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# **Digest of State Alcohol-Highway Safety Related Legislation**

## **Twentieth Edition**

**Current as of January 1, 2002**

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## INTRODUCTION

### PURPOSE

This Digest reports the status of State laws that are concerned with drunk driving offenses and alcoholic beverage control. Unless otherwise indicated, the status of the laws reported is January 1, 2002.

### ORGANIZATION

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

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

Likewise, Appendix B, using this same format, gives the provisions of the Millennium DUI Prevention Act.

### DEFINITIONS

Administrative Per Se Law. An "administrative per se law" allows a State's driver licensing agency to either suspend or revoke a driver's license based either on a specific alcohol concentration or on some

other criteria related to alcohol or drug use and driving. Such action is completely independent of any licensing action related to a driver's conviction for a drunk driving offense. These laws usually cover both resident and nonresident drivers. However, for nonresident drivers, the action would be limited to denying driving privileges in the sanctioning State.

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

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

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

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

## INTRODUCTION

(continued)

Homicide by Vehicle. "Homicide by vehicle" is the unlawful and unintentional death caused by a person while violating laws related to motor vehicle operation.

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

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

Intoxicating Liquor. A number of State laws provide that it is illegal to operate a vehicle while under the influence of "intoxicating liquor" (instead of under the influence of alcohol). However, the term "intoxicating liquor" is not defined in many of the State motor vehicle codes that provide for this type of drunk driving offense. Nevertheless, such term usually refers to all types alcoholic beverages (i.e., beer, wine and liquor). See Presumption. The term "presumption" under "Basis for a DWI Charge" refers to a specific

the definitions of "alcoholic liquor," "intoxicating liquor" and "liquor" in Black's Law Dictionary, Sixth Edition, West Publishing Company.

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

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

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

alcohol concentration in a driver's blood, breath or urine at or above which it may be

## INTRODUCTION

(continued)

presumed that they were driving in violation of the "Standard DWI Offense".

### EXPLANATIONS

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

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

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

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

Nevertheless, this Digest does report the

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

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

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

### LEGISLATIVE SUBJECT AREAS

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

## INTRODUCTION

(continued)

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

## ABBREVIATIONS & SYMBOLS

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

**INTRODUCTION**  
(continued)

**FEEDBACK & FUTURE EDITIONS**

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

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

S T A T E	P B T <sup>1</sup>	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 <sup>12</sup>	Anti- Consump. Law <sup>16</sup>	Dram Shop <sup>13</sup>
		1st	2nd		1st	2nd	3rd					
AL		S-90 dys	S-1 yr	0.08	S-90 dys	S-1 yr	S-3 yrs	0.08	0.08	X		L
AK	X	R-90 dys	R-1 yr	0.08	R-30 dys	R-1 yr	R-3 yrs	0.08	0.08	X <sup>14</sup>	X <sup>14</sup>	L
AZ	X	S-12 mos	S-2 yrs	0.08	S-30 dys	S-90 dys	S-90 dys	0.08	0.08	X	X	L
AR		S-180 dys <sup>10</sup>	S-2 yrs	0.08	-- <sup>35</sup>	S-24 mos <sup>10</sup>	S-30 mos <sup>10</sup>	0.08	-		X	C <sup>35</sup>
CA	X	S-1 yr <sup>34</sup>	R-2 yrs	0.08 <sup>40</sup>	S-30 dys <sup>30</sup>	S-1 yr <sup>30</sup>	S-1 yr <sup>30</sup>	0.08	0.08	X	X	L <sup>16</sup>
CO	X	R-1 yr <sup>6</sup>	R-2 yrs <sup>6</sup>	0.10	R-3 mos <sup>6</sup>	R-1 yr <sup>6</sup>	R-1 yr <sup>6</sup>	0.10	.05,.10 <sup>17</sup>		X	L
CT		-- <sup>29</sup>	S-1 yr	0.10	-- <sup>29</sup>	S-9 mos	S-2 yrs	0.10 <sup>62</sup>	--			L <sup>19</sup>
DE	X	R-6 mos	R-18 mos	(.10) <sup>3</sup>	R-3 mos	R-1 yr	R-18 mos	0.10	(0.10 <sup>28</sup> )		X <sup>14</sup>	No
DC	X	S-12 mos	S-12 mos	(.05) <sup>4</sup>	-	-	--	0.08	(0.05 <sup>20</sup> )	X	X	C
FL	X	S-90 dys	S-18 mos	0.08	S-30 dys	S-1 yr <sup>34</sup>	S-1 yr <sup>34</sup>	0.08	(0.08 <sup>20</sup> )	X	X	L <sup>22</sup>
GA		S-1 yr	S-1 yr	0.08	-	S-12 mos	S-2 yrs	0.08	--	X	X	L
HI	X	R-30 dys	R-2 yrs	0.08	R-30 dys	R-1 yr	R-2 yrs	0.08	(0.08 <sup>18</sup> )	X	X	C
ID		S-180 dys	S-1 yr	0.08	S-30 dys	S-1 yr	S-1 yr	0.08	--	X	X	L
IL	X	--	S-2 yrs	0.08	--	S-1 yr	S-1 yr	0.08	0.08	X	X <sup>23</sup>	L <sup>19</sup>
IN	X <sup>65</sup>	S-1 yr	S-1 yr	0.08	S-180 dys <sup>5</sup>	S-180 dys <sup>5</sup>	S-180 dys <sup>5</sup>	0.08	0.08 <sup>21</sup>	X <sup>45</sup>	X <sup>14</sup>	L
IA	X	R-90 dys	R-1 yr	0.10	R-30 dys	R-1 yr	R-1 yr	0.10	-	X	X	L
KS	X	S-1 yr	S-2 yrs	0.08	S-30 dys	S-1 yr	S-1 yr	0.08	(0.08 <sup>20</sup> )	X	X	No
KY	X	-- <sup>61</sup>	-- <sup>61</sup>	A <sup>7</sup>	--	--	--	0.08	--	X	X	L
LA		-- <sup>21</sup>	-- <sup>21</sup>	0.10 <sup>67</sup>	-- <sup>21</sup>	-- <sup>21</sup>	-- <sup>21</sup>	0.10 <sup>67</sup>	0.10 <sup>67</sup>	X <sup>14</sup>	X <sup>14</sup>	L <sup>23</sup>

