yrs**[1] Where there is "long-term incapacitating injury"-1st off-**1 yr**; 2nd or sub. off (w/n 7 yrs)-**5 yrs** §§257.52 & 257.625b(5) **Ignition Interlock.** For a DWI off (driving while visibly impaired, driving while under the influence, illegal per se) where the defendant is allowed to operated a vehicle on a restricted license, the court may order that the person only drive vehicles that are equipped with an "ignition interlock" device. §257.625b(7)
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** §257.625b(4)
Alcohol Treatment:	**Yes** §257.625b(4)

[1]If there has been a previous rev of any type within 7 yrs, the rev period is 5 yrs.

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 level (percent by weight of alcohol in the blood) of 0.04 or more or (2) are under the influence of or visibly impaired by 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 suspension is for not less than 10 yrs (10 yrs mand.). For a first refusal to submit to a chemical test for either an alcohol concentration or the presence of controlled substances, a CDL is suspended for 1 yr (mand.) (3 yrs (mand.) if transporting hazardous materials); for a second refusal, the CDL is suspended for not less than 10 yrs (10 yrs mand.). A person who operates a CMV with a BAC level of 0.04 or more but less than 0.07 commits a misdemeanor. For a 1st off, the person is subject to imprisonment for not more than 90 days and/or a fine of not more than $300; for a 2nd or subsequent conviction w/n 10 yrs, a person is subject to imprisonment for not more than 1 yr and/or a fine of not more than $1,000. In addition, a CMV operator who has a BAC level of 0.015 or more 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 90 dys and/or a fine of not more than $100. See §§257.1c, 257.4b, 257.7a, 257.312e, 257.319b, 257.319d, 257.625a(5) and 257.625m.

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

Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	None
Miscellaneous Sanctions Not Included Elsewhere:	**Cost of Prosecution.** The court may order a defendant to pay the cost of prosecution for driving while under the influence offenses related to either injury or death. §257.625(7)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes Felony** Death resulting from operating a vehicle "while under the influence of alcohol" or with a BAC level of 0.10 or more. §257.625(4) **Misd** Death caused by the operation of a vehicle at an immoderate rate of speed or 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
Mandatory Minimum Term:	None
Fine ($ Range):	Felony-**$2,500 to $10,000** §257.625(4) Misd-Not more than **$2,000** §750.324
Mandatory Minimum Fine:	None
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:	None

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-**Not more than 90 dys**; 2nd and subsequent offs Misd-**Not more than 1 yr** §257.904(1)(b)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	1st off-Not more than **$500**; 2nd and subsequent offs-Not more than **$1,000** §257.904(1)(b)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp or rev**[1] §257.904(2) & (3)
Length of Term of License Withdrawal Action:	The original license susp or rev is extended for a like period.
Mandatory Term of License Withdrawal Action:	The original license susp or rev is extended a like period.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

[1]For a 1st or subsequent offense, the registration plates of the vehicle involved in the offense shall also be confiscated. §257.904(1)(b) Also, vehicle impoundment from 30 to 120 dys. §257.904b

*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 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 §257.625a(3)(f)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes §257.625a(3)(f)
Vehicle Passengers:	No
Pedestrian:	No
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1978) §§436.33 & 436.33b(1)
Minimum Age (Years) Possession:	21 Employment exemption §436.33b(1) & (4)
Minimum Age (Years) Consumption:	21 Applies to licensed premises §436.33b(1)
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	Yes §436.22(4) Applies to personal injuries caused by serving alcoholic beverages to persons who are either under 21 years old or visibly intoxicated.
"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 *Jones v. Bourrie*, 120 N.W.2d 236 (Mich. 1963), & *Longstreth v. Fitzgibbon*, 335 N.W.2d 677 (Mich. App. 1983)
Dram Shop Actions-Social Hosts:	Yes **Limited** *Longstreth v. Gensel*, 377 N.W.2d 804 (Mich. 1985), *Trayler v. Koposky*, 384 N.W.2d 819 (Mich. App. 1986), & *Gardner v. Wood*, 414 N.W.2d 706 (Mich. 1987) These cases concerned giving alcoholic beverages to minors. However, 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)
Other:	None
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Misd §§436.22(3), 436.29 & 436.50
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$500**

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):	**Yes Susp or Rev** §§436.20(1) & 436.51
Length of Term of License Withdrawal:	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 $1,000 may be assessed in addition to or in lieu of a susp or rev.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd** §§436.22(1), 436.22(3) & 436.33
Term of Imprisonment:	Not more than **6 mos**[1] §436.50
Fine ($ Range):	Not more than **$500**[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):	**Yes Susp or Rev** §§436.20(1) & 436.51
Length of Term License Withdrawal:	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 $1,000 may be assessed in addition to or in lieu of a susp or 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):	**Yes** §257.624a
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §436.34 The law states that "[n]o alcoholic liquor shall be consumed on the public highways."

[1]These 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. §§436.33, 436.50 & 750.504

STATE:	**MINNESOTA**
General Reference:	Minnesota Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense;	Under the influence of alcohol §169.121, subd. 1(a)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1] §§169.01, subd. 61 & 169.121, subds. 1(d) & (e)
Presumption (BAC Level):	**None**
Types of Drugs/Drugs and Alcohol:	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
Other:	For Persons Under 21 Years Old, see the Special Note on p. 3-247. For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes Note: Also applies to CMV operators. §169.121, subd. 6
Implied Consent Law:	
Arrest Required (Yes/No):	No[2]
Applied Consent Law Applies to Drugs (Yes/No):	Yes (controlled substances) §169.123, subd. 2(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	No[3]
Other Information:	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 the DWI law. A violation of §609.121.[4]

[1]This 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 level of 0.10 or more.

[2]**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 level of 0.10 or more; or, (4) a person is involved in an accident resulting in property damage, personal injury, or death. §169.123, subd. 2

[3]In 1992, the statutory provision (§169.123, subd. 2(b)(7)) allowing for the admission of such evidence was "essentially" repealed by Art. 1, §16 of 1992 Minn. Ch. Law 570.

[4]**Historical Note:** Sec. 169.123, subd. 4, was amended in 1992 to indirectly abrogate a 1991 decision of the Minnesota Court of Appeals. The court held that the implied consent law prohibited the police from obtaining a chemical test via "force" once they had invoked the implied consent law. *State v. Scott*, 473 N.W.2d 375 (Minn.App. 1991), & Art. 1, §17 of 1992 Minn. Ch. Law 570 For recent cases concerned with the taking of blood samples for BAC testing (1) where a person consented but could not produce a urine sample for testing when requested or (2) where the implied consent law was not invoked, see respectively *State v. Aschnewitz*, 483 N.W.2d 107 (Minn.App. 1992), and *State v. Schauer*, 501 N.W.2d 673 (Minn.App. 1993).

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 level of 0.04 or more, (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 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 of 0.04 or more; the sanctions for this offense are jail for not more than 90 days and/or a fine of not more than $700. See §§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(3).

Preceding Page Blank

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §169.123, subd. 2
Urine:	Yes §169.123, subd. 2
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 §§169.124, 169.126 (alcohol assessment) & 260.193, subd. 8(h)

Special Note: If a person has had two or more implied consent tests showing an alcohol concentration of 0.07 or more, 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

Conditional Release. A person charged with a DWI offense, where the offender has either had 3 prior DWI offense convictions w/n 10 yrs or 4 such prior convictions w/n their lifetime, can, unless maximum bail is set, only be released under the following conditions: (1) Their vehicle's license plates are impounded; (2) they report weekly to a probation officer; (3) they abstain from the use of alcohol or controlled substances; (4) they submit to weekly random testing for alcohol; and, (5) if they are convicted, they must agree to pay the court or county for the costs of the above services. §169.121, subd 1c

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):	1st Refusal-misd: Jail-Not more than **90 dys**; fine-Not more than **$700** Refusal where there has been either a previous license revocation w/n 5 yrs or a prior revocation w/n 10 yrs of 2 or more revocations-gross misd: Jail-Not more than **1 yr**[1]; fine-Not more than **$3,000**. §§169.121, subds. 1a, 3a & 3(b) & (c) and 609.03(2) & (3) See Vehicle Impoundment/Confiscation on p. 3-251. See *McDonnell v. Com'r of Public Safety*, 473 N.W.2d 848 (Minn. 1991), which upheld the constitutionality of §169.121, subd. 1a. This statute was amended by 1992 Minn. Ch. Law 570. **Special Note:** Persons under 21 years old, who consume, ingest or have the "physical conditions" of having ingested alcohol and who operate a motor vehicle are subject the following sanctions as provided by the State's alcoholic beverage control law: Jail-Not more than 90 dys; fine-Not more than $700; license suspension-1st off-30 dys and sub. off-180 dys. For either 1st or sub. offs., a limited license is available for educational, employment, treatment or family needs. Note: It is an "affirmative defense" to this offense, if the defendant consumed (ingested) alcoholic beverages in the household of and with the consent of their parent (guardian). §§171.173, 340A.503, 340A.703 & 609.03

[1]See Footnote No. 1 on p. 3-249 for sanctions that must be imposed on 2nd or subsequent offenders for either implied consent or DWI convictions.

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

Administrative Licensing Action (Susp/Rev):

Revocation via a Conviction. 1st off-Rev-Not less than **90 dys** (15 dys mand[1]); 2nd off (w/n 5 yrs or 3rd or sub off on the record)-Rev-Not less than **1 yr** (180 dys mand[1]) 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 mand[1]); 4th and sub. off (on the record)-Rev-Not less than **2 yrs** (180 dys mand[1]) 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, & 171.30, sub. 2a

Admin. Revocations. 1st Refusal-Rev **1 yr** (15 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 mand) Note: A person is subject to rev. even if a test is taken via "force". §169.123, subd. 4

See Footnote No. 2.

Other:

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

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Important: See the Special Note under Alcohol Treatment on p. 3-251.

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off (Misd)-Up to **90 dys**; 2nd off[3] (w/n 5 yrs); Subsequent off[3],(w/n 10 yrs), Child Endangerment[4], or Illegally Crossing a Railroad Track While DWI (Gross Misd)-Not more than **1 yr** §§169.121 & 609.03 See the Special Note on p. 3-249.

[1]A limited license may be issued after this mandatory revocation (or "waiting") period. §171.30, subd. 2a However, see Footnote No. 2 on p. 3-250.

[2]**Comment:** Art. 1 of 1992 Minn. Ch. Law 570 may have indirectly abrogated a certain license revocation policy of the Commissioner of Public Safety. Under this policy, a defendant's license is revoked for 30 dys if they plead guilty to or are convicted of a DWI offense even though the defendant may be subject to license revocation action either for violating the admin. per se law or for refusing to submit to a chemical test. *Sutherlin v. Commissioner of Public Safety*, 449 N.W.2d 517 (Minn.App. 1990)

[3]A 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)

[4]Where a child under 16 years old is riding with a DWI offender who was at least 36 months older than the child. §169.121, subd. 3(c)(4)

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

Mandatory Minimum Term:	None[1] §169.121, subd. 3a
Fine:	
Amount ($ Range):	1st off (Misd)-Not more than $700; 2nd off (w/n 5 yrs.) and subsequent offs (w/n 10 yrs.) Child Endangerment, or Illegally Crossing a Railroad Track While DWI (Gross Misd)-Not more than $3,000 See the Special Note below.
Mandatory Min. Fine ($):	Misd Offs-$140; Gross Misd Offs-$600 Note: The law provides, that unless undue hardship would result, the court must impose on misdemeanor or gross misdemeanor offenders a fine of at least 20% of the maximum fine allowed by law. Furthermore, this minimum fine is in addition to any other assessments or surcharges under §609.101, subd. 1.[3] §609.101, subd. 4
Other Penalties:	
Community Service:	Yes See Footnote No. 1.
Restitution (eg Victim's Fund)	Yes Victim's Fund (§§611A.01 et seq.)[2] and also direct payment by the defendant to a victim (§§609.10 & 609.125(4))
Other:	See Footnote No. 3.

[1]**Jail, Community Service or Rehabilitation.** 2nd or sub. off (w/n 5 yrs)-30 dys in jail; 2nd or sub. off (w/n 10) 30 dys in jail or 8 hrs of community service may be substituted for each dy less than 30 dys that the person would have served in jail. I. However, for a 2nd or sub. off w/n 10 yrs, the court may on its own motion or on motion by the prosecutor sentence a person without regard to the minimum 30 dy jail sanction. The court may grant or, on its own, issue such a motion if "substantial mitigating factors" exist (§169.121, subd.3a). II. Also, for either a 2nd or sub. off w/n 5 yrs or a 2nd or sub. off w/n 10 yrs, a person may be placed on probation and ordered to participate in an intensive probation program (§169.1265) instead of jail (§169.121, subd. 3a(d)). A stay of execution of sentence (jail or fine but not license revocation) may be granted under §169.121, subd. 5, if the court orders a "level of care" in accordance with the assessment report under §169.126.

[2]Payments to all claimants shall not exceed $50,000 per victim. §611A.54

[3]**Assessments & Surcharges.** (felony, gross misd. or misd.). If no fine is imposed, an assessment of at least $25 but not more than $50. If a fine is imposed, a surcharge of 20% of the fine. In addition, the following surcharges must be paid: Felony-$25; gross misd-$15. § 609.101, subd. 1(a) and (b)(1) & (2) 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

Special Note: 1) In situations where the driver has caused a "great bodily injury" while operating a vehicle in either (1) in a grossly negligent manner, (2) in a negligent manner while under the influence of alcohol or (3) with an alcohol concentration of 0.10 or more, the following sanctions apply: Jail-not more than 5 yrs; fine-not more than $10,000. §609.21, subd. 2
2) In situations where the driver has caused a "substantial bodily injury" while operating a vehicle in either (1) in a grossly negligent manner, (2) in a negligent manner while under the influence of alcohol or (3) with an alcohol concentration of 0.10 or more, the following sanctions apply: Jail-not more than 3 yrs; fine-not more than $10,000. §609.21, subd. 2a
3) 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, (2) in a negligent manner while under the influence of alcohol or (3) with an alcohol concentration of 0.10 or more, the following sanctions apply: Jail-not more than 5 yrs; fine-not more than $10,000. §609.21, subd. 4

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

Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes 0.10** (BAC, BrAC & UrAC) 1st Violation-**Rev-90 dys**[1] (15 dys mand); 2nd or Sub. Violation (w/n 5 yrs)-**Rev-180 dys** (90 dys mand[2]) See Footnote Nos. 1 & 3 below. A limited license is available after the min. mandatory rev (or "waiting") period. §§169.123, subd 4, & 171.30, subd. 2 See Footnote No. 2 on p. 3-247.
Other:	Under §171.18, a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that requires mandatory license rev (e.g., DWI). Such action may be taken without a preliminary hearing.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	All offs-**Rev** §§169.121, subd. 4, and 171.17
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-Not less than **30 dys**; 2nd off (w/n 5 yrs.)-Not less than **180 dys**; 3rd off (w/n 5 yrs.)-Not less than **1 yr**; 4th and subsequent offs-Not less than **2 yrs** See Footnote No. 4. For persons under 21 yrs old, see Footnote No. 5.
Mandatory Minimum Term of Withdrawal:	1st and sub. off-**15 dys**[2&6]

[1]For persons less than 21 years old, the rev period is six (6) mos. §169.123, subd. 4

[2]**Comment:** It may be possible to obtain a limited license under the Ignition Interlock Law notwithstanding this mandatory ("waiting") period. The law granting limited licenses provides for this mandatory (or "waiting) period before a limited license can be issued when such limited licenses are issued following implied consent offenses, admin. per se violations or DWI offenses (including injury or death related DWI offenses). However, the issuance of limited licenses based on the use of an ignition interlock device rests on statutory authority not directly related to these violations or offenses. See "Ignition Interlock (Pilot Program)" under Misc. Sanctions on p. 3-252. As a practical matter, given the requirements (i.e., abstinence period) to obtain a limited lic. under the ignition interlock law, it does not appear possible that such a lic. could be issued before the mand. rev. period has passed.

[3]The 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(e)

[4]Note: Ninety (90) additional dys are added to the above rev base periods if the DWI off involved either a death or an injury. §169.121, subd. 4(d)

[5]If the defendant is under 21 yrs old and they are convicted of a DWI off, their license is revoked for 6 mos or for the normal period of time for DWI offenders whichever is the greater period. §169.121, subd. 4(b)

[6]**Special Note:** Under §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.

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

Other:	
Rehabilitation:	
Alcohol Education:	Yes §§169.124 & 169.126
Alcohol Treatment:	Yes §§169.121(5), 169.124 & 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, subd. 1.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Impoundment.** Under §168.041, subd. 3, for a 1st or 2nd DWI off. (or 2nd implied consent test refusal w/n 5 yrs), the defendant may be required to surrender their vehicle's registration plates. However, under §168.042, subds. 1 & 2, for either a 3rd DWI off[1&2] (w/n 5 yrs), a 4th DWI off[1&2] (w/n 15 yrs) or for DWI Child Endangerment (and there was either a pior DWI/Implied Consent offense w/n 5 yrs or two or more such offenses w/n 15 yrs), the registration plates (tags) of the vehicle used in the violation[1] and/or those vehicles owned by the defendant shall be impounded. The registration plates are reissued when the driver's license is reinstated. §§168.041, subd. 4 & 168.042, subd. 11 Note: Notwithstanding the above, "special plates" may be issued if one of the vehicle's drivers in the family has a regular license or the offender has a limited (restricted) license. §§168.041, subd. 6, & 168.042, subd. 12 **Forfeiture.** A person's vehicle is subject to forfeiture for either (1) 3 DWI or implied consent law convictions (or a combination of 3 such offenses) w/n 5 yrs, (2) 4 or more such convictions (or a combination of 4 such offenses) w/n 15 yrs or (3) Child Endangerment (and there was either (1) 2 prior DWI offense convictions w/n 5 yrs, (2) 2 prior license revocations w/n 5 yrs, (3) 3 or more DWI offense conviction w/n 15 yrs or (4) 3 or more license revocations w/n 15 yrs). In addition, a person with a license restriction prohibiting them from driving with any amount of alcohol or controlled substance in their body, may have their vehicle forfeited if they are convicted of a DWI or implied consent offense. §169.1217
Terms Upon Which Vehicle Will Be Released:	

[1]If the registered owner of a vehicle was not a passenger therein at the time of the 3rd or 4th DWI offense, they may have the vehicle registration plates reissued. §169.042, subd. 8

[2]A 2nd or subsequent offense includes convictions for violating the implied consent law. §168.042, subd. 1(c)(1)

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

Other:

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:

Ignition Interlock (Pilot Program). A person, whose license has been cancelled or denied on the grounds that they represent a hazard to highway safety because of an alcohol or controlled substance related incident, may, nevertheless, be issued a limited license to operate a motor vehicle equipped with an "ignition interlock" device. However, before this ignition interlock based limited license can be issued, the person must have completed (1) half of any "abstinence" (alcohol or drug free) period and (2) any rehabilitation program. Note: After 8/1/85, no limited licenses can be issued under this program. This pilot program ends 12/31/95. §§171.04, subd. 1(8) & 171.305
Intensive Probation (Pilot Program). Counties may receive State grants to start "intensive probation" programs for repeat DWI offenders. These program must provide, in part, 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

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Felony Death as a result of operating a motor vehicle (1) in a grossly negligent manner, (2) in a negligent manner while under the influence of alcohol or (3) with an alcohol concentration of 0.10 or more. §609.21, subd. 1 See the Special Note below.

Special Note: In situations where the driver has caused a "death to an unborn child" while operating a vehicle in either (1) in a grossly negligent manner, (2) in a negligent manner while under the influence of alcohol or (3) with an alcohol concentration of 0.10 or more, the following sanctions apply: Jail-not more than 10 yrs; fine-not more than $10,000. §609.21, subd. 3

Other Criminal Actions Related to DWI: (continued)

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **10 yrs**
Mandatory Minimum Term:	None
Fine ($ Range):	Not more than **$20,000**
Mandatory Minimum Fine:	None See Footnote No. 3 on p. 3-249.
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Rev §§169.11[1] & 171.17
Length of Term of Licensing Withdrawal:	Note: The maximum rev. length is not specified by statute.
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr** §171.30 Note: A limited license may be issued after the 1 yr minimum license rev period. §171.30, subd. 2a See Footnote No. 2 on p. 3-250.
Other:	None

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

Sanction:	
Criminal:	
Imprisonment (Term):	Misd Not more than **90 dys**[2] §§171.24 & 609.03(3)
Mandatory Minimum Term of Imprisonment:	None
Fine ($ Range):	Not more than **$700** 609.03(3)
Mandatory Minimum Fine:	None See Footnote No. 3 on p. 3-249.
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp Applies only to 2nd or sub. offs. §168.041, subd. 2 See Footnote No. 3.
Length of Term of License Withdrawal Action:	2nd or sub. off-Not more than **1 yr** §168.041, subd. 2
Mandatory Term of License Withdrawal Action:	None

[1]A defendant may also be required to surrender their vehicle's registration plates during the period of license revocation. §168.041, subds. 3 and 4

[2]A person who commits a DWI offense while their license is still suspended or revoked (for a previous DWI offense, implied consent law refusal, an admin. per se law violation or vehicle homicide) is guilty of a gross misdemeanor. Imprisonment-not more than 1 yr; fine-not more than $3,000 §§169.129 & 609.03(2)

[3]**Special Note:** A 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.

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 §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 Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1986) §340A.503, subd. 2(1) & (2)
Minimum Age (Years) Possession:	21 There is an exemption for the possession of alcoholic beverages in the home. §340A.503, subd. 3
Minimum Age (Years) Consumption:	21 There is an exemption for the consumption of alcoholic beverages with the consent of a parent in the home. §340A.503, subd. 1(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 §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):	Yes *Trail v. Christian*, 213 N.W.2d 618 (1973), & *Holmquist v. Miller*, 352 N.W.2d 47 (1984)
Dram Shop Actions-Social Hosts:	No *Cady v. Coleman*, 315 N.W. 2d 593 (1982), *Hoffman v. Wittscheck*, 379 N.W.2d 145 (Ct. App. 1985), & *Holmquist v. Miller*, 367 N.W.2d 468 (Minn. 1985).
Other:	None
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Gross Misd.** §§340A.502, 340A.702(7) & 609.03
Term of Imprisonment:	Up to **1 yr**
Fine ($ Range):	Not more than **$3,000** (An admin. fine of up to **$2,000** may also be imposed. §340A.415) See Footnote No. 3 on p. 3-249.
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes §340A.415
Length of Term of License Withdrawal:	Suspended for up to **60 days** or revoked for an unspecified period of time.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Gross. Misd** §§340A.503, subd. 2(1), & 340A.702(8) & 609.03
Term of Imprisonment:	Up to **1 yr**[1]
Fine ($ Range):	Not more than **$3,000** (An admin. fine of up to **$2,000** may also be imposed. §340A.415)[1] See Footnote No. 3 on p. 3-249.

[1]In *State v. Guminga*, 395 N.W.2d 344 (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.

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):	Yes §340A.415
Length of Term License Withdrawal:	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):	Yes §169.122(2) & (3)
Anti-Consumption Law (Yes/No):	Yes Driver and passengers §169.122(1)

STATE:	**MISSISSIPPI**
General Reference:	Mississippi Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §63-11-30(1)
Illegal Per Se Law (BAC Level):	**0.10** §63-11-30(1)(c)
Presumption (BAC Level):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Substance** or (2) Any Drug or Controlled Substance the possession of which is illegal §63-11-30(1)(b) & (d)
Other:	For Commercial Motor Vehicle Operators, see p. 3-258.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	Yes §63-11-5
Implied Consent Law:	
Arrest Required (Yes/No):	No However, a request to submit to a test is based on reasonable grounds and probable cause of DWI. §63-11-5(1)
Implied Consent Law Applies to Drugs (Yes/No):	No §63-11-5
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases)[1] §63-11-41
Other Information:	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 BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes[2] §63-11-5
Urine:	Yes[2] §63-11-5
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/No):	Yes A DWI charge may not be reduced if the BAC level of the defendent was 0.10 or more. §63-11-39
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Limited §63-11-30(2)(d)

[1]Refusal to submit a chemical test cannot be admitted into evidence in a civil action. §63-1-43

[2]A person may give their consent to tests of either blood or urine for the purpose of determining if they have any other impairing substance in their body. §63-11-5

Sanctions for Refusal to Submit to a Chemical Test

Refusal to Take Implied Consent 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** 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:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	DWI off-Misd (3rd and sub. off-Felony) 1st Off-Not more than **48 hrs**[1]; 2nd Off (w/5 yrs)-**10 dys**[1&2]**-1 yr**; 3rd & Sub. Off (w/n 5 yrs)-**1 to 5 yrs** (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 (4)
Mandatory Minimum Term:	No[1]

[1]The DWI law does not specifically prohibit suspending or placing persons on probation for the minimum imprisonment term. Also, §99-19-25 allows a court to suspended sentences for misdemeanor offenses. Furthermore, under §47-7-33, persons convicted of a first felony offense may be placed on probation and have their sentence suspended.
[2]See Community Service on p. 3-259.

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 level of 0.04 or more, (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. See §§63-1-75(b), 63-1-82(3), 63-1-83 and 63-1-84.

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

Fine:	
Amount ($ Range):	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** Conviction for a DWI off where there has been negligence resulting in disfigurement, disability, etc. (felony) - Not more than **$10,000** §§47-5-3, §63-11-30(2)(a), (b) & (c) & (4) and 99-19-32
Mandatory Min. Fine ($):	1st off-**$250**; 2nd off (w/n 5 yrs)-**$600**; 3rd & sub. off-**$2,000** §99-19-25
Other Penalties:	
Community Service:	**Yes** 2nd off-Community service from 10 dys to 1 yr in addition to imprisonment. §63-11-30(2)(b)
Restitution (eg Victim's Fund)	**Yes**[1] A defendant may be ordered by the court to make direct restitution to a victim. §99-39-1 et seq.
Other:	**Mand. State Assessment: $115** §99-19-73(2) & (7)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes** Limited to encouraging the speedy trial of DWI cases where the offender has a BAC level of 0.10. If no trial is requested, the license susp periods for implied consent violations apply. §63-11-23(2)
Other:	Under §63-1-53(1)(a), a person's license may be susp if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., vehicle homicide)[2]. Such action may be taken without a preliminary hearing. The time period for this susp is not specified.
Post DWI Conviction Licensing Action:	See the Special Note on p. 3-260.
Type of Licensing Action (Susp/Rev):	**Susp All offs** §63-11-30
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**90 dys-1 yr**[3&4]; 2nd off (w/n 5 yrs)-**2 yrs**[3]; 3rd off (w/n 5 yrs)-**5 yrs**[3]; 4th & sub. off (w/n 5 yrs)-**5 yrs**[3] **Special Note:** DWI off where there has been a chemical test refusal, the above susps are in addition to those imposed for chemical test refusal under the implied consent law. §63-11-30(3)

[1]Some victims of crimial 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.
[2]Note: A DWI offense results in license suspension not revocation.
[3]Judicial review is not allowed for these susp actions by the licensing agency. §63-11-26
[4]The 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.

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

Mandatory Minimum Term of Withdrawal:	1st off-30 dys[1]; 2nd off (w/n 5 yrs)-1 yr[2]; 3rd & sub. off (w/n 5 yrs)-3 yrs[3] See Footnote No. 4. **Special Note:** 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)
Other:	
Rehabilitation:	
Alcohol Education:	Yes 1st off - Required before license can be reinstated. §§63-11-30(2)(a) & 63-11-32
Alcohol Treatment:	Yes 2nd and 3rd offs §63-11-30(2)(e) & (f)
Alcohol Education/	
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Forfeiture.** For a 3rd or sub. offense (w/n 5 yrs), an person's vehicle may be forfeited . However, an offender'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
Terms Upon Which Vehicle Will Be Released:	
Other:	None
Miscellaneous Sanctions Not Included Elsewhere:	None

[1]The county circuit court may reduce the suspension period to 30 days provided the defendant demonstrates that they need their license because of a hardship. The court, if it reduces the suspension period, must require that the defendant "attend and complete an alcohol safety education program" as proved by §63-11-32.

[2]For 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)

[3]For 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)

[4]The 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)

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):	Not more than **25 yrs** §63-11-30(4)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$10,000** §§47-5-3 & 99-19-32(1)
Mandatory Minimum Fine:	**None**[1]
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §63-1-51(1)(a)
Length of Term of Licensing Withdrawal:	**1 yr** §63-1-51(1)(a)
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr** §63-1-51(1)
Other:	**None**

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

Sanction:	
Criminal:	
Imprisonment (Term):	**Misd. 48 hrs-6 mos** §63-11-40
Mandatory Minimum Term of Imprisonment:	**None** §99-19-25
Fine ($ Range):	**$200 to $500**[1] §63-11-40
Mandatory Minimum Fine:	**$200**[1] §99-19-25
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp**
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

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	

[1]There is a mand. State assessment of $115. §99-19-73(2) & (7)

Other Criminal Actions Related to DWI: (continued)

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:	21[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.
"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)[2]
Dram Shop Actions-Social Hosts:	Yes **Limited** A social host cannot be held liable if they provide alcoholic beverages to a person who may lawful consume such beverages. §67-3-73 & *Boutwell v. Sullivan*, 469 So.2d 526 (Miss. 1985)
Other:	None

[1]Note: Persons under 21 may consume light wine and beer in the presence of a parent or legal guardian. §67-3-54(1)
[2]These cases appear to have been abrogated by §67-3-73.

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** §§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**[1]

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: 1st off-**Misd**; 2nd and subsequent offs-**Misd** (2) Selling to a person under 21 beer and wine not more than 4% alcohol by weight-**Misd** §§67-1-81 & 67-3-53 See the Special Note below.
Term of Imprisonment:	(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21: 1st off-**None**; 2nd and subsequent offs-Not more than **1 yr** (2) Selling to a person under 21 beer and wine not more than 4% alcohol by weight-Not more than **6 mos** §§67-1-81, 67-3-53 & 67-3-69

[1]There is also a mand. State assessment of $37. §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)

Other State Laws Related To Alcohol Use: (continued)

Fine ($ Range):	(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21: 1st off-**$500-1,000**[1&2], 2nd and subsequent offs-**$1,000-2,000**[1&2] (2) Selling to a person under 21 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: 1st Off-Rev[3] §67-1-71; 2nd and subsequent Off-**Automatic Rev** §67-1-81 (2) Selling to a person under 21 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: 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 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

[1]There is also a mand. State assessment of $37. §99-19-73(5) & (7)

[2]The 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: 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)

[3]A limited susp may be imposed in lieu of rev.

STATE:	**MISSOURI**
General Reference:	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 Level):	**0.10**[2] §577.012
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	**Drugged Condition**[1] §577.010
Other:	A BAC/BrAC of **0.10** or more is *prima facie* evidence of intoxication. §577.037 For Commercial Motor Vehicle Operators, see p. 3-269.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	**Yes** §577.021
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 (Criminal & Possibly Civil Cases) & *State v. Berry*, 803 S.W.2d 37 (Mo.App. 1990)
Other Information:	None

Chemical Tests of Other Substances for BAC Level 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):	**Yes** A pre-sentence investigation may be made §217.760

[1]The term "intoxicated condition" means "under the influence of alcohol, a controlled substance, or drug, or any combination thereof." §577.001.2

[2]The provisions that establish the illegal per se offense provide that no one shall operate a motor vehicle with a 0.10 or more percent by weight of alcohol in the blood. However, percent by weight of alcohol is defined as grams of alcohol per 100 milliliters of blood. §577.012.1 & .2 Notwithstanding this definition, §577.037, which concerns the admissibility of chemical test evidence to prove either an intoxicated or illegal per se offense, defines "percent by weight of alcohol in the blood" to mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

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-**Rev-1 yr** (90 dys mand) (A restricted 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)(f) & (g), and 577.041
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st Off-Intoxicated off, 1st off Cl B Misd-not more than **6 mos**; Per se off, 1st off Cl C Misd-not more than **15 dys**; Intoxicated/illegal per se offs; "prior offender"[1]-Cl A Misd-not more than **1 yr**; "persistent offender"[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, 1st off-Not more than **$500**; Per se off, 1st off-Not more than **$300**; Intoxicated/illegal per se off, "prior offender"[1]-Not more than **$1,000**; "persistent offender"[2]-Not more than **$5,000**
Mandatory Min. Fine ($):	**None**

[1]A "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.

[2]A "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.

[3]For 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

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 ser offs must perform at least **10 dys** of community service. §577.023.4
Restitution (eg Victim's Fund)	(1) Victim's compensation fund. Note: Defendants pay $36 to the Court; $35 is remitted to the State for the fund and $1 is retained by the Court for admin. expenses. §§595.010 & 595.045 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 two (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:	**Yes 0.10 BAC/BrAC**[1] See the Special Note below. §§302.309.3(5)(i), and 302.500 et seq. 1st Violation-**Susp-30 dys**[1&2] (mand.) with a restricted license for an additional 60 dys (provided there has been no prior "alcohol related enforcement contact"[3] (w/n 5 yrs) §§302.309.3(5)(i) & 302.525.2(1); Subsequent Violation-**Rev-1 yr** (mand.) (if there has been an "alcohol related enforcement contact"[2] 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 under Alcohol Treatment on p. 3-270.
Other:	**None**

[1]Any 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

[2]*Barnes v. Director of Revenue*, 856 S.W.2d 108 (Mo.App. W.D. 1993)

[3]The 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

Special Note: It appears that an admin. per se action may be based on either a BAC or BrAC. The law provides that licensing action may be taken if a person operates a motor vehicle with a 0.10 or more percent of by weight of alcohol in their 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

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 points[1]; 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 off[3]-**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 off[3]-**1 yr**; 2nd off (w/n 5 yrs) of violating the laws related to driving while intoxicated[4]-**5 yrs** §302.060(10); 3rd and subsequent offs of vinlating the laws related to driving while intoxicated[4]-**10 yrs/Permanent**[4] §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. Also, under the point system, 12 points equals **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.

[2]License 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

[3]I.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]**Comment:** It is not clear whether this includes illegal per se offenses.

[5]Under §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 may grant restricted hardship driving privileges for employment reasons after the 30 dy mandatory period.

[6]*Appleby v. Director of Revenue*, 851 S.W.2d 540 (Mo.App. 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. 3-268. 1st Per Se off-None See Footnote Nos. 2 & 5 on p. 3-268. 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. 3-268. 2nd off (w/n 5 yrs) of violating the laws related to driving while intoxicated-2 yrs See Footnote No. 4 on p. 3-268. 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 limited driving privileges may be granted. 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 Footnote No. 4 on p. 3-268. §§302.060(9) & (10), 302.304, sub. 6 and 302.309, sub. 3(6)
A person under 21, 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: A restricted hardship license via court order is available under certain conditions. Such a license cannot be issued to a person (1) who has been convicted of a 2nd or subsequent Intoxicated off or (2) who has received a restricted lic w/n the preceding 5 yrs. §302.309.3(5)(c) & (e) See the Comment below.
Special Note: No restricted hardship 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: The Missouri Supreme Court has held that the State has no "standing" to appeal a trial court order granting hardship driving privileges to persons who have been convicted of a subsequent DWI offense w/n 5 yrs. The court made this holding despite the fact that the issuance of such hardship driving privileges was contrary to statutory law. *Munson v. Director of Revenue*, 783 S.W.2d 912 (Mo.banc 1990)

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 level of 0.04 or more, (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 of 0.04 or more 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. See §§302.700.2(2), (6), (10), (13) & (14), 302.745, 302.750, 302.755 and 302.780.

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
Special Note: I. For a 1st intoxicated/illegal per se conviction, the court must order a defendant to successfully completed an alcohol or drug education or rehabilitation program as a condition for suspending any permissible portion of a sanction. §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. For persons under 21 who have been convicted of any DWI offense, driving privileges cannot be restored until they have successfully completed an alcohol or drug education program. §577.520.1

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: **Impoundment/Forfeiture.** State law provides that certain cities with populations over 100,000 may enact DWI motor vehicle impoundment or forfeiture ordinances. A motor vehicle used in a DWI is subject to such action if (1) a person is a adjudicated within such a city's jurisdiction to be a "prior" or "persistent" offender or (2) a person, who is already such an offender is arrested in such city for a DWI offense and they either refuse to submit to a chemical test or they submit to such test which indicates a BAC level of 0.10 or more. **Important:** A forfeiture ordinance can only apply to persons who do not have lawful driving privileges. §1 of enacted 1993 Senate Bill 167

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

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**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.

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	
Sanction:	
Criminal:	
Imprisonment (Term):	Not more than **1 yr** (Cl A misd) §§302.302, 302.321 and 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**
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** Note: Restricted hardship driving privileges may be granted. This privilege, however, may only be granted once in 5 yrs. §302.309.3(5)

*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)

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

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1945) §§311.310, 311.325, 312.400 & 312.407
Minimum Age (Years) Possession:	21 §§311.325 & 312.407
Minimum Age (Years) Consumption:	None

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	Yes §537.053[1] 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):	No Note: Prior case law has been abrogated via statute. §537.053
Dram Shop Actions-Social Hosts:	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. 1990)
Other:	None

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

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes Rev §§311.720 & 312.510
Length of Term of License Withdrawal:	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

[1]Section 537.053 was held to be constitutional under both State and Federal constitutions. *Simpson v. Kilcher*, 749 S.W.2d 386 (Mo.banc 1988)

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** §§311.310, 311.880, 312.400, 312.500 & 312.510
Term of Imprisonment:	Not more than **1 yr**
Fine ($ Range):	**$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):	**Yes Rev** §§311.720 & 312.510
Length of Term License Withdrawal:	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):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Applies to persons while they are operating a vehicle. §577.017

STATE:	**MONTANA**
General Reference:	Montana Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §61-8-401(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1] §§61-8-406 & 61-8-407
Presumption (BAC Level):	**0.10** §61-8-401(4)(c)[2]
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**, (2) a Dangerous Drug or (3) Alcohol and Any Dangerous ot Other Drug §61-8-401(b), (c) & (d).
Other:	For Commercial Motor Vehicle Operators, see p. 3-277.

Chemical Breath Tests for BAC/BrAc Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §61-8-402(1)
Implied Consent Law Applies to Drugs (Yes/No):	No
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §61-8-404(2)[3]
Other Information:	None

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §61-8-402(1)
Urine:	Yes §61-8-402(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 Note: A PSI is given if the crime carries a prison sentence of **1** yr or more. §46-18-111

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol concentration of 0.10 or more (grams of alcohol per 75.3 milliliters of urine).

[2]The 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. Leverett*, 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.

[3]The Montana Supreme Court in *State v. Jackson*, 672 P.2d 255 (Mont. 1983), upheld the constitutionality of this provision on both Federal and State grounds.