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

S T A T E	P B T <sup>1</sup>	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 <sup>12</sup>	Anti- Consump. Law <sup>40</sup>	Dram Shop <sup>13</sup>
		1st	2nd		1st	2nd	3rd					
ME		S-275 dys <sup>2</sup>	S-18 mos	0.08	-	S-18 mos	S-4 yrs	0.08	--	X	X	L <sup>19</sup>
MD	X	(S-120 dys) <sup>60</sup>	(S-1 yr) <sup>60</sup>	0.08	--	(S-90 dys) <sup>60</sup>	(S-90 dys) <sup>60</sup>	0.08	(.07 <sup>24</sup> )	X <sup>25</sup>	X <sup>14</sup>	No
MA		S-120 dys <sup>51</sup>	S-120 dys <sup>51</sup>	0.08	S≤90 dys <sup>52</sup>	S≤90 dys <sup>52</sup>	S≤90 dys <sup>52</sup>	No	0.08	X		C
MI	X	--	S-1 yr	No	--	--	--	0.10	.07,.10 <sup>17</sup>	X	X	L
MN	X	R-15 dys	R-180 dys	0.10	R-15 dys <sup>39</sup>	R-90 dys <sup>56</sup>	R-90 dys <sup>56</sup>	0.10	-	X	X	L
MS	X	S-90 dys <sup>8</sup>	S-90 dys <sup>8</sup>	0.10 <sup>9</sup>	--	--	--	0.10	--			L
MO	X	R-90 dys	R-1 yr	0.08	S-30 dys	R-1 yr	R-1 yr	0.08	(0.08 <sup>65</sup> )		X <sup>14</sup>	L <sup>26</sup>
MT	X	S-6 mos	R-1 yr	No	--	--	--	0.10	(0.10 <sup>29</sup> )	-- <sup>49</sup>	-- <sup>49</sup>	L
NE	X	R-1 yr <sup>44</sup>	R-1 yr <sup>44</sup>	0.08	R-30 dys	R-1 yr	R-1 yr	0.08	--	X	X	No
NV	X	N/A <sup>38</sup>	N/A <sup>38</sup>	0.10	R-90 dys <sup>41</sup>	R-90 dys <sup>41</sup>	R-90 dys <sup>41</sup>	0.10	--	X	X <sup>14</sup>	No
NH	X	S-180 dys	S-2 yrs	0.08	S-6 mos	S-2 yrs	S-2 yrs	0.08	(0.08 <sup>28</sup> )	X	-- <sup>64</sup>	L
NJ		R-6 mos	R-2 yrs	No	-	-	-	0.10	--	X	X	L
NM		R-1 yr	R-1 yr	0.08	R-30 dys	R-30 dys	R-30 dys	0.08	--	X	X	L
NY	X	R-6 mos	R-1 yr	A <sup>7</sup>	-	-	-	0.10	(.07,.10 <sup>28</sup> )	X	X	L
NC	X	R-10 dys	R-12 mos <sup>39</sup>	0.08	R-10 dys	R-10 dys	R-10 dys	0.08	--	X	X	L <sup>19,27</sup>
ND	X	R-1 yr	R-2 yrs	0.10	S-30 dys	S-365 dys	S-2 yrs	0.10	--	X	X	L
OH		S-30 dys	S-90 dys	0.10	S-15 dys	S-30 dys <sup>40</sup>	S-180 dys <sup>47</sup>	0.10	-	X	X	L
OK		--	R-1 yr	0.08	-	R-1 yr	R-1 yr	0.08	(.05,.08 <sup>15</sup> )	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 <sup>25</sup> )	X	X	L

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

S T A T E	P B T <sup>1</sup>	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 <sup>12</sup>	Anti- Consump. Law <sup>40</sup>	Dram Shop <sup>13</sup>
		1st	2nd		1st	2nd	3rd					
PA	X	S-12 mos	S-12 mos	No	-	-	-	0.10	-	X	X	L
RI	X	S-3 mos	S-1 yr	No	-	-	-	0.08	--	X <sup>63</sup>		L
SC		--	--	0.15	-	-	-	0.10	0.10 <sup>36</sup>	X	X	C <sup>37,39</sup>
SD	X	-	-	No	-	-	-	0.10	0.10	X	X	No
TN		--	--	No	--	--	--	0.10	.10 (.08) <sup>33</sup>	X <sup>14</sup>	X <sup>14</sup>	L
TX		--	S-90 dys <sup>57</sup>	0.08	-	S-90 dys <sup>57</sup>	S-1 yr <sup>57</sup>	0.08	-	X		L <sup>32</sup>
UT		R-18 mos	R-24 mos	0.08	S-90 dys	S-1 yr	S-1 yr	0.08	--	X	X	L <sup>19</sup>
VT	X	S-6 mos	S-18 mos	0.08	S-90 dys	S-18 mos	S-2 yrs	0.08	0.08 <sup>35</sup>		X <sup>14</sup>	L
VA	X	S-1 yr	S-1 yr	0.08	S-7 dys	S-7 dys	S-7 dys	0.08	0.08		X <sup>14</sup>	No
WA		R-1 yr	R-2 yrs	0.08	S-30 dys	R-2 yrs	R-2 yrs	0.08	--	X	X	C <sup>30</sup>
WV	X	R-90 dys <sup>42</sup>	R-1 yr <sup>42</sup>	0.10 <sup>11</sup>	R-30 dys <sup>42</sup>	R-1 yr <sup>42</sup>	R-1 yr <sup>42</sup>	0.10	0.10 <sup>64</sup>		X	C
WI	X	R-30 dys	R-1 yr	0.10 <sup>43</sup>	--	--	--	0.10 <sup>43</sup>	(0.10 <sup>48</sup> )	X	X	L <sup>16</sup>
WY		S-6 mos	S-18 mos	0.10	--	S-90 dys	S-90 dys	0.10	--	X <sup>14</sup>	X <sup>14</sup>	L <sup>33</sup>
T O T A L S	32	S-22 R-17	S-24 R-20	42	S-17 R-11	S-22 R-14	S-22 R-14	0.10=21 0.08=29 No=1	0.08=9 0.10=7	41	43	L=36 C=8 No=7

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

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

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

<sup>1</sup>Preliminary Breath Test (Pre-arrest/nonevidentiary breath test) Law

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

<sup>3</sup>Based on probable cause of DWI. A BAC  $\geq 0.10$  is conclusive evidence of a DWI offense for the purposes of an admin. per se law violation.

<sup>4</sup>An admin. per se law violation is based on driving while under the influence of intoxicating liquor or drugs. A BAC  $\geq 0.05$  is *prima facie* evidence of driving while under the influence of intoxicating liquor.

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

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

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

<sup>7</sup>Alternative pre-DWI criminal adjudication licensing action by the courts.

<sup>8</sup>License suspension for one (1) year if the driver has a prior DWI offense conviction.

<sup>9</sup>Special provisions/procedures.

<sup>10</sup>If an offender is allowed to operated motor vehicles that are equipped with an ignition interlock device, the mandatory license suspension period is 90 dys for refusal/1 yr for an admin. per se violation.

<sup>11</sup>Or under the influence of alcohol.

<sup>12</sup>Laws prohibiting the possession of an open container of an alcoholic beverage in the passenger compartment of a motor vehicle.

<sup>13</sup>Seven (7) States and Puerto Rico do not have dram shop liability.

<sup>14</sup>Applies only to drivers.

<sup>15</sup>The lower of the two numbers is evidence of driving while impaired; the higher is *prima facie* evidence of driving while under the influence.

<sup>16</sup>Applies only to the actions of intoxicated minors.

<sup>17</sup>The lower of the two numbers is driving while impaired; the higher is driving while under the influence.

<sup>18</sup>Competent evidence of DWI.

<sup>19</sup>This state has a statute that places a monetary limit on the amount of damages that can be awarded in dram shop liability actions.

<sup>20</sup>An alcohol concentration which indicate *prima facie* evidence of a driving while under the influence offense.

<sup>21</sup>There is no mandatory licensing action if the violator is allowed to participate in the ignition interlock program.

<sup>22</sup>Applies only to the actions of intoxicated minors or persons known to be habitually addicted to alcohol.

<sup>23</sup>The statute appears to have limited actions to those committed by minors.

<sup>24</sup>An alcohol concentration  $\geq 0.07$  but  $< 0.10$  is *prima facie* evidence of driving while under the influence.

<sup>25</sup>Limited application.

<sup>26</sup>The law provides that a cause of action for damages under the dram shop act may only be brought against a liquor by the drink licensee.

<sup>27</sup>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.

<sup>28</sup>Not less than 0.08 constitutes being under the influence of intoxicating liquor.

<sup>29</sup>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.

<sup>30</sup>Applies only to the actions of (1) intoxicated minors or (2) adults who have lost their will to stop drinking.

<sup>31</sup>This state has both *prima facie* and presumptive evidence laws with an alcohol concentration  $\geq 0.08$ .

<sup>32</sup>Statutory law has limited dram shop actions.

<sup>33</sup>Liability limited only to the actions of persons who are under 21 years old.

<sup>34</sup>90 days if the person pleads guilty to a DWI charge at the time of first arraignment with counsel.

<sup>35</sup>Case law has been modified by statute.

<sup>36</sup>This alcohol concentration is an inference of DWI.

<sup>37</sup>Possible case law.

<sup>38</sup>*Prima facie* evidence of impairment.

<sup>39</sup>Applies to actions of intoxicated minors.

<sup>40</sup>Laws prohibiting the consumption of alcoholic beverages in a motor vehicle.

<sup>41</sup>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.

<sup>42</sup>Provided the person participates in the ignition interlock program.