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 - **Mandatory susp for 90 dys**; 2nd or subsequent refusals (w/n 5 yrs); mandatory **rev for 1 yr**. No restricted probationary license can be issued. The peace officer shall immediately seize the defendant's drivers license and it shall be forwarded to the driver licensing division. §61-8-402 **Comment:** 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. 3 on p. 3-278.
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
See the Special Note below.	
Term (Day, Month, Years, Etc.):	I. DWI Off[1,3]: 1st Off-**24 cons hrs-60 dys**; 2nd Off (w/n 5 yrs)-**7 dys-6 mos**; 3rd or sub. off (w/5 yrs)-**30 dys-1 yr** §§61-8-401 & 61-8-714 II. Illegal Per Se Offs[3]: 1st Off - Not more than **10 dys**; 2nd Off (w/n 5 yrs) - **48 cons hrs to 30 dys**; 3rd and subsequent offs (w/n 5 yrs) - **48 cons hrs to 6 mos** §61-8-722. Neg. Veh. Assult[2]-**Not more than 1 yr** §45-5-205

[1]DWI offenses except illegal per se.
[2]Negligent Vehicle Assult-Driving while under the influence of alcohol, a dangerous drug, any drug or any combination of these that results in a serious bodily injury accident.
[3]Imprisonment term can be served in a "facility" other then a jail. §§61-8-714(7) & 61-8-722(7)

Special Note: For persons under 18, the following sanctions apply to both under the influence and illegal per offenses. (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 probably cannot exceed 1 yr (§61-5-208(2)). And, (3) The vehicle owned by or used by the minor may be impounded for 60 days. A person under 18 cannot be incarcerated for these offenses. §61-8-723

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

Mandatory Minimum Term:	I. DWI Offs[1], 1st Off-**24 cons hrs** (may only be suspended for the defendant's physical and mental well-being); 2nd Off (w/n 5 yrs)-**3 dys, 48 hrs** of which must be served cons (may not be suspended except for the defendant's physical or mental well-being); 3rd or subsequent offs (w/n 5 yrs) - **10 dys, 48 hrs** of which must be served cons (may not be suspended if the 3rd off occurred w/n 5 yrs of the first off) §61-8-714 II. Illegal per se offs: 1st off-**24 hrs**; 2nd and sub. offs-**48 con hrs** §61-8-722
Fine: Amount ($ Range):	DWI Off (except illegal per se), 1st Off-**$100 to $500**; 2nd Off-(w/n 5 yrs)-**$300 to $500**; 3rd and subsequent Off-(w/n 5 yrs)-**$500 to $1,000**; Illegal Per Se Off, 1st Off-**$100 to $500**; 2nd Off (w/n 5 yrs)- **$300 to $500**; 3rd and subsequent Off- (w/n 5 yrs)-**$500 to $1,000** Neg. Veh. Assult-Not more then **$1,000**
Mandatory Min. Fine ($):	**None**
Other Penalties: Community Service:	**Yes** §46-18-201(a)(ix) Note: This section allows the court to impose community service but such service is not in lieu of the mandatory imprisonment sanctions noted above for a DWI off.
Restitution (eg Victim's Fund)	**Yes** (1) Paid by the defendant to a victim. §46-18-201(a)(iv) (2) A victim can also receive compensation from the State's Victims' Compensation Fund. §53-9-101 et seq.
Other:	**None**

[1]DWI offenses except illegal per se.

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 a BAC level of 0.04 or more, (2) are under the influence of alcohol or drugs or (3) refuse to submit to a chemical test for an alcohol concentration. For separate subsequent violations either (1) of operating a CMV with a BAC level of 0.04 or more or (2) of refusing to submit to a chemical test, the "suspension" is for life except as may be allowed by Federal regulations. For a second conviction of operating a CMV while under the influence of alcohol or drugs, the CMV privilege is suspended for life except as allowed by Federal regulations. For a 3rd conviction of operating a CMV while under the influence of alcohol or drugs, the CMV privilege is suspended for life (mand.). See §§61-1-134, 61-8-805, 61-8-806 and 61-8-111.

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

Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	None
Other:	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:	
Type of Licensing Action (Susp/Rev):	All DWI offs[1&2]: 1st Off-**Susp**; 2nd off (w/n 5 yrs)-**Rev**; 3rd and subsequent off (w/n 5 yrs)-**Rev** §§61-5-205(2) & 61-5-208 & 61-8-722(4) For persons under 18, their licensees may be **Susp/Rev** Neg. Veh. Assault-**Rev**
Term of License Withdrawal (Days, Months, Years, etc.):	All DWI Offs[1]: 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 and 61-5-208 For persons under 18 the period of susp/rev probably cannot exceed **1 yr** §61-5-208(2)
Mandatory Minimum Term of Withdrawal:	All DWI Offs[1]: 1st Off-**None** Note: Under §61-11-101(2), a restricted probationary license may be issued in lieu of a susp on the condition that the person attends an alcohol treatment program if available[3]; 2nd and subsequent off (w/n 5 yrs)-See Footnote No. 3 below and the Special Note under Alcohol Education on p. 3-279. Neg. Veh. Assault-See Footnote No. 3.

[1]Includes illegal per se offs.
[2]Under §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.
[3]Under §61-2-302, a person, who has had their driving privileges susp or rev, may have such action stayed (or may be issued a restricted probationary license), if they participate in a driver rehabilitation or improvement program. A person is eligible to participate in such a program if they meet one of the following two conditions. (1) They are subject to susp/rev because of a violation of the traffic laws or (2) they have completed 3 mos of a 1 yr rev (or have completed 1 yr of a 3 yr rev) and otherwise met the requirements for "reobtaining" a driver's license.

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

Other:	
Rehabilitation:	
Alcohol Education:	Yes[1] 1st and sub. offs[1&2] - Mandatory participation in either an alcohol education or treatment program. §§61-8-714(4) & 61-8-722(5) **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 See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	Yes **Limited** For persons under 18, The vehicle owned by or used by the them may be impounded for 60 days. §61-8-723
Terms Upon Which Vehicle Will Be Released:	
Other:	
Miscellaneous Sanctions Not Included Elsewhere:	**Home Detention.** Except for the initial 24 hrs of a 1st off[1] or the intial 48 hrs of a 2nd or sub. off[1], an offender may be allowed to serve their incarceration term under "home arrest". §§61-8-714(8) & 61-8-722(8)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	No See the Special Note below.
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	
Mandatory Minimum Term:	
Fine ($ Range):	
Mandatory Minimum Fine:	

[1]Driving while under the influence and illegal per se offenses.
[2]For driving while under the influence and illegal per se offenses, a restriced license may be issued on condition that the offender participates in an alcohol education or treatment program. §61-11-101(2) See Footnote No. 3 on p. 3-278.

Special Note: Even 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 revoication period if a person complies with the terms of a driver improvement program. §61-2-302(9)

Other Criminal Actions Related to DWI: (continued)

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):	**Misd 2 dys to 6 mos** §61-5-212
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$500** §61-5-212
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp or rev** §61-5-212
Length of Term of License Withdrawal Action:	The period of such susp or rev is extended for an additional like period. §61-5-212
Mandatory Term of License Withdrawal Action:	Note: There appears to be no mandatory licensing action. A restricted license may be issued. §61-2-302(9)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** §61-11-201 et seq.
Grounds for Being Declared an Habitual Offender:	Accumulation of 30 points in a 3 yr period Note: A DWI offense = 10 points. §61-11-203(2)
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

*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)

Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than 1 yr
Mandatory Minimum Term of Imprisonment:	None
Fine ($ Range):	Not more than $1,000
Mandatory Minimum Fine ($):	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:	21[1] (Year Eff: 1987) §§16-3-301(3)(a) & (4) & 16-6-305(b)
Minimum Age (Years) Possession:	21[2] §45-5-624(1)(b) There is an employment exemption.
Minimum Age (Years) Consumption:	None[2]

[1]The 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)

[2]It is illegal for a person under 19 years old to either possess or consume an "intoxicating substance". §45-5-624(1)(a)

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §27-1-710[1&2] 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** *Behring 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.[1]
Dram Shop Actions-Social Hosts:	**Yes Limited** §27-1-710 See Footnote No. 1.
Other:	**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)
Term of Imprisonment:	Not more than **6 mos**
Fine ($ Range):	Not more than **$500** Note: A civil fine may be assessed by the licensing agency and such fine is not to exceed $1,500. §16-4-406
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

[1]Under §16-6-305(1)(b) & (c), a person over 21 can be held liable for the tortuous 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 level of 0.05 or more or (2) substantial/visible mental/physical impairment.
[2]*Jevning v. Skyline Bar,* 726 P.2d 326 (Mont. 1986)

Other Criminal Actions Related to DWI: (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** 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 **$500** Note: A civil fine may be assessed by the licensing agency and such fine is not to exceed $1,500. §16-4-406

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Susp or rev** §16-4-406
Length of Term License Withdrawal:	The period of susp may not be more than 3 mos; The period of rev. is not be 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**[1] §16-3-106(2)
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §16-3-106(2)

[1]The 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."

STATE:	**NEBRASKA**
General References:	Revised Statutes of Nebraska & Nebraska Administrative Code (NAC)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic liquor §39-669.07(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1] §39-669.07(1)(b) & (c) Persons under 21 Years Old-**0.02** Traffic Infraction[2] §2 LB-564 enacted in 1993
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of **Any Drug** §39-669.07(1)(a)
Other:	For Commercial Motor Vehicle Operators, see p. 3-289.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**Yes** §39-669.08(3) & §3(2) LB-564 enacted in 1993
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §39-669.08(2)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §39-669.08(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** §39-669.08(9) (Criminal Cases) & *State v. Romell*, 204 N.W.2d 573 (1973)
Other Information:	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.[3] §39-669.08(9)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §39-669.08(1)
Urine:	**Yes** §39-669.08(1)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No[4]
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes**[5] Alcohol assessment (screening) for either a 1st offender or a sub. offender who has not received such an assessment. §39-669.07(8)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. Note: Illegal per se based upon an alcohol concentration in urine was repealed. §4 LB-291 enacted in 1992

[2]Action can only be undertaken as a secondary enforcement to some other illegal activity. §2(2) LB-564 enacted in 1993

[3]A surviving driver (or pedestrian under 16 years old), who is involved in an accident where there has been a fatality, shall be required to submit to a BAC chemical test. The results of such test, however, can only be used for statistical purposes. §§39-6,104.08 & 39-6,104.09

[4]Note: Under §29-3604, pretrial diversion of DWI cases is prohibited.

[5]"A court may order a presentence investigation in any case." §29-2261(2) & (3)

Preceding Page Blank

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): Class V misd **$100 fine**, no imprisonment §§28-106 & 39-669.08(3)

Administrative Licensing Action (Susp/Rev): None

Other: None

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): Cl W misd: 1st off-Not more than **$500/60 dys**; 2nd off (w/n 8 yrs)-Not more than **$500/90 dys**; 3rd off (w/n 8 yrs)-Not more than **$500/1 yr**; 4th or sub. off (w/n 8 yrs)-Not more than **$10,000/5 yrs** §§28-106 & 39-669.08

Mandatory Sanctions:

I. If probation is not granted: 1st off-**$200/7 dys**[1]; 2nd off (w/n 8 yrs)-**$500/30 dys**[1]; 3rd off (w/n 8 yrs)-**$500/90 dys**[1]; 4th or sub. off (w/n 8 yrs)-**$500/1 yr**[1] §§28-106 and 39-669.08(4)(b) & (c)

II. If probation is granted: 1st off-None; 2nd off (w/n 8 yrs)-**48 hrs**[1]; 3rd or sub. off (w/n 8 yrs)-**7 dys**[1] §§28-106 and 39-669.08(4)(b) & (c) See the Comment on p. 3-287.

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 & 39-669.08

II. If probation is granted, the following mandatory revocations must be imposed:[3] 1st off-**Rev 60 dys**; 2nd off-**Rev 6 mos**; 3rd and sub. off-**Rev 1 yr** As part of probation, the court may order to only operate motor vehicles that are equipped with an **ignition interlock** device.[4] §§28-106 & 39-669.08

III. Administrative action[4&5]: 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. §39-669.16 & 247 NAC §026

---

[1]See Footnote No. 1 on p. 3-287 concerning whether minimum mandatory sentences must be served consecutively.

[2]Reduced to 5 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. §39-669.19

[3]These revocations are based upon a conviction under §39-669.08. Revocations cannot run concurrently with jail sanctions.

[4]**Comment:** When a defendant is placed on probation, the law is not clear as to whether such person is eligible to operate a motor vehicle equipped with an "ignition interlock" device prior to the termination of the mandatory revocation period. The law, however, clearly provides that such use is prohibited when the licensing agency acts independently to revoke a driver's license for a refusal to submit to a chemical test.

[5]This 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.

Refusal to Take Implied Consent
Chemical Test: (continued)

Other:	A separate implied consent law makes refusal 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**; licensing action-**90 dys** license "impoundment" Restricted driving privileges for employment are available §39-6,112 and §§3 & 4 LB-564 enacted in 1993

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	Cl W misd: 1st off-Not more than **60 dys**; 2nd off (w/n 8 yrs)-Not more than **90 dys**; 3rd off (w/n 8 yrs)-Not more than **1 yr**; 4th and sub. offs (w/n 8 yrs)-Not more than **5 yrs** §§28-106 & 39-669.07 DWI w/serious bodily injury-Cl. IV Felony-Not more than **5 yrs** §39-669.39 Persons Under 21 Years Old (0.02)-**None**
Mandatory Minimum Term:	I. If probation is not granted: 1st off-**7 dys**[1]; 2nd off (w/n 8 yrs)-**30 dys**[1]; 3rd off (w/n 8 yrs)-**90 dys**[1]; 4th or sub. off (w/n 8 yrs)-**1 yr**[1] §§28-106 and 39-669.07(2)(a) & (b) II. If probation is granted: 1st off-**None**; 2nd off (w/n 8 yrs)-**48 hrs**[1]; 3rd or sub. off (w/n 8 yrs)-**7 dys**[1] §§28-106 & 39-669.07(2)(b) & (c) See the Comment below. DWI w/serious bodily injury-**None**
Fine:	
Amount ($ Range):	1st off-**$500**; 2nd off (w/n 8 yrs)-**$500**; 3rd off (w/n 8 yrs)-**$500**; 4th and subsequent offs (w/n 8 yrs)-**$10,000**; DWI w/serious bodily injury-Cl. IV Felony-Not more than **$10,000** §39-669.39. Persons Under 21 Years Old (0.02)-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 **$300** §39-6,112
Mandatory Min. Fine ($):	I. If probation is not granted: 1st off-**$200**; 2nd off (w/n 8 yrs)-**$500**; 3rd off (w/n 8 yrs)-**$500**; 4th or sub. off (w/n 8 yrs)-**$500** §§28-106 and 39-669.07(2)(a) & (b)

[1]If 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 suspended 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 associate with the granting of probation in §§39-669.07 & 39-669.08. *State v. Soe*, 366 N.W.2d 439 (Neb. 1985), *State v. Schulz*, 378 N.W. 165 (Neb. 1985), & *State v. Stasmy*, 395 N.W.2d 492 (Neb. 1986)

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

Mandatory Min. Fine ($): (continued)	II. If probation is granted: 1st and sub. offs-None §§28-106 & 39-669.07(2)(a) & (b) DWI w/serious bodily injury-None
Other Penalties:	
Community Service:	**Yes** A criminal law violator may be sentence to perform community service. However, community service cannot be used as a substitute for mand jail or fine. Also, community service cannot be used in cases where there is serious bodily injury. §29-2278
Restitution (eg Victim's Fund)	**Yes** (1) A defendant may be ordered to pay restitution to a victim. §29-2280 (2) 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. §39-669.27 **Ignition Interlock.** A DWI offender, who has been placed on probation, may be ordered to only operate motor vehicles that are equipped with "ignition interlock" devices. §6 LB-564 enacted in 1993
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**0.10** §§39-669.15 & 39-669.16 1st violation-Rev **90 dys** (30 dys mand[1]) 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 8 yrs)-Rev **1 yr**[1] (mand) 247 NAC §026[2] **Special Note:** 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. §39-669.16(4)
Other:	**None**
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	**Rev**[3&4] §§39-669.07 & 60-424 Persons Under 21 Years Old (0.02)-**Impoundment** §3(3) LB-564 enacted in 1993

[1]**Comment:** Following the 30 dy mand rev period, restricted driving privileges may be granted with the condition that the offender only operate motor vehicles that are equipped with an "ignition interlock" device. The law is not clear as to whether this condition is mandatory. For subsequent violators, the entire 1 yr revocation period is mandatory. §39-669.16(2)
[2]Regulation 247 NAC §026 also provides that a person is ineligible for a restricted (hardship) license if they are a subsequent violator.
[3]License 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. §§39-669.26, 39-669.27 & 60-4,129
[4]Revocations cannot run concurrently with jail sanctions.

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 8 yrs)-**1 yr**; 3rd & sub. off (w/n 8 yrs)-**15 yrs**[1] §39-669.07 DWI w/serious bodily injury-Cl. IV Felony-**15 yrs** §39-669.39(1) Persons Under 21 Years Old (0.02)-**30 dys** (Driving privileges for employment are available.)
Mandatory Minimum Term of Withdrawal:	1st off-**60 dys**; 2nd off (w/n 8 yrs)-**6 mos**; 3rd & sub. off (w/n 8 yrs)-**1 yr** §39-669.07 & *State v. Matthews*, 465 N.W.2d 763 (Neb. 1991) The court must impose these minimum license revocation periods even if it suspends sentence or places a person on probation. As part of probation, the court may order to only operate motor vehicles that are equipped with an **ignition interlock** device. §39-669.07 However, there may be exemptions; see the Comment below. DWI w/serious bodily injury-Cl. IV Felony-**60 dys** §39-669.39(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. §39-669.07(5) **Comment:** Secs. 39-669.07(5) & 39-669.16(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 §39-669.07(5). Such convictions would normally subject a person to mandatory license revocation periods far longer than 30 days.
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. §39-669.07(8)

[1]Reduced to 5 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. §39-669.19

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 (UrAC = grams of alcohol per 100 milliliters of urine) level of 0.04 or more, (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. See §§60-645, 60-467, 60-4,138, 60-4,163, 60-4,164 and 60-4,168.

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

Alcohol Treatment:	Yes See Alcohol Education on p. 3-289.
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:	
State Has Such a Law:	Yes[1] (1) Veh. Code §39-669.20 and (2) Crim. Code §§28-105, 28-106, & 28-306 which provide respectively for a Cl I Misd (unintentional death caused while operating a motor veh in violation of law except as noted) and a Cl IV Felony (if homicide was the result of DWI, reckless driving or willful reckless driving)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	(1) Veh. Code off-**6 mos**; (2) Crim. Code offs-Cl I Misd-**1 yr** and Cl IV Felony-**5 yrs**
Mandatory Minimum Term:	None
Fine ($ Range):	(1) Veh. Code off-**$500**; (2) Crim. Code offs-Cl I Misd-**$1,000** and Cl IV Felony-**$10,000**
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	(1) Veh. Code off-**Rev**; (2) Crim. Code offs-Cl I Misd-**Rev** and Cl IV Felony-**Rev**; (A person must also attend and successfully complete a driver's education course of at least 8 hrs duration; see §39-669.27.) §§28-306(3)(b), 39-669.26, 39-669.27 & 60-424
Length of Term of Licensing Withdrawal:	(1) 6 mos from the date of revocation or after the date of release from confinement whichever is later.[2] (2) If the death is DWI related, rev. for 15 yrs. and the rev. shall not run concurrently with any jail term.
Mandatory Action--Minimum Length of License Withdrawal:	(1) An employment driving permit may be issued. §§39-669.27 & 39-669.34 (2) If the death is DWI related, mand. rev. for 60 dys and the rev. shall not run concurrently with any jail term. §28-306(3)(b)
Other:	None

[1]**Special Note:** There are two veh homicide laws. One is located in the the Vehicle Code and the other is located in the Criminal Code.
[2]This 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. §§39-669.26 & 39-669.27

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 & sub. offs-Cl III Misd-Not more than 3 mos See Footnote Nos. 1 & 2. §§28-106 & 60-4,108
Mandatory Minimum Term of Imprisonment:	None
Fine ($ Range):	1st & sub. offs-Cl III Misd-Not more than $500 §28-106 See Footnote Nos. 2 & 3.
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	1st & sub offs-Driver ordered not to operate a vehicle §60-4,108 **Special Note:** Under §60-4,110, a motor veh; operated by any person whose license has either been revoked or suspended, may be impounded for a period of time not exceeding 30 dys.
Length of Term of License Withdrawal Action:	1st off-1 yr; sub. off-2 yrs §60-4,108
Mandatory Term of License Withdrawal Action:	1st off-1 yr; sub. off-2 yrs §60-4,108
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	

[1]It is Class IV felony for a person to operate a motor vehicle while their license is suspended/revoked if the basis for the suspension/revocation was three or more DWI/implied consent offense convictions. Sanctions: Jail-Not more than 5 yrs; fine-not more than $10,000. §§28-105, 39-669.07(5) & 39-669.08(7)

[2]Sanctions 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, 39-669.30 & 60-4,129

*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)

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** §39-6,104.07
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** If dead within 4 hrs of the accident.
Vehicle Passenger:	**No**
Pedestrian:	**Yes** If at least 16 yrs old and died within 4 hrs of the accident.
Laws Establishing the Minimum Ages Concerning 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 minor's "permanent place of residence" and for certain employment purposes by those 19 yrs old or older. §§53-102, 53-103(2), 53-103(23), & 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 a case denying liability, see *Holmes v. Circo*, 244 N.W.2d 65 (1976).
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:	**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**

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):	**Yes Susp/Rev**[1] §§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**
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**[1] §§53-116.2, 53-128 & 53-1,104
Length of Term License Withdrawal:	Not specified in the statute.
Anti-Happy Hour Laws/Regulations:	**Yes** Regulation Note: 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):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §53-186 (The consumption of alcoholic liquors inside vehs on public roadways is unlawful "unless authorized" by the State or local government having jurisdiction over the particular public roadway where the consumption is to take place.)

[1]In 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:	**NEVADA**
General Reference:	Nevada Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §484.379(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1&2] §§484.0135 & 484.379(1)(b) & (c)
Presumption (BAC/BrAC Level):	**0.10** §484.381(2)(c) & (4)(c)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **A Controlled Substance**, (2) a Combination of Intoxicating Liquor and a Controlled Substance or (3) Any Chemical, Poision, Organic Solvent and Any Compound or a Combination of These. §484.379(2)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §484.382
Implied Consent Law:	
Arrest Required (Yes/No):	No[3] §484.383(1)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §484.383(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §484.389

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. §484.0135

[2]**Special Note:** Sec. 484.381(1) provides for a presumption related to illegal per se. This provision states that, if the chemical test indicates a BAC level of 0.10 or more, such result shall be "presumed to be no less than the amount present at the time of the alleged violation." A Federal appellate court has held that this statutory provision does not create an unconstitutional mandatory conclusive presumption on its "face". However, a State trial court applied this presumption as if it were a mandatory conclusive presumption. Such application was held to be unconstitutional. *McLean v. Moran*, 963 F.2d 1306 (9th Cir. 1992)

[3]Only "reasonable grounds" are needed not an actual arrest.

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 promulgate 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 level of 0.04 or more, (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 (mand.). 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. In addition, 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. A person, who violates a State regulation, may also be liable for a civil penalty which is not to exceed $10,000. See §§483.908, 706.173, 706.756 & 706.771, NAC §706.247 and 49 USC Appx §2901 et seq.

Preceding Page Blank

Chemical Breath Tests for BAC/BrAC Level:
(continued)

Other Information:	A blood sample may be obtained without consent if (1) there was a death or substantial bodily harm to another person or (2) the driver to be tested was convicted of a previous DWI offense w/n 7 yrs. §484.383(3) & (8) and *Ebarb v. State, Dept. of Motor Vehicles and Public Safety,* 822 P.2d 1120 (Nev. 1991).

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §484.383(1)
Urine:	Yes §484.383(1)[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. DWI offenders and to DWI offenders who have caused either an injury or death. §§176.135, 484.3792(1)(c) & 484.3796 II. 1st offenders who resgistered a BAC/BrAC level of 0.18 or more and 2nd offenders (w/n 7 yrs) must be administered an alcohol or drug evalustion. §484.____ (§4 Ch. 668 Laws of 1993) III. For 1st offenders, a teacher of an (alc.) education course must evaluate the offender to determine if they are an abuser of alcohol or drugs. The finding of this evaluation must be reported to the court. §484.3792(1)(a)(3)

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):	Rev 90 dys §484.384(3)
Other:	None

[1]A 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 arrested for a drug driving offense. §484.383(4), (6) & (7)

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):	1st Refusal - **Rev 1 yr** mandatory; 2nd or subsequent Refusals (w/n 7 yrs) - **Rev 3 yrs** mandatory §§484.384(1) & (2) and 484.385.
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	1st & 2nd DWI offs are misds; 3rd DWI & sub. offs are 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. 3-300.
Term (Day, Month, Years, Etc.):	1st off-**2 dys to 6 mos**; 2nd off (w/n 7 yrs)-**10 dys to 6 mos** (or residential confinement in a treatment facility-**10 dys to 6 mos**); 3rd and subsequent off (w/n 7 yrs)-**1 to 6 yrs** (State prision) §§484.379 & 484.3792
Mandatory Minimum Term:	1st off- **2 dys** 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-**$200 to $1,000**; 2nd off (w/n 7 yrs)-**$500 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-**$200**; 2nd off-**$500**; 3rd and sub. off-**$2,000** §§484.3792(3) & 484.3974(4)(c)(3)
Other Penalties:	
Community Service:	1st off-**48 hrs** (alternative to imprisonment) or, if rehabilitation is taken, **24 hrs** §484.3794(1)(c)
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.

Special Note: A 1st offender or a 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 a 1 yr alcohol or drug treatment program. The person must serve 1 dy in jail or perform 24 hrs of community service and pay the cost of any treatment. §484.3794(1)(c) **Comment:** If this option is taken by a 2nd offender, they may not have to serve the 48 con hrs in jail as provided in §484.3792(4).

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

Other:

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

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. A defendant, however, still has to serve any minimum mandatory imprisonment sentence. §484.3941 et seq. Note: The law is not specific on whether the installation of this device has any impact on mandatory licensing actions.

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. A 1st or 2nd offender who has been ordered to submit to alcohol or drug evaluation, must pay a fee of not more than **$100**. §484.____ (§4 Ch. 668 Laws of 1993)

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.____ (§1 Ch. 140 Laws of 1993)

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

Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	Yes **0.10** BAC/BrAC Level[1] **Rev 90 dys** (mand) §§484.0135, 484.383, 484.384 & 484.385 See the Special Note below.
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" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.
Post DWI Conviction Licensing Action:	
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.
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**90 dys**[2]; 2nd off (w/n 7 yrs)-**1 yr**; 3rd and subsequent off (w/n 7 yrs.)-**3 yr**[2] §483.460
Mandatory Minimum Term of Withdrawal:	1st off-**45 dys**[2]; 2nd off (w/n 7 yrs)-**1 yr** §§483.460(1)(b)(5) & 483.490(2); 3rd and subsequent offs (w/n 7 yrs)-**1 1/2 yrs**[2] 483.490(2)
Other:	
Rehabilitation:	
Alcohol Education:	Yes A temporary alcohol education program may be established. §5 of Ch. 583 of the laws of 1987
Alcohol Treatment:	Yes For 1st[2] & 2nd non-death/non-injuryrelated offs[3] §§209.425 et seq. & 484.3794 Note: Under §209.425, an alcohol treatment program is available for incarcerated DWI offenders.

[1]**Comment:** Sec. 484.385 appears to authorize admin. licensing action against a person who operates a motor vehicle with any amount of a controlled substance in their body for which a valid prescription has not been issued. However, this provision conflicts with §484.384(3). This later section only provides for a 90 dy susp if the driver has a BAC/BrAC level of 0.10 or more.
[2]After 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)
[3]An 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.____ (§5 Ch. 668 Laws of 1993)

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.

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

Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	None
Miscellaneous Sanctions Not Included Elsewhere:	**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)

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-felony (§193.120) §484.377 and (2) death caused by a DWI[1] off-felony (§193.120) §484.3795
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**1 to 6 yrs**-Reckless driving; **1 to 20 yrs**[2]-DWI related offs.[3] §§484.377 & 484.3795
Mandatory Minimum Term:	For a DWI related death-**1 yr**[2&4]
Fine ($ Range):	Not more than **$5,000**-reckless driving; **$2,000 to $5,000**[2]-DWI related offs.
Mandatory Minimum Fine:	For a DWI related death-**$2,000**[2&4]
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §483.460 (Applies to either reckless driving or DWI related deaths.)
Length of Term of Licensing Withdrawal:	For a DWI related death, **3 yrs** 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) & 483.490(2)

[1]The sanctions for this offense also apply to DWI injury related offenses. §484.3795
[2]This sanction also applies to a person who causes substantial bodily harm as a result of a DWI offense. §484.3795(1)
[3]For 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)
[4]This minimum sanction may not be suspended nor may probation be granted.

Other Criminal Actions Related to DWI: (continued)

Other:	1) A person, who has been convicted of DWI related vehicle homicide, may be required to serve a ten (10) period of probation; see §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.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd 30 dys to 6 mos[1] §483.560**
Mandatory Minimum Term of Imprisonment:	**30 dys[1]**
Fine ($ Range):	**$500 to $1,000[1]**
Mandatory Minimum Fine:	**$500[1]**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	For driving on a suspended license-**Susp** For driving on a revoked license-**Rev** §483.560
Length of Term of License Withdrawal Action:	The original susp period extended a like period The original rev extended 1 yr §483.560
Mandatory Term of License Withdrawal Action:	See above. Note: The restricted license provisions of §483.490(2) may apply. See Footnote No. 1 on p. 3-299.
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	

[1]These 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.

Other Criminal Actions Related to DWI: (continued)

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:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
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 Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1933) §§202.020 & 202.055
Minimum Age (Years) Possession:	21 Applies only to possess in a public place. §202.020
Minimum Age (Years) Consumption:	21 Applies to any place where alcoholic beverages are sold. §202.020
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 *Hamm v. Carson City Nugget*, 450 P.2d 358 (Nev. 1969), & *Yoscovitch v. Wasson*, 645 P.2d 975 (Nev. 1982).
Dram Shop Actions-Social Hosts:	No[1]
Other:	None

[1]In *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.

Other State Laws Related To Alcohol: (continued)

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

Type of Criminal Action:	**No** Note: The State allows 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**

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 mos**[1]
Fine ($ Range):	Not more than **$1,000**[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):	Note: Controlled by local law.
Length of Term License Withdrawal:	Note: Controlled by local law.

[1]A person may be allowed to perform community service in lieu of all or part of the jail/fine sentence. §193.150

Other State Laws Related To Alcohol: (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 §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 veh while such person is driving such motor veh upon a highway."

STATE:	**NEW HAMPSHIRE**
General Reference:	New Hampshire Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §§265:82, I(a) & 265:82-a, I(a)
Illegal Per Se Law (BAC/BrAC Level):	0.08[1] §§265:82, I(b) & 265:82-a, II
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Controlled Drug** and (2) any Combination of Intoxicating Liquor and Controlled Drugs §§265:82(I)(a) & 265:82-a, I
Other:	A BAC/BrAC level of 0.08 is *prima facie* evidence of intoxication. §265:89 For Commercial Motor Vehicle Operators, see p. 3-309.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §§215-A:11 & 265:92-a
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §265:84
Implied Consent Law Applies to Drugs (Yes/No):	Yes §265:84
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) §265:88-a
Other Information:	I. If there is probable cause of DWI, a driver, involved in an accident, shall submit to a chemical test for alc. blood content. §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 refusal to submit to these tests or examinations will also result in license suspension.

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §265:84
Urine:	Yes §265:84
Other:	None

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.08 or more or (2) a urine alcohol concentration of 0.08 or more. §259:3-b

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/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
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No Note: Under §651:4, a pre-sentence investigation is not required in misdemeanor cases.

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 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
Other:	See Footnote No. 1.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off-Violation-No term of imprisonment; 2nd and subsequent offs (w/n 7 yrs.)-Misd-Not more than 1 yr §265:82 & 265:82-b, I(b) & 651:2 Aggravated DWI[2]-Misd.-Not more than 1 yr §§265:82-a; 265:82-b, II; 265:9, IV(A) & 651:2 Aggravated DWI[2]-Serious Bodily Injury-Cl B Felony-Not more than 7 yrs §§265:82-b, II & 651:2, II

[1]A person holding an "at risk" probationary license whom police have reasonable cause to believe is driving with a BAC/BrAC level of 0.03 and who refuses to take a BAC test, shall have their license suspended for 90 days. §263:14-a(III). See Miscellaneous Sanctions on p. 3-310.

[2]Aggravated DWI (§265:82-a) is a DWI offense where there is either a serious bodily injury, speed in excess of 30 MPH over the speed limit or a BAC/BrAC level of 0.20 or more.

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

	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)
Mandatory Minimum Term:	2nd and sub. off (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 multiple DWI offender intervention detention center. §265:82-b, I(b)(1) & III
Fine:	
Amount ($ Range):	1st off-**$350 to $1,000**[1]; 2nd and subsequent offs (w/n 7 yrs) Cl A Misd-**$500 to $1,000**[1] Aggravated DWI-Cl A Misd- **$500 to $1,000**[1] Aggravated DWI-Serious Bodily Injury-**$1,000 to $2,000**[1] §265:82-b, I & II
Mandatory Min. Fine ($):	1st off-**$350**[1]; 2nd and subsequent offs-**$500**[1] Aggravated DWI-**$500**[1] Aggravated DWI-Serious Bodily Injury-**$1,000**[1] §265:82-b, I, II & III
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.[2] §651:62 et seq. II. A victim may receive compensation for damages from a State fund.[2] §21-M:8-g et seq.
Other:	**Assessments.** There are two (2) special assessments (1) An assessment of either $2 or 10% of the fine imposed; this assessment is used to fund police training. And, (2) an assessment of 2% of the fine imposed. This assessment is used to fund local victim assistance programs. §188-F:31

[1]**Special Note:** These fine sanctions are listed in the DWI law not in the criminal code.
[2]The 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

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

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, a 28 day treatment program 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 (0.04 for persons under 21 years old) 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" (but have not necessarily been convicted of) an off that requires mandatory license rev (e.g., DWI). A preliminary hearing is required before such action can be taken.

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

1st off-Rev; 2nd off (w/n 7 yrs.)-Rev; 3rd and subsequent offs (w/n 10 yrs)-Rev; Aggravated DWI-Rev See Rehabilitation on p. 3-307. §§263:65, 263.66 & 265:82-b
See the Special Note above.

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

Term of License Withdrawal (Days, Months, Years, etc.):	1st off-90 dys-2 yrs; 2nd off (w/n 7 yrs)-3 yrs[1&2]; 3rd and subsequent offs (w/n 7 yrs)-**Indefinitely**[1&2]; Aggravated DWI[3]-1 to 2 yrs
Mandatory Minimum Term of Withdrawal:	1st off-90 dys; 2nd off (w/n 7 yrs)-3 yrs; 3rd and subsequent offs (w/n 7 yrs)-3 yrs; Aggravated DWI[3]-1 yr 265:82-b(III) **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 A defendant must be complete an impaired driver intervention program before license can be restored for any alcohol related driving off. §263:65a
Alcohol Treatment:	
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	
Terms Upon Which Vehicle Will Be Released:	
Other:	**Vehicle Registration Revocation.** For a 2nd or subsequent DWI 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

[1]If a 2nd or subsequent DWI (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, V

[2]A 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

[3]Aggravated DWI (§265:82-a): A DWI offense where there is either serious bodily injury, speed in excess of 30 MPH over the speed limit or a 0.20 BAC/BrAC level.

[4]Before 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. §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 a BAC/BrAC/UrAC level of 0.04 or more 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 then 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. See §§259:3-b, 259:12-e, 259:14, 259:20-a, 263:94, 263:95 and 263:96.

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

Miscellaneous Sanctions Not Included Elsewhere:	Any person who shall apply for reissuance of their license following an alcohol 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 BAC/BrAC level of 0.03. §263:14a(I) & (II) Note: This suspension may not be mandatory.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Negligent Homicide-Cl A felony-if death results from the operation of a motor veh while DWI §630:3, II
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **15 yrs** §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 Type of Action:	**Rev** §630:3, III
Length of Term of Licensing Withdrawal:	Up to **7 yrs** §630:3, III
Mandatory Action--Minimum Length of License Withdrawal:	**None**
Other:	**Vehicle Registration Revocation.** 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

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

Sanction:	
Criminal:	
Imprisonment (Term):	Misd - Not more than **1 yr** §§625:9, IV, 263:64 & 651:2, II(c)
Mandatory Minimum Term of Imprisonment:	**7 con 24 hrs** periods §263:64, IV
Fine ($ Range):	Not more than **$1,000** §263:64, IV
Mandatory Minimum Fine:	**None**

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Rev §263:64, IV
Length of Term of License Withdrawal Action:	**An additional 1 yr**
Mandatory Term of License Withdrawal Action:	**An additional 1 yr**
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §§259:39 & 262:18 et seq.
Grounds for Being Declared an Habitual Offender:	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)
Term of License Rev While Under Habitual Offender Status:	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-e
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Note: Type of off is not specified in the statute. It is probably a Cl B felony with modifications in the penalty as provided in the habitual offender law. §625:9, III(a)(2)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	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)
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 $4,000.
Mandatory Minimum Fine ($):	**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):	Yes (Required) §§262-A:69-1 & §265:93
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] (Year Eff: 1985) §§175:1, 179:5 & 179:6
Minimum Age (Years) Possession:	21 There are employment exemptions. §§179:10 & 179:23
Minimum Age (Years) Consumption:	None
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	Yes §507-F:1 et seq.[2] Note: 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 (1965).
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:	Misd (For corporations-Felony) §179.58(I)
Term of Imprisonment:	Not more than 1 yr §651:2(II)(c)
Fine ($ Range):	Not more than $2,000 §651:2(IV)(a) (For corporations-not more than $100,000) §651:2(IV)(b))

[1]It 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)

[2]New 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.

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):	**Yes Susp/Rev** §179:57
Length of Term of License Withdrawal:	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:	**Misd** (For corporations-Felony) §179.58(I)
Term of Imprisonment:	Not more than 1 yr §651:2(II)(c)
Fine ($ Range):	Not more than **$2,000** §651:2(IV)(a) (For corporations-not more than $100,000 §651:2(IV)(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):	**Yes Susp/Rev** §179:57
Length of Term License Withdrawal:	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:	**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** §265:81
Anti-Consumption Law (Yes/No):	**Possible** Driver and passengers §177:4 The law states that "...liquor sold in a state store shall not be consumed in a public place." Note: The State is the only seller of sealed packaged alcoholic beverages; however, this would, it appears, not apply to packages purchased outside of the State.

STATE:	**NEW JERSEY**
General Reference:	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 Level):	**0.10**[1,2&3] §39:4-50(a) Under 21 Years Old-**0.01 but less than 0.10**[4] §39:4-50.14
Presumption (BAC Level):	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. 3-318.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	**Probably Yes** Under §39:4-50.2(a), a driver's license can only be revoked when the refusal is based on an arrest. However, see §39:4-50.2(a) where only "reasonable grounds" seems to be required.
Implied Consent Law Applies to Drugs (Yes/No):	No
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) *State v. Stever*, 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". *State v. Dyrl*, 478 A.2d 390 (N.J. 1984), & *State v. Woomer*, 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 & *State v. Figueroa*, 515 A.2d 242 (N.J.Super.A.D. 1986), certif. den. 526 A.2d 204

[1]Standard: Percent by weight of alcohol in the blood. §39:4-50(a)

[2]In *State v. Downie*, 569 A.2d 242 (N.J. 1990), the New Jersey Supreme Court held that breathalzyer results must be given "judicial notice". The court felt that this was is 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)

[4]The 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 "vehicle crossings" (bridges and tunnels) operated by the Port of New York Authority, (2) on any "project" of the New Jersey Expressway Authority or (3) on any "project" of the New Jersey Turnpike Authority. §§27:12C-37(B), 27:12C-37J, 27:23-26, 29:23-32, 32:1-154.3, 32:1-154.9& 32:1-154.10 It is illegal to operate a motorized bicycle while under the influence of intoxicating liquor, any narcotic 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

Preceding Page Blank

Chemical Tests for Other Substances for BAC Level 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) §39:4-50(b)

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):	Fine **$250 to $500** §39:4-50.4a
Administrative Licensing Action (Susp/Rev):	1st Refusal-**Rev 6** mos (Mand); 2nd or sub refusal-**Rev 2 yrs** (Mand) §§39:4-50.2 & 39:4-50.4a
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note below.
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
Mandatory Minimum Term:	1st off-See Rehabilitation on p. 3-318. 2nd off-**48 cons hrs** See Rehabilitation on p. 3-318. 3rd and subsequent offs-**90 dys**[1] See Rehabilitation on p. 3-318.

[1]The 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)

Special Note: In *State v. Hamm*, 577 A.2d 1259 (N.J. 1990), the New Jersey Supreme Court noted that a DWI offense is not a "crime".

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

Fine:	
Amount ($ Range):	1st off-**$250-400**[1]; 2nd off (w/n 10 yrs of a first off)-**$500-1,000**[1]; 3rd and subsequent offs (w/n 10 yrs of a second off)-**$1,000**[1] §39:4-50
Mandatory Min. Fine ($):	1st off-**$250**[1]; 2nd off (w/n 10 yrs of a first off)-**$500**[1]; 3rd and subsequent offs (w/n 10 yrs of a second off)-**$1,000**[1] §39:4-50, *State v. Laurick*,4 575 A.2d 1340 (N.J. 1990), & *State v. Hamm*, 577 A.2d 1259 (N.J. 1990)
Other Penalties:	
Community Service:	2nd off-**30 dys**[2]; 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. Under 21 Years Old-BAC 0.01 but less than 0.10-**15 to 30 dys** community service.[3] §39:4-50.14
Restitution (eg Victim's Fund)	**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
Other:	**None**
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	For an "alleged" DWI relate injury or death (as well as for other serious driving offenses), the licensing agency may issue a preliminary suspension without 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) Also, under §39:5-30(a), the licensing agency can suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws or on "other reasonable grounds".

[1]In addition to any fine, defendants must pay the following fee and surcharge. Defendants must pay an $80 fee to the Alcohol Education and Enforcement Fund (§39:4-50(b)), and are charged a $100 surcharge which goes into a Drunk Driving Enforcement Fund (§39:4-50.8).

[2]May be mandatory and in addition to the minimum term of imprisonment.

[3]The community service and driver licensing sanctions against a person under 21 yrs old for operating a motor vehicle with a BAC level of 0.01 to 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

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

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	**Rev** (probably) The statute uses the terminology "forfeit his right to operate a motor veh." §§39:4-50 & 39:4-50.14
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**6 mos-1 yr**; 2nd off-**2 yrs**; 3rd and subsequent offs-**10 yrs** Under 21 Years Old-BAC 0.01 but less than 0.10-**30 to 90 dys** See Footnote No. 3 on p. 3-317.
Mandatory Minimum Term of Withdrawal:	1st off-**6 mos**; 2nd off-**2 yrs**; 3rd and subsequent offs-**10 yrs** See the Special Note below. Under 21 Years Old-BAC 0.01 but less than 0.10-**30 dys** See Footnote No. 3 on p. 3-317.
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** See the Special Note below. Under 21 Years Old-BAC 0.01 to 0.10-**Yes** §39:4-50.14
Alcohol Treatment:	1st Off-**Yes**[1]; 2nd Off-**Yes**[2]; 3rd and subsequent offs-**Yes**[3] §39:4-50 See the Special Note below. Under 21 Years Old-BAC 0.01 to 0.10-**Yes** §39:4-50.14
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	

[1]There 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.
[2]The imprisonment term may be served in an intoxicated driver resource center.
[3]The 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 CDL is "suspended" 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 level of 0.04 or more, (2) are under the influence of intoxicating liquor, a narcotic, a hallucinogenic drug or habit-producing 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 (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. See §39:3-10.9 et seq.

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

Miscellaneous Sanctions Not Included Elsewhere:	**Special Assessment.** A defendant shall be assessed a penalty of $30 which is to be paid into a fund administered by the Violed Crimes Compensation Board. §2C:43-3.1 **Insurance Surchages.** A DWI offender must pay the following insurance surcharges: 1st & 2nd offs-not less than **$1,000**; and, 3rd off (w/n 3 yrs)-not less than **$1,500**. These surcharges must be paid annually for three (3) years. §17:29A-35(b)(2) **Special Note:** Higher surcharges may be in effect. The New Jersey Insurance Commissioner has the statutory authority to increase these surcharges in order to equate certain types of motor vehicle insurance rates. §17:29A-35(d)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Crime of the third degree[1] Death must have resulted from the reckless operation of a vehicle. "Death by auto" §2C:11-5
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**3 to 5 yrs** §2C:43-6(a)(3)
Mandatory Minimum Term:	If the offense was DWI related-**270 dys**[2]
Fine ($ Range):	Not more than **$7,500** §2C:43-3(b)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**None**
Length of Term of Licensing Withdrawal:	
Mandatory Action--Minimum Length of License Withdrawal:	
Other:	**Restitution** by the defendant (§2C:43-3) or via the Violent Crimes Compensation Board (§52:4B-1 et seq.)

[1]This 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.

[2]Alternative-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)

Other Criminal Actions Related to DWI: (continued)

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

Sanction:	
Criminal:	
Imprisonment (Term):	Not more than 90 dys §39:3-40
Mandatory Minimum Term of Imprisonment:	None
Fine ($ Range):	$500
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp §39:3-40
Length of Term of License Withdrawal Action:	An additional period of not less than 1 yr nor more than 2 yrs §39:3-40
Mandatory Term of License Withdrawal Action:	1 yr

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 §26:2B-24
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes
Vehicle Passengers:	No

Other State Laws Related To Alcohol Use: (continued)

Pedestrian:	Yes
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	21 §§33:1-77 & 33:1-81 (Year Eff: 1983)
Minimum Age (Years) Possession:	21[1] §2C:33-15 There is an exemption for employment.
Minimum Age (Years) Consumption:	21[1] §§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):	Yes §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):	No Note: Previous case law (e.g., *Rappaport v. Nichols*, 156 A.2d 1 (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 served alcoholic beverages to an injury causing guest where the guest (1) is over the legal drinking age and (2) is visibly intoxicated; furthermore, the injuries must be the result of negligent operation of a vehicle by the guest (§2A:15-5.6). Previous case law concerning "adult" guests appears to have been abrogated by these sections. *Kelly v. Gwinnell*, 476 A.2d 1219 (N.J. 1984) 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)
Other:	See Footnote No. 2.

[1]Possession or consumption in a public place.

[2]Under 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 injuried if the bartender continued to serve alcoholic beverages to the patron when it should have been known that the patron was intoxicated. Note: This regulation may have been abrogated by the dram shop statute.

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 disordery persons offense[1] 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[2] §§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.

[1]§§2C:1-4, 2C:1-5b, 2C:43-1, 2C:43-3 & 2C:43-8
[2]§2C:33-17

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.

Other State Laws Related To Alcohol Use: (continued)

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.
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[1]
Anti-Consumption Law (Yes/No):	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

[1]Under §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:	**NEW MEXICO**
General Reference:	New Mexico Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §66-8-102(A)
Illegal Per Se Law (BAC/BrAC Level):	**0.08**[1] §§66-8-102(C) & 66-8-110(E)
Presumption (BAC Level):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of **Any Drug** §66-8-102(B)
Other:	**Aggravated DWI Offense:** Either (1) driving with a BAC/BrAC of 0.16 or more, (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. 3-327.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §66-8-107
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §66-8-107
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Possibly Civil Cases) *McKay v. Davis*, 653 P.2d 860 (1982)
Other Information:	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 BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §66-8-107
Urine:	**No**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No** **Special Note:** The police officer must charge a driver with committing a DWI off if the driver's BAC level is 0.08 or more. §66-8-110(C)
Anti-Plea Bargaining Statute (Yes/No):	**Yes** §§66-8-102.1 If a guilty plea is entered, it must be to one of subsections of the DWI statute when BAC=0.08.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** DWI-PSI screening is requried. §66-8-102(H)

[1]This 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.

Preceding Page Blank

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:	
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. 3-328.); 2nd and 3rd offs-Not more than **364 dys**; 4th 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. **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. §§66-1-4.6(C), 66-1-4.16(Q) & 66-8-102(E)
Mandatory Minimum Term:	DWI Offenses: 1st off-**No**; 2nd off-**72 cons hrs**[4]; 3rd off-**30 con dys**; 4th off-**6 mos** Aggravated DWI Offenses: 1st off-**48 con hrs**; 2nd off-**96 cons hrs**; 3rd off-**60 con dys**; 4th 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**[1]

[1]For any noncapital felony offense, the sentence may be altered by as much as one third by the court depending upon the aggravating/mitigating circumstances. §31-18-15.1

[2]For each prior DWI offense conviction (w/n 10 yrs), the basic imprisonment sanction is increased by an additional 2 yrs.

[3]A 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

[4]This mandatory sanction applies only if the second or subsequent off occurred within five (5) yrs of a first or prior offense.

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

Fine:	
Amount ($ Range):	DWI/Aggravated DWI Offenses: 1st off-Not more than **$500**; 2nd and 3rd offs-Not more than **$1,000**; 4th 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-**$300** (or community service); 2nd off-**$500**; 3rd off-**$750**; 4th 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); 2nd off-**48 hrs** (Mandatory) §66-8-102
Restitution (eg Victim's Fund)	**Yes** §31-17-1 Restitution is to be paid by the defendant.[1]
Other:	**BAC Test Fee.** A fee of **$35** is assessed against each defendant to defray the costs of BAC and other chemical tests for DWI. §31-12-7 **DWI Program Fee.** A fee of **$75** is assessed to fund comprehensive DWI community programs. §31-12-7
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	1st Admin. Per Se Action-(1) For persons 21 yrs old and above who have a BAC/BrAC level of **0.08** or more-**Rev 90 dys** (30 dys mand followed by restricted driving priviliges for 60 dys) and (2) For persons under 21 yrs of age who have a BAC/BrAC level of **0.02** or more-**Rev 6 mos** (30 dys mand followed by restricted driving priviliges for 60 dys); Subsequent Admin Per Se Action (all persons)-**Rev 1 yr** (mand) §§66-8-110(D), 66-8-111(C)(1), (2) & (3) and (D) See Footnote No. 2.
Other:	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.

[1]Restitution appears to be required if a sentence is either suspended or deferred. §§31-17-1B & 31-20-6

[2]For an admin. per se action where a person (1) has failed to complete a rehabilitation program for a 1st DWI off or (2) has been convicted of a second or subsequent DWI off - **1 yr** mandatory license rev. §66-5-29(A)(2) & (3) and (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 either (1) have a BAC level of 0.04 or more (Standard: Percent by of alcohol in the blood), (2) are under the influence of alcohol or a controlled substance (Note: A conviction for these offenses is required before a person can be "disqualified". §66-5-68) 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.). See §§66-5-65, 66-5-68 & 66-5-68.1.

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

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	DWI/DWI Aggravated Offenses: 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-**1 yr**; 3rd off-**10 yrs** §66-5-35(A)(2) **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)
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:	**None**
Miscellaneous Sanctions Not Included Elsewhere:	**Driving Safety Course.** A DWI offender may be required to take a driving safety course. §66-10-11

Historical Note: In 1993, legislation that revised the DWI laws repealed previous 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 (CA 1989), cert. den. by the New Mexico Supreme Court, 778 P.2d 911 (N.M. 1989)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes Misd** However, if the driver was intoxicated-**3rd Degree Felony** §66-8-101
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Misd-Not more than **90 dys**; 3rd Degree Felony-**3 yrs**[1] §§31-18-15 & 66-8-7B
Mandatory Minimum Term:	3rd Degree Felony-**2 yrs** See Footnote No. 1 on p. 3-324.
Fine ($ Range):	Misd-Not more than **$100**; 3rd Degree Felony-Not more than **$5,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Misd-**Susp**; 3rd Degree Felony-**Susp** §§66-5-29 & 66-5-20
Length of Term of Licensing Withdrawal:	Misd-**1 yr**; 3rd Degree Felony-**1 yr**
Mandatory Action--Minimum Length of License Withdrawal:	3rd Degree Felony-**1 yr**
Other:	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.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd Less than 1 yr** §§31-19-1(A) & 66-5-39(A)
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 additional suspension/revocation periods appear to be mandatory.

[1]For each prior DWI offense conviction (w/n 10 yrs), the basic imprisonment sanction is increased by an additional 2 yrs.
[2]Plea bargaining is not allowed to another offense. §66-5-39(A)
[3]The 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)

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	No However, §66-5-5(D) does prevent anyone, who has been convicted of DWI 3 or more times, from applying for a drivers license for 5 yrs.
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[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]

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1934) §§60-3A-3(0), 60-7B-1 & 60-7B-1.1
Minimum Age (Years) Possession:	21 There is an exemption when the minor is accompanied by a parent or guardian. §§60-3A-3(O), 60-7B-1 & 60-7B-1.1
Minimum Age (Years) Consumption:	None

[1]The 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)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	Yes §41-11-1[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 *Lopez v. Maze*, 651 P.2d 1269 (N.M. 1982)[3]
Dram Shop Actions-Social Hosts:	Yes §41-11-1(E)[2] 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)[3]
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):	Yes[4] §60-6C-1
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) **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)

[1]The 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]Note: For each transaction or occurance, damage awards are subject to the following limits: (1) For one person, $50,000 for injuries/death and $20,000 for property damage; and, (2) for two or more persons, $100,000 for injuries/death and $20,000 for property damage. §41-11-1(I) **Caution:** In a case of limited application, the New Mexico Supreme Court has held that, as applied to certain specific facts before the court, the above limits on liability were unconstitutional. *Richardson v. Carnegie Library Restaurant, Inc.*, 763 P.2d 1153 (N.M. 1988)

[3]Note: §41-11-1(H) may have abrogated the holding in a previous social host liability case decided by the New Mexico Supreme Court. *MRC Prop. v. Gries*, 652 P.2d 732 (N.M. 1982)

[4]In emergency situations, licenses may be "summarily suspended". §60-6C-7

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:	**Petty Misd**-for persons; **Misd**-for corporations §§31-19-1(A)(B), 31-20-1, 60-7A-25, 60-7B-1 & 60-7B-1.1
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 Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes**[1] §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) **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)
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]See Footnote No. 4 on p. 3-331.

STATE:	**NEW YORK**
General Reference:	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 condition[1] V&T Law §1192(3)
Illegal Per Se Law (BAC Level):	**0.10**[2] V&T Law §1192(2)
Presumption (BAC Level):	**None**
Types of Drugs/Drugs and Alcohol:	**A Controlled Substance**[1&3] V&T Law §§114-a & 1192(4) and Public Health Law §3306
Other:	A BAC of not more than **0.05** but not more than **0.07** is "relevant evidence" of being impaired. V&T Law §1195(2)(b) & (c) A BAC of more than **0.07** but less than **0.10** is *prima facie* evidence of impairment. V&T Law §1195(2)(b) & (c) For Commercial Motor Vehicle Operators, see p. 3-336.

Chemical Breath Tests for BAC Level:

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):	**No**[4] V&T Law §1194(2)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** V&T Law §1194(2)(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) V&T Law §1194(2)(f)
Other Information:	**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 alcoholic 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.

[1]The 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.
[2]Standard: Percent by weight of alcohol in the blood. V&T Law §1192(2)
[3]The law provides that no one shall drive while impaired by drugs as defined in the motor vehicle law.
[4]A 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)

Chemical Tests of Other Substances for BAC Level 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):	**No**
Anti-Plea Bargaining Statute (Yes/No):	**Yes** Unless available evidence determines otherwise, plea bargaining is allowed only to another DWI offense. V&T Law §1192(10)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** (Required for felony convictions.) Criminal Procedure Law §390.20

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**Infraction**[1] 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):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**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.
Other:	(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 arraingment based upon a sworn written police report.

[1] *People v. Steves*, 459 N.Y.S.2d 402 (Sup. 1983)

[2] For persons under 21 who have refused to submit to a chemical test and who have had a previous alcohol/drug driving offense conviction, 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) A Civil Penalty of **$200**; a Civil Penalty of **$500** for a 2nd or subsequent refusal (w/n 5 yrs) or for a 1st refusal where there has been a previous DWI off conviction (w/n 5 yrs) V&T Law §1194(2)(d)(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	"Impaired" status offs (Traffic Infraction) V&T Law §§1192(1) & 1193(1)(a); 1st off-Not more than **15 dys**; 2nd off[1] (w/n 5 yrs)-Not more than **30 dys**; 3rd and any subsequent off[1] (w/n 10 yrs)-Not more than **90 dys**; Per Se and Intoxicated status offs[2], 1st off (Misd)-Not more than **1 yr** V&T Law §1193(1)(b); 2nd and any subsequent offs[3] (w/n 10 yrs) Cl E Felony-Not more than **4 yrs**[4] V&T Law §§1192 & 1193(1)(c)
Mandatory Minimum Term:	None
Fine:	
Amount ($ Range):	"Impaired" status offs, 1st off-**$300 to $500**; 2nd off[1] (w/n 5 yrs)-**$500 to $750**; 3rd and any subsequent offs[1] (w/n 10 yrs)-**$750 to $1,500** V&T Law §1193(1)(a); Per se and intoxicated status off[2], 1st off (Misd)-**$500 to $1,000** V&T Law §1193(1)(b); 2nd and subsequent offs (w/n 10 yrs) Cl E Felony-**$1,000 to $5,000** V&T Law §1193(1)(c)
Mandatory Min. Fine ($):	"Impaired" status offs, 1st off-**$300**; 2nd off (w/n 5 yrs)-**$500**; 3rd and any subsequent offs (w/n 10 yrs)-**$750**; Per se and intoxicated off[1], 1st off (Misd)-**$500**; 2nd and any subsequent offs (w/n 10 yrs) Cl E felony-**$1,000**[5]
Other Penalties:	
Community Service:	**Yes** Community service may be a condition of probation. Penal Law §65.10(2)(h)
Restitution (eg Victim's Fund)	**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.

[1]A previous alcohol offense conviction (of any type) is considered a previous offense.
[2]Includes driving while impaired by drugs.
[3]A previous offense also includes vehicle assault (Penal Law §§120.03 & 120.04) and vehicle homicide (Penal Law §§125.12 & 125.13).
[4]Penal Law §§70.00 & 80.00
[5]This fine (for a felony conviction) may not be mandatory. *People v. Porter*, 522 N.Y.S.2d 88 (Co.Ct. 1987)

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

Other:

Special Note: New York has an off known as "Vehicle Assault". A person is guilty of such an off if they injure another in a criminally negligent manner while in violation of the DWI law. Such an off is a Cl E Felony. Penal Law §120.03

Ignition Interlock. In a pilot program, limited to only a few counties, the court may require a person convicted of driving either while impaired or intoxicated and sentenced to probation to only operate vehicles equipped with an "ignition interlock" device. V&T Law §1198 (repealed 7/1/94)

Mandatory Surcharges. Felony-Mand surcharge of **$150** plus a $5 crime victim assistande fee Misd-Mand surcharge of **$85** plus a $5 crime victim assistande fee V&T Law §1809 & Penal Law §60.35 See Footnote No. 1.

[1]Note: The mandatory surcharges provided by the V&T Law and the Penal Law and given are identical until November 1, 1994. After this date, the V&T Law provides that for any offense there will be a mandatory surcharge of $25. The provisions in the Penal Law will remain the same.

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 level of 0.04 or more (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 a 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". See V&T Law §§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 level 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 level 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 within five (5) years been convicted two (2) or more times 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 E felony if they are convicted two (2) times (within ten (10) years) of operating a CMV in violation of the regular provisions of the DWI Law (V&T §1192, subds. 1, 2, 3 & 4). The sanctions for the above felony offenses are a fine of $1,000 to $5,000 and/or a term of imprisonment of not more than four (4) years. See V&T Law §1193(1)(d)(1), (2) & (3) and Penal Law §§55.10(1)(b), 55.10(2)(b), 70.00(2)(c) & 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 trunk 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 one (1) year. For a subsequent offense (within ten (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 four (4) years; in addition, such person is "disqualified" from operating these types of vehicles for at least five (5) years. See V&T Law §§1193(1)(d)(1), (2) & (3), 1193(2)(b)(4) & 1193(2)(e)(3) and Penal Law §§55.10(1)(b), 55.10(2)(b), 70.00(2)(c) & 70.15(1)(a).

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

Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	None
Other:	**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)[1] See "Other" under Sanctions for Refusal to Submit to an Implied Consent Test on p. 3-334.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	"Impaired" status offs[2], 1st off-**Susp** (Rev if person is under 21 years old); 2nd off (w/n 5 yrs of any alcohol driving off)-**Rev**; Per se and intoxicated offs[3], 1st off-**Rev**; 2nd and any subsequent offs (w/n 10 yrs)-**Rev** V&T Law §1193(2) See Footnote No. 4 and the Special Note below.
Term of License Withdrawal (Days, Months, Years, etc.):	"Impaired" status offs, 1st off-**90 dys**; 2nd off (w/n 5 yrs of any alcohol driving off)-**6 mos**; Per se and intoxicated offs, 1st off[5]-At least **6 mos**; 2nd and any subsequent offs[5] (w/n 10 yrs)-At least **1 yr** V&T Law §1193(2)(a) & (b)
Mandatory Minimum Term of Withdrawal:	"Impaired" status offs, 2nd off (w/n 5 yrs of any alcohol driving off)-**6 mos**; Per se and intoxicated offs, 2nd and any subsequent offs[3] (w/n 10 yrs)-**1 yr** V&T Law §1193(2)(a) & (b) See Footnote Nos. 3 and 5.

[1]There must be "reasonable cause" to believe that the offender violated V&T Law §1192(2), (3) & (4) before the court can impose this suspension.

[2]If a person is convicted of an "impaired" offense while operating a motor vehicle on a probationary license, such license is suspended for 60 days (mandatory) V&T Law §510-b(1)

[3]Also includes driving while impaired by drugs under V&T Law §1192(4).

[4]A 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, prior to 11/1/88, they have participated in such a program w/n a five yr period or (2) if, after 11/1/88, they have been convicted of a subsequent alcohol driving offense. 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)

[5]Under V&T Law §1193(2)(c), if a person is convicted of two (2) violations of V&T Law §1192(3) & (4) where a personal injury has resulted in each offense, their license is permanently revoked.

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. 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). An offender is eligible for restricted driving privileges for all of this period. V&T Law §510(6)(i)

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

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 DWI felony offense (e.g., a second DWI offense w/n 10 yrs). This sanction is not mandatory. Civil Practice Law & Rules §§1301(5) & 1311(1)(a) and *Holtzman v. Bailey*, 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. See the Special Note on p. 3-337. V&T Law §1193(2)(a) & (b)
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)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	Yes Vehicle Manslaughter in the 2nd degree-Cl D felony Death of another based on criminally negligent action while in violation of the DWI laws. Penal Law §125.12 See Footnote No. 1.
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

[1]If a person kills another while operating a motor vehile while their license is suspended/revoked for either an alcohol/drug driving offense conviction 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 a fine of not more than $5,000. Penal Law §§70.00(2)(c), 80.00(1)(a) & 125.13

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** V&T Law §510(2)(a)(i)
Length of Term of Licensing Withdrawal:	At least **6 mos** V&T Law §510(6)
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 (See Footnote No. 1 on 3-318.) 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:

Sanction:	
Criminal:	
Imprisonment (Term):	**Misd**[1] **7 to 180 dys** V&T Law §511(2)(a)(iii) & (2)(b) See Footnote No. 2.
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$500-$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:	

[1]Aggravated 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.

[2]A person operating 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-$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)

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 N.Y. County Law §674(3)(b)[1]
BAC 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:	21[2] (Year Eff: 1985) Alcoholic Beverage Control Law §§65, 65-b & 82 and Penal Law §260.20(4)
Minimum Age (Years) Possession:	21[3]
Minimum Age (Years) Consumption:	21[3]

[1]The 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)

[2]It 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-b

[3]Unlawful possession with intent to consume by persons under 21 years old. Alcohol Beverage Control Law §65-c Exceptions: (1) Either a person under 21 year 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.

Other State Laws Related To Alcohol Use: (continued)

Dram 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):	*Berkeley v. Park*, 262 N.Y.S. 2d 290 (N.Y. 1965)
Dram Shop Actions-Social Hosts:	**Yes Limited** Liability apples only in situations where the person being served alcoholic beverages is under 21 years old.[1] N.Y. Gen. Oblig. Law §11-100 Note: In *Joly v. Northway Motor Car Corp.*, 517 N.Y.S.2d 595 (A.D. 3 Dept. 1987), the court found no social host liability at a party given by a business where alcoholic beverages where furnished to adult guests.
Other:	**None**
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
Term of Imprisonment:	**Not more than 1 yr**
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):	**Yes** suspended, cancelled, or revoked Alcoholic Beverage Control Law §17(3)
Length of Term of License Withdrawal:	Not specified in the statute

[1]Note: In *Montgomery v. Orr*, 498 N.Y.S.2d 968 (Sup. 1986), the court held a social host liable on a factual situation, concerning the service of alcoholic beverages to persons under 21 years old, arising prior to the enactment of N.Y. Gen. Oblig. Law §11-100. The court based its decision on common law negligence principles.

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:	**Class A or B Misds**[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:	Cl A Misd-Not more than **1 yr**; Cl B Misd-Not more than **3 mos**
Fine ($ Range):	Cl A Misd-Not more than **$1,000** (Not more than $5,000 for corporations); Cl B Misd-Not more than **$500** (Not more than $2,000 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):	**Yes** Suspended, cancelled, or revoked Alcoholic Beverage Control Law §17(3)
Length of Term License Withdrawal:	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):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers V&T Law §1227

[1]Penal 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.

[2]Under 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). A violation of §65 of the Alcoholic Beverage Control Law is a Class A misdemeanor (§130 of the Alcoholic Beverage Control Law). A violation of §260.20 of the Penal Law is a Class B misdemeanor. See also §55.10(2)(b) of the Penal Law.

STATE:	**NORTH CAROLINA**
General Reference:	General Statutes of North Carolina

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an impairing substance[1] §§20-4-4.01(14a) & 20-138.1(a)(1)
Illegal Per Se Law (BAC/BrAC Level):	**0.08**[2&3] §§20-4.01(0.2) & 20-138.1(a)(2)
Presumption (BAC Level):	**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:	For Commercial Motor Vehicle Operators, see p. 3-344.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**Yes** §§20-16.2(i) & 20-16.3
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[4] §20-16.2(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §§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)
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 officers 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 BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes Limited**[5]
Urine:	**No**[5]
Other:	**No**[5]

[1]The term "impairing substance" means either alcohol, a controlled substance (under Ch. 20), any other drug or psychoactive substance. §20-4.01(14a)

[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.08 or more.

[3]**Special Note:** It is illegal for a provisional licensee, a person 16 but less than 18 years old, to operate a motor veh with any alcohol or a controlled substance in their body. This does not apply in situations where the controlled substance was lawfully obtained and is taken in therapeutically appropriate amounts. §20-138.3.

[4]Arrest or if criminal process for the DWI offense has been issued. §20-16.2(a1)

[5]The taking of blood appears to be limited to unconscious persons or to those who are incapable of refusing a test. However, the officer may direct the administration of any other chemical test that may be effectively performed. §20-16.2(a) & (b)

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 §§20-179(m) & 20-179.1

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	No
Administrative Licensing Action (Susp/Rev):	No
Other:	None
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	1st refusal: **Rev 12 mos** (6 mos mand with a 10 dy immediate mand rev); 2nd or sub. refusal (w/n 7 yrs): **Rev 12 mos** (with a 10 dys immediate mand rev) §§20-16.2(d) & 20-16.5[1]
Other:	**Special Note:** 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)

[1]For persons 16 but less than 18 years old, provisional licensees, a rev of 45 dys or until the person reaches 18 whichever is the longer period (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): 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 level of 0.04 or more, (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.). It is a misdemeanor to operate a CMV (1) while appreciably under the influence of an impairing substance or (2) with a BAC/BrAC level of 0.04 or more. The sanctions for this offense are jail for not more than 2 yrs and a fine of not less than $100. See §§20-4.01(0.2)(3d), (5a), (14) & (25a), 20-17.4(a) & (b) and 20-138.2.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	Level 1 Punishment-**14 dys-24 mos**; Level 2 Punishment - **7 dys-12 mos**; Level 3 Punishment- **72 hrs-6 mos**[1]; Level 4 Punishment-**48 hrs-120 dys**[1]; Level 5 Punishment-**24 hrs to 60 dys**[2] §20-179 See Footnote No. 3 and the Special Note on p. 3-346. 4th off or sub. off (w/n 7 yrs) (Habitual Impaired Driving) (Class J Felony)-**1 to 3 yrs**[4] §§14-1.1(a)(9) & 20-138.5 For Provisional Licensees, See the Special Note on p. 3-347.
Mandatory Minimum Term:	Level 1 Punishment - **14 dys** or 4 con. dys in jail and 20 dys of "house arrest"[3]; Level 2 Punishment - **7 dys** or 2 con dys in jail and 10 dys of "house arrest"[3] See the Special Note on p. 3-346. §20-179(g) & (h) 4th off or sub. off (w/n 7 yrs) (Habitual Impaired Driving) (Class J Felony)-**1 yr**[4] §20-138.5
Fine:	
Amount ($ Range):	Level 1 Punishment - Not more than **$2,000**; Level 2 Punishment - Not more than **$1,000**; Level 3 Punishment - Not more than **$500**; Level 4 Punishment - Not more than **$250**; Level 5 Punishment - Not more than **$100** §20-179 4th off or sub. off (w/n 7 yrs) (Habitual Impaired Driving) (Class J Felony)-Fines are authorized but are not specified in the statute.[4] §§14-1.1(a)(9) & 20-138.5.
Mandatory Min. Fine ($):	None
Other Penalties:	
Community Service:	Level 3 Punishment - **72 hrs**; Level 4 Punishment - **48 hrs**; Level 5 Punishment - **24 hrs** See Footnote No. 2. §20-179
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).)
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).

[1]The 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.

[2]Community service is imposed as a condition of probation.

[3]For 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)

[4]Effective January 1, 1995, the Habitual Impaired Driving Offense will be classified as a Class I Felony. The sanctions for this type of felony are an imprisonment term of up to 59 mos and a fine. The length of the imprisonment term 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

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

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. 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)

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

Yes 0.08 BAC/BrAC[1&2] **Rev for 10 dys** (Mand) §20-16.5(b) A limited license cannot be issued following a rev under this section. §20-16.5(i) 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 30 dys. §20-16.5(f)

Other:

None

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
For Provisional Licensees, see the Special Note on p. 3-347.

[1]The standard is the same as for illegal per se.
[2]For commercial motor vehicle operators, the BAC/BrAC level is **0.04**. §20-16.5

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

Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**1 yr**[1&2]; 2nd off-**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 See the Special Note on p. 3-346.
Mandatory Minimum Term of Withdrawal:	1st off-None; 2nd off-**2 yrs** (After 2 yrs, a conditional license may be issued); 3rd off- **3 yrs** (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** §20-179.2
Alcohol Treatment:	**Yes** Under §20-179.1, treatment may be order by the court as a condition of probation. Also, 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.

[1]Under §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. 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.

[2]If 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).

Special Note: For persons who have provisional licenses, persons 16 but less than 18 yrs old, the following sanctions apply:

1) For the offs of driving with any alcohol or controlled substance in their body but where such amount would not result in a normal DWI charge and conviction (§20-138.3) - a rev for 45 dys or until the person reaches 18 whichever is the longer rev period. This revocation period is mandatory. §20-13.2 A violation of §20-138.3 is a misdemenaor (Effective January 1, 1995: Misd Cl 2 Misd). The sanctions for this offense are a jail term of not more than 60 dys and/or a fine of not more than $100 (Effective January 1, 1995, 1 to 120 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. §15A-1340.23). §§20-176(c) & 15A-1340.23

2) For a DWI conviction - a rev for 45 dys or until the person reaches 18 whichever is the longer rev period (this revocation period is mandatory) plus a regular DWI rev. These revs, however, are to run concurrently. §§20-4.01(31a) & 20-13.2

3)Note: A person convicted under §20-138.3 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)

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

Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	None
Terms Upon Which Vehicle Will Be Released:	
Other:	A driver's veh may be subject to forfeiture if the driver was operating a veh (1) while DWI and (2) while his/her license has been revoked for a previous DWI off, implied consent refusal, or other mandatory rev. that involved alcohol. §20-28.2
Miscellaneous Sanctions Not Included Elsewhere:	None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	Yes Death by Vehicle I. Class I Felony (Effective January 1, 1995: Class G Felony) if death is DWI related[1] II. Misd (Effective January 1, 1995: Class 1 Misd) if death is not DWI related §20-141.4
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	I. Class I felony-Not more than **5 yrs** §14-1.1 Effective January 1, 1995: Class G Felony-**6 to 29 mos**[2] §15A-1340.17 II. Misd-Not more than **2 yrs** §20-141.4(b) Effective January 1, 1995: Class 1 Misd-**1 to 120 dys**[3] §15A-1340.23
Mandatory Minimum Term:	None
Fine ($ Range):	I. Class I felony-Fines authorized but not specified in the statute. §14-1.1 Effective January 1, 1995: Class G Felony-The fine amount is discretionary with the court. §15A-1340.17 II. Misd-Not more than **$500** §20-141.4(b) Effective January 1, 1995: Class 1 Misd-The fine amount is discretionary with the court. §15A-1340.23
Mandatory Minimum Fine:	None

[1]Includes deaths that are related to CMV operation while in violation of §20-138.2.
[2]The 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
[3]The length of the imprisonment term is determined in part by the number of prior criminal convictions.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev**
Length of Term of Licensing Withdrawal:	**1 yr** unless the trial judge issues a limited driving privilege 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(e)
Mandatory Action--Minimum Length of License Withdrawal:	**None**
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Vehicle Impoundment/Confiscation on p. 3-348.
Sanction:	
Criminal:	
Imprisonment (Term):	Driving While Revoked-**Misd** (1) Not to exceed **2 yrs** §20-28(a) (2) If a person's license has been permanently revoked and they thereafter drive-**30 dys to 2 yrs** §20-28(b) Effective January 1, 1995: Class 1 Misd-**1 to 120 dys**[1] §15A-1340.23
Mandatory Minimum Term of Imprisonment:	If a person's license has been permanently revoked and they thereafter drive, **30 dys** §20-28(b)
Fine ($ Range):	Driving While Revoked-(1) Not less than **$200** 20-28(a) (2) If a person's license has been permanently revoked and they thereafter drive-not more than **$1,000** §20-28(b) Effective January 1, 1995: Class 1 Misd-The fine amount is discretionary with the court. §15A-1340.23
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	1st or 2nd off-**Susp** or **Rev**; 3rd off-**Rev** §§20-28
Length of Term of License Withdrawal Action:	1st off-**1 yr** susp/rev added to original susp/rev period; 2nd off-**2 yrs** susp/rev added to original susp/rev period; 3rd off-**Permanent rev** §§20-28

[1]The length of the imprisonment term is determined in part by the number of prior criminal convictions.

*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)

Mandatory Term of License Withdrawal Action:

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)
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. 3-345.

Habitual Traffic Offender Law:
State Has Such a Law (Yes/No): No Note: The Habitual Traffic Offender Law, §§20-220 to 20-231, was repealed by Session Laws 1977, Ch. 243, §1.

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):

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:

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) §§18B-302(a) & (b)
Minimum Age (Years) Possession:	**21** §§18B-301(f)(4) & 18B-302(b) There is an 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 $500,000
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Hutchens v. Hankins*, 303 S.E.2d 584 (N.C. App. 1983) (discretionary review denied by the North Carolina Supreme Court 305 S.E.2d 734 (N.C. 1983)), *Freeman v. Finney*, 309 S.E.2d 531 (N.C.App. 1983) (discretionary review denied by the North Carolina Supreme Court 315 S.E.2d 702 (N.C. 1984)), & *Chastain v. Litton Systems, Inc.*, 694 F.2d 957 (CA4, 1982) (cert. den., 462 U.S. 1106 (1983).
Dram Shop Actions-Social Hosts:	**Yes** Under general negligence principles of common law, a social host may be held liable for the injuries caused by intoxicated guests. *Hart v. Ivey*, 420 S.E.2d 174 (N.C. 1992) **Comment:** Although the *Hart* case concerned injuries caused by intoxicated minors, language by the court indicates that liability could also result from injuries caused by intoxicated adult guests.
Other:	A licensee is not liable for the injuries sustained by an intoxicated patron. *Sorrells v. M.Y.B. Hospitality Ventures*, 423 S.E.2d 72 (N.C. 1992)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misd**[3] §§14-3, 18B-102 & 18B-305
Term of Imprisonment:	Not more than 2 yrs
Fine ($ Range):	Under §14-3, a fine is authorized but is not specified. See Footnote No. 2.

[1]These 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".

[2]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

[3]See Special Note on p. 3-352.

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): **Yes**[1] Left to the Board's discretion as to whether to suspend or to revoke. §§18B-104 & 18B-305

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: **Misd** §§14-3, 18B-102 & 18B-302 See the Special Note below.

Term of Imprisonment: Not more than 2 yrs

Fine ($ Range): Under §14-3, a fine is authorized but is not specified. See Footnote No. 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**[1] 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.