<sup>43</sup>For a 1st & 2nd off, an alcohol concentration  $\geq 0.10$ ; for a 3rd off, an alcohol concentration  $\geq 0.08$ ; and, for a 4th or subsequent off, an alcohol concentration  $\geq 0.02$ .

<sup>44</sup>This revocation is based on administrative action.

<sup>45</sup>Provided the driver has an alcohol concentration  $\geq 0.04$ .

<sup>46</sup>Applies only if there was a prior DWI offense conviction.

<sup>47</sup>Applies only if there were two prior DWI offense convictions.

<sup>48</sup>An alcohol concentration  $\geq 0.10$  is *prima facie* evidence for 1st and 2nd offs. An alcohol concentration  $\geq 0.08$  is *prima facie* evidence for 3rd and sub. offs.

<sup>49</sup>The Open Container/Anti-Consumption law appears to be limited to persons who are operating "common carriers".

<sup>50</sup>Applies only to persons  $\geq 21$  years old.

<sup>51</sup>Suspension for 180 days if the driver has had a previous drunk driving offense conviction. Suspension for 1 year if the driver has had two or more previous drunk driving offense convictions.

<sup>52</sup>Suspension until the drunk driving charges are disposed of but not more than 90 days.

<sup>53</sup>For a 1st offense, an alcohol concentration  $\geq 0.10$  is a presumption of driving while under the influence of an intoxicant. For a subsequent offense, an alcohol concentration  $\geq 0.08$  is a presumption of driving while under the influence of an intoxicant.

<sup>54</sup>This 1 year suspension only applies if there have been two or more drunk driving offense convictions. The "actual" suspension period appears to be only 11 months.

<sup>55</sup>A restricted hardship license may be issued for a 1st violation.

<sup>56</sup>If the BAC was  $> 0.20$ , the mandatory license revocation is double that given.

<sup>57</sup>For either a refusal or admin. per se action, 2 yrs and 1 yr suspensions respectively are mand if an occupational license was issued for either a prior refusal, drunk driving offense or admin. per se action.

<sup>58</sup>There is no licensing sanction for a refusal to submit to a chemical test. However, if a person refuses to submit to a chemical test, one may be administered via force.

<sup>59</sup>If a person does not have previous conviction for a drunk driving offense, they may only be subject to a 10 day mandatory license revocation.

<sup>60</sup>A suspension may be modified or a restricted license may be issued if an offender participates in the "ignition interlock" program for at least 1 yr.

<sup>61</sup>Licensing action for a refusal only occurs if the offender is not convicted of the related DWI offense.

<sup>62</sup>0.07 if the driver has a previous violation of §14-227a(a), driving under the influence intoxicating liquor/illegal per se at  $> 0.10$ .

<sup>63</sup>The law makes it illegal for a person to "operate a motor vehicle upon the public highways with any unsealed alcoholic beverage container within the passenger section of said vehicle."

<sup>64</sup>This state has both *prima facie* and presumptive evidence laws with an alcohol concentration  $\geq 0.10$ .

<sup>65</sup>The PBT law only applies to drunk driving offenses that are related to either an injury or a death.

<sup>66</sup>This level is *prima facie* evidence of intoxication.

<sup>67</sup>0.08 on 9/30/2003.

SUMMARY TABLE 2 - MANDATORY SANCTIONS

S T A T E	Mandatory Fine (\$) -- DWI Conviction			Mandatory Imprisonment -- DWI Conviction			Community Service in Lieu of Mandatory Jail			Mandatory Licensing Action -- DWI Conviction		
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
AL	--	--	--	--	5 D	60 D	--	30 D	--	S-90 D	R-1 Y	R-3 Y
AK	250	500	1,000	72 CH <sup>48</sup>	20 D <sup>48</sup>	60 D <sup>48</sup>	--	--	--	R-30 D	R-1 R	R-10 Y
AZ	250	500	--	24 CH <sup>13</sup>	30 CD <sup>13</sup>	4 M <sup>13</sup>	--	--	--	S-90 D <sup>20</sup>	R-1 Y	R-3 Y
AR	150	400	900	24 H	7 D	90 D	-- <sup>47</sup>	30 D	90 D	-- <sup>46</sup>	-- <sup>46</sup>	-- <sup>46</sup>
CA	390 <sup>2</sup>	375 <sup>2</sup>	390 <sup>2</sup>	--	96 H <sup>1,2</sup>	30 D <sup>1,2</sup>	-	10 D <sup>1,2</sup>	-- <sup>1,2</sup>	--	--	R-18 M <sup>2</sup>
CO <sup>x</sup>	-	-	--	-	10 D	10 D	(48 H) <sup>18</sup>	(60 H) <sup>18</sup>	(60 H) <sup>18</sup>	-	R-1 Y	R-1 Y
CT <sup>x</sup>	-	-	-	48 CH	120 CD	1 Y	100 H	(100 H) <sup>18</sup>	(100 H) <sup>18</sup>	-- <sup>42</sup>	-- <sup>42</sup>	-- <sup>42</sup>
DE	--	--	--	--	60 D <sup>34</sup>	3 CM <sup>34</sup>	--	--	--	-- <sup>35</sup>	R-6 M <sup>35</sup>	R-6 M
DC <sup>x</sup>	-	-	-	--	5 D	10 D	--	30 D	60 D	R-6 M	R-1 Y	R-2 Y
FL	-	-	-	-	10 D <sup>10</sup>	30 D <sup>10</sup>	(50 H) <sup>18</sup>	-	-	-	R-12 M <sup>45</sup>	R-24 M <sup>45</sup>
GA	300	600	1,000	(24 H) <sup>32</sup>	72 H	15 D	(40 H) <sup>18</sup>	(30 D) <sup>18</sup>	(30 D) <sup>18</sup>	-- <sup>33</sup>	S-12 M	R-2 Y
HI	150 <sup>3</sup>	500	500	48 H <sup>3</sup>	5 D <sup>10</sup>	10 D <sup>10</sup>	72 H <sup>3</sup>	240 H	--	S-30 D	S-1 Y	R-1 Y
ID	--	--	--	--	10 D <sup>10</sup>	30 D <sup>10</sup>	--	--	--	S-30 D	S-1 Y	S-1 Y
IL	--	--	--	--	5 D	10 D	--	30 D	60 D	--	R-1 Y	R-1 Y
IN	-	-	-	-	5 D	10 D	--	30 D	60 D	S-30 D	S-1 Y	S-1 Y
IA	500 <sup>6</sup>	1,500	2,500	48 H <sup>34</sup>	7 CD <sup>7</sup>	30 CD <sup>35</sup>	--	--	--	R-30 dys <sup>30</sup>	R-1 Y	R-1 Y
KS	(500) <sup>66</sup>	(1,000) <sup>66</sup>	(1,500) <sup>66</sup>	48 CH	5 CD <sup>36</sup>	90 D <sup>36</sup>	100 H	--	--	S-30 D	S-1 Y	S-1 Y
KY	200 <sup>3</sup>	--	--	48 H <sup>3</sup>	7 D	30 D	48 H <sup>3</sup>	--	--	S-30 D	R-12 M	R-24 M
LA	-	-	-	--	48 H <sup>23</sup>	30 D <sup>23</sup>	4 D	30 D	--	--	-- <sup>41</sup>	S-12 M