Special Note: Effective January 1, 1995, this offense will be classified as Class 1 Misdemeanor. The imprisonment sanction for this type of misdemeanor is 1 to 120 dys. The length of the imprisonment term is determined in part by the number of prior criminal convictions. The amount of the fine sanction for this type of misdemeanor is discretionary with the court. §15A-1340.23

[2]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

[1]In lieu of either suspension or revocation, the permittee may agree to pay a penalty of not more than $5,000. §18B-104

Other State Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:	Yes (Regulation) T04: 02S.0200[1]
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[2] §18B-401(a)
Anti-Consumption Law (Yes/No):	Yes[2] Driver only §18B-401(a)

[1]North Carolina Administrative Code

[2]The 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."

STATE:	**NORTH DAKOTA**
General Reference:	North Dakota Century Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §39-08-01(1)(b)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1] §§39-08-01(1)(a) and 39-20-07(3) & (4)
Presumption (BAC Level):	**None**
Types of Drugs/Drugs and Alcohol:	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:	For Commercial Motor Vehicle Operators, see p. 3-357

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**Yes**[2] §39-20-14
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §39-20-01
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §39-20-01
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §39-20-08 & *City of West Fargo v. Maring*, 458 N.W.2d 318 (N.D. 1990) Admissible provided the defendant testifies.
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 is DWI, such driver may be compelled to submit to a chemical test. §39-20-01.1

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §39-20-01
Urine:	**Yes** §39-20-01
Other:	**Saliva** §39-20-01

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**[3] §39-08-01(4) (Addiction evaluation)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol level of 0.10 or more.
[2]Under §39-06.2-10.2(5), a CMV operator is deemed to have given consent to a PBT under §39-20-14.
[3]Applies to 1st, 2nd and 3rd DWI offenders.

Preceding Page Blank

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	No
Administrative Licensing Action (Susp/Rev):	Same as for Implied Consent Refusal §§39-20-04 & 39-20-14
Other:	None
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	1st refusal **Rev-1 yr**; 2nd refusal[1] (w/n 5 yrs.) **Rev.-2 yrs**; 3rd or sub refusal[1] (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 Note: A person is not subject to licensing action for a refusal if they plead guilty to a DWI offense. §39-20-04(2)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	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 and sub offs (w/n 7 yrs) (Cl A Misd)-Not more than **1 yr** §§12.1-32-01 and 39-08-01(2) & (4)
Mandatory Minimum Term:	1st off-**No**; 2nd off (w/n 5 yrs)-**4 dys** of which 48 hrs must be served cons[2]; 3rd off (w/n 5 yrs)-**60 dys** of which 48 hrs must served cons[2]; 4th off (w/n 7 yrs)-**180 dys**[4] of which 48 hrs must be served cons.[2] §39-08-01(4) See Footnote No. 3 below and the Special Note under Miscellaneous Sanctions on p. 3-359.

[1]Previous DWI convictions are considered as previous refusals for the purpose of determining license enhancement sanctions under the Implied Consent Law.

[2]The mandatory fine and imprisonment sanctions may be either suspended or deferred if the defendant was only "in actual physical control of a motor vehicle." This exclusion, however, does not apply if the defendant was "driving" a vehicle. §39-08-01(4)(e)(1) For persons under 18 year old, who have been convicted of a subsequent DWI offense (w/n 5 yrs), a sentence of 48 con hrs in jail or 10 dys of community service. §39-08-01(4)(e)(2)

[3]§39-08-04(a) & *State v. Nelson*, 417 N.W.2d 814 (N.D. 1987)

[4]The law does not specifically provide for mandatory criminal sanctions beyond a 4th offense.

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

	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
Fine: Amount ($ Range):	1st off-Not more than **$500**; 2nd off (w/n 5 yrs)-Not more than **$500**; 3rd offs (w/n 5 yrs)-Not more than **$1,000**; 4th and sub off-Not more than **$1,000** §12.1-32-01
Mandatory Min. Fine ($):	1st off-**$250**; 2nd off (w/n 5 yrs)-**$500**; 3rd off (w/n 5 yrs) **$1,000**; 4th off (w/n 7 yrs)-**$1,000**[1] See Footnote Nos. 2 and 3 on p. 3-356.
Other Penalties: Community Service:	2nd off (w/n 5 yrs)-**10 dys** as an alternative to imprisonment (does not apply to other subsequent offenses) See Footnote Note No. 2 on p. 3-356.
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. 3-358. Such a requirement appears to apply only to the issuance of temporary restricted driving privileges. §§39-06.1-11 & 39-08-01.3.

[1]The law does not specifically provide for mandatory criminal sanctions beyond a 4th offense.

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 level of 0.04 or more, (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 amount of alcohol in their system is subject to being place "out-of-service" for 24 hours. See §§39-06.2-02, 39-06.2-10, 39-06.2-10.2 and 39-06.2-10.9.

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

Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	Yes **0.10** (BAC/BrAC/UrAC) §§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 off[1] (w/n 5 yrs)-**365 dy susp** (mand.); 3rd and sub off[1] (w/n 5 yrs.)-**2 yr susp** (mand.)
Other:	None
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	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: A 4th off (w/n 7 yrs) is treated as a 1st off for lic. susp. purposes.
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/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/5 yrs)- **365 dys**, 3rd and sub off (w/n 5 yrs)-**2 yrs** §§39-06.1-10(3.1) & 39-0.6.1-11 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:	See Alcohol Treatment below.
Alcohol Treatment:	Yes I. For a 1st, 2nd and 3rd DWI off conviction, the defendant must be referred to a 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. §39-06.1-10(3.1)(b)

[1]A previous violation also includes a previous DWI offense conviction or previous implied consent refusal.

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

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: No

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)
Forfeiture. For three or more DWI offense convictions (w/n 5 yrs), a defendant's vehicle may be subject to forfeiture. §39-08-01.3

Miscellaneous Sanctions Not Included Elsewhere: **Special Note:** 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

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:
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:

Other Criminal Actions Related to DWI: (continued)

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

Sanction:	
Criminal:	
Imprisonment (Term):	**Cl B Misd** Not more than **30 dys** §§12.1-32-01(6) & 39-06-42 Note: Under §39-06-42(3), license plates may also be impounded for the duration of the driver's license susp/rev.
Mandatory Minimum Term of Imprisonment:	**4 con dys** §§39-06-42(2) & 39-08-01
Fine ($ Range):	Not more than **$500** §12.1-32-01(6)
Mandatory Minimum Fine:	**None**
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
Length of Term of License Withdrawal Action:	See above.
Mandatory Term of License Withdrawal Action:	See above.

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 & 5-02-06
Minimum Age (Years) Possession:	**21**[1&2] §5-01-08
Minimum Age (Years) Consumption:	**21**[2] §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 injuried 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**
Dram Shop Actions-Social Hosts:	**Yes**[3] §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

[1]There is any employment exemption for persons who are 19-20 years old. §5-02-06.
[2]There is an exception when an "under age" person is accompanied by a parent or legal guardian. §5-01-08
[3]*Olson v. Griggs County*, 491 N.W.2d 725 (N.D. 1992)

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:	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."

STATE:	**OHIO**
General Reference:	Ohio Revised Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §4511.19(A)(1)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1,2,3] §4511.19(A)(2), (3) & (4)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) a of Drug Abuse or (2) a Combination of Alcohol and a Drug of Abuse §4511.19(A)(1)
Other:	For Commercial Motor Vehicle Operators, see p. 3-369.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §4511.191(A)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §4511.191(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) *City of Westerville v. Cunningham*, 239 N.E.2d 40 (1968)
Other Information:	A conscious person cannot have a blood sample withdrawn via force for BAC testing. *State v. Lampman*, 612 N.E.2d 779 (OhioApp. 1992)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §4511.191(A)
Urine:	Yes §4511.191(A)
Other:	Probably No Note: "Other bodily" substance is applicable to §4511.19 but is not mentioned in §4511.191 which is the implied consent statute. §§4511.191(A) & 4511.19

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

[1]For blood alcohol concentration, the standard is percent by weight of alcohol in the blood.

[2]This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol concentration of 0.14 or more (grams of alcohol per 100 milliliters of urine).

[3]Under §4511.19(B), a person under 18 years old shall not operate a vehicle with an alcohol concentration of 0.02 up to 0.10 for blood/breath or 0.028 up to 0.14 for urine. A violation of this provision as well as a violation of the regular DWI law (§4511.19(A)) by persons under 18 will result in special sanctions for juvenile offenders under §2151.356(A)(6). See Miscellaneous Sanctions on p. 3-368.

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):	1st Refusal (minor misd)-Not more than **$100**; 2nd refusal (w/n 1 yr) (4th Degree misd)-**30 dys** and not more than **$250**; 3rd and subsequent refusals (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) Occupational driving privileges may be granted after the mandatory period of lic. susp. has passed. §4511.191(E), (I) & (K)) **Special Note:** A susp for a refusal will be terminated if the person is found "not guilty" of the related DWI offense. §4511.191(H)(2)
Other:	Important. See the Special Note on p. 3-366 and Footnote No. 1 on p. 3-367.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st Off (1st Degree misd.)-Not more than **6 mos**; 2nd Off (w/n 5 yrs) (1st Degree misd.)-Not more than **6 mos**; 3rd Off (w/n 5 yrs)(misd.)[2]-**30 con dys-1 yr**; Subsequent offs (w/n 5 yrs)(misd.)[2]-**60 con dys-1 yr** §§2929.21 & 4511.99(A) See Footnote No. 1 and the Special Note below.

[1]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)

[2]A crime is classified as a misdemeanor if the imprisonment sanction is not more than 1 yr. §2901.02(F)

Special Note: A previous offense includes a conviction for a vehicle homicide offense where alcohol or drugs were a factor.

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

Mandatory Minimum Term:	1st Off-**3 con dys**[1] (Note: 3 con dys is defined as 72 con hrs.) §4511.991); 2nd off (w/n 5 yrs)-**10 con dys** (Alternative: 5 con dys in jail and not less than 18 dys "house arrest" with electronic monitoring[2]); 3rd Off (w/n 5 yrs)-**30 con dys-1 yr** (Alternative: 15 con dys in jail and not less than 55 dys "house arrest" with electronic monitoring[2]); Subsequent offs (w/n 5 yrs)-**60 con dys** See Footnote No. 3 and the Special Note below.
Fine:	
Amount ($ Range):	1st Off-**$200-$1,000**; 2nd off (w/n 5 yrs)-**$300-$1,500**; 3rd off (w/n 5 yrs)-**$500-$2,500**; Subsequent offs (w/n 5 yrs)-**$750-$10,000**
Mandatory Min. Fine ($):	1st Off-**$200**; 2nd off (w/n 5 yrs)-**$300**; 3rd Off (w/n 5 yrs)-**$500**; Subsequent offs (w/n 5 yrs)-**$750** See Footnote No. 3.
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) & *State v. Theuring*, 546 N.E.2nd 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.[4] §§2951.02(I), 4507.16(C), 4511.83 & 4511.99(L) **Confinement Costs.** In some counties, offenders may have to pay the costs of confinement (workhouses). §§2929.15 & 2947.19

[1]In 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.

[2]This alternative is imposed only for offenses committed prior to 7/1/93 and when their are overcrowded jail conditions. §4511.99(A)(8)(a) & (b)

[3]Ref: *State v. Cichy*, 480 N.W.2d 90 (Ohio App. 1984).

[4]If 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: For 1st, 2nd or 3rd off, a defendant may be given work release following the mandatory jail sentence. §4511.99(A)(5)(a) & (b)

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

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

0.10 BAC/BrAC or 0.14 UrAC (For UrAC standard, see Footnote No. 2 on p. 3-359.) (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 5 yrs. (3) **Susp-2 yrs** (180 dys mand) if the offender has two prior DWI, vehicle homicide or vehicle assault conviction w/n 5 yrs. (4) **Susp-3 yr** (mand) if the offender has three or more prior DWI, vehicle homicide or vehicle assault conviction w/n 5 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.
Ignition Interlock. For (1) and (2), a person may be required to use "ignition interlock" devices when operating a vehicle on an occupational license. For (3) and (4), a person must use these devices when driving on an occupational license.
Special Note: A susp for an administrative per se violation will be terminated if the person is found "not guilty" of the related DWI offense. §§4507.16 and 4511.191(F), (H)(2), (I)(4) & (K)

Other:

Important. See the Special Note below.

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

1st Off-**Susp**; 2nd off (w/n 5 yrs)-**Susp**; 3rd off (w/n 5 yrs)-**Susp**; Subsequent offs (w/n 5 yrs)-**Susp/Rev** DWI Related Aggravated Vehicle Assault-**Rev** §§2903.08 & 4507.16(B) See the Special Note on p. 3-367.

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 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)

Term of License Withdrawal (Days, Months, Years, etc.):	1st Off-**6 mos to 3 yrs**; 2nd off (w/n 5 yrs)-**1 to 5 yrs**; 3rd off (w/n 5 yrs)-**1 to 10 yrs**; Subsequent Off (w/n 5 yrs)-**Susp for not less than 3 yrs or Permanent Revocation** See Footnote No. 1. DWI Related Aggravated Vehicle Assault-**Permanent Revocation**
Mandatory Minimum Term of Withdrawal:	1st Off-**15 dys**[2]; 2nd Off-**30 dys**[2]; 3rd off (w/n 5 yrs)-**180 dys**[2]; Subsequent Off (w/n 5 yrs)-**3 yrs**[2] §4507.16(E) & (J) After these mandatory minimum susp periods, occupational driving privileges may be granted. See Footnote No. 3. §4507.16(E) DWI Related Aggravated Vehicle Assault-**Permanent Revocation**
	Point System: A license may be suspended via a point system under §4507.021(D) & (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.
Other:	
Rehabilitation:	
Alcohol Education:	
Alcohol Treatment:	**Yes** 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)

[1]**Persons Under 18 Years Old.** I. Persons under 18 years 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 under 18 yrs old who violate §4511.19(B) by driving with a BAC/BrAC of greater than 0.02 (UrAC of greater than 0.028) but less than 0.10 (UrAC 0.14). II. Persons under 18 yrs old, who commit three or a combination of three 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).

[2]For 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. 4 on p. 3-365. §4511.16(E) & (J)

[3]Even though the occupation licenses can be granted as indicated, under §4507.16(G), 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.

Special Note: A driver's license can also be revoked for any DWI offense conviction under §4507.16(B). This section does not provide for a specific revocation time period. However, §4507.34 provides that revocation periods shall not exceed 1 year for the operation of a vehicle relating to "recklessness." In *City of Columbus v. Tyson*, 484 N.E.2d 155 (Ohio App. 1983), the court held that the term "recklessness" in this particular section included other offenses and not just strictly the offense of operating a vehicle in a reckless manner. As a result, DWI or vehicle homicide might be included in this term. Further court decisions, no doubt, will be necessary in order to resolve this issue.

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

Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	2nd off (w/n 5 yrs)-**Immobilization** of and **impoundment** of the license plates of the vehicle used in the offense for **90 dys**; 3rd off (w/n 5 yrs)-**Immobilization** of and **impoundment** of the license plates of the vehicle used in the offense for **180 dys**; Sub. off (w/n 5 yrs)-**Criminal Forfeiture** of the vehicle used in the offense §§4511.194 & 4511.99
Terms Upon Which Vehicle Will Be Released:	
Other:	A person convicted of a 4th or subsequent offense (w/n 5 yrs), is prohibited from registering a motor vehicle for 5 yrs. §4507.021(C)(3)
Miscellaneous Sanctions Not Included Elsewhere:	A person under 18 yrs old, who violates the DWI law, 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)

Other Criminal Actions Related to DWI:

Homicide by Vehicle: State Has Such a Law:	**Yes** (1) Aggrevated (Reckless) Vehicle Homicide-felony §2903.06; (2) Vehicle Homicide (Negligence)-1st off -misd; sub. off-felony (§2903.07) See the Special Note on p. 3-369.
Sanctions: Criminal Sanction: Imprisonment (Term):	(1) Aggrevated (Reckless) Vehicle Homicide: 1st off (aggrevated felony 3rd degree)-**2 to 5 yrs**; sub. off (aggrevated felony 2nd degree)-**3 to 10 yrs**; (2) Vehicle Homicide (Negligence): 1st off (misd. 1st degree)-not more than **6 mos**; sub. off (felony 4th degree)-**18 mos-5 yrs** §§2929.11 & 2929.21 See Footnote No. 1.
Mandatory Minimum Term:	See Footnote No. 2.
Fine ($ Range):	(1) Aggrevated (Reckless) Vehicle Homicide: 1st off (aggrevated felony 3rd degree)-**not more than $5,000**; sub. off[1] (aggrevated felony 2nd degree)-**not more than $7,500**; (2) Vehicle Homicide (Negligence): 1st off (misd. 1st degree)-**not more than $1,000**; sub. off[1] (felony 4th degree)-**not more than $2,500** §§2929.11 & 2929.21
Mandatory Minimum Fine:	See Footnote No. 2.

[1]A previous offense includes either a §2903.06 or a §2903.07 offense.

[2]For 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)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action: Licensing Authorized and Type of Action:	For either Aggrevated (Reckless) Vehicle Homicide or Vehicle Homicide (Negligence)-**Susp or rev** §§2903.06(B), 2903.07(B), 4507.16(A), 4507.16(D), 4507.34 and *City of Columbus v. Tyson*, 484 N.E.2d 155 (Ohio App. 1983) See the Special Note on p. 3-367.
Length of Term of Licensing Withdrawal:	For either Aggrevated (Reckless) Vehicle Homicide or Vehicle Homicide (Negligence)-susp-**30 dys-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) Effective 7/1/93, there is also **permanent license revocation** if a person has been convicted of "Involunary Manslaughter" where DWI is an element of the offense. §2903.04(D)(1)(a)
Mandatory Action--Minimum Length of License Withdrawal:	For either Aggrevated (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) Effective 7/1/93, there is also **permanent license revocation** if a person has been convicted of "Involunary Manslaughter" where DWI is an element of the offense. §2903.04(D)(1)(a)
Other:	For either 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 <u>any</u> death related vehicle offenses. §4507.164(A)

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-5 to 25 yrs; fine-not more than $10,000). If the death is misdemeanor related, the offense is an aggravated felony 3rd degree (Jail-2 to 10 yrs; fine-not more than $5,000). §2929.11

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 a BAC/BrAC/UrAC (The UrAC standard is grams of alcohol per 100 milliliters of urine.) level of 0.04 or more, (2) are under the influence of a controlled substance or (3) refuse to submit to a chemical test for the presence of either 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 (or for any other period as specified by Federal regulations) (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. See §§4506.01(A), (E), (G), (H) & (V), 4506.15, 4506.16(A) & (B) and 4506.17(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):	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) See Footnote No. 1.
Mandatory Minimum Term of Imprisonment:	1st Off-**3 con dys** (Alternative: 30 con. dys of "house arrest" with electronic monitoring.[2]); 2nd Off (w/n 5 yrs)-**10 con. dys** (Alternative: 90 con. dys of "house arrest" with electronic monitoring.[2]); 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. 3.
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp**[4] §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. 3-367.

[1]Driving while suspended for an implied consent law violation (refusal)-Misd. of the first degree: Imprisonment-not more than 6 mos (§2929.21(B)(1)); fine-not more than $1,000 (§2929.(C)(1)); and license revocation-not more than 1 year (§4511.99(B)) §§4511.192 & 4511.99

[2]This alternative is imposed only for offenses committed prior to 7/1/93 and when their are overcrowded jail conditions. §4507.99(B)(6)(a) & (b)

[3]Ref: *State v. Cichy*, 480 N.E.2d 90 (Ohio App. 1984).

[4](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)

Special Note: In addition to the "immobilization" and license plate "impoundment" of a vehicle that was used in the offense, the law also provides for the "impoundment" of the license plate(s) of vehicle(s) registered to the offender that were not so used. I. Under §4507.164(C), provides discretionary authority for such suspension. II. However, §4507.02(F) provides that the license plates of such vehicles shall be impounded until the offender's license is reinstated. Nevertheless, under §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.

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	
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:	21 §§4301.63 & 4301.69 (Year Eff: 1987)
Minimum Age (Years) Possession:	21 §4301.632
Minimum Age (Years) Consumption:	21 §§4301.631, 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 (1973)[1]

[1]See also *Terry v. Markoff*, 497 N.E.2d 1133 (Ohio App. 1986), and *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. *Settlemyer v. Wilmington Veterans Post No. 49, American Legion, Inc.*, 464 N.E.2d 521 (1984)[1] However, a social host may be held liable for the death of a third person caused by an intoxicated minor guest. *Mitseff v. Wheeler*, 526 N.E.2d 798 (Ohio 1988) 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:	**None**
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 **$500** §2929.21(C)(3)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev/Susp**[1] §§4301.25 and 4301.27
Length of Term of License Withdrawal:	**Indeterminate**
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misd**[2] 1st or 3rd Degree
Term of Imprisonment:	1st Degree Misd: Not more than **6 mos** §2929.21(B)(1); 3rd Degree Misd: Not more than **60 days** §2929.21(B)(3)
Fine ($ Range):	1st Degree Misd: Not more than **$1,000** §2929.21(C)(1); 3rd Degree Misd: Not more than **$500** §2929.21(C)(3)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes Rev/Susp**[1] §§4301.25 & 4301.27
Length of Term License Withdrawal:	**Indeterminate**

[1]For 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

[2]A 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)

Other State Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:	**Yes** 4301:1-1-50 (regulation)[1] 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):	**Yes** §4301.62(B)(4) & (5)
Anti-Consumption Law (Yes/No):	**Yes** Drivers and passengers §4301.64 The law states that "[n]o person shall consume any beer or intoxicating liquor in a motor vehicle."

[1]This regulation was held to be constitutional. *DDDJ, Inc. v. Liquor Control Comm.*, 582 N.E.2d 1152 (OhioApp. 10 Dist. 1990)

STATE:	**OKLAHOMA**
General Reference:	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 Level):	**0.10**[1] 47 §§756(d) & 11-902(A)(1)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Intoxicating Substances** or (2) a Combination of These and Alcohol[2] 47 §11-902(A)(3) & (4)
Other:	**0.10** BAC level is also *prima facie* evidence that a person was under the influence of alcohol 47 §756(c) **>0.05 but <0.10** is evidence of Driving While Impaired 47 §756(b) For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

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
Other Information:	(1) Under 47 §753, a mandatory chemical test may be ordered in situations where there is probable cause that a person has been operating a motor vehicle while DWI and 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.

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

[2]The impaired offense applies only to the use of alcohol (not other drugs). The sanctions given for driving while under the influence includes both alcohol and drug driving violations.

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 level of 0.04 or more, (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). See 47 §6-205.2.

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.

Preceding Page Blank

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** For alcohol & intoxicating substances 47 §751(A)
Urine:	**Yes** For intoxicating substances only 47 §751(A)
Other:	**Saliva** For intoxicating substances only 47 §751(A)

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** Alcoholism evaluations must be conducted on persons convicted of or placed on probation before judgment for driving while under the influence/illegal pe se. 22 §§991a(B) & 991c(B) and 47 §§6-212.2 & 11-902(H) Also, there is a general PSI for persons who have been convicted of a felony offense. 22 §982

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-**Rev 180 dys** (90 dys mandatory)[1]; 2nd Refusal (w/n 5 yrs)-**Rev 1 yr** (mandatory); Sub. Refusal (w/n 5 yrs)-**Rev 3 yrs** (18 mos mandatory) 47 §§ 6-205.1, 6-211(i), 753, 754.1 & 755 See Footnote No. 2 on p. 3-378.
Other:	None

[1]A restricted hardship license is available after the mandatory 90 day period.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	Driving While Impaired-Not more than **6 mos** 47 §761 Driving While Under the Influence/Illegal Per Se: 1st Off (Misd)-**10 dys to 1 yr**; 2nd & subsequent offs (w/n 10 yrs-felony)-**1 yr to 5 yrs** 47 §11-902 Personal Injury Accident (Driving While Under the Influence/Illegal Per Se)-1st Off (Misd)-**90 dys to 1 yr**; 2nd Off (felony)-**1 to 5 yrs** 47 §11-904(A) Great Bodily Harm (Driving While Under the Influence/Illegal Per Se) (felony)-**1 to 5 yrs** 47 §904(B)
Mandatory Minimum Term:	**Limited Circumstances.** For a 2nd or subsequent illegal per se/under the influence offense where a person is not sentenced to the custody of the Department of Corrections, they must either (1) serve not less than ten (10) days of community service or (2) undergo inpatient rehabilitation/treatment for not less than 48 consecutive hours. 47 §11-902(E)[1] See Footnote No. 1 on p. 3-379.
Fine:	
Amount ($ Range):	Driving While Impaired-**$100 to $500** 47 §761 Driving While Under the Influence/Illegal Per Se: 1st Off (Misd)- Not more than **$1,000**; 2nd & subsequent offs (w/n 10 yrs-felony)-Not more than **$2,500** 47 §11-902; 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) Great Bodily Harm (Driving While Under the Influence/Illegal Per Se) (felony)-not more than **$5,000** 47 §904(B)
Mandatory Min. Fine ($):	None
Other Penalties:	
Community Service:	Yes For all offs 22 §991a For a 2nd or sub. illegal per se/driving while under the influence offense if jail is not served, a defendant may be required to serve ten (10) days of community service. 47 § 11-902(C)
Restitution (eg Victim's Fund)	Yes Paid by a defendant to a victim as part of a probation/suspended sentence. 22 §991a
Other:	None

[1]Except as just noted, the court has the power the suspend a sentence and/or place a defendant on probation. 22 §991a

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

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:	**Yes 0.10 BAC/BrAC** 1st Action-**Rev 180 dys**[1]; 2nd Action (w/n 5 yrs)-**Rev 1 yr** (mandatory); Sub. Action (w/n 5 yrs)-**Rev 3 yrs** (18 mos mandatory) 47 §§6-205.1, 6-211(i), 754, 754.1, & 755 See Footnote No. 2.
Other:	**None**

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	Driving While Impaired-**Susp** 47 §761 Driving While Under the Influence[3]; 1st Off-**Rev**; Sub. off.-**Rev** 47 §11-902 See Footnote No. 2 and the Comment and Special Note below.
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 dys**; 2nd Off (w/n 5 yrs)-**Rev 1 yr**; sub off (w/n 5 yrs)- **Rev 3 yrs** 47 §§6-205 & 6-205.1 See the Special Note below.
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-**None**[1]; 2nd off-**1 yr**; sub off-**18 mos** See the Special Note below.

Note: The license suspensions for driving while impaired do not apply if the defendant has had their license revoked either for a refusal to submit to a chemical test or for an administrative per se violation based on the same incident. 47 §761

[1]There is no minimum mand period of license rev. A rev may be "modified" in cases of "extreme or unusual hardship". An offender may be allowed hardship restricted driving privileges for the purpose of going to and from either employment or educational/medical/child care facilities. 47 §§754.1 & 755

[2]For 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)

[3]The revs for a violation of 47 §11-902 would, it appears, apply also to violations of 47 §11-904 (causing great bodily harm while operating a vehicle under the influence/illegal per se. 47 §§6-205, 6-205.1 & 756 However, there are no specific licensing actions in 47 §11-904.

Special Note: In addition to any other suspension/revocation for an impaired, under the influence, or illegal per se offense, a person 17 years old or younger shall have their driving privileges denied/cancelled as follows: 1st off-for 1 yr or until the person reaches 17 whichever is longer (90 dys are mandatory); 2nd or subsequent off-for 1 yr or until the person reaches 18 whichever is longer (1 yr is mandatory). The person may also be required to complete an alcohol/drug abuse program. 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 of 0.10 or more. Note: There is a license revocation for operating a motor vehicle with a BAC/BrAC level of 0.10 or more via the admin. per se law.

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

Other:	
Rehabilitation:	
Alcohol Education:	Yes 1st and subsequent offenders (all typs of DWI offenses) may be ordered by the court to participate in alcohol or drug substance abuse courses.[1] A 1st offender must successfully complete this course. 22 §991a(A)(5) & 47 §6-212.2
Alcohol Treatment:	Yes 1st and subsequent offenders (all types of DWI offenses) may be ordered by the court to participate in alcohol or drug rehabilitation treatment programs.[1] 22 §991a(A)(5) In addition, under 47 §6-212.2, a 1st DWI defendant must complete an alcohol and substance abuse course before their license can be reinstated. For a 2nd or sub. illegal per se/driving while under the influence offense, the defendant may be required to participate in an inpatient rehabilitation/treatment program for 48 consecutive hours if they are not sentence to serve a jail term. 47 §11-902(E). See the Special Note on p. 3-378.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	None
Miscellaneous Sanctions Not Included Elsewhere:	**Victim Impact Program.** A defendant may be ordered by the court to participate in a victim impact panel program. 22 §991a(A)(5) & 47 §11-902(I) **Ignition Interlock.** A defendant may be ordered by the court 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 §991a(A)(5) **Electronic Home Monitoring.** A defendant may also be subject to court ordered electronic home monitoring. 22 §991a(A)(5) and 57 §§510.5 & 611 **Comment:** It appears that electronic home monitoring can be used as a substitute for incarceration.

[1]**Special Note:** Following a conviction for either driving while under the influence or driving while impaired, the court may suspend the execution of sentence on condition that the defendant agrees to attend and successfully complete and alcohol and drug abuse course or treatment program. 43A §452(B)

Other Criminal Actions Related to DWI: (continued)

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Misd[1] 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 $1,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev**
Length of Term of Licensing Withdrawal:	1st off-**6 mos**; 2nd off-**2 yrs** 47 §§6-205(1), 6-208(b)(1) & (3) and 11-903(c)
Mandatory Action--Minimum Length of License Withdrawal:	**6 Mos**
Other:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	
Sanction:	
Criminal:	
Imprisonment (Term):	**Misd**-Not more than **1 yr** 47 §§6-303(B) & 6-205.2(F)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$100 to $500** 47 §§6-303(B) & 6-205.2(F)
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 not **3 mos** 47 §6-303(C)

[1]**Special 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)).

*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)

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 §1215[1] & 37 §246(A)[2]
Minimum Age (Years) Consumption:	21[3] 37 §241(C)

[1]Under 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."

[2]Under 37 §246(A), it is illegal for a person under 21 years old to possess "nonintoxicating" beverages (alcoholic beverages containing more than ½ of 1% alcohol by volume but not more more than 3.2% alcohol by weight) with the intent to consume such beverages in public.

[3]It is only illegal for a person under 21 years old to consume "nonintoxicating" beverages (alcoholic beverages containing more than ½ of 1% alcohol by volume but not more than 3.2% alcohol by weight) in public.

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 *Brigance v. The Velvet Dove Restaurant*, et al., 725 P.2d 300 (Okl. 1986), & *Tomlinson v. Love's Country Stores, Inc.*, 854 P.2d 910 (Okl. 1993)
Dram Shop Actions-Social Hosts:	No *Troxell v. Bingham*, 774 P.2d 1073 (Okl.App. 1989)
Other:	A 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 (Okl. 1991)

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

Type of Criminal Action:	For alcoholic beverages except nonintoxicating beverages[1] **Felony** 37 §506(3), §537(A)(2) & §538(G)
Term of Imprisonment:	Not more than **1 yr** 37 §538(G)
Fine ($ Range):	**$500 to $1,000** 37 §538(G)

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev** 37 §528(C)(1) & (E)
Length of Term of License Withdrawal:	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.

[1]A person who serves a nonintoxicating alcoholic beverage (alcoholic beverages with an alcoholic content of ½ of 1% to 3.2% alcohol) to an intoxicated person may not have committed an offense under 37 §§537(A)(2) & 538(G). 37 §§506(3) & 506(13) This matter is not addressed in the laws covering nonintoxicating beverages. 37 §§163.1 et seq.

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:	For alcoholic beverage 3.2% and above - **Felony** 37 §§537(A)(1) & 538(F); for alcoholic beverages ½ of 1% to 3.2% **Misd** 21 §§10, 21 & 1220 and 37 §§163.1, 163.2, 163.11, 163.20 & 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**
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(I)(3) & (J), 244, 528(C)(1), (D) & (E) and 538(E) & (F)
Length of Term License Withdrawal:	(1) For alcoholic beverages 3.2% or more - 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 nonintoxicating alcoholic beverages of ½ of 1% to 3.2% - Rev (mand) by the district court for **12 mos**
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 37 §537(A)(8) The law states that "It shall be unlawful to drink intoxicating liquor ... in a public place."

[1]For package store licensees who "knowingly" sell alcoholic to persons under 21 years old, license revocation is mandatory. 37 §528(D)

STATE:	**OREGON**
General Reference:	Oregon Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor[1] §813.010(1)(b)
Illegal Per Se Law (BAC Level):	0.08[1&2] §813.010(1)(a)
Presumption (BAC Level):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **A Controlled Substance** or (2) a Controlled Substance and Intoxicating Liquor[1] §813.010(1)(b) & (c)
Other:	A BAC level of not less than **0.08** constitutes being under the influence of intoxicating liquor. §813.300(2) For Commercial Motor Vehicle Operators, see p. 3-389.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §813.100
Implied Consent Law Applies to Drugs (Yes/No):	No
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal and Civil Cases) §813.310
Other Information:	I. There is also an implied consent law on field sobriety testing. §813.135 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. §813.136 There is no other sanction for refusing to submit to field sobriety testing. 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)

[1]A 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 level of 0.08 or more or driving while under the influence of either intoxicating liquor or controlled substances. §813.010(1) **Special Note:** 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 level of 0.08 or more or (2) while under the influence of alcohol/controlled substance. *State v. King*, 852 P.2d 190 (Or. 1993), & *State v. Miller*, 788 P.2d 974 (Or. 1990)

[2]Standard: 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.

Preceding Page Blank

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes Limited**[1&2]
Urine:	**Yes Limited**[2]
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes §813.170 **Special Note:** There is a diversion program for DWI offenders who have not been convicted of a DWI off w/n a 10-yr period. §813.200 et seq.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol screening §813.020(1)(b)

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):	1. **Susp** for **1 yr** if there have been no previous susps for either a test refusal or a DWI off (90 dys are mandatory)[3] 2. **Susp** for **3 yrs** if there has been either a previous test refusal or a previous DWI off/admin. per se violation based license susp w/n 5 yrs (1 yr mand)[3] §§813.100, 813.130, 813.410, 813.420, 813.430 & 813.520 Important: See Special Note No. 1 on p. 3-389.
Other:	None

[1]Implied 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)

[2]A law enforcement officer may obtain either a blood or urine sample for testing to determine either a BAC/UrAC 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

[3]A 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.):	A DWI off is a Cl A Misd - Not more than **1 yr** §§813.010(4) & 161.615(1)
Mandatory Minimum Term:	**48 con. hrs**[1] §813.020(2)
Fine:	
Amount ($ Range):	Not more than **$2,500** §161.635(1)(a)[2]
Mandatory Min. Fine ($):	**$300** §153.623(23)
Other Penalties:	
Community Service:	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.)
Other:	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) & 813.030 II. Every DWI offender must pay a **Unitary Assessment of $84**. §137.290(1)(c) III. Every DWI offender must pay an **Court Assessment** which is in addition and which is based on the amount of fine they have to pay. The assessment vary in amount from **$12** to **$35**. §137.306 & §6 Ch. 14, Laws 1993
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	Yes BAC **0.08** or **Any BAC level for persons under 21 years old** (The BAC standard is the same as for illegal per se.) 1. A **90 dy susp** (**30 dys** are mandatory[3,4]) if there has been no previous susp for either a chemical test refusal, or an admin. per se violation, or a DWI off 2. A **1 yr susp** (mandatory)[3] §§813.100, 813.130, 813.300(3), 813.420, 813.430 & 813.520 Important: See Special Note No. 1 on p. 3-389.
Other:	None

[1]This 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).

[2]There 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)

[3]A restricted hardship license may be issued after this mandatory period. §813.520(2)

[4]This mand. susp is reduced by any mand. susp imposed for either a 2nd or sub. off (w/n 5 yrs) if based on the same occurrence. §813.520

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

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): 1st Off-Susp; 2nd and subsequent offs (w/n 5 yrs)-Susp See Special Note No. 3 on p. 3-389.
Ignition Interlock. Persons convicted of DWI offenses shall have an "ignition interlock" device installed in their vehicles prior to being issued a hardship license. §813.____ (Ch. 382, Laws 1993)

Term of License Withdrawal (Days, Months, Years, etc.): 1st Off-1 yr; 2nd and subsequent offs (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: 1st off-Susp for 1 yr or until the person reaches 17 whichever is the longer susp period; 2nd or sub. off.-Susp for 1 yr or until the person reaches 18 whichever is the longer susp period.
Persons Under 18 Years Old. Also, under §809.405(4), a person under 18 who has 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. 3-389.

Mandatory Minimum Term of Withdrawal: 1st Off-See Footnote No. 1; 2nd Off (w/n 5 yrs)-90 dys[2]; 3rd and subsequent offs (w/n 5 yrs)-1 yr[2] For persons under 17 but not younger than 13, 1st off-90 dys; 2nd or sub off-1 yr Important: See Special Note Nos. 1 & 2 on p. 3-389.

Other:

Rehabilitation:

Alcohol Education: Yes If an offender is determined to be a non-problem drinker, the offender must enroll in an alcohol education program. However, if the offender is determined to be a problem drinker, he or she must enroll in a rehabilitation program. The offender must enroll in either of these programs before such a license may be issued. For second or subsequent DWI offense convictions, a restricted hardship license can be issued only following an examination of the DWI offender by the mental health division to determine if the offender is a problem drinker. §§813.020(1)(c) & 813.500

[1]A restircted 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 major traffic off. §813.520(9)

[2]A 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)

Alcohol Treatment:	Yes See Alcohol Education on p. 3-388.
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	Yes **Impoundment**[1&2] for 2nd or subsequent DWI offs §809.700
Terms Upon Which Vehicle Will Be Released:	After a period of impoundment of not more than **120 dys**[1] and after paying the costs of the veh's removal and storage. §809.700(2) This sanction also applies where a person has been driving while their driver's license is either suspended or revoked. §809.700(1)(a)
Other:	None

[1]The vehicle registration can also be suspended for 120 dys for a 2nd or subsequent DWI offense. §809.010(1)(b) & (3)
[2]Note: The 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.

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 0.04 BAC (Standard: percent by weight of alcohol in the blood) or (3) refused to submit to a chemical test for alcohol concentration. For a 1st DWI conviction or 0.04 violation, 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 0.04 violation or a combination of these, the CDL privilege is suspended is for life (mand.). See §§813.120, 813.130, 813.403, 813.404 and 813.410.

Special Note No. 1: Under §807.220, a person may be issued an emergency driver's license 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 their 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), 809.280(9) and §2 of Ch. 835 of 1991 Note: Sec. 2 of Ch. 835 of 1991 is not codified but it is located after §809.260 in the statutes.