SUMMARY TABLE 2 - MANDATORY SANCTIONS  
(continued)

S T A T E	Mandatory Fine (\$) -- DWI Conviction			Mandatory Imprisonment -- DWI Conviction			Community Service in Lieu of Mandatory Jail			Mandatory Licensing Action -- DWI Conviction		
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
ME	400	600	1,000	48 H <sup>17</sup>	7 D	30 D	--	--	--	S-60 D <sup>24</sup>	S-18 M <sup>24</sup>	S-4 Y <sup>24</sup>
MD <sup>Y</sup>	--	--	--	--	48 CH	48 CH	--	80 H	80 H	--	--	--
MA	--	--	--	--	30 D <sup>25</sup>	150 D <sup>25</sup>	--	--	--	S-45 D	R-6 M	R-2 Y
MI <sup>X</sup>	100 <sup>32</sup>	200 <sup>32</sup>	500 <sup>32</sup>	--	5 D <sup>10</sup>	30 D <sup>61</sup>	--	30 D	(60 D) <sup>18</sup>	S-30 D	R-1 Y	S-5 Y
MN	210 <sup>58</sup>	900 <sup>58</sup>	900 <sup>58</sup>	--	48 CH <sup>39</sup>	90 D <sup>55</sup>	--	80 H <sup>39</sup>	--	R-15 D <sup>26</sup>	R-90 D <sup>26</sup>	R-90 D <sup>26</sup>
MS	250	600	2000	--	5 D	1 Y	--	(10 D) <sup>18</sup>	--	S-30 D	S-1 Y	S-3 Y
MO	--	--	--	--	5 D	10 D	--	30 D	60 D	S-30 D <sup>21</sup>	R-2 Y <sup>21</sup>	R-3 Y <sup>21</sup>
MT	--	--	--	24 CH <sup>9</sup>	3 D <sup>9,10</sup>	10 D <sup>9,10</sup>	--	--	--	--	R-3 M <sup>29</sup>	R-3 M <sup>29</sup>
NE	400 <sup>38</sup>	500 <sup>38</sup>	600 <sup>38</sup>	--	5 D <sup>34</sup>	10 D <sup>34</sup>	--	240 H <sup>38</sup>	480 H <sup>38</sup>	R-60 D <sup>34</sup>	R-1 Y <sup>38</sup>	R-1 Y <sup>38</sup>
NV	400	750	2,000	2 D <sup>11</sup>	10 D <sup>12</sup>	1 Y <sup>10</sup>	48 H <sup>11</sup>	(100 H) <sup>12&amp;18</sup>	--	R-45 D	R-1 Y	R-1.5 Y <sup>49</sup>
NH	300	500	500	--	10 D <sup>14</sup>	10 D <sup>14</sup>	--	--	--	R-90 D	R-3 Y	R-3 Y
NJ	250	500	1,000	-- <sup>15</sup>	48 CH	90 D <sup>27</sup>	--	(30 D) <sup>18</sup>	(90 D) <sup>18</sup>	R-6 M <sup>22</sup>	R-2 Y <sup>22</sup>	R-10 Y <sup>22</sup>
NM	--	500	750	--	48 CH	30 CD	--	--	--	--	R-30 D <sup>27</sup>	R-30 D <sup>27</sup>
NY <sup>Z</sup>	500	1,000	1,000	--	--	--	--	--	--	--	R-1 Y	R-1 Y
NC	--	--	--	--	7 D	30 D	--	--	--	--	R-2 Y	R-3 Y
ND	250	500	1,000	--	5 D	60 D <sup>49</sup>	--	30 D	--	S-30 D	S-365 D	S-2 Y
OH	250	350	550	-- <sup>60</sup>	5 CD <sup>60</sup>	15 CD <sup>60</sup>	--	--	--	S-15 D	S-30 D	S-180 D
OK <sup>X</sup>	--	--	--	--	5 D <sup>62</sup>	10 D <sup>62</sup>	--	--	--	--	R-1 Y	R-1 Y
OR	1,000	1,500	2,000 <sup>44</sup>	48 CH	48 CH	48 CH	80 H	80 H	80 H	--	S-90 D	S-1 Y

SUMMARY TABLE 2 - MANDATORY SANCTIONS  
(continued)

S T A T E	Mandatory Fine (\$) -- DWI Conviction			Mandatory Imprisonment -- DWI Conviction			Community Service in Lieu of Mandatory Jail			Mandatory Licensing Action -- DWI Conviction		
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
PA	300 <sup>37</sup>	300 <sup>37</sup>	300 <sup>37</sup>	48 CH <sup>50</sup>	30 D <sup>50</sup>	90 D <sup>50</sup>	--	--	--	S-1 M <sup>5</sup>	S-12 M	S-12 M <sup>5</sup>
RI	100 <sup>63</sup>	400 <sup>63</sup>	400 <sup>63</sup>	--	10 D <sup>10,63</sup>	1 Y <sup>10,63</sup>	10 D <sup>63</sup>	--	--	S-3 M <sup>64</sup>	S-1 Y <sup>63</sup>	S-2 Y <sup>63</sup>
SC	300	1,000	3,500	48 H <sup>43</sup>	48 H <sup>43</sup>	60 D <sup>43</sup>	48 H <sup>43</sup>	10 D <sup>43</sup>	--	--	S-1 Y	S-4 Y <sup>36</sup>
SD	--	--	--	--	--	--	--	--	--	--	R-1 Y <sup>41</sup>	R-1 Y
TN	350	600	1,100	48 CH	45 D <sup>10</sup>	120 D <sup>10</sup>	--	--	--	--	R-2 Y	R-3 Y
TX	--	--	--	--	5 D <sup>16</sup>	10 D <sup>16</sup>	--	--	--	--	S-1 Y <sup>67</sup>	S-1 Y <sup>67</sup>
UT	700	800	1,500 <sup>51</sup>	48 CH	240 CH	1,500 H <sup>51</sup>	24 H	240 H	--	S-90 D	R-1 Y	R-1 Y
VT	--	--	--	--	60 CH	100 CH	--	200 H	400 H	S-90 D	S-18 M	R-2 Y
VA	--	--	--	--	5 D <sup>24</sup>	30 D <sup>24</sup>	--	--	--	--	R-1 Y <sup>24</sup>	R-3 Y
WA	350 <sup>4</sup>	500 <sup>4</sup>	1,000 <sup>4</sup>	24 CH <sup>4&amp;28</sup>	30 D <sup>4</sup>	90 D <sup>4</sup>	--	--	--	S-30 D <sup>4</sup>	R-2 Y <sup>4</sup>	R-3 Y <sup>4</sup>
WV	100 <sup>19</sup>	1,000 <sup>19</sup>	3,000 <sup>19</sup>	24 H <sup>19</sup>	6 M <sup>19</sup>	1 Y <sup>19</sup>	-- <sup>19</sup>	-- <sup>19</sup>	-- <sup>19</sup>	R-30 D <sup>40</sup>	R-1 Y <sup>40</sup>	R-1 Y <sup>40</sup>
WI	150	350	600	--	5 D	30 D	--	30 D	--	--	R-1 Y	R-1 Y
WY	--	--	--	--	7 D	30 D <sup>31</sup>	--	--	--	--	S-1 Y	R-3 Y
T O T A L S	28	28	27	18	49	49	11	19	9	S-19 R-9	S-16 R-30	S-14 R-34

<sup>4</sup>Mandatory sanctions for the offenses of driving while under the influence and illegal per se.

<sup>3</sup>Mandatory sanctions for the offense for driving while under the influence of alcohol/illegal per se.

<sup>2</sup>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  
Important! A blank space in this table does not mean that a State does not have a sanction. It only means that a State does not have a mandatory sanction.