Special Note No. 3: The State issues special licenses to persons 14-17 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

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

Miscellaneous Sanctions Not Included Elsewhere:

Home Detention. A DWI defendant, who is placed on probation, may be "restricted" to their own residence. §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)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: No
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 **5 yrs** for manslaughter etc. resulting from the operation of a motor vehicle. §809.410(1) Important: See Special Note No. 1 on p. 3-389. **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:

Other Criminal Actions Related to DWI: (continued)

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

Sanction:	
Criminal:	
Imprisonment (Term):	**Cl C felony**-Not more than **5 yrs** §§811.182 & 161.605 See Footnote No. 1.
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$100,000** §161.625 See Footnote No. 1. There is also a Unitary Assessment of $94. §137.209(1)(a)
Mandatory Minimum Fine:	**$1,000** §153.623(21)(c)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**None**
Length of Term of License Withdrawal Action:	
Mandatory Term of License Withdrawal Action:	

Note: For a violation of §811.182, a defendant's veh may either be impounded for not more than 120 dys under either §809.700 or the vehicle registration suspended for 120 dys under §809.010(1)(a) & (3).

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 a 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. 3-389.

[1]It is a Class A misdemeanor for a person to operate a vehicle while their license is still suspended either for an implied consent refusal or for an admin. per se law violation. §811.182.(4)(c) Sanctions: Jail-not more than 1 yr (§161.615(1)); fine-$500 (mand) to than $2,500 (§§153.623(21)(b) & 161.635(1)(a)).

Other Criminal Actions Related to DWI: (continued)

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 $94. §137.209(1)(a)
Mandatory Minimum Fine ($):	**$1,000** §153.623(21)(c)
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
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** (Year Eff: 1933) §§471.410 & 471.430
Minimum Age (Years) Possession:	**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
Minimum Age (Years) Consumption:	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):	**Yes** §§30.950 & 30.960 Note: In order to be liable, it must be shown that the licensee provided alcoholic beverages to a "visibly intoxicated" patron.

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):	No[1]
Dram Shop Actions-Social Hosts:	**Yes** §§30.950 & 30.960 Note: In order to be liable, it must be shown that the social host povided alcoholic beverages to a "visibly intoxicated" guest.
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Cl A Misd** - Applies to the sale of (1) wine and beer sold be the drink by certain types of licensees and (2) all types of pkg alc. beverages by licensed stores; see §471.410; **Misd** - Applies to the sale of distilled spirits, wine and beer sold by the drink by (1) private clubs or (2) specially licensed restaurants or other commercial establishments where food is prepared and served. §§472.310 & 472.990 See the Special Note below.
Term of Imprisonment:	Cl A Misd - Not more than **1 yr** §161.615; Misd 1st off- Not more than **6 mos**; 2nd or subsequent offs - Not more than **1 yr** §472.990
Fine ($ Range):	Cl A Misd - Not more than **$2,500** §161.635 See Footnote No. 2; Misd 1st off - Not more than **$500**; 2nd or subsequent offs - Not more than **$1,000** §472.990 There is also a Unitary Assessment of $54. §137.209(1)(b)

[1]Previous 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).
[2]The mandatory fine sanctions for a Cl A Misd offense do not apply to licensees. §471.410(5)

Special Note: Under §471.412, no licensee shall knowingly serve alcoholic beverages to a visibly intoxicated person. However, notwithstanding any other provision of law, the alcoholic beverage control commission shall only issue letters of reprimand for the first three (3) violations w/n a 2 yr period.

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):	**Yes Susp/Rev**
Length of Term of License Withdrawal:	Any licensed establishment, that either sells liquor by the drink or packaged alcoholic beverages and that violates the liquor laws concerning sales to intoxicated persons, may have their license revoked/suspended for an indeterminate period of the time. §§471.315, 472.180 & 472.187
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:	**Cl A Misd** - Applies to the sale of (1) wine and beer sold be the drink by certain types of licensees and (2) all types of pkg alc. beverages by licensed stores. §471.410 **Misd** - Applies to the sale of distilled spirits, wine and beer sold by the drink by (1) private clubs or (2) specially licensed restaurants or other commercial establishments where food is prepared and served. §§472.310 & 472.990
Term of Imprisonment:	Cl A Misd - Not more than **1 yr** §161.615 See Footnote No. 2 on p. 3-393. Misd 1st off- Not more than **6 mos**; 2nd or subsequent offs - Not more than **1 yr** §472.990
Fine ($ Range):	Cl A Misd - Not more than **$2,500** §161.635; Misd 1st off - Not more than **$500**; 2nd or subsequent offs - Not more than **$1,000** §472.990 There is also a Unitary Assessment of $54. §137.209(1)(b)

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):	**Yes Susp/Rev**
Length of Term of License Withdrawal:	Any licensed establishment, that either sells liquor by the drink or packaged alcoholic beverages and that violates the liquor laws concerning sales to persons under the minimum legal drinking age, may have their license revoked/suspended for an indeterminate period of the time.[1] §§471.315, 472.180 & 472.187
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** §811.170(1)(b) & (c)
Anti-Consumption Law (Yes/No):	**Yes** driver and passengers §811.170(1)(a) Excludes passengers riding in a veh used to carry persons for hire.

[1]A licensee who is subject to a 30 day or less suspension, 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 $2,000. For persons holding a server permit, the penalty is from $25 to $500. §471.322

STATE	PENNSYLVANIA
General Reference:	Pennsylvania Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol 75 §3731(a)(1)
Illegal Per Se Law (BAC Level):	**0.10**[1] 75 §3731(a)(4) & (5)
Presumption (BAC Level):	**None**
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. 3-399.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	Yes 75 §1547(k)
Implied Consent Law:	
Arrest Required (Yes/No):	No[2]
Implied Consent Law Applies to Drugs (Yes/No):	Yes 75 §1547(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) 75 §1547(e)
Other Information:	Under 75 §1547(b)(1), a person has a statutory right to refuse to submit to a chemical test. A "forced" test cannot be administered if this right is exercised. *Commonwealth v. Eisenhart*, 611 A.2d 681 (Pa. 1992)[3]

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes 75 §1547
Urine:	Yes 75 §1547
Other:	**None**

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/arraignment. 75 §3731(f)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol/drug screening 75 §1548(a)

[1]Standard: Percent by weight of alcohol in the blood. 75 §3731(a)(4).

[2]The implied consent law would seem to indicate that an arrest is necessary before licensing sanctions for refusal could be imposed. However, in *Magill v. Com.*, 522 A.2d 172 (Pa.Cmwlth. 1987), the court held that only "reasonable grounds", not an actual arrest, is all that is needed.

[3]**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. This provision was declared unconstitutional under both the Federal and State constitutions by the Pennsylvania Supreme Court. The court held that this provision was unconstitutional because it did not require law enforcement officers to have "probable cause" prior to conducting a chemical test which the court considered to be a search. *Commonwealth v. Kohl*, 615 A.2d 308 (Pa. 1992)

Preceding Page Blank

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** 75 §1547(b)(1) (Mand) An occupational license is not available. 75 §1553(d)(7)
Other: None	

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	A 1st or sub. DWI off is a 2nd Degree misd[1]
Term (Day, Month, Years, Etc.):	All offs - not more than **2 yrs** 18 §1104
Mandatory Minimum Term:	1st off-**48 con hrs**[2]; 2nd off (w/n 7 yrs)-**30 dys**[2]; 3rd off (w/n 7 yrs)-**90 dys**[2]; 4th off (w/n 7 yrs)-**1 yr**[2] 42 §9721 & 75 §3731(e) *Commonwealth v. Sojourner*, 518 A.2d 1145 (Pa. 1986), & *Commonwealth v. Kriston*, 588 A.2d 898 (Pa. 1991) In the *Kriston* case, electronic home monitoring was held not to be the equivalent of imprisonment.

[1]**Special Note:** A first DWI offender may be placed in Accelerated Rehabilitation Disposition (ARD). 75 §§1552 & 3731(e)(6) and Pa. Cr. Pro. Rule 175 et seq. Acceptance into ARD shall be considered a first DWI conviction for the purpose of computing previous DWI offenses. 75 §3731(e)(2) 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.
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.
[2]Work release is allowed for the purpose of litter collection from either public or private property. 75 §3731(h)

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

Fine:	
Amount ($ Range):	Not more than **$5,000** 18 §1101
Mandatory Min. Fine ($):	1st off[1]-**$300** and a surcharge of $50[2]; 2nd off (w/n 7 yrs.)[1]-**$300** and a surcharge of $100[2]; 3rd off (w/n 7 yrs.)[1]-**$300** and a surcharge of $200[2]; 4th off (w/n 7 yrs)[1]-**$300** and a surcharge of $300[2] 75 §§3731(e) & 6506(a)(7) See Footnote No. 3.
Other Penalties:	
Community Service:	1st off-Possible under ARD
Restitution (eg Victim's Fund)	**Yes**[4] 18 §1106 Restitution is to be paid by a defendant to a victim. Note: Restitution is required under ARD. 75 §3731(e)(6)(iii)
Other:	For persons admitted to an 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)

[1]Acceptance of ARD shall be considered a 1st conviction for purposes of computing any subsequent violations. ARD applies only to a first offense.

[2]These 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)

[3]The 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)

[4]Note: 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)

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 level of 0.04 or more (percent by weight of alcohol in the blood) 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.). 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. Their are two separate provisions, 75 §§ 3731(i)(4) and 3731.1, that make it illegal to operate a CMV with a BAC level of 0.04 or more. A person who violates 75 §3731(i)(4) will be subject to the same criminal sanctions as for any other DWI offense. However, a person, who violates 75 §3731.1, commits only a summary offense. The only sanction for a summary offense is a fine of $25 (75 §6502). See 75 §§1603, 1611, 1612, 1613, 3731(i) & 3731.1.

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

Administrative Licensing Actions	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	None
Other:	None
Post DWI Conviction Licensing Action:	
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 or for 1st offenders, if accepted into ARD program, 1 mo to 12 mos[1&5] **Persons Under 18 Years Old.** 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&5] An occupational license is not available. 75 §1553(d)(6) & (8)
Other:	
Rehabilitation:	
Alcohol Education:	Yes[2&3]
Alcohol Treatment:	Yes[2&5]
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	Yes Vehicle forfeiture for a DWI offense under the "common law". *Commonwealth v. Crosby*, 568 A.2d 233 (Pa.Super. 1990)
Terms Upon Which Vehicle Will Be Released:	
Other:	
Miscellaneous Sanctions Not Included Elsewhere:	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

[1]See Habitual Traffic Offender Law on p. 3-402.

[2]1) 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)

[5]If 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)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** 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**; Felony 3rd degree (alcohol related death 75 §3735)-Not more than **7 yrs**
Mandatory Minimum Term:	Misd 1st Degree (non-alcohol related death)-**None**; Felony 3rd Degree (Alcohol related death)-**3 yrs** (75 §3735(b))
Fine ($ Range):	Misd 1st Degree (Non-alcohol Related Death) - not more than **$10,000**; Felony 3rd Degree (Alcohol related death)-Not more than **$15,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	See Habitual Traffic Offender Law on p. 3-402.
Licensing Authorized and Type of Action:	Misd 1st Degree (Non-Alcohol Related Death)-**Rev**; Felony 3rd Degree (Alcohol Related Death)-**Rev**
Length of Term of Licensing Withdrawal:	Misd 1st Degree (Non-Alcohol Related Death)-**1 yr**; Felony 3rd Degree (Alcohol Related Death)-**1 yr** 75 §1532
Mandatory Action--Minimum Length of License Withdrawal:	Misd 1st Degree (Non-Alcohol Related Death)-**1 yr**; Felony 3rd Degree (Alcohol Related Death)-**1 yr** An occupational license is not available; see 75 §1553(a)(2).
Other:	See Laboratory Costs under Miscellaneous Sanctions on p. 3-400.

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

Sanction:	
Criminal:	
Imprisonment (Term):	Summary Offense-Not less than **90 dys**[1] 75 §1543(b)
Mandatory Minimum Term of Imprisonment:	**90 dys**[1] 75 §§1543(b)[2]
Fine ($ Range):	**$1,000**[1] 75 §1543(b)
Mandatory Minimum Fine:	**$1,000**[1] 75 §§1543(b)[2]

[1]These 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.
[2]*Com. v. Hill*, 549 A.2d 583 (Pa.Super. 1988), & *Com. v. Hoover*, 494 A.2d 1131 (Pa.Super. 1985)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Rev/Susp** 75 §1543(c)
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 license is not available. 75 §1553(d)(11)
Habitual Traffic Offender Law:	
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) veh homicide when DWI; 2) DWI; 3) other offs listed in 75 §1532; 4) operation following registration's susp; 5) using a veh w/out knowledge or consent of owner; 6) using veh for unlawful sale of alcohol or controlled substance; 7) any felony in which veh was essentially involved. 75 §1542
Term of License Rev While Under Habitual Offender Status:	**5 yrs** 75 §1542 Note: For another offense committed w/n 5 yrs, an additional rev of 2 yrs.
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Summary off** 75 §1543
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**1 yr** 75 §6503
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$200 to $1,000** 75 §6503
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**2 yrs** additional **Rev** period 75 §6503

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** 75 §3749
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** If driver was 15 yrs old and died within 4 hrs of the accident.

Other State Laws Related To Alcohol Use: (continued)

Vehicle Passengers:	**Yes** But only if the driver of the veh cannot be determined.
Pedestrian:	**Yes** If the person was over 15 yrs old and died within 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 and 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 Note: This law applies only if the "customers" who are served are "visibly intoxicated".[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** *Jardine v. Upper Darby Lodge No. 1973 Inc.*, 198 A.2d 550 (Pa. 1964), & *Matthews v. Konieczny*, 527 A.2d 508 (Pa. 1987)[2]
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.[2] See also *Klein v. Raysinger*, 470 A.2d 507 (Pa. 1983)[3], where the court found no social host liability for the actions of adult guests. Note: A minor, a person under 21 yrs old, cannot be held liable as a social host. *Kapres v. Heller*, 612 A.2d 989 (Pa.Super. 1992)
Other:	**None**

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

Type of Criminal Action:	**Misd** 47 §§4-493(1) and 4-494(a)
Term of Imprisonment:	**3 mos to 1 yr**
Fine ($ Range):	Not more than **$5,000**

[1]The 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 some circumstances a licensee has been held liable for the actions of inebriated minors notwithstanding the fact the licensee did not sell them alcoholic beverages. Liability under the these conditions can occur if the injury causing minor received the alcoholic beverage from another minor who had purchased such beverages illegally. *Matthews v. Konieczny*, 527 A.2d 508 (Pa. 1987)

[2]*Macleary v. Hines*, 817 F.2d 1081 (3rd Cir. 1987), & *Orner v. Mallick*, 527 A.2d 521 (Pa. 1987)

[3]*Bemis v. Gumbeski*, 534 A.2d 1099 (Pa.Super. 1987)

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):	Yes or liquor control board may impose a fine of $50 to $1,000. 47 §4-471 Note: Susp/Rev mand for a 3rd or sub. off w/n 4 yrs. 47 §4-471(c)
Length of Term of License Withdrawal:	3 yrs if revoked (1 yr for location unless ownership changes hands, including immediate family members.); if susp, indeterminate 47 §4-471
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	Misd[1] 47 §§4-493(1) and 4-494(a)
Term of Imprisonment:	3 mos to 1 yr
Fine ($ 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 47 §4-471 Note: Susp/Rev mand for a 3rd or sub. off w/n 4 yrs. 47 §4-471(c)
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):	Yes[2] driver only 75 §3715

[1]It 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)

[2]Also applies to the consumption of "controlled substances". 75 §3715

JURISDICTION:	**PUERTO RICO**
General Reference:	Laws of Puerto Rico Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating drinks 9 §1041(a)
Illegal Per Se Law (BAC Level):	None
Presumption (BAC Level):	0.10[1] 9 §1041(b)(2) 0.05 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) Marihuana or (3) a Depressing or Stimulating Substance 9 §1045
Other:	None

Chemical Breath Tests for BAC Level:

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 BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes 9 §1043(a)
Urine:	No[2]
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 9 §1042(d)

[1]Standard: Percent or more of alcohol by volume in the driver's blood. 9 §1043(a)

[2]The 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).

JURISDICTION - Puerto Rico

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 dys**[1]; 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 dys**[1]; 2nd off (Misd) (w/n 5 yrs)-**90 dys to 6 mos**; 3rd and subsequent off (Felony)-**fixed jail term of 1 yr**[3] Serious Injury Related DWI Off (Felony): **fixed jail term of 1 yr**[3] 9 §1042
Mandatory Minimum Term:	Non-Injury DWI Off (Misd)-1st off-**None**[1]; 2nd off (w/n 5 yrs)-**24 con. hrs**[2]; 3rd off-**30 dys**; subsequent off-**60 dys** Injury Related DWI Off: 1st off (Misd)-**None**[1]; 2nd off (Misd) (w/n 5 yrs)-**24 con. hrs**[2]; 3rd and subsequent off (Felony)-**6 mos and 1 dy**[3] Serious Injury Related DWI Off (Felony): **6 mos and 1 dy**[3] 9 §1042

[1]For 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 level 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)

[2]For 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 level 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)

[3]For 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):	Non-Injury DWI Off (Misd)-1st off-not more than **$100 to $300**[1]; 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 $500**[1]; 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. 3-406.
Restitution (eg Victim's Fund)	**Yes** Paid by the defendant[2] 33 §3212
Other:	A defendant may be ordered to take and pass a driver improvement course. 9 §1042(h)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	**None**
Post DWI Conviction 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 mos**[1]; 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)

[1]See Footnote No. 1 on p. 3-406.
[2]Payment cannot be more than $500.

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 (Misd.) 33 §4005; (2) Death caused by gross or willful negligence in driving a motor vehicle (Felony) 33 §§3044 & 4006
Sanctions:	
	Criminal Sanction:
Imprisonment (Term):	Misd. 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:	None
Fine ($ Range):	Misd. off-$3,000; felony off-None
Mandatory Minimum Fine:	None
	Administrative Licensing Action:
Licensing Authorized and Type of Action:	Rev 33 §4007
Length of Term of Licensing Withdrawal:	1 yr 33 §4007
Mandatory Action--Minimum Length of License Withdrawal:	1 yr 33 §4007
Other:	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.

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**

[1]There 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-6 mos; fine: $25-500. 33 §§1021 & 3035 (2) Sanctions against dealers. Misd. Jail: 30 dys-1 yr; fine: $100-$1,000. 13 §§6083 & 6116

[2]An administrative fine of not more than $2,000 may be imposed at any time before a misd. trial of an alcohol offense.

STATE:	**RHODE ISLAND**
General Reference:	General Laws of Rhode Island

Basis for a DWI Charge:

Standard DWI Offince:	Under the influence of intoxicating liquor §31-27-2(a)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1&2] and **Any Blood "Presence" of a Controlled Substance** §31-27-2(b) Persons under 21 years old who have a BAC level of between 0.04 and 0.10 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 Level):	None
Types of Drugs/Drugs and Alcohol"	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:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**Yes** §31-27-2.3
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** (Implied) §31-27-2.1
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 law, statute or case, on this subject.
Other Information:	None

[1]This 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

[2]Standard: Percent by weight of alcohol in the blood, breath or urine. §31-27-2(b) However, §31-27-2(e) provides that percent of weight of alcohol in the blood is to be based upon milligrams of alcohol per 100 cubic centimeters of blood.

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/"Other Bodily Substance" alcohol concentration level of 0.04 percent or more, (2) while under the influence of alcohol or controlled substances or (3) of a refusal to submit to a chemical test. For either (1) a second violation or (2) a combination of two violations of any of the above listed items, a person's privilege to operated a CMV is "revoked" 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: A CMV operator commits a "regular" DWI offense if they should operate a CMV with a BAC level of 0.04 or more. See §§31-10.3-3(9), (11), (13) & (28) and 31-10.3-31.

Preceding Page Blank

Chemical Tests of Other Substances for BAC Level 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 §31-27-2(d)(7)

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:	Administrative fine-**$15** §§31-27-2.3(B) & 31-41-4
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	1st refusal-**$200 to $500 and 10 to 60 hrs of public service**; 2nd refusal (w/n a 5 yr period)-**$300 to $500**; 3rd and subsequent refusal (w/n a 5 yr period)-**$400 to $500** In addition to the above fines, a defendant must pay an assessment 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):	1st Refusal-**Susp 3 to 6 mos** (3 mos mand) (For persons under 18 years old-mandatory susp for 6 mos §31-27-2.5(a)); 2nd refusal (w/n 5 yr period)-**Susp 1 to 2 yrs** (1 yr mand); 3rd and subsequent refusal (w/n 5 yr period)-**Susp 2 to 3 yrs** (2 yrs mand) §31-27-2.1
Other:	1st Refusal-Attendance at a DWI class or alcohol/drug treatment program; 2nd refusal (w/n 5 yr period)-Attendance at an alcohol/drug treatment program; 3rd and subsequent refusal (w/n 5 yr period)-Attendance at an alcohol/drug treatment program **Special Note:** Attendance at these classes or programs is required.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	A DWI off is a Misd §31-27-2(b)(2) 1st off-Not more than **1 yr**; 2nd off (w/n 5 yrs)-**10 dys-1 yr**; 3rd and subsequent offs (w/n 5 yrs)-**6 mos-1 yr**; §31-27-2(d) DWI serious bodily injury offs: 1st off-**1 to 5 yrs**; 2nd and sub. off (w/n 5 yrs)-**2 to 15 yrs** §31-27-2.6 The sanctions for young persons who committ certain alcohol driving offenses are contained in the Misc. Sanctions section on p. 3-416.
Mandatory Minimum Term:	1st off-**None**; 2nd off (w/n 5 yrs)-**10 dys containing at least 48 cons hrs**; 3rd and subsequent offs (w/n 5 yrs)-**6 mos containing at least 48 cons hrs** 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**[1] DWI serious injury offs: 1st off-**$1,000 to $5,000**; 2nd and sub. off (w/n 5 yrs)-**$3,000 to $10,000** §31-27-2.6
Mandatory Min. Fine ($):	1st off-**$100**; 2nd off (w/n 5 yrs)-**$400**; 3rd and subsequent offs (w/n 5 yrs)-**$400** §31-27-2(d) For DWI serious injury off-**None**
Other Penalties:	
Community Service:	1st off-**10 to 60 hrs**
Restitution (eg Victim's Fund)	**Yes** Victim's compensation fund §12-25-1 et seq.[2]
Other:	**Highway Assessment Fee.** In addition to the above fines, a defendant must pay a highway assessment fee of **$500**. §31-27-2(d)(5)(a)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	Under §31-11-7(a), a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev/susp (e.g., DWI). Such action may be taken without a preliminary hearing.

[1]The defendant must also pay a fee of either $20 or 10% of the fine imposed which ever is the greater amount. This fee is for the purpose of supporting the fund which compensates victims of violent crimes such as DWI related deaths or injuries. §12-25-12(c)
[2]Awards are limited to $25,000 plus attorney's fees. §12-25-6(b)

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

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	**Susp** all non-injury DWI offs. For DWI serious injury offs-**Rev.** For young persons, see Misc. Sanctions on p. 3-417. See Footnote No. 1.
Term of License Withdrawal (Days, Months, Years, etc.):	DWI non-injury offs: 1st off-**3 to 6 mos**; 2nd off-**1-2 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) 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)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Yes Forfeiture** 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)(b)
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**
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 subsequent 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

[1]In addition to the licensing action indicated, a person convicted of driving while under the influence of a "controlled substance" may have their license revoked for 1 year. §31-11-6

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

Miscellaneous Sanctions Not Included Elsewhere: (continued)

Criminal/Juvenile Justice Information Fee. All DWI offenders must pay a fee of $147[1] (for FYs 1993 thru 1995) for the purpose of funding the criminal/juvenile justice information system. §31-27-2(d)(5)(b)

DWI Offenders Under 18 Years Old. In addition, the following sanctions apply to persons convicted of DWI who are under 18 years old: 1st off.-a highway assessment fine of not more than $500, 10-60 hrs. of community service & a 6 to 18 mo. lic. susp. (6 mos mand.); 2nd and sub. off.-confinement in a training school for not more than one (1) yr., a fine of not more than $500 & lic. susp. until the person is 21 (mandatory). §31-27-2(d)(6)

Persons Under 18 Years Old with BAC Level of 0.04. There are two separate provisions of law that provided for sanctions against young persons who drive while impaired (i.e., drive with a BAC level of 0.04 up to 0.10.)

I. For persons under 18 years old, who have been found to have been driving while impaired (BAC level between 0.04 and 0.10), the following sanctions apply. For 1st and sub. offs, an assessment fee of $150 or 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 years old plus an additional 2 yr susp (appears mand) §31-27-2.5(d)(2), (3) & (4)

II. For persons under 21 but over 18 years old, who have been found to have been driving while impaired (BAC level between 0.04 and 0.10), the following sanctions apply. 1st violation: A fine of not more than $100; a highway safety assessment fee of $150 (mand); 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 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

[1]This fee will increase to $173 in FYs 1996 thru 1999 and then decrease to $86 in FYs 2000 thru 2006.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	Yes
Criminal Sanction:	
Imprisonment (Term):	1) Death related DWI offs-felony-1st off - **2 to 15 yrs**; 2nd and subsequent (w/n 5 yrs) - **5-20 yrs** §§31-27-2.2 & 11-1-2; 2) Non-DWI related driving causing death-felony-Not more than **10 yrs** §§31-27-1 & 11-1-2
Mandatory Minimum Term:	None
Fine ($ Range):	Death related DWI offs, 1st off - **$5,000 to $10,000**; 2nd and subsequent (w/n 5 yrs) - **$10,000 to $20,000** Non-DWI related deaths - **None**
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Death related DWI offs, 1st off-**Rev**; 2nd and subsequent (w/n 5 yrs)-**Rev**; Non-DWI related driving causing death-**Rev** §31-11-6
Length of Term of Licensing Withdrawal:	Death related DWI offs, 1st off-**3 yrs**; 2nd and subsequent offs (w/n 5 yrs)-**5 yrs**; Non-DWI related driving causing death-**3 yrs**
Mandatory Action--Minimum Length of License Withdrawal:	Death related DWI offs, 1st off-**3 yrs**; 2nd and subsequent offs (w/n 5 yrs)-**5 yrs**; Non-DWI related driving causing death-**3 yrs**
Other:	None
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	
Imprisonment (Term):	Where susp or rev is due to either a DWI conviction, a refusal to submit to chemical test, reckless driving, motor veh manslaughter or 3 moving violations in one yr.[1] 1st off (Misd)-**10 dys to 1 yr**; 2nd off (w/n 5 yrs) (Misd)-**6 mos-1 yr**; 3rd and subsequent offs (w/n 5 yrs) (felony)-**1 to 5 yrs** §§31-11-18.1, 31-27-13 & 31-27-14
Mandatory Minimum Term of Imprisonment:	1st off-**10 dys**; 2nd off (w/n 5 yrs)-**6 mos**; 3rd and subsequent offs (w/n 5 yrs)-**1 yr** §31-11-18.1(d)
Fine ($ Range):	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
Mandatory Minimum Fine:	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)

[1]See §31-11-18 for sanctions while driving while either susp or rev for other traffic law violations.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev** §31-11-18.1
Length of Term of License Withdrawal Action:	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
Mandatory Term of License Withdrawal Action:	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
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §30-40-1 et seq.
Grounds for Being Declared an Habitual Offender:	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 $150 or more; or 8) a combination of six (6) traffic off. convictions where any one conviction could result in license susp/rev for 30 dys or more. §31-40-2
Term of License Rev While Under Habitual Offender Status:	**1-5 yrs** §31-40-7
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Felony** §11-1-2
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **5 yrs** §31-4-8
Mandatory Minimum Term of Imprisonment:	The **5 yr** sentence may not be suspended except in cases where the defendant operated a vehicle in order to save life or limb. §31-40-8
Fine ($ Range):	None
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:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1984) §§3-8-1, 3-8-5 & 3-8-6(a)(2)
Minimum Age (Years) Possession:	21 §3-8-10
Minimum Age (Years) Consumption:	21 Note: Applies only to licensed premises §3-8-6(a)(2)
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 (No cases)
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
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)[2]

[1]Rhode 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.
[2]See Footnote No. 2 on p. 3-421.

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:	**Violations**[1] §§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.
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes Susp/Rev** §3-5-23
Length of Term License Withdrawal:	Susp-Length is not specified §3-5-23; Rev. - **5 yrs** (under §3-5-23)[2]
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):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Driver only §31-22-21

[1]A 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

[2]If the revocation is under §3-5-22, the length would be 1 yr.

STATE:	**SOUTH CAROLINA**
General Reference:	Code of Laws of South Carolina Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquors §56-5-2930
Illegal Per Se Law (BAC Level):	None
Presumption (BAC Level):	0.10[1] §56-5-2950(b)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Narcotic Drugs, (2) Barbiturates, (3)Paraldehydes or (4) Drugs[2], Herbs or Any Other Substance of Like Character §56-5-2930
Other:	For Commercial Motor Vehicle Operators, see p. 3-427.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §56-5-2950(a)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §56-5-2950(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) *State v. Miller,* 185 S.E.2d 359 (S.C. 1971)
Other Information:	None

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes[3] Only required if a breath sample cannot be obtained §56-5-2950(a)
Urine:	Yes[3] Only required if drugs other than alcohol are involved §56-5-2950(a)
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 §56-5-2990

[1]South Carolina law uses the term "inferred" instead of "presumed". Standard: Percent by weight of alcohol in the blood. §56-5-2950(b)(3)

[2]Note: The term "drug" is defined as an "illicit or licit drug, a combination of alcohol and an illicit drug or a combination of alcohol and a licit drug." §56-5-2930

[3]These tests are not authorized if the driver has registered a BAC level of 0.10 or more on a breath test device. §56-5-2950(a)

Preceding Page Blank

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):	**90 dy susp** of license[1] (Mandatory) §56-5-2950(d)
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	DWI-Misd (§§16-1-10 & 16-1-20) 1st off-**48 hrs to 30 dys**; 2nd off (w/n 10 yrs)-**48 hrs to 1 yr**; 3rd off (w/n 10 yrs)-**60 dys to 3 yrs**; 4th and subsequent off (w/n 10 yrs)-**1 to 5 yrs** §56-5-2940 DWI where there is great bodily injury-**felony, 30 dys to 10 yrs** §§16-1-10 & 56-5-2945
Mandatory Minimum Term:	1st off-**48 hrs**[2]; 2nd off-**48 hrs**[2]; 3rd off-**60 dys**[2]; 4th and subsequent offs-**1 yr**[2] DWI where there is great bodily injury-**30 dys**[2]
Fine:	
Amount ($ Range):	1st off-**$200**; 2nd off-**$2,000 to $5,000**[3]; 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-**$200**; 2nd off-**$1,000**[3]; 3rd off-**$3,500**; 4th off-**None** DWI where is great bodily injury-**$5,000** §§56-5-2940 & 56-5-2945

[1]The South Carolina Supreme Court has declared unconstitutional (U.S. Constitution) a provision of §56-5-2950(d) which allowed a 1st DWI offender, who had refused to submit to a chemical test, to avoid the 90 dy susp for refusal by pleading guilty or *nolo contendere* to a drunk driving off. *Shumpert v. South Carolina Dept. of Highways and Public Transportation*, 409 S.E.2d 771 (S.C. 1991)

[2]**Special Note:** 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. 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

[3]For a 2nd off only, $250 of the fine must be remitted to the Victims' Compensation Fund. §56-5-2940(2)

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 imprisonment[1]; 2nd off-Not less than **10 dys** in lieu of imprisonment[1]
Restitution (eg Victim's Fund)	**Yes** Victims' Compensation Fund §16-3-1110 et seq.
Other:	**None**
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**No**
Other:	**None**
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	1st off[1]-**Susp**; 2nd off[2] (w/n 10 yrs)-**Susp**; 3rd off[2] (w/n 10 yrs)-**Susp**; 4th off[1] (w/n 10 yrs)-**Susp**; 5th and subsequent offs[1] (w/n 10 yrs)-**Rev** §56-5-2990 DWI off where there is great bodily injury-**Susp** §56-5-2945
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**; 4th off (w/n 10 yrs)-**3 yrs**; 5th and subsequent offs (w/n 10 yrs)-**Permanent**; 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 (see §§56-1-1320 and 56-1-1330); 2nd off (w/n 10 yrs)-**1 yr**; 3rd off (w/n 10 yrs)-**2 yrs**; 4th off (w/n 10 yrs)-**3 yrs**; 5th and subsequent offs (w/n 10 yrs)-**5 yrs**; DWI off where there is great bodily injury-**Term of imprisonment plus 3 yrs**
Other:	
Rehabilitation:	
Alcohol Education	(1) For suspended licensed drivers, a successful completion of an Alcohol and Drug Safety Action Program prior to license reinstatement (or a special recommendation by the Medical Advisory Board before the license is restored; and (2) For revoked licensed drivers, the license may be reinstated after 5 yrs provided such drivers have been rehabilitated. §56-5-2990

[1]Home detention may be ordered in lieu of community service. §24-13-1530
[2]Note: 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.

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

Alcohol Treatment:	Yes See Alcohol Education on p. 3-421.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	Yes Either for a 4th DWI off (w/n 10 yrs) or a 4th off (w/n 5 yrs) of driving while license is susp/rev, the driver's vehicle **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).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** There are two offenses. (1) Felony if death is based on a DWI off and (2) Misd if death is caused by the reckless (non-DWI related) operation of a vehicle. §§16-1-10, 16-1-20, 56-5-2910 & 56-5-2945.
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Felony off-**1 to 25 yrs** Misd off-not more than **5 yrs**
Mandatory Minimum Term:	Felony off-**1 yr** §56-5-2945(A)(2) See the Special Note below.
Fine ($ Range):	Felony off-**$10,000 to $25,000** Misd off-**$1,000 to 5000**
Mandatory Minimum Fine:	Felony off-**$10,000** §56-5-2945(A)(2)
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Felony off-**Susp** §56-5-2945; misd off-**Rev** §56-5-2910
Length of Term of Licensing Withdrawal:	Felony off-**Term of imprisonment plus 3 yrs**; misd off-**5 yrs**
Mandatory Action--Minimum Length of License Withdrawal:	Felony off-**Term of imprisonment plus 3 yrs**; misd off-**5 yrs** §56-5-2910
Other:	**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

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-**10-30 dys**; 2nd off (w/n 5 yrs)-**60 dys-6 mos**; 3rd 2nd subsequent off (w/n 5 yrs)-**6 mos-3 yrs** §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]; 2nd off-**$500**[3]; 3rd and sub off-**None** §56-1-460
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp/Rev** See Vehicle Impoundment/Confiscation on p. 3-422.
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.
Mandatory Term of License Withdrawal Action:	**None**

[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

[2]If 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 license suspension or revocation was based on a DWI offense conviction.

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 level of 0.04 or more, (2) have an alcohol concentration of 0.04 or more 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. See §§56-1-2030(2), (6), (9), (10) & (21), 56-1-2110, 56-1-2120, 56-1-2130 and 56-1-6190.

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	Yes §56-1-1010 et seq.
Grounds for Being Declared an Habitual Offender:	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	Misd §56-1-1100
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	1 to 5 yrs[1] §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 on Persons Killed in Traffic Accidents:	
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 Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	21 (Year Eff. 1986) §§20-7-370, 20-7-380, 61-3-990(3), 61-9-40(A), 61-9-410(1) & 61-13-290
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, 20-7-370 & 20-7-380
Minimum Age (Years) Consumption:	None

[1]**Special Note:** An 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

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], *Christiansen v. Cambell*, 328 S.E.2d 351 (S.C.App. 1985), & *Steele v. Rogers*, 413 S.E.2d 329 (S.C.App. 1992)
Dram Shop Actions-Social Hosts:	No *Garren v. Cummings & McCrady, Inc.*, 345 S.E.2d 508 (S.C.App. 1986)[2], & *Hill v. Honey's, Inc.*, 786 F.Supp. 549 (D.S.C. 1992)
Other:	None
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	For alcoholic liquors[3]-(Misd) §§66-3-990, 61-5-30, 61-5-110, 61-13-210 & 61-13-430 For nonintoxicating beverages-(Misd) §§61-9-410 & 61-13-870
Term of Imprisonment:	Alc. Beverages: (1) a violation of §61-3-990 via §61-13-210-1st off-**6 mos**; 2nd off-**1 yr**; 3rd and sub. off-**2 yrs** §61-3-430(3); (2) a violation of §61-5-30 (a) for persons-not more than **30 dys**; for licensees-None §61-5-110. Non-intoxicating Beverages: §61-9-410 Not less than **3 mos** §61-13-870 See Footnote No. 1 on p. 3-428.
Fine ($ Range):	Alc. Beverages: (1) a violation of §61-3-990 via §61-13-210-1st off-Not less than **$600**; 2nd off-**$1,500**; 3rd and sub. off-**$3,000** §61-3-430(3); (2) a violation of §61-5-30 (a) for persons-not more than **$100**; for licensees-1st off-**$200 to 500**; 2nd off (w/n 3yrs)-**$200 to 500**; 3rd off (w/n 3 yrs)-Not less than **$500** §61-5-110. Non-intoxicating Beverages: §61-9-410 Not less than **$100** §61-13-870 See admin. fines under Admin. Actions on p. 3-426.

[1]In 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.

[2]However, 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)

[3]The 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. §61-9-10 The term "alcoholic liquors" applies to all other alcoholic beverages. §61-3-20(1)

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): Yes Alcoholic Beverages-**Susp/Rev**; Non-intoxicating Beverages-**Susp/Rev**

Length of Term of License Withdrawal: Alcoholic Beverages: (1) Rev. under §61-13-500 for a violation of §61-3-999 via §61-13-210: 1st off-Rev for **1 yr** or pay an admin. fine of $200; sub. off-Rev for **2 yrs** or pay an admin. fine of $500; (2) Rev under §61-5-110 for a violation of §61-5-30: 1st off-Susp for **30 dys**; 2nd off-Susp for **180 dys**; 3rd off-**Permanent Rev** Note: Under §61-13-510, an admin. fine of from $100-1,500 may be paid in lieu of susp/rev. Non-intoxicating Beverages: Susp/Rev under §61-9-410 et seq.-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. §61-13-510

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: Alcoholic Liquors[1]-(Misd); Non-intoxicating beverages[1]-(Misd)

Term of Imprisonment: Alcoholic Beverages: (1) A violation of §61-3-990 via 61-13-210 1st off-**6 mos**; 2nd off-**1 yr**; 3rd and sub offs-**2 yrs** §61-13-430(3); (2) A violation of §61-13-290--**30 to 60 dys** Non-intoxicating Beverages: (1) A violation of §61-9-40--**30 to 60 dys**; (2) A violation of §61-9-410--Not less than **3 mos** §61-13-870

See Footnote No. 1 on p. 3-428.