**SUMMARY TABLE 2 - MANDATORY SANCTIONS**  
(continued)

- <sup>1</sup>The 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.
- <sup>2</sup>The sanctions listed are for non-injury offenses.
- <sup>3</sup>The court must impose at least one of these sanctions but may impose more than one such sanction.
- <sup>4</sup>Where the offender's alcohol concentration was <0.15.
- <sup>5</sup>For a 1st off, 1 mo mand susp if defendant is accepted into the Accelerated Rehabilitation Disposition program. For a 3rd off, revocation could be 5 yrs under the habitual offender law.
- <sup>6</sup>There is a mandatory fine of \$500 if the offender either (1) had a BAC/BrAC >0.15 or (2) refused to submit to a chemical test under implied consent law. However, a 1st offender is subject to a mandatory fine of \$1,000 if the drunk driving offense resulted in injury to another person. Nevertheless, the law appears to allow an offender to perform community service in lieu of these mandatory fines.
- <sup>7</sup>This sentence must be served in 48 hr segments.
- <sup>8</sup>This sanction may be served in a residential treatment facility.
- <sup>9</sup>This sanction only applies to driving while under the influence offenses.
- <sup>10</sup>Must serve 48 consecutive hours.
- <sup>11</sup>One day of imprisonment or 48 hrs of community service if 1 yr rehabilitation is taken.
- <sup>12</sup>48 hours must be served consecutively. However, if the defendant agrees to participate in a 1 yr treatment program, the mand jail term is 5 dys with 50 hrs of mand community service.
- <sup>13</sup>The following mandatory sanctions apply for 0.18 offenses: 1st offense-10 con dys and 2nd off-60 con dys. For a 3rd drunk driving offense (Aggravated DWI), a limited furlough may be granted.
- <sup>14</sup>Three (3) consecutive 24 hour periods in a house of correction and seven (7) consecutive 24 hour periods in a DWI detention center. If a person has previously completed the 7 day DWI detention center program for a prior offense, they are imprisoned for 30 consecutive 24 hour periods for a subsequent offense.
- <sup>15</sup>12 to 48 hrs mand treatment; this time is to be spent in an intoxicated driver resource center.
- <sup>16</sup>2nd offense-As a part of community supervision with required ignition interlock usage. 3rd or subsequent offenses-As part of community supervision.
- <sup>17</sup>Provided the defendant, at the time of the drunk driving offense, either (1) had an alcohol concentration of 0.15 or more, (2) was driving 30 MPH over the speed, (3) was eluding a police officer or (4) was driving a vehicle with a passenger under 21 years old.
- <sup>18</sup>Mandatory community service as well as mandatory imprisonment.
- <sup>19</sup>Applies to offenses that are not related to injury or death. Home incarceration or community service may be used in lieu of incarceration.
- <sup>20</sup>May not apply to certain offenders who have been suspended pursuant to the administrative per se law.
- <sup>21</sup>Applies only to driving while intoxicated offenses.
- <sup>22</sup>The law states that the right to operate a motor vehicle is "forfeited".
- <sup>23</sup>Home incarceration is possible.
- <sup>24</sup>w/n 5 yrs
- <sup>25</sup>Work release is available for this period of time.
- <sup>26</sup>If the BAC was ≥0.20, the mandatory license revocation period is double that given.
- <sup>27</sup>Not more than 90 dys as an alternative to imprisonment.
- <sup>28</sup>In lieu of jail, a defendant may be allowed to serve 15 dys in an electronic home monitoring program.
- <sup>29</sup>This revocation may not be mandatory if the defendant meets certain eligibility requirements for and does participate in a driver rehabilitation or improvement program.
- <sup>30</sup>90 dys mandatory if the defendant has refused to submit to a chemical test under the implied consent law.
- <sup>31</sup>Or 15 dys if the offender completes an inpatient treatment program.
- <sup>32</sup>Possible
- <sup>33</sup>Followed by a period of "house arrest" with electronic monitoring.
- <sup>34</sup>"House arrest" may be possible in lieu of a jail sentence.
- <sup>35</sup>3 months with participation in the ignition interlock program.
- <sup>36</sup>w/ 48 con. hrs.
- <sup>37</sup>Plus the following mandatory surcharges: 1st off-\$50; 2nd off-\$100; and, 3rd off-\$200.
- <sup>38</sup>The mandatory sanctions given are based upon a person receiving probation.
- <sup>39</sup>The usually mandatory period is 30 days imprisonment with 48 consecutive hours. However, based on mitigating circumstances, the court may sentence a person without regard to this mandatory sanction. Nevertheless, the court must still impose either 48 consecutive hours of imprisonment or 80 hours of community service.
- <sup>40</sup>Applies only to DWI offenses that are not related to injury or death and provided the person participates in the ignition interlock program.
- <sup>41</sup>There is no mandatory licensing action if the offender is placed on probation and is allowed to participate in the ignition interlock program.
- <sup>42</sup>License suspension is not mandatory in all situations. A "special permit" may be issued in cases of "significant hardship".
- <sup>43</sup>Home detention may be used in lieu of this sanction.
- <sup>44</sup>This mandatory fine applies only if the offender is not sentenced to a term of imprisonment.
- <sup>45</sup>A restricted occupational license may be issued after this period of time.
- <sup>46</sup>Licensing sanctions are via the administrative per se law.
- <sup>47</sup>For a 1st offense, the law does not specify the length of the community service in lieu of jail.
- <sup>48</sup>Sixty (6) days mandatory for 3rd offense committed w/n 10 yrs but more than 5 yrs from a previous offense. For either a 1st or subsequent offense, it may be possible for a defendant to receive "electronic monitoring" in lieu of imprisonment.
- <sup>49</sup>10 dys if the offender agrees to undergo drug/alcohol evaluation. Based on this evaluation, the offender may be placed on probation with treatment/rehabilitation.
- <sup>50</sup>House arrest or in-patient rehabilitation may be used as alternatives to this imprisonment sentence.
- <sup>51</sup>This mandatory sanction applies only if the court suspends sentence and places the defendant on probation. If the offender is not placed on probation they must serve a minimum incarceration period of 90 dys.
- <sup>52</sup>24 hours if the offender's alcohol concentration was ≥0.08.
- <sup>53</sup>1st offenders <21 years old have their licenses suspended for the following mandatory periods: 6 mos if their alcohol concentration was <0.08; and, 12 mos if their alcohol concentration was >0.08.
- <sup>54</sup>There is a mandatory imprisonment sentence of 48 hrs if the offender (1) had a BAC/BrAC >0.15, (2) refused to submit to a chemical test under implied consent law or (3) committed a drunk driving offense that injured another person.
- <sup>55</sup>30 days must be served consecutively; alternative, 6 dys incarceration with intensive supervision.
- <sup>56</sup>For a 3rd offense w/n 5 yrs. For a 3rd offense w/n 10 yrs, the mand revocation period is 2 yrs.
- <sup>57</sup>A restricted license after a 30 dy mandatory revocation provided the offender is enrolled in a DWI school, an alcohol screening program and operates vehicles that are equipped with ignition interlock devices.
- <sup>58</sup>\$50 if there is undue hardship on the defendant.
- <sup>59</sup>1 yr mand if an offender is allowed to operate a motor vehicle with an ignition interlock device.
- <sup>60</sup>For illegal per se offenses with BAC ≥0.17, the following mandatory jail sanctions apply: 1st offense-3 con dys; 2nd offense-10 con dys; and, 3rd offense-30 con dys.
- <sup>61</sup>30 dys w/48 con hrs if probation is granted. 1 yr if probation is not granted.
- <sup>62</sup>Or inpatient treatment for this period of time.
- <sup>63</sup>If BAC is <0.15.
- <sup>64</sup>If BAC is ≥0.10.
- <sup>65</sup>30 con dys only for persons sentenced to county jail; not those sentenced to the Dept. of Corrections.
- <sup>66</sup>The court may order a person to perform community service in lieu of payment of fine.
- <sup>67</sup>Applies to 2nd or subsequent offenses (w/n 5 years) that require ignition interlock usage for 1 year after the mandatory license suspension period.