Fine ($ Range): Alcoholic Beverages: (1) A violation of §61-3-990 via 61-13-210 1st off-**Not less than $600**; 2nd off-**$1,500**; 3rd and sub offs-**$3,000** §61-13-430(3); (2) A violation of §61-13-290--**$100 to $200** Non-intoxicating Beverages: (1) A violation of §61-9-40- **$100 to $200**; (2) A violation of §61-9-410-Not less than **$100** §61-13-870 See Admin. fines under Admin. Actions below.

[1]See Footnote No. 3 on p. 3-429.

Other State Laws Related To Alcohol Use And Driving: (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):	**Yes Susp/Rev**
Length of Term License Withdrawal:	Alcoholic Beverages: (1) A violation of §61-3-990 via §61-13-210-1st off-Rev for **1 yr** or pay an admin. fine of $200; sub off-Rev for **2 yrs** or pay an admin. fine of $500 Note: Under §61-13-510, an admin. fine of from $100 to $1,500 may be paid in lieu of susp/rev. Non-intoxicating Beverages: Susp/rev §61-9-410 et seq.-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. §61-13-510
Anti-Happy Hour Laws/Regulations:	**Yes Limited** §61-13-875[1]
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** §§61-5-20 & 61-9-87
Anti-Consumption Law (Yes/No):	**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. §61-13-360

[1]This law prohibits the selling of alcoholic beverages (1) for free (there are exceptions), (2) for less than half price or on a "two for one" basis and (3) for less than the regular price except between the hours of 4 and 8 p.m.

STATE:	**SOUTH DAKOTA**
General Reference:	South Dakota Codified Laws

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an alcoholic beverage §32-23-1(2)
Illegal Per Se Law (BAC Level):	**0.10**[1] §32-23-1(1)
Presumption (BAC Level):	**0.10**[1] §32-23-7 Note: §32-23-7 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. 3-435.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	**Yes** §32-23-1.2
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §32-23-10
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §32-23-10
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** §§19-13-28.1 & 32-23-10.1[2] (Criminal Cases)
Other Information:	Chemical test required for persons who have been arrested for a third or subsequent DWI offense 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 BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §32-23-10
Urine:	**No** §32-23-10
Other:	"Other bodily substances" §32-23-10

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea Bargaining Statute (Yes/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** If the defendant's BAC level is 0.17 or more, the court must require them to undergo an evaluation to determine if they are addicted to alcohol. §32-33-23 Note: The courts have general authority to order discretionary pre-sentence investigation reports. §23A-27-5

[1]Based 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."
[2]This statute was held constitutional in *South Dakota v. Neville*, 459 U.S. 553 (1981).

Preceding Page Blank

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Prelimipary 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.):	1st off Cl 1 Misd-Not more than **1 yr** (county jail); 2nd off (w/n 5 yrs) Cl 1 Misd-Not more than **1 yr** (county jail); 3rd off Cl 6 Felony (w/n 5 yrs)-Not more than **2 yrs**[2] (State penitentiary); 4th & sub. off (w/n 5 yrs) Cl 5 Felony-Not more than **5 yrs**[2] (State penitentiary) §§22-6-1, 22-6-2, 32-23-2, 32-23-3, 32-23-4 & 32-23-4.1 Vehicle Battery[3] (Cl 4 Felony)-Not more than **10 yrs** (State penitentiary) §§22-6-1 & 22-6-_ (§2 of Ch. 174 Session Laws of 1993)
Mandatory Minimum Term:	**None**
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 Battery[3]-Not more than **$10,000** §§22-6-1, 22-6-2 & 22-6-_ (§2 of Ch. 174 Session Laws of 1993)
Mandatory Min. Fine ($):	**None**

[1]Under §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.

[2]A person convicted of a Cl 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

[3]Vehicle Battery: Causing serious bodily injury while driving a motor vehicle in a negligent manner while under the influence of an alcoholic beverage.

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

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:	None
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	None
Other:	None
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	1st off-Rev; 2nd and sub off-Rev (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) Vehicle Battery (Cl 4 Felony)-Rev §§22-6-1 & 22-6-__(§2 of Ch. 174 Session Laws of 1993)
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-30 dys-1 yr; 2nd off-1 yr; 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;" 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) §§32-12-52.1, 32-23-2, 32-23-3, 32-23-4 & 32-23-4.6 Vehicle Battery (Cl 4 Felony)-2 yrs subsequent to release from incarceration §22-6-_____ (§2 of Ch. 174 Sessions Laws of 1993)

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 blood alcohol level of 0.04 or more by weight, (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 blood alcohol level of 0.04 to 0.10 is a Class 2 Misdemeanor; the sanctions for the offense are (1) a jail of not more then 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. See §§22-6-2, 32-12-77(5), 32-12-77(9), 32-12-77(20), 32-12-104, 32-12-105, 32-12-106.1, 32-12-110, 32-12-110.1 and 32-12-111.

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

Mandatory Minimum Term of Withdrawal:	1st off-None[1]; 2nd off-1 yr; 3rd off-1 yr; 4th and sub. off-2 yrs Note: Under the point system, there is no mandatory susp. period. §§32-23-2, 32-23-3 & 32-23-4 Vehicle Battery (Cl 4 Felony)-None
Other:	
Rehabilitation:	
Alcohol Education:	
Alcohol Treatment:	
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	None
Terms Upon Which Vehicle Will Be Released:	
Other:	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 Cl 3 Felony where death is caused by veh operation while under the influence of alcohol or drugs. §22-16-41
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than 15 yrs §22-6-1
Mandatory Minimum Term:	None
Fine ($ Range):	Not more than $15,000 §22-6-1
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Rev §22-16-41
Length of Term of Licensing Withdrawal:	2 yrs Subsequent to release from incarceration §22-16-41
Mandatory Action--Minimum Length of License Withdrawal:	None
Other:	See DWI Vehicle Impoundment/Confiscation above.

[1]A restricted hardship license is available. §§32-23-2, 32-23-3 & 32-23-4

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	
Sanction:	
Criminal:	
Imprisonment (Term):	For driving while revoked, Cl 1 Misd - Not more than **1 yr** for driving while suspended, Cl 2 Misd - Not more than **30 dys** See Footnote No. 1. §§22-6-2 & 32-12-65
Mandatory Minimum Term of Imprisonment:	**3 days** if the original licensing (revocation) action was for a 2nd DWI offense §32-23-3; **10 days** if the original licensing (revocation) action was for a 3rd DWI offense §32-23-4; and **20 dys** if the original lic. actions was for a 4th or sub. DWI offense §32-23-4.6
Fine ($ Range):	For driving while revoked, Cl 1 Misd - Not more than **$1,000** For driving while suspended, Cl 2 Misd - Not more than **$200**
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	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. 3-436.
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.[2] §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:	

[1]Under §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.

[2]Mandatory 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.

*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)

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:	21[1]
Minimum Age (Years) Consumption:	21[1]
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	No[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[2] *Waltz v. City of Hudson*, 327 N.W.2d 12 (S.D. 1982), & *Baatz v. Arrow Bar*, 426 N.W.2d 298 (S.D. 1988)

[1]There is an exemption for either the possession or the consumption of alcoholic beverages by persons under 21 yrs of age for religious ceremonies. §§35-4-78, 34-9-1 & 35-9-2

[2]**Historical Note:** In 1982, the South Dakota Supreme Court established dram shop liability via common law negligence (The *Waltz* case). The State legislature, in 1985, attempted to abrogate this decision via legislation. §§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 (the *Baatz* case).

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:	**No**[1] §35-11-2
Other:	
None	
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Cl 1 Misd** §§22-6-2 & 35-4-78
Term of Imprisonment:	Not more than **1 yr** (county jail)
Fine ($ Range):	Not more than **$1,000**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Rev/Susp** §35-2-10
Length of Term of License Withdrawal:	**Rev-1 yr** or **Susp**-not more than **60 dys**[2] §§35-2-20 & 35-2-21
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Cl 1 Misd** Licensees who sell alcoholic beverages to persons under 21 years old §§22-6-2 & 35-4-78[3]
Term of Imprisonment:	Not more than **1 yr** (county jail)
Fine ($ Range):	Not more than **$1,000**

[1]The State supreme court has not had an occasion to decide whether §35-11-2, which prohibits dram shop actions against social hosts, violates Art. VI, §20 of the State constitution. See Footnote No. 2 on p. 3-438.

[2]In 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

[3]Under §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.

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):	**Yes Rev/Susp** §35-2-10
Length of Term License Withdrawal:	**Rev-1 yr** or **Susp**-not more than **60 dys** See Footnote No. 2 on p. 3-439. §§35-2-20 & 35-2-21
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** §35-1-9.1
Anti-Consumption Law (Yes/No):	**No**

STATE:	**TENNESSEE**
General Reference:	Tennessee Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of any intoxicant[3] (e.g., alcohol) §55-10-401(a)
Illegal Per Se Law (BAC Level):	Persons Under 21 Years Old-**0.02**[1] (Impaired Driving Offense) §55-10-____(a)(1)(A) (§1(a)(1)(A) of 1993 Public Chapter 491)
Presumption (BAC Level):	**0.10**[2] §55-10-408(b)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Intoxicant**, (2) Marijuana, (3) Narcotic Drug or (4) Stimulating Drugs listed in §55-10-401(b)[3] §55-10-401(a)
Other:	For Commercial Motor Vehicle Operators, see p. 3-445.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §55-10-406(a)(3)
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)
Other Information:	None

Chemical Tests of Other Substances for BAC Level 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)
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No

[1]**Persons Under 21 Years Old.** Sec. 55-10-____ (§1 of 1993 Public Chapter 491) establishes the offense of "driving while impaired" (which is a lessor included offense of regular DWI) for persons over age 16 but under age 21. This offense consists of (1) driving with a BAC level of 0.02 or more, (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 over age 18 but under age 21, this offense is classified as a Class A misd; for persons over age 16 but under age 18, this offense is classified as a "delinquent act". §55-10-____(d) & (e) (§1(d) & (e) of 1993 Public Chapter 491)

[2]Standard: Percent by weight of alcohol in the blood. §55-10-408(b) However, in *State v. McKinney*, 605 S.W.2d 842 (Tenn.Cr.App. 1980) (Permission to appeal was denied by the Tennessee Supreme Court.), the Court of Criminal Appeals of Tennessee held that "the standard medical and scientific method of reporting blood-alcohol is a representation of the number of grams of alcohol in one hundred milliliters of blood." 605 S.W.2d at 846

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):	**Susp** - Not more than **6 mos** §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:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off (Cl A misd)-**48 hrs-11 mos 29 dys**; 2nd off (w/n 10 yrs) (Cl A misd)-**45 dys-11 mos 29 dys**[1]; 3rd and subsequent off (w/n 10 yrs) (Cl A misd)-**120 dys-11 mos 29 dys** §55-10-403 See Footnote No. 2. DWI Aggravated Assult[2] (Felony)-**2 to 10 yrs** §39-2-101(b) & (d) **Persons Under 21 Years Old** (Impaired Driving Offense)-None
Mandatory Minimum Term:	1st off-**48 hrs**; 2nd off (w/n 10 yrs)-**45 dys**[1]; 3rd and subsequent off (w/n 10 dys)-**120 dys** DWI Aggravated Assult-**None**
Fine:	
Amount ($ Range):	1st off-**$250-$1,000**; 2nd off (w/n 10 yrs)-**$500-$2,500**; 3rd and subsequent off (w/n 10 dys)-**$1,000-$5,000** §55-10-403 DWI Aggravated Assult-**None** See Footnote No. 4. **Persons Under 21 Years Old** (Impaired Driving Offense)-**$250** §55-1-____(d) (§1(d) of 1993 Public Chapter 491)

[1]For 2nd offenses, the court may order a person 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. However, a person may be allowed to participate in a work release program. §41-2-128(c)(1)

[2]These criminal sanctions for a DWI offense also apply to commerical motor vehicle operators who violate §55-50-405(a). §§55-50-405(a)(6)(A) & 55-10-403

[3]Serious bodily injury to another person as a proximate result of operating a vehicle while in violation of §55-10-401.

[4]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. §55-10-403(i) and §2 of Public Chapter 1081 of 1990

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

Mandatory Min. Fine ($):	1st off-**$250**; 2nd off (w/n 10 yrs)-**$500**; 3rd and subsequent off (w/n 10 yrs)-**$1,000** Note: These fines are mandatory unless a judge determines that a defendant is indigent. §55-10-403(b)(2) **DWI Aggravated Assult-N/A** Persons Under 21 Years Old (Impaired Driving Offense)-**$250** **Comment:** The law is not clear on whether this fine is mandatory.
Other Penalties: Community Service:	I. In metropolitan areas with a population of over 100,000, the court is authroized to sentence a 1st offender to perform 200 hrs of community service in lieu of the 48 hrs minimum jail term. §55-10-403 (Ch. 653, Public Laws 1992) 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 of time in lieu of or in additional to other penalities. The community service work may be accomplished during non-working hrs. §55-10-104(a)(1) **III. Persons Under 21 Years Old** (Impaired Driving Offense). The court may impose "public work" service. §55-10-____(d) (§1(d) of 1993 Public Chapter 491)
Restitution (eg Victim's Fund):	**Yes** (1) 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) (2) 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 serve. §55-10-403(c)(3)
Other:	Upon conviction all defendants, in counties with a population of 318,000 or more and in counties with a metropolitan form of government, must pay a BAC test fee of $17. This fee is paid to the county. §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. §55-10-412(d) Note: The 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.

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

Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	None
Other:	The licensing agency can suspended a person's license if they have committed but have not necessary been convicted of an offense which requires mandatory license revocation. §55-50-502(a)
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	**Prohibition/Rev[1&2]** §§55-10-403, 55-7-501(a)(2) & 55-7-502 **Persons Under 21 Years Old (Impaired Driving Offense). Susp** §55-10-___(d) (§1(d) of 1993 Public Chapter 491)
Term of License Withdrawal (Days, Months, Years, etc.):	The following action is by the courts: 1st off - **1 yr**; 2nd off (w/n 10 yrs) - **2 yrs**[4]; 3rd and subsequent offs (w/n 10 yrs) - **3 to 10 yrs**[4] §§55-10-403 & 55-50-501 See Footnote No. 2. **Persons Under 21 Years Old** (Impaired Driving Offense)-**1 yr**
Mandatory Minimum Term of Withdrawal:	1st off - **1 yr**[3] 2nd off - **2 yrs**[4]; 3rd and subsequent offs - **3 yrs**[4] §55-10-403(d)(2) & (3) **Persons Under 21 Years Old** (Impaired Driving Offense)-**1 yr** **Comment:** The law is not clear on whether this licensing action is mandatory.
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** See below.
Alcohol Treatment:	**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. See Footnote No. 4. §55-10-403(c)(2) See Footnote No. 1 on p. 3-442.

[1]The Tennessee Code 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.

[2]Under §§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.

[3]Hardship license for employment available after 1st conviction only if no one was killed or seriously injured as a result of the DWI off. §55-10-403(d)

[4]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/drug abuse education or treatment program.

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

Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	Yes[1] .Vehicle Forfeiture (mand.) for a 3rd or sub. DWI offense conviction. §55-10-403(k)
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 then $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

[1]**Special Note:** In *State v. Bouldin,* 717 S.W.2d 584 (Tenn. 1986), a temporary vehicle forfeiture provision of a DWI plea bargaining/probation agreement was voided by the Tennessee Supreme Court.

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 level of 0.04 or more (Standard: Percent by alcohol in the blood. See Footnote No. 2 on p. 3-441.) 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 suspension is for life (10 yrs mand.). A commercial motor vehicle operator, who drives a CMV with a BAC level of 0.04 or more violates the regular DWI laws (§55-10-401). See §§55-50-102(12), 55-50-405(a) and 55-50-408.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Cl C Felony §39-13-213(b)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**3 to 15 yrs** §40-35-111(b)(3)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$10,000** §40-35-111(b)(3)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev/Prohibition** §§39-13-213 & 55-50-501(1)
Length of Term of Licensing Withdrawal:	There are two (2) separate diving privilege withdrawal schemes. (1) For all vehicle homicide offenses, the licensing agency revokes the driver's license for period that **equals the term of the sentenced received**[1]. §55-7-501(1) (2) For DWI related vehicle homicide offenses, the court prohibits the driver from operating a motor vehicle from **3 to 10 yrs**. §39-13-213
Mandatory Action--Minimum Length of License Withdrawal:	**3 yrs** §39-13-213
Other:	**None**

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	
Imprisonment (Term):	1st off (Cl B misd) - **2 dys to 6 mos**; 2nd & sub. off (Cl A misd) - **45 dys to 1 yr** §55-50-504(a)
Mandatory Minimum Term of Imprisonment:	1st off - **2 dys**; 2nd off - **45 dys** §50-55-504(f)
Fine ($ Range):	1st off - not more than **$500**; 2nd & sub. off - not more than **$500** §55-50-504(a)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp** - if the conviction was based on driving while suspended; **Rev** - if the conviction was based on driving while revoked. §55-50-504(h)

[1]If 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)

Other Criminal Actions Related to DWI: (continued)

Length of Term of License Withdrawal Action:	An additional susp period which is equal to the original period; The original rev period extended **1 yr**. §55-50-504(b)
Mandatory Term of License Withdrawal Action:	An additional susp period which is equal to the original period; 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) serious traffic offense convictions w/n 3 or w/n 5 yrs or 5 or more such offense convictions w/n 10 yrs II. Three (3) serious traffic offense convictions w/n 5 yrs. III. Five (5) 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 yr**[1] §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**

[1]One (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:

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**
Laws Establishing the Minimum Ages Concerning 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 §§1-2-113, 57-3-412(a)(3), 57-4-203(b)(2)(A) & (b)(3) and 57-5-301(e)(1)
Minimum Age (Years) Consumption:	**21** §1-3-113
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §57-10-101 et seq.[1] **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. Kemer*, 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:	See the Special Note on p. 3-450.
Type of Criminal Action:	**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**

[1]Before 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.

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): **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**

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: See the Special Note on p. 3-450.

Type of Criminal Action: **Cl A Misd** §§57-3-406(d), 57-3-412(a)(1), 57-4-101(a), 57-4-203(b)(1), 57-4-203(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), 57-5-109(k) & 57-5-303(c)

Length of Term 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**

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):	No

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 (Cl A misd), there is a jail term for not more than 11 mos 29 dys and a fine of not more than $2,500; in addition, the license to sell such beverages may be either be either suspended or revoked. For a 2nd off (Cl E felony), there is an imprisonment term of from 1 to 6 yrs and a fine of not more than $3,000; in addition, the license to sell such beverages is permanently revoked. 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. Nevertheless, the license may still be suspended for not more than ten (10) days. §§40-35-111, 57-5-105, 57-5-301(a)(1), 57-5-105(c) & 57-5-109(b)

STATE:	**TEXAS**
General Reference:	All citations are to Vernon's Texas Civil Statutes unless otherwise indicated.

Basis for a DWI Charge:

Standard DWI Offense:	Intoxicated while driving[1] Art. 6701*l*-1(b) After September 1, 1994: Penal Code §§49.01(2)(A) & 49.04
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1] Art. 6701*l*-1(a)(1), (a)(2)(B) & (b) After September 1, 1994: Penal Code §§49.01(2)(B) & 49.04
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Intoxicated while driving[1] Art. 6701*l*-1(b) After September 1, 1994: Penal Code §§49.01(2)(A) & 49.04
Other:	For Commercial Motor Vehicle Operators, see p. 3-456.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes Art. 6701*l*-5
Implied Consent Law Applies to Drugs (Yes/No):	Yes Art. 6701*l*-5, §1
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) Art. 6701*l*-5, §3(g) & *Jamail v. State*, 787 S.W.2d 380 (Tex.Cr.App. 1990)[2]
Other Information:	None

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes Art. 6701*l*-5
Urine:	No
Other:	None

[1]Effective until September 1, 1994. The term "intoxicated" means (1) not having normal use of mental or physical facilities by reason of the introduction of alcohol, a controlled substance, a drug, a substance or its vapors that contain a volatile chemical, an abusable glue, or an aerosol paint or a combination or two or more of these substances into the body or (2) having an "alcohol concentration" level of 0.10 or more. *Sullivan v. State*, 807 S.W.2d 342 (Tex.App. - Houston [14th Dist.] 1991) The term "alcohol concentration" means an alcohol concentration in either the blood, breath or urine using the normal standards. Art. 6701*l*-1(a)(2)(A) & (B)
Effective September 1, 1994. The term "intoxicated" means (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 or two or more of these substances into the body or (2) having an "alcohol concentration" level of 0.10 or more. *Sullivan v. State*, 807 S.W.2d 342 (Tex.App. - Houston [14th Dist.] 1991) The term "alcohol concentration" means an alcohol concentration in either the blood, breath or urine using the normal standards. Penal Code §49.01(1)
[2]Evidence 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)

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 I. Required for community supervision (probation) Code of Criminal Procedure Article 42.12, §13 See Treatment Alternative to Incarceration on p. 3-455. II. There is also a general PSI law. Code of Criminal Procedure Art. 42.12, §9

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):	Effective until January 1, 1995. **Susp 90 dys** (Susp 1 yr if the driver was under 21 yrs old.) Art. 6701*l*-5, §2(f) Hardship licenses may be issued. Art. 6687b, §23A However, the courts have no authority to "probate" a license suspension based on a refusal. Art. 6701*l*-5(k) Effective January 1, 1995. I. Refusal-**Susp 90 dys** An occupational license may be issued at any time based on essential need. II. Refusal where there has been either a previous refusal or a previous or admin. per se action w/n 5 yrs-**Susp 180 dys** (90 dys mand) III. Refusal where there has been a previous DWI offense conviction w/n 5 yrs-**Susp 1 yr** (180 dys 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 also order the driver to submit to alcohol and drug counseling and rehabilitation. Art. 6701*l*-5, §2(i) & Art. 6687b, §23A See Footnote No. 2.
Other:	None

[1]Following either a guilty or *nolo contendere* plea for a DWI offense, a defendant cannot receive "deferred adjudication". 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. Code of Criminal Procedure Art. 42.12, §5(d)

[2]The law specifically provides that a suspension based on a refusal cannot be "probated". Art. 6701*l*-5, §2(n)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment:
Term (Day, Month, Years, Etc.):

Effective until September 1, 1994.
1st off (Cl B Misd)-**72 hrs to 2 yrs**; 2nd off (w/n 10 yrs) (Cl B Misd)-**15 dys** to 2 yrs; Sub offs (w/n 10 yrs) (3rd Degree Felony)-Not less than **30 dys** nor more than **2 yrs** in county jail or not less than **60 dys** nor more than **5 yrs** in the State penitentiary. Art. 6701*l*-1 & Penal Code §12.41 See Footnote No. 1.
Effective September 1, 1994.
1st off (Cl B Misd)-**72 hrs to 180 dys**; 2nd off (w/n 10 yrs) (Cl 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.

Mandatory Minimum Term:

Effective until September 1, 1994.
1st off-**None**; 2nd off (w/n 10 yrs)-**15 dys** (72 hrs if probation is granted); Sub offs (w/n 10 yrs)-**30 dys** (10 dys if probation is granted) Art. 6701*l*-1(c), (d) & (e), Code of Criminal Procedure Art. 42.12, §13(a) and §4.03 of Ch. 900 of the Laws of 1993 See Treatment Alternative to Incarceration on p. 3-455 and Alcohol Treatment on p. 3-457.
Effective September 1, 1994.
1st off (Cl B Misd)-**None**; 2nd off (w/n 10 yrs) (Cl A Misd)-**15 dys** (not less than 72 hrs 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) Note: Under Penal Code §12.44, a 3rd Degree Felony offender may receive the imprisonment sanction of a Cl. A Misd. Penal Code §§49.04 & 49.09 and Code of Criminal Procedure Art. 42.12, §13(a)
Important. See Miscellaneous Sanctions on p. 3-457.

[1] Effective until Septebmer 1, 1994. Art. 6701*l*-1(f) provides special enhanced sanctions for DWI offenders in two circumstances. I. If at the time of the offense the offender had in their immediate possession an open container of an alcoholic beverage. 1st DWI off.-min. term of confinement increased 3 dys; min and maximum fines increased $100. 2nd DWI off.-min term of confinement increased 6 dys; min and maximum fines increased $200. Sub. off.-min term of confinement increased 12 dys; min and maximum fines increased $400. II. If, as a result of the DWI offense, another person "suffered serious bodily injury", The minimum term of confinement is increased by 60 dys (30 dys mand.) and the maximum and minimum fines are increased by $500.
Effective September 1, 1994. I. If 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) II. A 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)

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

Fine:	
Amount ($ Range):	Effective until September 1, 1994. 1st off-**$100 to $2,000**; 2nd off (w/n 10 yrs)-**$300 to $2,000**; Sub offs (w/n 10 yrs)-**$500 to $2,000** Art. 6701*l*-1(c), (d) & (e) Effective September 1, 1994. 1st off (Cl B Misd)-Not more than **$2,000**; 2nd off (w/n 10 yrs) (Cl A Misd)-Not more than **$4,000**; Sub offs (w/n 10 yrs) (3rd Degree Felony)-Not more than **$10,000** Penal Code §§12.21, 12.22, 12.34, 49.04 & 49.09
Mandatory Min. Fine ($):	None
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 Cl Felony-240 to 800 hrs; 3rd Cl Felony-160 to 600 hrs; Cl A Misd-80 to 200 hrs; and, Cl B Misd-24 to 100 hrs Code of Criminal Procedure Art. 42.12, §17 (After September 1, 1994: Code of Criminal Procedure Art. 42.12, §16) & *Mills v. State*, 799 S.W.2d 447 (Tex.App. - Corpus Christi 1990)
Restituaion (eg Victim's Fund)	**Yes Limited** As a condition of community supervision Art. 42.12, §11(14) Note: A victim of a DWI offense can receive payments from a State victims' compensation fund only if the defendant's actions were intended to cause personal injury or death. Art. 8309 See especially §3(4)(D) of this article.
Other:	**Ignition Interlock.** I. For a 1st or 2nd DWI/DWI death related 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 3rd and sub DWI/DWI death related off convictions, 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. Code of Criminal Procedure Art. 42.12, §13(i)[1] II. The licensing agency must require the use of an "ignition interlock" device before granting restricted driving privileges based on essential need where the offender has been convicted either of a 3rd DWI offense or a 2nd or sub DWI Manslaughter offense. Art. 6687b, §23A(f)[2]

[1]See the Special Note on p. 3-458.

[2]After September 1, 1994, there is some question as to whether this provision will apply to DWI offenses (including Intoxication Assault and Intoxication Manslaughter). Chapter 900 of the Laws of 1993 places all DWI related offenses in Penal Code Chapter 49 and repeals Art. 6701*l*-1 (the DWI law prior to September 1, 1994) and Penal Code §19.05 (the DWI vehicle manslaughter law prior to September 1, 1994). However, the Texas Legislature did not enact conforming amendments to Art. 6687b substituting the appropriate sections of Penal Code Chapter 49 for the repealed provisions.

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. Art. 6701*l*-1(m)

After September 1, 1994: Code of Criminal Procedure Art. 102.017(c)

Treatment Alternative to Incarceration. In counties with a population of 550,000 or more, 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:

Effective January 1, 1995. **0.10** (BAC/BrAC/UrAC) I. Admin Per Se Action-**Susp 60 dys**[1] 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 dys**[1] (90 dys mand) III. Admin Per Se Action where there has been a previous DWI offense conviction w/n 5 yrs-**Susp 180 dys**[1] (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. Art. 6687b-1, §§6(h) & (c) and Art. 6687b, §23A(f) & (g)

Other:

Effective September 1, 1993 Persons Under 21 Years Old, who operate a motor vehicle with a BAC/BrAC/UrAC of **0.07** or more but less than 0.10, are subject to a **susp of not more than 1 yr**. Art. 6687b, §22(g)

[1]The law specifically provides that a suspension based on an admin per se action cannot be "probated". Art. 6687b-1, §7(l)

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

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): Susp

Term of License Withdrawal (Days, Months, Years, etc.): I. The following susps must be based on a conviction that resulted from the introduction of alcohol into the body. 1st off-**90 to 365 dys**[1&2]; subsequent off-**180 dys to 2 yrs**[1&2] Art. 6687b, §24 & Code of Criminal Procedure Art. 42.12, §13(k) II. DWI offense based on driving while intoxicated by a "controlled substance"-**Susp 180 dys** Art. 6687b, §24B A person is eligible for driving privileges based on an essential need to drive. Art. 6687b, §§23A & 24B(h) See the Comment on p. 3-458.

Mandatory Minimum Term of Withdrawal: **Special Note:** I. For any of the above offenses, including driving while intoxicated by a "controlled substance", an occupational/restricted license based on "essential need" may be issued. 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. Art. 6687b, §23A(a)(2). See Footnote No. 2. II. The licenses of 1st offenders, who are over 21 years old and are placed on probation, are not subject to suspension if they attend and alcohol education program. Art. 6687b, §24(g)

---

[1]I. The following applies to alcohol related DWI offenses committed by persons under 21 years old: License suspension for 1 yr. 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. Art. 6687b, §24(a-1) & (j) However, an occupational license does appear to be available. Art. 6687b, §§23A & 24(k) II. The following applies for DWI offenses committed (i.e., conduct committed) by persons under 17: 1st off-suspension until the person reaches 17 or for 365 dys whichever is the longer suspension period; subsequent off-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. Art. 6687b, §§23A & 24(a-1) & (k) and Family Code §§51.02(1) and 54.042(a)(1) & (b)

[2]I. For 1st offender's (after September 1, 1994, all DWI offenders), who are over 21 yrs old, a license cannot be suspended if a jury recommends community supervision and against such suspension. Art. 6687b, §24(g)(1) & Code of Criminal Procedure Art. 42.12, §§4 & 13(g) **Comment:** As written, Art. 6687b, §24(g)(1) and 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 attended 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. Art. 6687b, §24(g)(1), 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)

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 level of 0.04 or more, (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. See Art. 6687b-2, §§3(1), 3(2), 3(6), 3(9), 3(11), 3(24), 25, 26 and 27.

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

Other:

Rehabilitation:

Alcohol Education: Yes For any DWI offense, including Intoxication Assault and Intoxication Manslaughter, an offender may be 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)
Note: A restricted license may be issued for either occupational reasons or for participation in an education program. Art. 6687b, §24(g)

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[1]

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: Yes A defendant's veh may be subject to forfeiture by the State following three or more DWI convictions. Art. 6701*l*-7 See Footnote No. 2.

Terms Upon Which Vehicle Will Be Released:

Other: None

Miscellaneous Sanctions Not Included Elsewhere: **Work Release.** For misd offs and felony offs (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 monitoring "house arrest". Code of Criminal Procedure Art. 42.035

[1]See the Special Note on p. 3-458.

[2]**Comment:** This forfeiture provision may not apply to 3rd or subsequent DWI offenses committed on or after September 1, 1994. Article 6701*l*-7 refers to DWI offenses committed under Art. 6701*l*-1. This later article will be repealed as of September 1, 1994 and replaced by Penal Code Chapter 49. However, since Art. 6701*l*-7 has not be amended to reflect this change, there is some question as to whether it is still applicable after this date.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Effective until September 1, 1994. **Involuntary Manslaughter** DWI related 3rd degree felony. Penal Code §19.05(a)(2) & (c) Effective September 1, 1994. **Intoxication Manslaughter**[1] (DWI related death) 2nd Degree Felony Penal Code §49.08
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	3rd Degree Felony-**2 to 10 yrs** Penal Code §12.34 2nd Degree Felony-**2 to 20 yrs** Penal Code §12.33
Mandatory Minimum Term:	**120 dys** if community supervision is granted. Art. 42.12, §13(b) Code of Criminal Procedure
Fine ($ Range):	3rd Degree Felony-Not more than **$10,000** Penal Code §12.34 2nd Degree Feonly-Not more than **$10,000** Penal Code §12.33
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Susp** Art. 6687b, §§22(b)(2) and 24(e)
Length of Term of Licensing Withdrawal:	**180 dys to 2 yrs** Art. 6687b, §24(e) For persons under 21 years old-susp 1 yr (appears to be mand) Art. 6687b, §24(j)
Mandatory Action--Minimum Length of License Withdrawal:	**None** Except for persons under 21 years old, an occuapational/restricted lic. based on "essential need" may be issued. Art. 6687b, §§23A(f) & 24(j)
Other:	I. See Community Service for DWI offenders on p. 3-454. II. See Ignition Interlock on p. 3-454.

[1]There is no deferred adjudication for this offense. Code of Criminal Procedure Art. 42.12, §5(d)

Special Note: Even though the revisions to the Code of Criminal Procedure (effective September 1, 1993) only make reference to the "new" DWI offenses, including Intoxication Assault and Intoxication Manslaughter, (Chapter 49 of the Penal Code) which will be effective September 1, 1994, the chapter law that revised the Code of Criminal Procedure provides that any reference to the "new" DWI law shall be construed to refer to the law applicable to DWI and related offenses in effect prior to September 1, 1994. §4.03 of Ch. 900 of the Laws of 1993

Comment: Starting September 1, 1994, there is some question as to whether the law will provide for license suspensions based on convictions for DWI offenses (including Intoxication Assault and Intoxication Manslaughter). Chapter 900 of the Laws of 1993 places all DWI related offenses in Chapter 49 of the Penal Code and repeals Art. 6701*l*-1 (the DWI law prior to September 1, 1994) and Penal Code §19.05 (the DWI vehicle manslaughter law prior to September 1, 1994). However, the Texas Legislature did not enact conforming amendments to Art. 6687b (the law that authorizes license suspensions) to provide for license suspensions under Penal Code Chapter 49. Art. 6687b still retains references only to Art. 6701*l*-1 and Penal Code §19.05 which will be repealed on September 1, 1994. As a result, there is some question as to whether the State will have the authority to suspend a driver's license for a DWI related offense conviction on or after this date.

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-not less than 72 hrs nor more than 6 mos.; 2nd & sub. off (Class A Misd.)-not more than 1 yr Art. 6687b, §34, Art. 6701h, §32(c), and Penal Code §12.21
Mandatory Minimum Term of Imprisonment:	None
Fine ($ Range):	1st off-not less than $100 nor more than $500; 2nd and sub. off-not more than $3,000 After September 1, 1994, $4,000 Art. 6687b, §34, Art. 6701h, §32 and Penal Code §12.21
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp Art. 6687b, §§22(b)(1) & 24(c)
Length of Term of License Withdeawal Action:	The regular suspension period is extended for an additional period that is equal to the original period.
Mandatory Term of License Withdrawal Action	None A restricted license may be issued based on essential need. Art. 6687b, §23A
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	Yes Art. 6687(b), §22(b)(4)
Grounds for Being Declared an Habitual Offender:	"Any person with 4 or more convictions arising out of different transactions in a cons period of 12 mos or 7 or more convictions arising out of different transactions w/in a period of 24 mos...." Art. 6687(b), §22(b)(4)
Term of License Rev While Under Habitual Offender Starus:	Susp for not more than 1 yr 6687(b) §22(a)
Offender Status:	An occasional license may be issued on a showing of "essential need". Art. 6687b, §23A
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	None
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

*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 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: 1986) Alcoholic Beverage Code §§106.01, 106.02 & 106.03[1]
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 Alcoholic Beverage Code §2.01 et seq. See Footnote No. 2. 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.

[1]Selling Alcoholic Beverages to a minor with criminal negligence.

[2]Note: 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.

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** Note: The following case law may have been aborgated 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:	No *Graff v. Beard*, 858 S.W.2d 918 (Tex. 1993)[1,2]
Other:	Under the Dram Shop Law, a licensee may be held liable for the injures sustained by an intoxicated patron. *Smith v. Sewell*, 858 S.W.2d 350 (Tex. 1993)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	**Misd** Alcoholic Beverage Code §101.63
Type of Criminal Action:	
Term of Imprisonment:	1st off-Not more than **1 yr**; 2nd off-Not more than **1 yr** Alcoholic Beverage Code §§101.63(b) & 101.63(c)
Fine ($ Range):	1st off-Not less than **$100 nor more than $500**; Subsequent off-Not less than **$500 nor 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**[3]
Length of Term of License Withdrawal:	**Suspended** for not more than **60 dys**, revoked or cancelled Alcoholic Beverage Code §§11.61, 32.17 and 61.71

[1]This case concerned a situation where a social host served alcoholic beverages directly to a guest who become 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.

[2]**Historical Note:** In this case, the Texas Supreme Court reversed a decision by the Texas Court of Appeals. The court of appeals had held in favor of social host liability. *Beard v. Graff*, 801 S.W.2d 158 (Tex.App. - San Antonio 1990)

[3]In 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.

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]
Term of Imprisonment:	Not more than 1 yr[2] Alcoholic Beverage Code §§106.01 & 106.03
Fine ($ Range):	Not less than **$100 nor more than $500**; Subsequent offense-**$500 to $1,000** Alcoholic Beverage Code §106.03
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[3] Alcoholic Beverage Code §§106.13 & 61.71(a)(5)
Length of Term License Withdrawal:	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. 1 on p. 3-453.
Anti-Consumption Law (Yes/No):	Yes Applies only to drivers Art. 6701d, §107E After September 1, 1994: Penal Code §49.03

[1]Alcoholic Beverage Code §11.621 The sale to a minor must be with criminal negligence. §106.03(a) of the Alcoholic Beverage Code
[2]Applies to both a 1st and sub off.
[3]In 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:	**UTAH**
General Reference:	Utah Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §41-6-44(1)(a)(ii)
Illegal Per Se Law (BAC/BrAC Level):	**0.08**[1] §41-6-44(1)(a)(i) & (2)
Presumption (BAC Level):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** or (2) a Combination of Any Drug and Alcohol §41-6-44(1)(a)(ii)
Other:	For Commercial Motor Vehicle Operators, see p. 3-467.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §41-6-44.10(2)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §41-6-44.10(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal & Civil Cases) §41-6-44.10(8)
Other Information:	A driver may be compelled to submit to a chemical test if they have been placed under arrest either (1) for a DWI offense and there is reason to believe that another person may die as a result of the offense or (2) for a vehicle homicide alcohol related offense. §76-5-207(6)(b) & (7)(a)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** §41-6-44.10
Urine:	**Yes** §41-6-44.10
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No** Note: A Magistrate may not grant diversion in a DWI case. §77-2-9
Anti-Plea Bargaining Statute (Yes/No):	**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)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** §§41-6-44(4) & (5) and 41-6-44.4(1)(a) (Assessment)

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.08 or more.

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**[2] (Mand) If the driver has had a previous refusal, admin. per se action or DWI offense conviction which occured after 7/1/93-**Rev 18 mos**[1] (mand) §41-6-44.10(2)(e) & (f) Note: No hardship license may be issued for revs based on a test refusal. §41-2-19(d)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, (etc.):	1st off and 2nd off (w/n 6 yrs)-Class B misd.- not more than **6 mos**; 3rd & sub off (w/n 6 yrs) if one or more of the previous offs occurred prior to 4/23/90-Class B misd. - not more than **6 mos**; 3rd off (w/n 6 yrs) if two of the previous offs occurred after 4/23/90-Class A misd. - not more than **1 yr**; 4th & sub off (w/n 6 yrs) if the three previous offs occurred after 4/23/90-3rd Degree felony - not more than **5 yrs** A DWI off-where there is an injury related to negligent action-Class A misd.- not more than **1 yr** §§41-6-44, 76-3-203(3) & 76-3-204
Mandatory Minimum Term:	1st off-**48 cons hrs**; 2nd off (w/n 6 yrs)-**240 cons hrs**; subsequent off[2&3] (w/n 6 yrs)-**720 hrs** DWI related injury off-**48 cons hrs** **Special Note:** A vehicle homicide offense is to be considered a prior DWI offense. §41-6-44(3)(b)(iii)

[1]This sanction also applies to persons under 21 years old who refuse to submit to a chemical test to determine if they have violated §41-6-44.4(1). Sec. 41-6-44.4 provides for administrative (licensing) actions against such persons who drive a vehicle with any amount of alcohol in their body.

[2]This mandatory sanction (i.e., jail or community service alternative) may not apply to 3rd offenses (w/n 6 yrs) if the two previous offs occurred after 4/23/90 and to 4th & sub offenses (w/n 6 yrs) if the three previous offs occurred after 4/23/90. The law provides that for these offenses "[e]nrollment in and completion of a chemical dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow through after the treatment." §41-6-44(6)(c)(ii) & (7)(c)

[3]**Comment:** This sanction may not be mandatory in 4th offense cases where the three prior offenses occurred after 5/3/93. §41-6-44(7)(b)(ii)

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

Fine:	
Amount ($ Range):	1st off and 2nd off (w/n 6 yrs) off-Class B misd.-not more than **$1,000**; 3rd & sub off (w/n 6 yrs) if one or more of the previous offs occurred prior to 4/23/90-Class B misd. - not more than **$1,000**; 3rd off (w/n 6 yrs) if two of the previous offs occurred after 4/23/90-Class A misd. - not more than **$2,500**; 4th & sub off (w/n 6 yrs) if the three previous offs occurred after 4/23/90-3rd Degree felony - not more than **$5,000** See Footnote Nos. 1 & 2. A DWI off-where there is an injury related to negligent action-Class A misd.-not more than **$2,500** §§41-6-44 & 76-3-301 See Footnote Nos. 1 & 2.
Mandatory Min. Fine ($):	3rd off (w/n 6 yrs) if two of the previous offs occurred after 4/23/90-**$1,000**; 4th & sub off (w/n 6 yrs) if the three previous offs occurred after to 4/23/90-**$1,000** See Footnote Nos. 2 & 3.
Other Penalties:	
Community Service:	1st off - **24 to 50 hrs** in lieu of imprisonment (24 hrs mandatory); 2nd off (w/n 6 yrs) - **80 to 240 hrs** in lieu of imprisonment (80 hrs are mandatory); Subsequent offs (w/n 6 yrs) - **240 to 720 hrs** in lieu of imprisonment (240 hrs are mandatory) See Footnote No. 2 on p. 3-464. DWI Injury off-**24 to 50 hrs** in lieu of imprisonment (24 hrs mandatory)
Restitution (eg Victim's Fund):	**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(3)(a)(i))
Other:	**None**

[1]Under § 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

[2]Under §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)

[3]See Footnote No. 3 on p. 3-464.

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

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

Yes I. A BAC level of **0.08** or reasonable grounds that a DWI violation has occured - 1st admin. action - **Susp for 90 dys**; 2nd and subsequent admin. actions - **Susp for 1 yr** Note: These license susps appear to be mandatory. §§41-2-129 & 41-2-130
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. §41-6-44.4
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) & 41-6-44.4(11)(b)(i) See Footnote No. 1 on p. 3-467.

Other:

Under §41-2-128(1)(a) & (8)(a), a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., 2nd or sub. DWI). Such action may be taken without a preliminary hearing.

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

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** §§41-2-127, 41-2-128 & 41-6-44(12)

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

1st off (for either injury or non-injury related offs) - **90 dys**; subsequent off (w/n 6 yrs) (for either injury or non-injury related offs) - **1 yr** §41-6-44(12)

Mandatory Minimum Term of Withdrawal:

1st off (for either injury or non-injury related offs) - **90 dys**; subsequent off (w/n 6 yrs) (either injury or non-injury related offs) - **1 yr** §41-6-44(12) No hardship license may be issued. §41-2-127(4)

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

	Other:
Rehabilitation:	
Alcohol Education:	Yes[1] For a 1st off, a judge must order a defendant to attend an alcohol or drug education program. §41-6-44(4)
Alcohol Treatment:	Yes[1] For a 1st or 2nd off, the court may order a defendant to obtain alcohol or drug treatment. And, for a sub. off, the court must order a defendant to obtain alcohol or drug treatment. §41-6-44(4)(c)(ii),(5),(6) & (7)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	No Note: Under §41-6-44.30, an unattended vehicle may be temporarily impounded following a DWI arrest in order to protect the public safety.
Terms Upon Which Vehicle Will Be Released:	
Other:	None
Miscellaneous Sanctions Not Included Elsewhere:	None

[1]A 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. §41-6-44.4(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 a BAC/BrAC/UrAC level of 0.04 or more, (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. See §§41-2-102(5)(a), 41-2-102(8), 41-2-703(2), 41-2-703(6), 41-2-703(8), 41-2-703(9), 41-2-703(21), 41-2-712, 41-2-715, 41-2-716 & 41-2-717.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:	**Yes Automobile Homicide** 1) "Simple" Negilgent Homicide: Death caused by operating a motor vehicle in a negligent manner while DWI or with a BAC level of 0.08 or more - 3rd degree felony §76-5-207(1) 2) "Criminal" Negligent Homicide: Death caused by operating a motor vehicle in a criminally negligent manner (as defined by §76-2-103(4)) while DWI or with a BAC level of 0.08 or more - 2nd degree felony §76-5-207(2).
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Simple Negligent Homicide - Not more than **5 yrs**; §76-3-203(3) Criminally Negligent Homicide - **1-15 yrs** §76-3-203(2)
Mandatory Minimum Term:	**None**
Fine ($ Range):	1) Simple Negligent Homicide - Not more than **$5,000**; 2) Criminal Negligent Homicide - Not more than **$10,000**; §76-3-301(1) & (2)
Mandatory Minimum Fine:	**None**
	Administrative Licensing Action:
Licensing Authorized and Type of Action:	For both offs - **Rev** §41-2-127(1)(a)
Length of Term of Licensing Withdrawal:	For both offs - **1 yr** §41-2-132
Mandatory Action--Minimum Length of License Withdrawal:	For both offs - **1 yr** No hardship license may be issued. §41-2-127(4)(a)(i)
Other:	**None**

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

Sanction:	
Criminal:	
Imprisonment (Term):	Cl B Misd **not more than 6 mos** §§41-2-136(3)(a), 41-6-44 and 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**[1]

[1]The fine shall be in an amount not less than the maximum fine for a Class C misdemeanor. §§41-2-136(3)(b) & 76-3-301(1)(e)

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 §41-2-127(2)
Length of Term of License Withdrawal Action:	For driving while suspended - an additional like period of susp for driving while revoked; for driving while revoked 1 yr additional period rev §41-2-127(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. §41-2-127(4)(a)

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)

Other State Laws Related to Alcohol Use: (continued)

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
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §32A-14-101[1] Damages are limited to $100,000 per person and $300,000 per occurance.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No**
Dram Shop Actions-Social Hosts:	Possible statutory liability §32A-14-101[1]
Other:	None
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Class B **Misd** §§32A-4-106(10), 32A-12-104, 32A-12-20, 76-3-204(2), 76-3-301(4) & 76-3-302(3)
Term of Imprisonment:	Not more than **6 mos**
Fine ($ 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):	**Yes**[2] **Suspension** or **Revocation** §32A-1-119
Length of Term of License Withdrawal:	**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]Dram shop liability applies to the service of alcoholic beverages on certain "premises". "Premises" is defined as ... "any building, enclosure, room, or equipment used in connection with the sale, storage, service, manufacture, distribution or consumption of alcoholic beverages...." §32A-1-105(36)

[2]**Special Note:** Under §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.

Comment: Under §63-55-7(8), the Alcoholic Beverage Control Act (Title 32A) will "terminate" on July 1, 1998.

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:	Class A **Misd** §§32A-4-106(10), 32A-12-104, 32A-12-203, 76-3-204(1), 76-3-301(3), & 76-3-302(2)
Term of Imprisonment:	Not more than **1 yr**
Fine ($ Range):	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 Alcohlic Beverages Withdrawn (Yes/No):	**Yes**[1] **Suspension** or **Revocation** §32A-1-119
Length of Term License Withdrawal:	**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:	**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** §41-6-44.20(2)
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §41-6-44.20(1)

[1]See Footnote No. 2 on p. 3-470.

STATE:	**VERMONT**
General Reference:	Vermont Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor[1] 23 §1201(a)(2)
Illegal Per Se Law (BAC/BrAC Level):	**0.08**[2] 23 §1201(a)(1) **0.02**[2] For persons under 18 years old - A Civil Traffic Violation 23 §1216(a)
Presumption (BAC Level):	A BAC level of 0.02 w/n 2 hrs of a DWI incident is a "rebuttable presumption" that a person under 18 committed a Civil Traffic Violation. 23 §1216(d)
Types or Drugs/Drugs and Alcohol:	Under the influence of (1) **Any "Regulated" Drug**[3] or (2) a Combination of Any "Regulated" Drug and Alcohol 23 §1201(a)(3)
Other:	(1) A BAC level of 0.08 is a "permissive inference" of a DWI offense. 23 §1204(a)(2) (2) A BAC level of 0.10 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. 3-474.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**Yes** 23 §1203(f)
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[4] 23 §1202(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes**[5] 23 §1202(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) 23 §1202(b)
Other Information:	A driver, who is involved in a fatal accident where there is reasonable grounds to believe that they had alcohol 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) Note: This test is not mandatory. The police officer cannot "force" a driver to submit to such a test.

[1]Includes all alcoholic beverages. 23 §1200(4)

[2]This 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. Under 23 §1200(1), the generally used standards for defining "alcohol concentration" for both blood and breath are given.

[3]"Drug" means regulated drugs as defined in 18 §4201. 23 §1200(2)

[4]Note: 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

[5]A 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)

Preceding Page Blank

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes See Footnote No. 5 on p. 3-473.
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 The court may require a defendant to undergo alcohol assessment screening. 23 §§4(49), 1209a(a) & 1210(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):	1st off - **Susp 6 mos** (mand.); 2nd off - **18 mos susp** (mand.); 3rd off - **3 yr rev** (2 yrs mand.)[1]; 4th and subsequent offs - **Rev for life** (3 yrs mand.)[1] 23 §1205(a) & (i) **Special Note:** If a 1st refusal occurred before 7/1/91, enhanced licensing sanctions for 2nd or sub. refusals apply only if these refusals occurred w/n 5 yrs of a previous one. §19 of Act 55 (1991)
Other:	A person under 18, who has refused to submit to a chemical test for the purpose of determining if they have a BAC/BrAC level of 0.02 or more, is subject the licensing action for a Civil Traffic Violation on p. 3-476. 23 §1216(c)

[1]See Rehabilitation on pp. 3-476 and 3-477.

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 level of 0.04 or more, (2) are under the influence of either "intoxicating liquor" or drugs 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. See 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.):	1st off - Not more than **2 yrs**; 2nd off - Not more than **2 yrs**; 3rd and sub. off - Not more than **5 yrs**; Serious injury related DWI off - **1** to **15 yrs** 23 §1210 **Special Note:** (1) If a 1st DWI conviction occurred before 7/1/91, enhanced criminal sanctions for a 2nd offense apply only if the conviction occurred w/n 5 yrs of the 1st offense. (2) If a 1st or 2nd DWI conviction occurred before 7/1/91, enhanced criminal sanctions for a 3rd offense apply only if the conviction occurred w/n 15 yrs of the 1st offense. §19 of Act 55 (1991)
Mandatory Minimum Term:	2nd DWI off - **48 cons hrs** 23 §1210(c)
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:	**Surcharge.** A DWI offender must pay a surcharge of **$30** in addition to any fine. 23 §1210(h)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes** 0.08 BAC/BrAC See Footnote No. 2 on p. 3-473. 1st Action-susp. **90 dys** (mandatory); 2nd Action-susp. **18 mos** (mandatory); 3rd Action-susp. **3 yrs** (2 yrs mandatory)[1]; 4th & Sub. Action-susp. for **life** (3 yrs mandatory)[2] See Footnote Nos. 2 & 3. 23 §1205
Other:	None

[1]See Rehabilitation on p. 3-476.

[2]Under 23 §1205(o), suspensions for admin. per se actions and for DWI convictions are to run concurrently.

[3]Title 23 §1205(m) creates a rebuttable presumption that a persons's BAC level was 0.08 at the time of operating a motor vehicle if such was at this level w/n two (2) hours after such operation.

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 off - **Rev**; 4th and subsequent offs - **Rev** 23 §§1206 and 1208 See Footnote No. 2 on p. 3-475.

Term of License Withdrawal (Days, Months, Years, etc.): 1st off - **90 dys**; 2nd off - **18 mos**; 3rd off - **3 yrs**; 4th and subsequent off - **Life**

Special Note: (1) If a 1st DWI conviction occurred before 7/1/91, enhanced licensing sanctions for a 2nd offense apply only if the conviction occurred w/n 5 yrs of the 1st offense. (2) If any DWI conviction occurred before 7/1/91, enhanced licensing sanctions for a 3rd or sub. offense apply only if the conviction occurred w/n 15 yrs of a 1st offense. §19 of Act 55 (1991)

Mandatory Minimum Term of Withdrawal: 1st off-**90 dys**; 2nd off-**18 mos**; 3rd off-**2 yrs**; 4th and sub offs-**3 yrs** See Rehabilitation below.

Civil Traffic Violation (applies to persons under 18 who operate a vehicle with a BAC/BrAC level of 0.02 to 0.10): 1st violation-license susp. until the person completes an alcohol and driver education program; 2nd and sub. violations-license susp. until the person has submitted to alcohol assessment/screening and has completed (or has made substantial progress to complete) any needed therapy program. 23 §1216(a)(1) & (2)

Other:

Rehabilitation:

Alcohol Education: **Yes**

Special Note No. 1: For any 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 prior to having their license reinstated.

Special Note No. 2: For 2nd and 3rd refusals, 2nd and 3rd admin. per se actions or 2nd and 3rd DWI off convictions, a defendant must also complete a therapy program at their own expense.

Special Note No. 3: If a person has had their license suspended for 3 or more yrs as a result of a refusal, admin. per se action or a DWI conviction, they may have their license reinstated provided they have abstained from the consumption of alcohol for 2 yrs. The abstinence period does not include any period of time the person was incarcerated in a correctional facility.

Special Note No. 4: If a person has had their license revoked (suspended) for life as a result of a refusal, admin. per se action or a DWI conviction, they may have their license reinstated provided they have abstained from the consumption of alcohol for 3 yrs. The abstinence period does not include any period of time the person was incarcerated in a correctional facility.

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

	Special Note No. 4: (continued) In the case of a lifetime suspension, a person is eligible for license reinstatement only once. 23 §§1205, 1206, 1208 and 1209a
Alcohol Treatment:	**Yes** See the Special Notes on p. 3-476 and above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
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) and 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

[1]Before a defendant's license is reinstated, they must complete an alcohol and driver education program. 23 §§1206(b) and 1209(a)

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:

Sanction:	
Criminal:	
Imprisonment (Term):	Not more than **2 yrs**[1] 23 §674 See Footnote No. 2.
Mandatory Minimum Term Imprisonment:	1st off - **2 con. dys**[1]; 2nd off - **4 con. dys**[1]; 3rd off - **8 con. dys**[1]; 4th and sub. off - **16 con. dys**[1] 23 §674(c) There can be no community service in lieu of these minimum jail terms. *State v. Baker*, 579 A.2d 479 (Vt. 1990)
Fine ($ Range):	Not more than **$5,000** 23 §674
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp** 23 §2506
Length of Term of License Withdrawal Action:	(1) 1st off - **30 dys**[1]; 2nd off - **90 dys**[1]; 3rd and 4th offs - **6 mos**[1] (2) Or susp under the point system whichever is greater. 23 §2506
Mandatory Term of License Withdrawal Action:	**None**

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

[1]Under 23 §674(c), 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).

[2]A person commits only a traffic violation if they drive while suspended/revoked but where the period of suspension/revocation has expired. I.e., the offender is eligible for a license but has not applied for reinstatement. 23 §676(b)

Other Criminal Actions Related to DWI: (continued)

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:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	21[1] (Year Eff: 1986) 7 §§238, 657 & 658
Minimum Age (Years) Possession:	21[1] 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
Minimum Age (Years) Consumption:	21[1] See the Special Note above. 7 §657

[1]Students, 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

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No)	Yes 7 §501
"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:	Yes *Langle v. Kurkul*, 510 A.2d 1301 (1986) A social host, who furnishes alcoholic beverages either (1) to a visibly intoxicated adult guest or (2) to a minor guest, may be liable to a third person for injuries caused by such guests.[1]
Other:	None
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
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):	No
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]
Term of Imprisonment:	2 yrs 7 §658 & 13 §1
Fine ($ Range):	$200 to $1,000

[1]Title 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."

[2]Under 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).

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 Alcohlic Beverages Withdrawn (Yes/No):	**Yes**[1] **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** Driver only 23 §1134

[1]An "administrative penalty" of not more than $2,500 may be imposed on a licensee in lieu of susp/rev. 7 §236(b)

STATE:	**VIRGINIA**
General Reference:	Code of Virginia Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §18.2-266
Illegal Per Se Law (BAC Level):	**0.10**[1] §18.2-266
Presumption (BAC Level):	**0.10**[1] §18.2-269(A)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**, (2) Any Narotic or 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
Other:	For Commercial Motor Vehicle Operators, see p. 3-486.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	Yes §18.2-267(a) For CMV operators, see §46.2-341.25.
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §18.2-268.2(A)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §18.2-268.2(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes But only for rebuttal purposes[2] §18.2-268(O)
Other Information:	None

Chemical Tests od Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §18.2-268.2(A)
Urine:	No
Other:	No

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

[1]Standard: Percent by weight by volume. §§18.2-266 & 18.2-269(A)(3)

[2]Note: The 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) This reversed a prior "panel" decision by this same court in *Farmer v. Com.*, 390 S.E.2d 775 (Va.App. 1990).

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-6 mos**[1]; 2nd or subsequent refusal (w/n 1 yr)-**Susp-1 yr**[1] (These susps appear to be mandatory.) §18.2-268.4
Other:	See "persons under 18 years old" in Post DWI Conviction Licensing Action on p. 3-485.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	Cl 1 Misd (all offs) 1st off-not more than **12 mos**; 2nd off (w/n 10 yrs)-**1 mo-1 yr**; 3rd and sub off (w/n 10 yrs)-**2 mos-1 yr** §§18.2-11(a) & 18.2-270
Mandatory Minimum Term:	2nd off (w/n 5 yrs)-**48 hrs**; 3rd and sub off (w/n 5 yrs)-**30 dys**; 3rd and subsequent off (w/n 5-10 yrs from 1st)-**10 dys**
Fine:	
Amount ($ Range):	1st off-Not more than **$2,500**; 2nd off (w/n 10 yrs)-**$200-$2,500**[2]; 3rd and sub off (w/n 10 yrs) -**$500-$2,500**
Mandatory Min. Fine ($):	None
Other Penalties:	
Community Service:	None
Restitution (eg Victim's Fund):	**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
Other:	A person convicted of a DWI offense 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

[1]The court may dismiss a refusal susp action if the defendant pleads guilty to a DWI offense. §18.2-268.4

[2]If a person is required to enter a driver alcohol rehabilitation 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)

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

Other: (continued)	**Child Endangerment.** 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 **$100** (mand) to **$500** and community service of 40 hrs (mand) benefitting children; sub. off-fine of $100 (mand) to **$500** and community service of 80 hrs (mand) benefitting children. §18.2-270
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	**None**
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	1st off-Privilege to operate any motor veh is **"deprived"** (or revoked); 2nd off (w/n 10 yrs)-**Rev**; 3rd and sub off (w/n 10 yrs) **Rev**; 4th off-**Rev** §§18.2-271, 46.2-391 & 46.2-394
Term of License Withdrawal (Days, Months, Years, etc.):	1st off-**1 yr**; 2nd off (w/n 10 yrs)-**3 yrs**; 3rd off (w/n 10 yrs)-**10 yrs**[1]; 4th off-**5 yrs**[5] See Footnote No. 2. 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 license may be issued to a 1st offender. §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.
Mandatory Minimum Term of Withdrawal:	1st off - See Footnote No. 3; 2nd off (w/n 10 yrs) **4 mos**[4]; 3rd and sub off (w/n 10 yrs)-**5 yrs**[5]; 4th off-**5 yrs**

[1]After 10 yrs, the license can only be restored "for good cause shown". §46.2-391(B)

[2]Subject 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).

[3]A restricted lic. may be issued if the defendant participates in a rehabilitation program. §18.2-271.1(E)

[4]A restricted lic. may be issued after the minimum period of lic. withdrawal has passed and a defendant has participated in a rehabilitation program. §18.2-171.1(E) & *Turner v. Com.*, 408 S.E.2d 586 (Va.App. 1991)

[5]For a 3rd off, if a person is at the time of the DWI conviction dependent on alcohol, their license may be restored after 5 yrs provided they have been cured of such dependency, and are not otherwise a threat to the public safety. §46.2-391(C)

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

Other:
Rehabilitation:

Alcohol Education:	1st off-Yes; 2nd off (w/n 10 yrs)-Yes; 3rd and sub off - Not eligible to participate in alcohol education or rehabilitation program under §18.2-271.1(A). §18.2-271(C) See Footnote No. 1 below and Footnote No. 5 on p. 3-485.
Alcohol Treatment:	1st off-Yes; 2nd off (w/n 10 yrs)-Yes; 3rd and sub off - Not eligible to participate in alcohol education or rehabilitation program under §18.2-271.1(A). §18.2-271(C) See Footnote No.1 below and Footnote No. 5 on p. 3-485.

[1]If court authorizes an offender to participate in either an education or treatment program, a restricted permit may be issued. §18:2-271.1(E)

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 level of 0.04 or more (Standard: Percent by volume.), (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). It is a Class 3 Misd. to operate a CMV with a BAC level of 0.04 or more; the sanction for this offense is a fine of not more than $500. It is a Class 1 Misd. to operate a CMV either with a BAC level of 0.10 or more 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 $2,5000. 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. 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. See §§18.2-11(a) & (c), 18.2-271.1(I), 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:	None
Terms Upon Which Vehicle Will Be Released:	N/A
Other:	**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 suspended such registration if the person maintains proof of financial responsibility.
Miscellaneous Sanctions Not Included Elsewhere:	**Special Note:** 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

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
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**1 to 10 yrs**[1] §18.2-10(e)
Mandatory Minimum Term:	**None**
Fine ($ Range):	**None**[1]
Mandatory Minimum Fine:	**N/A**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §46.2-389
Length of Term of Licensing Withdrawal:	**1 yr** §46.2-389
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr** §46.2-389
Other:	See "Registration Suspension" under DWI Vehicle Impoundment/Confiscation above.

[1]As an alternative, the defendant may be sentence to jail for not more than 12 mos and/or pay a fine of not more than $2,500. §18.2-10(e)

Other Criminal Actions Related to DWI: (continued)

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

Sanction:	
Criminal:	
Imprisonment (Term):	1st off (Cl. 2 Misd.)-Not more than **6 mos**; 2nd and subsequent offs (Cl. 1 Misd.)-Not more than **12 mos** §§18.2-11 & 46.2-301 See Footnote No. 1 and Special Note below.
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	1st off-Not more than **$1,000**; 2nd and subsequent offs-Not more than **$2,500**
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Rev** or **Susp** §46.2-301 See Footnote No. 2.
Length of Term of License Withdrawal Action:	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.
Mandatory Term of License Withdrawal Action:	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.

[1]Violations that authorize susp/rev for 30 dys or more.
[2]See "Registration Suspension" under DWI Vehicle Impoundment/Confiscation on p. 3-487.

Special Note: Under separate provisions of law in the State's criminal code, it is a Cl. 1 misd for a person to operate a motor vehicle when their privilege to do so has been "forfeited". §18.2-272.

*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)

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §§46.2-351 et seq.
Grounds for Being Declared an Habitual Offender:	Either (1) any 3 or a combination of 3 of the following offs: DWI, manslaughter via vehicle, driving while susp. or rev. felon under motor veh. laws, failure to stop at an accident or swearing false information or (2) 12 or more violations which either require or authorize a susp or rev of 30 dys or more or includes those offs listed in (1).
Term of License Rev While Under Habitual Offender Status:	**10 yrs**[1] §46.2-356 See Footnote No. 2.
Type of Criminal Off if Convicted on Charges of Driving While on Habitual Offender Status:	1st off: **Misd** if driving did not endanger life, limb or property of another; **Felony** if driving did endanger life, limb or property of another 2nd or sub off: **Felony** 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)
Mandatory Minimum Term of Imprisonment:	**Misd-None** **Felony-1 yr** §46.2-357(B)(2)
Fine ($ Range):	**Misd**-Not more than **$2,500** §46.2-357(B)(1) **Felony-None**
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

[1]The 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. (4) If the 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. (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 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: 1987) §§4.1-304 & 4.1-305
Minimum Age (Years) Possession:	21 A special exemption to minors, for employment reasons, and at the 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):	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 For a case denying liability, see *Williamson v. Old Brogue, Inc.*, 350 S.E.2d 621 (Va. 1986)[1]
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:	Class 1 Misd §§4.1-304, 18.2-11(a) & 18.2-12
Term of Imprisonment:	No more than 12 mos
Fine ($ Range):	Not more than $2,500

[1]For 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).

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):	**Yes Rev or susp**[1&2] §§4.1-225(a)(k)
Length of Term of License Withdrawal:	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:	**Class 1 Misd** §§4.1-304, 18.2-11(a) & 18.2-12
Term of Imprisonment:	Not more than **12 mos**
Fine ($ Range):	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 Alcohlic Beverages Withdrawn (Yes/No):	**Yes Rev or susp**[1&2] §§4.1-225(a)(k)
Length of Term License Withdrawal:	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):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Drivers only §18.2-323.1

[1]Note: Either in addition or in lieu of suspending a license, a civil fine may be imposed as follows: 1st off-Not more than $1,000; 2nd off-Not more than $2,500; and, 3rd 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)

[2]This administrative action is base 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:	**VIRGIN ISLANDS**
General Reference:	Virgin Islands Code (Updated through 1992)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an intoxicating liquor 20 §493(a)(1)
Illegal Per Se Law (BAC Level):	**0.10**[1] 20 §493(a)(2)
Presumption (BAC Level):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **A Controlled Substance** or (2) a Combination of Intoxicating Liquor and a Controlled Substance 20 §493(a)(1)
Other:	**0.10** is *prima facie* evidence that a person is under the influence of an intoxicating liquor 20 §493a(a)(3).

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** 20 §493c(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** 20 §493c(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) 20 §493c(g)
Other Information:	**None**

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** 20 §493c(a)
Urine:	**Yes** 20 §493c(a)
Other:	**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):	**N/A**
Administrative Licensing Action (Suspension/Revocation):	**N/A**
Other:	

[1]Standard: Percent by weight of alcohol in the blood. 20 §493(a)(2)

Preceding Page Blank

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

Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Suspension/Revocation):	**Susp 90 dys** (Appears to be mandatory.) 20 §493c(e)(2)(B)
Other:	

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 1.
Imprisonment:	
Term (Day, Month, Years, Etc.):	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)
Mandatory Minimum Term:	1st Off-**None**; sub. off (w/n 10 yrs)-**48 con hrs**[2]
Fine:	
Amount ($ Range):	1st Off-Not less than **$300** However, if there has been an accident-Not less than **$500**; sub. off (w/n 10 yrs)-Not more than **$2,000** 20 §§493(b) & 544(b)
Mandatory Min. Fine ($):	1st Off-**$300** However, if there has been an accident-**$500**; sub. off-**None** However, 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):	**Yes** 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:	**Yes**[3] If the court finds by a preponderance of the evidence that a person has been driving with a BAC level that constitutes *prima facie* evidence of driving while under the influence (i.e., a BAC level of **0.10**), it suspends the driver's license for **90 days**. This suspension action appears to be mandatory. 20 §493c(e)(2)
Other:	**None**

[1]Under 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; Misc.-**Impoundment** of the vehicle used in the offense for not more than **60 dys**.
[2]Ten (10) days of community service in lieu of the mandatory jail term.
[3]Note: 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:	See Footnote No. 1 on p. 3-494.
Type of Licensing Action (Suspension/Revocation):	**Susp/Rev**[1&2] 20 §493(c)
Term of License Withdrawal (Days, Months, Years, etc.):	1st Off-**6 mos**; Sub. Off-**1 to 5 yrs**
Mandatory Minimum Term of Withdrawal:	1st Off)-**30 dys**[3]; 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)
Alcohol Treatment:	See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Yes Limited** See Footnote No. 1 on p. 3-494. 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:	**Yes**[4] **Felony** 14 §2(b)(1) & 20 §504
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **5 yrs** 20 §504
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$1,000** 20 §504
Mandatory Minimum Fine:	**None**

[1]Either suspension or revocation for the periods indicated.
[2]Under 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.
[3]After 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)
[4]Negligent homicide by motor vehicle where the driver was either (1) under the influence of alcohol, (2) affected by alcohol, (3) affected by narcotic drugs or (4) operating a vehicle in a reckless manner.

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. 3-494.

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. The following sanctions apply to a conviction of driving without a valid license: Jail-Not more than 6 mos; fine-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):	Yes (Limited) 20 §493c(m)
BAC Chemical Test Is Given to the Following Persons:	
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. 20 §493c(m)
Vehicle Passengers:	No
Pedestrian:	No
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	18 (Sales only) (Year Eff: 1964) 14 §485
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):	
Dram Shop Actions-Social Hosts:	
Other:	

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:	Misd 14 §485
Term of Imprisonment:	Not more than 1 yr 14 §3(a)(2)
Fine ($ Range):	Not more than $200 14 §3(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):	Yes Rev 14 §485
Length of Term License Withdrawal:	3 yrs 14 §485
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

STATE:	**WASHINGTON**
General Reference:	Revised Code of Washington Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of or affected by intoxicating liquor §§46.61.502(1)(c) & 46.61.504(1)(c)
Illegal Per Se Law (BAC/BrAC Level):	**0.10**[1] §§46.61.502(1)(a) & (b) and 46.61.504(1)(a) & (b)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** or (2) a Combination of Intoxicating Liquor and Any Drug §§46.61.502(1)(c) & (d) and 46.61.504(1)(c) & (d)
Other:	For Commercial Motor Vehicle Operators, see p. 3-502. See the Special Note below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §46-20-308
Implied Consent Law Applies to Drugs (Yes/No):	No[1]
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §46.61.517[2]
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) DWI where there has been an injury related accident which may result in death. §46.20.308[3] & *State v. Schulze*, 804 P.2d 566 (Wash. 1991)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes
Urine:	No
Other:	None

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

[2]In *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.

[3]Under §46.20.308(3), if there is an injury likely to cause death, a person may be compelled to submit to a test for drugs as well as for alcohol.

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.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No[1]
Anti-Plea Bargaining Statute (Yes/No):	No[1]
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Permissive authorization, but not mandatory §46.61.515

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-**Rev for 1 yr** (Mand); 2nd refusal (w/n 5 yrs) **Rev for 2 yrs** (Mand) §§46.20.308 & 46.20.311(2)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off - **24 hrs - 1 yr**; 2nd and Subsequent off (w/n 5 yrs) - **7 dys - 1 yr**; 2nd and Subsequent off but offender has no license or because their license was either suspended or revoked - **90 dys - 1 yr** Veh Assault (Drunk driving related injury Cl C felony) - Not more than **5 yrs** §§9A.20.021(1)(c), 46.61.502, .504, .515, .522 See Miscellaneous Sanctions on p. 3-503.
Mandatory Minimum Term:	1st off - **24 cons hrs**[1&2]; 2nd and Subsequent offs (w/n 5 yrs) - **7 dys**[2&3]; 2nd and Subsequent off but offender has no license or because their license was either suspended or revoked - **90 dys** See Miscellaneous Sanctions on p. 3-503.

[1]The State has a deferred prosecution program for DWI offenses. A person is eligible for this program only once in every five (5) years. 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.
[2]May be suspended only if jail would impose a risk to defendant's physical or mental well-being.
[3]With 48 con. hrs. §46.61.515(1)

Special Note: The Washington Supreme Court has held that DWI offenses are not felonies. *State v. Elgin*, 825 P.2d 314 (Wash. 1992)

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

Fine:	
Amount ($ Range):	1st off - **$250-$1,000**, 2nd and Subsequent off (w/n 5 yrs) - **$500-$2,000**; 2nd and Subsequent DWI off but offender has no license or because their license was either suspended or revoked - Not more than **$1,500** Veh Assault (Drunk Driving related injury Cl C felony) - Not more than **$10,000** §9A.20.021(1)(c)
Mandatory Min. Fine ($):	1st off - **$250**[1]; 2nd and Subsequent offs (w/n 5 yrs) - **$500**[1]; 2nd and Subsequent DWI offender but offender has no license because their license was either suspended or revoked - **$200** §§46.61.502, .504 and .515
Other Penalties:	
Community Service:	Possible for any offense §9.94A.101 et seq.
Restitution (eg Victim's Fund)	**Yes**[2] A victim of a DWI offense may receive payment from a State compensation fund. §7.68.010 et seq.
Other:	**Ignition Interlock.** The court may order a person convicted of a DWI offense to install an "ignition interlock" device on their vehicle. The device, if required, must remain installed for at least 6 mos. §46.20.710 et seq. **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. §46.51.515(5) **Incarceration Costs.** A defendant (except an indigent) may be required to pay not more than **$50** for each day of incarceration. §10.64.____ (Ch. 335, Laws 1993) **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.____ (§2 Ch. 251, Laws 1993)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**[3]
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" (but have not necessarily been convicted of) 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.

[1]Unless the defendant is indigent.

[2]Also, 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

[3]An admin. per se law, due to become eff 1/1/86, was repealed by §6 of Ch. 407, Laws of 1985.

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) - **Rev**; 3rd and subsequent off (w/n 5 yrs) - **Rev**; Veh Assault - **Rev** §§46.04.480, 46.20.285 & 46.61.515
Term of License Withdrawal (Days, Months, Years, etc.):	1st off - Not less than **90 dys**[1]; 2nd off (w/n 5 yrs) - **1 yr**; 3rd and subsequent off (w/n 5 yrs) - **2 yrs**; Veh Assault - **1 yr** §§46.04.480, 46.20.285 & 46.61.515
Mandatory Minimum Term of Withdrawal:	1st off - **30 dys**[2]; 2nd off (w/n 5 yrs) - **1 yr**; 3rd and subsequent off (w/n 5 yrs) - **2 yrs**; Veh Assault - **1 yr**
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** for all offs[3]
Alcohol Treatment:	**Yes** for all offs[3]
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Forfeiture.** A vehicle which is owned and driven by a person, who commits a 2nd or sub DWI offender (w/n 5 yrs), is subject to forfeiture. Another individual with an ownership interest in the vehicle (e.g., a community property interest) may obtain possession of the vehicle. §46.61.____ (§2 Ch. 487, Laws 1993)
Terms Upon Which Vehicle Will Be Released:	
Other:	**None**

[1]If the defendant is under 19 yrs old, the susp is for 90 dys or until they reach 19 whichever is the longer susp period.
[2]A restricted license may be issued under certain conditions after the 30-dy mandatory period. §46.20.391
[3]Note: Alcohol education/treatment is required and is in addition to any other criminal/ civil sanctions. §46.61.515

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 level of 0.04 or more, (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 the operate a CMV with any amount of alcohol in their system: Jail-not more than 1 yr; fine-not more than $5,000. See §§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)

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

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	Yes Cl B Felony Where death is caused by the operation of a vehicle while under the influence of intoxicating liquor or in a reckless manner. §46.61.520
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **10 yrs** §9A.20.021(1)(b)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$20,000** §9A.20/021(1)(b)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §46.20.285
Length of Term of Licensing Withdrawal:	**2 yrs** §46.20.285
Mandatory Action--Minimum Length of License Withdrawal:	**2 yrs** 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. **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.____ (§2 Ch. 251, Laws 1993)

Other Criminal Actions Related to DWI: (continued)

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

Sanction:	
Criminal:	
Imprisonment (Term):	**Gross Misd**[1] 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 and 9A.20.021
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp** or **Rev**[2] §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 already has 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:	**5 yrs** Note: There is a special stay of rev if based on DWI offs and person is attending an alcohol treatment program. Also, after 2 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)

[1]Note: If the vehicle used in this offense is owned by the driver, the vehicle may be impounded until any penalties, fines or forfeitures associated with the offense are satisfied. §46.20.435

[2]If the driver is the registered owner of the vehicle used in the offense, the vehicle's registration may be cancelled. Note: At the time of arrest, the registration of the vehicle used is seized by the police and replaced by a 60 dy temporary registration. Also, the license plate is marked with a special "sticker". §46.16.710 et seq. & *Washington v. Yeager*, 834 P.2d 73 (Wash.App. 1992)

*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)

Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	1st off-**10 dys-1 yr**; 2nd off-**90 dys-1 yr**; 3rd & sub. off-not less than **1 yr** §§9.92.020, 9A.20.021, 46.20.342(1) & 46.65.090(1)
Mandatory Minimum Term of Imprisonment:	1st off-**10 dys** (if the offender has also commited a DWI off-**90 dys**); 2nd off-**90 dys**; 3rd & sub. off-**1 yr** §46.65.090(1)
Fine ($ Range):	Not more than **$5,000** §§9.92.020, 9A.20.021 & 46.65.090(1)
Mandatory Minimum Fine ($):	**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):	**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.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**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 State (Case Citation):	**Yes** *Purchase v. Meyer*, 737 P.2d 661 (Wash. 1987)[2]
Dram Shop Actions-Social Hosts:	**Yes** *Hansen v. Friend*, 824 P.2d 483 (Wash. 1992)[3]
Other:	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:	**Misd/Gross Misd** §§9A.20.010(2), 66.44.180 & 66.44.200
Term of Imprisonment:	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**
Fine ($ Range):	For individuals: 1st off - Not more than **$500**; 2nd and sub off-**None** For corporations: 1st off - Not more than **$5,000**; 2nd and subsequent offs - Not more than **$10,000** (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):	**Yes Susp/Cancel (Rev)** §§66.24.010 & 66.44.200
Length of Term of License Withdrawal:	Not specified in the statute

[1]Note: This State's Dram Shop Law was repealed in 1955. Ch. 372 of the laws of 1955

[2]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).

[3]In the *Hansen* case, an adult host was held liable for the death of an intoxicated minor guest. This decision appears to have overturned an earlier one that had held against such social host liability. *Burkhart v. Harrod*, 755 P.2d 579 (Wash. 1988) See also *Halligan v. Pupo*, 678 P.2d 1295 (Wash.App. 1984), where businesses that host events, where alcoholic beverages are served, may be liable for the injuries caused by intoxicated employees (or guests). **Comment:** Even thought the court in the *Hansen* decision did not address the question of the liability of a social host to third parties who are injured by a host's intoxicated guest, language in the case would appear to support such liability.

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/Gross Misd** §§9A.20.010(2), 66.44.180, 66.44.270 & 66.44.320
Term of Imprisonment:	Same penalties apply as to serving alcoholic beverages to intoxicated persons
Fine ($ Range):	Same penalties apply as to serving alcoholic beverages to intoxicated persons

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

License to Serve Alcohlic Beverages Withdrawn (Yes/No):	**Yes Susp/Cancel (Rev)**
Length of Term License Withdrawal:	Not specified in the statute §§66.24.010, 66.44.180, 66.44.320 and 66.44.325

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 Passengers[2] §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).

[1]A violation is a traffic infraction.

[2]Does not apply to passengers in commercially chartered vehicles.

STATE	**WEST VIRGINIA**
General Reference:	West Virginia Code

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §17C-5-2
Illegal Per Se Law (BAC Level):	**0.10**[1] §17C-5-2
Presumption (BAC Level):	**0.10**[1] §17C-5-8
Types of Drugs/Drugs and Alcohol:	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
Other:	A BAC level of **0.10**[1] or more is also *prima facie* evidence of driving under the influence of alcohol. §17C-5-8 A BAC level **>0.05 but < 0.10** 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. 3-510.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	Yes[2] §17C-5-5
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §17C-5-4
Implied Consent Law Applies to Drugs (Yes/No):	No
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) *State v. Cozart*, 352 S.E.2d 152 (W.Va. 1986)
Other Information:	None

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §17C-5-4
Urine:	Yes §17C-5-4
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

[1]Standard: Percent by weight of alcohol in the blood. §§17C-5-2 & 17C-5-8 Under §17C-5-8, "[p]ercent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred cubic centimeters of blood."
[2]A preliminary test may also be requested for either blood or urine. §17C-5-4

Preceding Page Blank

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** for **1 yr** (Mand[1] *Kimes v. Bechtold*, 342 S.E.2d 147 (W.Va. 1986)); 2nd Refusal[2]-**Rev** for **10 yrs** (5 yrs Mand[3]); 3rd Refusal[2]-**Rev** for **life** (10 yrs Mand[3]) §§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. 3-513. **Special Note:** A refusal to submit to chemical test based on a blood sample does not result in license revocation. §17C-5-4
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	DWI not related to death or bodily injury, 1st off - **1 dy**[4] **to 6 mos**; 2nd off-**6 mos to 1 yr**; 3rd and subsequent offs-**1 to 3 yrs**;

[1]Ninety (90) dys mand. if the person participates in the ignition interlock program. §17C-5A-3a(c)(2) For more details, see "Ignition Interlock Program" on p. 3-514.
[2]A previous admin. per se violation is also considered a prior refusal for licensing sanction enhancement purposes. §17C-5-7(b)
[3]One (1) yr mand. rev. if the person participates in the ignition interlock program. In addition, the person's full driving privileges may be reinstated after one year. §17C-5A-3a(c)(3) & (e) Certain subsequent violators are not eligible for this program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program" on p. 3-514.
[4]Actual confinement of not less than 24 hrs.

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 level of 0.04 or more (Note: The alcohol concentration levels are based on the general standards (definitions).), (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. See §§17E-1-3, 17E-1-13, 17E-1-14, 17E-1-15 & 17E-1-25.

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

Criminal Sanctions: (continued)	
Imprisonment:	
Term (Day, Month, Years, Etc.):	DWI resulting in death where there is reckless discegard of the safety of others[1]-**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 offs-**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 dy**[2] **to 1 yr**; 2nd off - **6 mos to 1 yr**; 3rd and subsequent offs - **1 to 3 yrs** §17C-5-2 See Footnote No. 3.
Mandatory Minimum Term:	**None** See Footnote No. 4, Home Confinement and Community Service below.
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 subsequent offs - **$3,000 to $5,000**; DWI resulting in death where there is reckless disregard of the safety of others[1] - **$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 offs - **$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 subsequent offs - **$3,000 to $5,000** §17C-5-2 See Footnote No. 3.
Mandatory Min. Fine ($):	§17C-5-21(m) provides that the above sentences are mandatory and are not subject to either susp or rev.
Other Penalties:	
Community Service:	**Yes** As an alternative to incarceration for crimes which are punishable by confinement in the county jail. §62-11A-1a
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 misdemeanor cases in lieu of incarceration. *State v. Kerns*, 394 S.E.2d 532 (W.Va. 1990)

[1]Felony

[2]Actual confinement of not less than 24 hrs.

[3]Note: It 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.

[4]Note: Sec. 17C-5-2(m) 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 §62-11A-1 et. seq. may be applied by the court. In brief, §62-11A-1 provides for a defendant's temporary release from confinement for employment, educational, medical, or family needs/reasons. *State v. Kerns*. 394 S.E.2d 532 (W.Va. 1990)

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

Other: (continued)

Assessments. The following costs are assessed against each DWI offender: 1st off-$10; 2nd off-$25; 3rd and sub. off-$50. These assessments are deposited into the Crime Victims Compensation Fund. §14-2A-4(a)

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

Yes 0.10 (Standard: The same as for illegal per se.) or **Driving While Under the Influence of Alcohol[1], 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 are mandatory[2]); 2nd action-**10 yrs rev** (5 yrs are mandatory[3]); Sub action-**Rev for life** (10 yrs mandatory[3]); 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 mandatory), Sub action-**Rev for life** (10 yrs mandatory). 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 mandatory); Sub action-**Rev for life** (10 yrs mandatory). Admin actions where there is bodily injury: 1st action-**2 yrs rev** (**1 yr** mandatory); 2nd action-**10 yrs rev** (5 yrs mandatory[3]) Sub action-**Rev for life** (10 yrs mandatory[3]) §§17C-5A-1, 17C-5A-2 and 17C-5A-3. See the Special Note below. Note: The admin. per se law appears to apply to both residents and nonresidents. §17B-3-2

Special Note: I. If an habitual user of a narcotic drug or an amphetamine or any derivative thereof has operated a motor vehicle, their license is revoked as follows: 1st action - 6 mos; 2nd action - 10 yrs; and 3rd action - for life. §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 admim. per se action based on driving while under the influence of alcohol where there was no BAC 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).

[1]A BAC level of >0.05 but < 0.10 is "relevant evidence" of driving while under the influence of alcohol. §17C-5-8
[2]Thirty (30) dys mand. if the person participates in the **ignition interlock** program. In addition, the person's full driving privileges may be reinstated after 180 dys. §17C-5A-3a(c)(1) & (e) For more details, see "Ignition Interlock Program" on p. 3-514.
[3]One (1) yr mand. if the person participates in the **ignition interlock** program. §17C-5A-3a(c)(3) In addition, the person's full driving privileges may be reinstated after one year. Certain subsequent offenders are not eligible for this program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program" on p. 3-514.

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

	Special Note: 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)
Other:	Under §§17B-3-6 & 17B-3-8, a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that requires mandatory license rev (e.g., DWI). Such action may be taken without a preliminary hearing.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	A person convicted of a DWI offense is subject to the same licensing sanctions (i.e., license revocations) as for an administrative per se violation. §17C-5A-1a
Term of License Withdrawal (Days, Months, Years, etc.):	
Mandatory Minimum Term of Withdrawal:	
Other:	
Rehabilitation:	
Alcohol Education:	Yes[1] §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 treatement, 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

[1]A 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

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

Miscellaneous Sanctions Not Included Elsewhere:	**Ignition Interlock Program.** The driver licensing agency may reduce the mand. and regular revocation periods of certain implied consent, admin. per se and DWI law offenders, if they agree to operate motor vehicles equipped with an ignition interlock device. First offenders must participate in the program for at least 5 mos and subsequent offenders must participate in the program for at least 1 yr. §§91-9-7.1 & 91-9-7.3 (Regulation 91 CSR 9) A person must either be participating in or have successfully completed a safety and treatment program to be eligible for this program. In addition, the licensing agency places restrictions on the offender's driving activities. The offender is restricted to operating a motor vehicle only for limited purposes such as going either to and from employment, treatment programs, education facilities, and for emergency medical purposes. §91-9-5.6 (Regulation 91 CSR 9) A person is not eligible for this program if (1) they have been involved in a death related admin. per se or DWI law violation, (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. §17C-5A-3a

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes Misd**[1] Negligent homicide §17C-5-1 Note: For the details on deaths related to DWI, see DWI sanctions on pp. 3-511 & 3-512.
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **1 yr**
Mandatory Minimum Term:	None
Fine ($ Range):	**$100 to $1,000**
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Rev** §§17B-1-1(n) & 17B-3-5
Length of Term of Licensing Withdrawal:	**1 yr**
Mandatory Action--Minimum Length of License Withdrawal:	**1 yr**
Other:	None

[1]A felony is defined as an offense for which the law specifically requires that the incarceration sanction is to be served in the State penitentiary, §17B-1-1(n) **Comment:** Since §17C-5-1 does not specify where the term of incarceration must be served, the offense would appear to be a misdemeanor.

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 - 6 mos; 2nd off Misd - 1 yr; 3rd and subsequent offs Felony - 1-3 yrs (penitentary) §17B-4-3(b) See §§17E-1-7 and 17E-1-25 for special sanctions related to operating a CMV while either "disqualified" or suspended/revoked.
Mandatory Minimum Term of Imprisonment:	1st off - 6 mos; 2nd off - 1 yr; 3rd and subsequent offs - 1 yr
Fine ($ Range):	1st off - $100-$500; 2nd off - $1,000-$3,000; 3rd and subsequent offs - $3,000-$5,000 §17B-4-3(b)
Mandatory Minimum Fine:	1st off - $100; 2nd off - $1,000; 3rd and subsequent offs - $1,000
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp/Rev
Length of Term of License Withdrawal Action:	If license was originally suspended the license withdrawal period would be equivalent to the original period of susp. If license was revoked, 1 yr extension of the original rev. §17B-4-3(c)
Mandatory Term of License Withdrawal Action:	Same as above.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	No
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ 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) §§11-16-18(a)(3), 11-16-19(a), 60-3-12(3), 60-3-22(1), 60-3-22a, 60-3A-24(A), 60-6-8(4), 60-7-12(a)(3), 60-7-12a, 60-8-20(c) & 60-8-20a
Minimum Age (Years) Possession:	Yes §§11-16-19(a), 60-3A-24(A) & 60-8-20a(a)
Minimum Age (Years) Consumption:	Yes §§11-16-19(a), 60-3A-24(A) & 60-8-20a(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):	Yes *Bailey v. Black*, 394 S.E.2d 58 (W.Va. 1990), *Anderson v. Moulder*, 394 S.E.2d 61 (W.Va. 1990), and *Walker v. Griffith*, 626 F.Supp. 350 (W.D. Va. 1986)
Dram Shop Actions-Social Hosts:	No[1] *Overbaugh v. McCutcheon*, 396 S.E.2d 153 (W.Va. 1990)
Other:	A licensee, who sells alcoholic beverages to a minor who becomes intoxicated, can be held liable for the minor's injuries resulting from the inebriated condition. *Anderson v. Moulder*, 394 S.E.2d 61 (W.Va. 1990)

[1]**Comment:** Generally, social hosts are not liable for the actions of their intoxicated guests. This is especially the case where the guests serve alcoholic beverages to themselves. However, there may be extenuating circumstances where liability could result. *Price v. Halstead*, 355 S.E.2d 380 (W.Va. 1987), 64 ALR4th 255 In this case, 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.

Other State Law Related to Alcohol Use: (continued)

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

Type of Criminal Action: **Misd** For all offenses

Term of Imprisonment: Alcoholic Liquor[1&6]: Private Pkg Retail Sales[2]-**30 dys to 1 yr**; Special Licensees[3]-**30 dys to 1 yr**; Private Clubs[4]-**not more than 1 yr**; Wines[5]-**30 dys to 6 mos**. Nonintoxicating Beer[1&7]: Class A & B Licensees-**30 dys to 6 mos**. Footnotes are on p. 3-518.

Fine ($ Range): Alcoholic Liquor[1&6]: Private Pkg Retail Sales[2]-**$100-$5,000**; Special Licensees[3]-**$50 to $500**; Private Clubs[4]-**$100 to $500**; Wines[5]-**$25 to $500**. Nonintoxicating Beer[1&7]: Class A & B Licensees-**$25 to $500**. Footnotes are on p. 3-518.

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Discontinued, suspended or revoked**

Length of Term of License Withdrawal: Alcoholic Liquor[1&6]: Private Pkg Retail Sales[2] (also, a civil penalty of not more than $1,000); Special Licensees[3]-Rev time period is not specified but normal licensing period is **one (1) year**; Private Clubs[4]-**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); Wines[5]-Rev/susp time period is not specified in the statute. Footnotes are on p. 3-518. 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. 3-518.

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** For all offenses

Term of Imprisonment: Alcoholic Liquor[1&6]: Private Pkg Retail Sales[2]-**30 dys to 1 yr**; Special Licensees[3]-**30 dys to 1 yr**; Private Clubs[4]-**not more than 1 yr**; Wines[5]-**30 dys to 6 mos**. Nonintoxicating Beer[1&7]: Class A & B Licensees-**30 dys to 6 mos**. Footnotes are on p. 3-518

Other State Law Related to Alcohol Use: (continued)

Fine ($ Range):	Alcoholic Liquor[1&6]: Private Pkg Retail Sales[2]-$100 to $5,000; Special Licensees[3]-$50 to $500; Private Clubs[4]-$100 to $500; Wines[5]-$25 to $500. Nonintoxicating Beer[1&7]: Class A & B Licensees-$25 to $500.
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcohlic Beverages Withdrawn (Yes/No):	Yes Discontinued, suspended or revoked
Length of Term License Withdrawal:	Alcoholic Liquor[1&6]: Private Pkg Retail Sales[2]; Special Licensees[3] (also a civil penalty of not mroe than $1,000)-Rev time period is not specified but normal licensing period is one (1) year; Private Clubs[4]-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); Wines[5]-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.

[1]Alcoholic 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.

[2]The 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.

[3]Special 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.

[4]Private Clubs, which are not open to the public, may be licensed to sell alcoholic liquor by the drink. §60-7-1 et seq.

[5]Licenses 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.

[6]Alcoholic 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

[7]Nonintoxicating Beer-citations: §§11-16-9, 11-16-18, 11-16-23 & 11-16-25 **Special Note:** Class A Licenses ("on and off premisis" sales) are issued (1) to retail businesses (profit) and (2) to social, fraternal, private clubs, etc. (non-profit); Class B Licenses ("off premisis" 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 passengers §60-6-9(a)(3)

STATE:	**WISCONSIN**
General Reference:	Wisconsin Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an intoxicant §346.63(1)(a) & (2)(a)
Illegal Per Se Law (BAC/BrAC Level):	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 an alcohol concentration of **0.10** or more. 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 an alcohol concentration of **0.08** or more. See Footnotes Nos. 1 & 2. §§340.01(46m), 343.307(1), 346.63(1)(b) & (2)(a)(2) and 940.25
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	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- A BAC/BrAC level of 0.10 or more is *prima facie* evidence of driving either (1) while under the influence of an intoxicant or (2) with a BAC/BrAC level of 0.10 §885.235(1)(c) II. 3rd or subsequent off- A BAC/BrAC level of 0.08 or more is *prima facie* evidence of driving either (1) while under the influence of an intoxicant or with a BAC/BrAC level of 0.08 §885.235(1)(cd) For Commercial Motor Vehicle Operators, see p. 3-525.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	**Yes** §343.303 & §343.305(3)(am) (CMV operators)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §343.305(3)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §343.305(2)
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.[3] *State v. Bolhing*, 494 N.W.2d 399 (Wis. 1993)

[1]Standard: "Percent by alcohol by weight" or "grams of alcohol in 210 liters of breath". §340.01(46m) These standards also apply to the administrative per se law. Under §§340.01(iv) and 885.2351(5)(a), "alcohol concentration" is defined as either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

[2]Sec. 346.63(2m) prohibits any person under 19 years old from operating a motor vehicle with a BAC/BrAC level of more than 0.00 but less than 0.10. Under §885.235(1)(1m), a BAC/BrAC level within this range is *prima facie* evidence of such level. Note: Sec. 346.63(2m) uses the same standards for alcohol concentration as §340.01(46m).

[3]Note: The implied consent law, §343.305, does not specifically prohibit or authorize the taking of a blood sample by force. However, §343.305(3)(c) provides that a law enforcement officer has the right to obtain evidence "by any lawful means."

Preceding Page Blank

Chemical Tests of Other Substances for BAC Level 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 Two (2) or more DWI offenses w/n 1 year or where there has been an injury related DWI offense. In addition, 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

[1]Deferred 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]If a person, under 19 years old has been arrested for a violation of §346.63(2m), driving with an alcohol concentration of more than 0.00 but less than 0.10, refuses to submit to a chemical test, their license is revoked for six (6) months. After the first 15 days of this revocation period have passed, an occupational license can be issued. 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(9)(em) & 346.63(2m)

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):	1st refusal - **1 yr rev**, after 30 dys of the rev period, the driver is eligible for an occupational license; 2nd refusal (w/n 5 yrs) - **2 yr rev**, after 90 dys of the rev period, the driver is eligible for occupational license; 3rd and subsequent refusal (w/n 5 yrs) - **3 yr rev**, after 120 dys of rev period, the driver is eligible for an occupational license[2]; 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. For 2nd refusal (w/n 5 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) II. For a 3rd or sub. refusal (w/n 5 yrs), a person's vehicle shall be **forfeited**. §§343.305(10m) & 346.65(6)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:	
Term (Day, Month, Years, Etc.):	Non-injury related DWI off: 1st off-**None**[1]; 2nd off (w/n 5 yrs)-**5 dys to 6 mos**; 3rd off (w/n 5 yrs)-**30 dys to 1 yr**; 4th off (w/n 5 yrs)-**60 dys to 1 yr**; 5th and sub. offs (w/n 5 yrs)-**6 mos to 1 yr**; Injury related DWI offs, Without great bodily harm-**30 dys to 1 yr**; With great bodily harm (Cl E felony)[2]-Not more than **2 yrs** See "Other" on p. 3-525. §§346.63(1), 346.65(2), 346.65(3), 939.50 & 940.25

[1]A 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).

[2]In 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)

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

Mandatory Minimum Term:	Non-injury related DWI off: 1st off-**None**; 2nd off-**5 dys**[1]; 3rd off-**30 dys**[1]; 4th off-**60 dys**[1]; 5th and sub. offs-**1 mos**[1]; Injury Related DWI off (without great bodily harm)-**30 dys**[1]
Fine:	
Amount ($ Range):	Non-injury related DWI offs: 1st off-**$150-$300** (See Footnote No. 1 on p. 3-523.); 2nd DWI off (w/n 5 yrs)-**$300-$1,000**; 3rd off (w/n 5 yrs)-**$600-$2,000**; 4th off (w/n 5 yrs)-**$600 to $2,000**; 5th and sub. offs (w/n 5 yrs)-**$600 to $2,000**; Injury related DWI offs, Without great bodily harm-**$300-$2,000**; With great bodily harm (Cl E felony)-Not more than **$10,000** See Footnote No. 2.
Mandatory Min. Fine ($):	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 Special Note in Footnote No. 1.
Other Penalties:	
Community Service:	**Yes** §346.65(2g)[3]
Restitution (eg Victim's Fund):	**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)

[1] *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. 3 below and "Other" on p. 3-525.

[2] Sec. 346.63(2m) prohibits any person under 19 years old from operating a motor vehicle with a BAC level of more than 0.00 but less than 0.10. There is a forfeiture of $10 for a violation of this provision. §346.65(2q)

[3] Community 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).

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

Other:

Surcharges. Persons convicted of a DWI offense must pay a driver improvement surcharge of $250 in addition to any other fine or forfeiture that may be imposed; see §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 besentenced 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)

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

Yes 1. If the person has had one or no prior DWI offense convictions or refusals, the admin. action is based on an alcohol concentration of **0.10** or more.

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 level of 0.04 or more, (2) are intoxicated or under the influence of alcohol (a BAC/BrAC level of 0.04 is *prima facie* evidence) or a controlled substance, (3) under the influence of any drug wich 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 any "measurable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Any person who operates a CMV with any "measurable" amount of alcohol in their system shall pay a forfeiture of $10. Any person who operates a CMV with a BAC/BrAC of between 0.04 and 0.10 is subject to the following criminal sanctions. For non-injury offs: 1st off-forfeiture of $150 to $300; 2nd off (w/n 5 yrs)-jail 5 dys to 6 mos, fine-$300 to $1,000; 3rd or sub off (w/n 5 yrs)-jail 30 dys to 1 yr, fine-$600 to $2,000. 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 E felony): Jail-not more than 2 yrs; fine-not more than $10,000. Note: The minimum jail and fine sanctions may be mandatory. See Footnote No. 1 on p. 3-524. See §§340.01(1v), 340.01(8), 340.01(13m), 340.01(9r)(intro.), 343.305(2), 343.305(3)(a), 343.305(4)(c)2, 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(3),346.65(2u)(a),885.235(1)(d)& (5)(a), 940.25(1)(intro.) and 940.25(1)(bm).

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

	II. If the person has had two or more previous DWI offense convictions or refusals, the admin. action is based on an alcohol concentration of **0.08** or more. (For alcohol concentration standards, see Footnote No. 1 on p. 3-521.) §§340.01(46m) & 343.305(7) & (8) Action is taken via the licensing agency. §343.305(8) **Susp 6 mos** (not mand) §343.305(7) See Footnote No. 1.
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):	1st off - **Susp**; 2nd and sub. offs - **Rev**: DWI injury related offs, with or without great bodily harm - **Rev** §§343.10, 343.30 & 343.31 For any person under 19 years old who operates a motor vehicle with a BAC/BrAC level of more than 0.00 but less than 0.10 - **Susp** §346.63(2m)
Term of License Withdrawal (Days, Months, Years, etc.):	Non-injury related DWI offs; 1st off-**Susp 6 to 9 mos**; 2nd off (w/n 5 yrs)-**Rev 1 yr-18 mos**; sub off (w/n 5 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** For any person under 19 years old who operates a motor vehicle with an alc. con. level of more than 0.00 but less than 0.10 - **Susp-3 mos** an occupational lic. is available (§343.30(1q)).
Mandatory Minimum Term of Withdrawal:	Non-injury related DWI offs; 1st off - **None**[1]; 2nd off - **60 dys**[2]; sub off - **90 dys**[2] Injury related DWI offs Without great bodily harm - **60 dys**; With great bodily harm - **120 dys** For any person under 19 years old who operates a motor vehicle with a BAC/BrAC level of more than 0.00 but less than 0.10 - **None** (An occupational license is available; see §343.30(1q).)

[1]A 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

[2]A 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 convicted of a DWI related injury offense (without great bodily harm) 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. Operating privileges shall be suspended if a person does not comply with court ordered alcohol/drug assessment (DWI screening), education or treatment program. §343.30(1q)(c) & (d)

Alcohol Treatment: Yes See above.

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: For 2nd offense (w/n 5 yrs), a person's vehicle may be **forfeited**. For a 3rd or sub. offense (w/n 5 yrs), a person's vehicle shall be **forfeited**. §§343.305(10m) & 346.65(6)

Terms Upon Which Vehicle Will Be Released:
Other: Instead of forfeiture, for a 2nd offense (w/n 5 yrs), a person's vehicle may be **immobilized or equipped with an ignition interlock device**. 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. §§343.305(10m) & 346.65(6)

Miscellaneous Sanctions Not Included Elsewhere: A person who has not attained the age of 19, may not operate a motor veh with a BAC/BrAC level of 0.0 up to 0.10. §346.63(2m) For a violation of §346.63(2m) there is a license susp for 3 mos. For a 1st off., an occupational hardship license is available at any time. §343.30(1p) There is also a forfeiture of $10. §346.65(2q)

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

Ignition Interlock. For a 2nd offense (w/n 5 yrs), a person with a restricted license may be 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)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **Yes** Cl E felony where death is caused by operating a veh with negligence; Cl D felony Where death is caused by operating a veh while under the influence of an intoxicant or with illegal per se levels. §§343.10, 343.31(3)(c) & (3m)(a), 939.50, 940.09 and 940.10

Sanctions:
Criminal Sanction:
Imprisonment (Term): Cl E felony-Not more than **2 yrs**; Cl D felony-Not more than **5 yrs** §§343.10, 343.31, 939.50, 940.09 & 940.10
Mandatory Minimum Term: **None**

Fine ($ Range): Cl E felony - Not more than **$10,000**; Cl D felony - Not more than **$10,000**

Mandatory Minimum Fine: None
Administrative Licensing Action:
Licensing Authorized and Type of Action: For Cl E & D felonies - **Rev** §§343.10 & 343.31
Length of Term of Licensing Withdrawal: Cl E felony - **1 yr**; Cl D felony - **5 yrs** §§343.10 & 343.31
Mandatory Action--Minimum Length of License Withdrawal: Cl E felony - **15 dys**; Cl D felony - **120 dys** A restricted occupational license may be issued after these periods. §§343.10 & 343.31

Other: **Special Note:** In lieu of a continuous prison sentence, a defendant may serve a series of periods of not less than 48 hrs nor more than 3 dys. §969.08(10)(b) & 973.03(5)

Other Criminal Actions Related to DWI: (continued)

I. For a 2nd offense[1] (w/n 5 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)
II. For a 3rd or sub. offense[1] (w/n 5 yrs), a person's vehicle shall be **forfeited**. §§343.305(10m) & 346.65(6)

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

Sanction:

Criminal:

Imprisonment (Term): 1st off-None; 2nd off[2]-**5 dys to 6 mos**; 3rd off[2]-**30 dys to mos**; 4th off[2]-**60 dys to 1 yr**; 5th and subsequent offs[2]-**6 mos to 1 yr** §§343.31 and 343.44(2g) See Footnote No. 3.

Mandatory Minimum Term of Imprisonment: 1st off-None; 2nd off[2]-**5 dys**; 3rd off[2]-**30 dys**; 4th off[2]-**60 dys**; 5th & sub. off[2]-**6 mos.** See Footnote No. 4.

Fine ($ Range): 1st off-**$150 to $600**; 2nd off[2]-**$300 to $1,000**; 3rd off[2]-**$1,000 to $2,000**; 4th off[2]-**$1,500 to $2,000**; 5th and subsequent offs[2]-**$2,000 to $2,500** §§343.31 and 343.44

Mandatory Minimum Fine: 1st off-**$150**; 2nd off[2]-**$300**; 3rd off[2]-**$1,000**; 4th off[2]-**$1,500**; 5th & sub. off[2]-**$2,000** See Footnote No. 4.

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): **Rev** §343.31(1)(f) & 343.30(1g)

Length of Term of License Withdrawal Action: **6 mos** §343.31(3)(g) & 343.30(1g)

Mandatory Term of License Withdrawal Action: **15 dys** Under §343.10, after this period of time, a person may obtain a restricted occupational license. However, a restricted license is not available if there has been a previous susp/rev w/n 1 yr for an offense for which a person has received a license susp/rev. §343.10(2)(a)

[1]A prior offense also includes prior DWI offenses and refusals. §940.09(1d)
[2]Within 5 yrs
[3]Note: There are different sanctions for persons who operate a CMV while they are "disqualified" from driving such a vehicle. §343.44(2m)
[4]The minimum fine sanctions appear to be mandatory. See the cases cited in Footnote No. 1 on p. 3-524. Notwithstanding the cases cited in this footnote, a defendant may not have to serve these minimum jail sentences. E.g., §973.03 provides for "home detention" in lieu of imprisonment.

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** §§351.01 to .11
Grounds for Being Declared an Habitual Offender:	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 license[1] 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 dys**[2] §351.08
Mandatory Minimum Term of Imprisonment:	See Footnote No 3.
Fine ($ Range):	Not more than **$5,000**[2] §351.08
Mandatory Minimum Fine ($):	See Footnote No 3.
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	**Yes** §346.71(2)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** (14 years or older)

[1]If 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

[2]These sanctions are in addition to any other sanction that may be imposed for driving while license is suspended or recoked under §343.44. See also §351.11.

[3]Although 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

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** §125.035 Note: Liability is limited to the serving of alcoholic beverages to minors; case law noted below may have been abrogated in part.
"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)[1]
Dram Shop Actions-Social Hosts:	**Yes** §125.035 Note: Liability limited to the actions of intoxicated minors. 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): **$100-500**	

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**

[1]The 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:	All offs are violations and, therefore, they are not criminal offs.[1] §125.07(1)(a) & (b)
Term of Imprisonment:	**N/A**
Fine ($ Range):	1st off - Not more than **$500**; 2nd offs (w/n 12 mos) - **$200-$500**; 3rd off (w/n 12 mos of a previous off.) - **$500-$1,000**; sub. off (w/n 12 mos of a previous off) - **$1,000-$5,000**

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

License to Serve Alcohlic Beverages Withdrawn (Yes/No):	Yes for 2nd and subsequent offs; §125.07(1)(b)
Length of Term License Withdrawal:	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):	Yes §346.935(2) & (3)
Anti-Consumption Law (Yes/No):	Yes Driver and passengers §346.935(1) Note: Does not apply to a motor bus.

[1]However, a 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

STATE:	**WYOMING**
General Reference:	Wyoming Statutes Annotated
Basis for a DWI Charge:	
Standard DWI Offence:	Under the influence of alcohol §31-5-233(b)(ii)(A)
Illegal Per Se Law (BAC Level):	**0.10**[1] §31-5-233(b)(i)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **A Controlled Substance**[2] or (2) a Combination of Alcohol and Any Controlled Substance §31-5-233(b)(ii)(B) & (C)
Other:	For Commercial Motor Vehicle Operators, see p. 3-537.
Chemical Breath Tests for BAC Level:	
Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §31-6-102(a)(i)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §31-6-102(a)(i)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal and Civil Cases) §31-6-105(f)
Other Information:	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 BAC Level Which Are Authorized Under the Implied Consent Law:	
Blood:	Yes
Urine:	Yes
Other:	None
Adjudication of DWI Charges:	
Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/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

[1]This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol concentration level of 0.10 or more (grams of alcohol per 75 milliliters of urine). §31-5-233(a) & (b)(i)

[2]Includes glue, aerosol or other toxic vapor. §31-5-233(a)(ii)

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. Refusal[1]-**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 guilts to a DWI offense w/n 10 dys of arraignment, the susp. for refusal shall not take effect. §31-6-107(a)(iii)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off Misd - Not more than **6 mos**; Subsequent offs (w/n 5 yrs) Misd - **7 dys to 6 mos**[2]; Serious bodily injury DWI off (§31-5-233(g)), 1st off - Not more than **1 yr**; Subsequent offs - Not more than **20 yrs** §31-5-233(e) & (h)
Mandatory Minimum Term:	Subsequent DWI offs (w/n 5 yrs)-**7 dys** §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)

[1]A 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)
[2]The discretionary portion of a jail sentence may be supended if the defendant agrees to pursue and complete an alcohol education and treatment program. §31-5-233(e)

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

Fine:	
Amount ($ Range):	1st off - Not more than **$750**; Subsequent offs - **$200 to 750**; Serious bodily injury DWI off - 1st off - Not more than **$5,000**; subsequent off - not more than **$10,000** §§6-10-101 & 6-10-102 Note: A surcharge of $50 is assessed against convicted DWI offenders. This surcharge is used to help finance the Victims' Compensation fund. §1-40-119
Mandatory Min. Fine ($):	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:	None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes 0.10 BAC Susp 90 dys**[1&2] (For a subsequent action w/n 5 yrs, this susp is mandatory.) §§31-5-1205(k), 31-6-102(e), 31-6-103(b), 31-7-105(d) & 31-7-138
Other:	**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(d)(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.

[1]For 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)
[2]See Footnote No. 1 on p. 3-530.

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 dys**[1]; 2nd off (w/n 5 yrs) - **1 yr**[1]; 3rd & subsequent offs - **3 yrs**[1]; DWI Serious bodily injury offs - See the comment below.
Mandatory Minimum Term of Withdrawal:	1st off - Hardship driving privileges are available, see Rehabilitation; 2nd off (w/n 5 yrs) - **1 yr**; 3rd & subsequent offs (w/n 5 yrs) - **3 yrs**; 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 with a five (5) year period See II below. As a result, the law does not provide for a specific license revocation period for a first DWI serious bodily injury offense.

[1]A 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)

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 and 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. 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)

Alcohol Treatment: Yes See Alcohol Education above.

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 (UrAC = grams of alc per 75 milliliters of urine) level of 0.04 or more, (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 "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§31-7-102(a)(ii), (vii) & (viii), 31-7-305, 3-7-306 and 31-7-307.

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

Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	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; see §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:	None
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 Licensing Withdrawal:	1 yr
Mandatory Action--Minimum Length of License Withdrawal:	1 yr
Other:	None

Other Criminal Actions Related to DWI: (continued)

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

Sanction:	
Criminal:	
Imprisonment (Term):	**Misd** - Not more than **6 mos** §31-7-134(a)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$750** §31-7-134(a)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Susp or rev**
Length of Term of License Withdrawal Action:	The original susp or rev period is extended **1 yr**. §31-7-134(b)
Mandatory Term of License Withdrawal Action:	The original susp or rev period is extended **1 yr**. §31-7-134(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):	

*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 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 §12-6-101(a) & (c) (Year Eff: 1988)
Minimum Age (Years) Possession:	21 Applies to possession in a public place. There are exemptions for either employment or by order of a parent. §12-6-101(b)
Minimum Age (Years) Consumption:	None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	Yes Limited[1,2] §12-8-301
"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: Case law, *McClellan v. Tottenhoff*, 666 P.2d. 408 (Wyo. 1983), was apparently indirectly abrogated by §12-8-301[1]
Dram Shop Actions-Social Hosts:	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 Application[3] 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

[1]Sec. 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.
[2]Under §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.
[3]Previous 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):	Yes §12-7-101 Limited Application[1] See §12-5-301(a)(v) and the statement above under criminal sanctions.
Length of Term of License Withdrawal:	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:	Misd §§12-5-301, 12-6-101 and 12-8-101
Term of Imprisonment:	Not more than 6 mos
Fine ($ Range):	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 Alcohlic Beverages Withdrawn (Yes/No):	Yes Susp or rev where there is gross violation of the law
Length of Term License Withdrawal:	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):	No

[1]See Footnote No. 2 on p. 3-540.

APPENDIX

ITEM:	UNIFORM VEHICLE CODE (UVC)
Reference:	The UVC as revised by the National Committee on Uniform Traffic Laws and Ordinances in 1992.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §11-902(a)(2)
Illegal Per Se Provision (BAC/BrAC Level):	**0.08**[1&2] §§11-902(a)(1) & 11-903(a)(5)
Presumption (BAC/BrAC Level):	**0.08**[2] §11-903(b)(2)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug**[3], (2) a Combination of Drugs[3] or (3) a Combination of Alcohol and Drugs[3] §11-902(a)(3) & (4)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Provision:	Yes §6-209
Implied Consent Provision:	
Arrest Required (Yes/No):	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 a BAC/BrAC level of 0.08 or more (for persons under 21 years old, a BAC/BrAC level of 0.02 or more). §§6-207(a) & 6-208(b)
Implied Consent Provision Applies to Drugs (Yes/No):	Yes §§6-207(a) & 6-208(b)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) §11-903(c)

[1]The UVC's illegal per se provision also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.08 or more.
[2]Under §11-903(a)(5), "[a]lcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath."
[3]Which 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 a BAC/BrAC level of 0.04 or more, (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. See §§6-514, 6-516 and 6-517.

Preceding Page Blank

Chemical Breath Tests for BAC/BrAC Level: (continued)

Other Information:	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

Chemical Tests of Other Substances for BAC LevelWhich 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 Screening §11-904(a) **Special Note:** Prior to sentencing, a victim's impact statement may be made to the court either orally or in writing. §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):	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. 4 on p. A-3.
Other:	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]
Fine:	
Amount ($ Range):	1st off-Misd-**$100 to $1,000**; 2nd & sub. off-Misd-Not more than **$1,000** §11-902(c)
Mandatory Min. Fine ($):	**None**[2]
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:	**BAC/BrAC 0.08** (0.02 for persons under 21 years old[3])-**Rev 3 mos/6 mos**[4,5] 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) See the Special Note on p. A-4.

[1]Since §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.

[2]Under §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.

[3]Sec. 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 a BAC/BrAC level of 0.02 or more.

[4]Under §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.

[5]**Comment:** It may be possible for persons under 21, 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 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.

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

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 (but have not necessarily been convicted of) an off that requires mandatory license revocation (e.g. DWI).
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)
Mandatory Minimum Term of Withdrawal:	See Footnote No. 4 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 DWI conviction, 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:

Homicide by Vehicle:	
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 than **1 yr** nor more than **5 yrs** in the penitentiary §11-906(b)
Mandatory Minimum Term:	None[2]
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[2]

[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 definition of a felony in Black's Law Dictionary, 4th Ed., 1968. 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.

[2]See §17-103(c) where a court may probate or suspend sanctions for any misdemeanor traffic off unless such penalities are made specifically mandatory by law. For felony offenses, the UVC provides no specific guidance as to mandatory sentences. However, many State criminal laws provide for the suspension or probation of a sentence for certain types of felony offenses.

Other Criminal Actions Related to DWI: (continued)

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. 4 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:	
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 (Suspension/Revocation):	**Susp/Rev** §6-303(b)
Withdrawal Action:	**1 yr** from and after the date the period of suspension or revocation would otherwise have terminated. §6-303(b)
Mandatory Term of License Withdrawal Action:	**None** The additional period of suspension or revocation is discretionary. §6-303(b)
Other:	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)

Habitual Traffic Offender Provision:

UVC Has Such a Provision (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Revocation While Under Habitual Offender Status:	

[1]Under §17-103(c), a court may probate or suspend sanctions for any misdemeanor traffic offense unless such penalities are made specifically mandatory by other provisions.

*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.

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 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:	

[1]This 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 Provisons:	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

[1]This area of the law is not normally covered by UVC.