STATE  
General Reference:

ALABAMA  
Code of Alabama

Basis for a DWI Charge:

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

Under the influence of alcohol<sup>1</sup> §32-5A-191(a)(2)  
≥ 0.08<sup>2</sup> §32-5A-191(a)(1)  
≥ 0.02<sup>2&3</sup> School Bus and Day Care Vehicle Operators  
§32-5A-191(c)  
Persons Under 21 Years Old ≥ 0.02<sup>2&3</sup> §32-5A-191(b) (¶1)

Presumption (BAC/BrAC):

≥ 0.08<sup>2</sup> §32-5A-194(b)(3)  
≥ 0.02<sup>2</sup> Presumption of driving under the influence of alcohol for  
School Bus and Day Care Vehicle Operators §32-5A-194(b)(3)  
≥ 0.02<sup>2</sup> Presumption of driving under the influence of alcohol for  
persons under 21 yrs old §32-5A-194(b)(3)

Types of Drugs/Drugs and Alcohol:

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

Other:

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

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Yes §32-5-192

Arrest Required (Yes/No):

Implied Consent Law Applies to

No

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal & Civil Cases) §32-5A-194(c)

Other Information:

**Accident Related Implied Consent Law.** Under separate  
provisions of law, a person, who is involved in an accident, which  
resulted in a "serious physical injury", and where there is  
reasonable grounds that they were driving while under the  
influence of alcohol, amphetamines, opiates or cannabis, shall be  
deemed to have given consent to a test of their blood for the  
purpose of determining the alcoholic content or the presence of the  
drugs listed. §32-5-192.1(a)

**Special Note:** A person arrested for a DWI offense shall not be  
released until their BAC/BrAC is <0.08 (for persons <21 yrs  
old, <0.02) §32-5A-191(l)

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

Blood:

Yes §32-5-192

Urine:

Yes §32-5-192

Other:

None

<sup>1</sup>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).

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

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

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Adjudication of DWI Charges:

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

Sanctions for Refusal to Submit to a  
Chemical Test:

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

Refusal to Take Implied Consent  
Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	

1st Refusal-Susp-90 dys (mand); 2nd Alc. or Drug-Related Enforcement Contact<sup>1</sup> (w/n 5 yrs)-Susp-1 yr (mand); 3rd Alc. or Drug-Related Enforcement Contact<sup>1</sup> (w/n 5 yrs)-Susp-3 yrs (mand); 4th Alc. or Drug-Related Enforcement Contact<sup>1</sup> (w/n 5 yrs)-Susp-3 yrs (mand); 5th or Sub Alc. or Drug-Related Enforcement Contact<sup>1</sup> (w/n 5 yrs)-Susp-5 yrs (mand) §§32-5A-300, 32-5A-304 & 32-5A-305 See the Comment below.

Other:

**Refusing to Submit to a Test Under the Accident Related Implied Consent Law-Susp-2 yrs §32-5-192.1(a)** This suspension appears to be mandatory.<sup>3</sup>

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions  
Imprisonment/Fine:

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

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

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

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

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

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

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

Criminal Sanctions Imprisonment/Fine: (continued)	<u>Serious Bodily Injury related to a DWI Off</u> (assault in the first degree-Class B felony): <b>2 to 20 yrs<sup>1</sup></b> , not more than <b>\$10,000<sup>1</sup></b> §§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: <u>2nd off-5 dys<sup>2</sup></u> ; <u>3rd off-60 dys</u> ; <u>4th or subsequent off-10 dys in county jail<sup>3</sup></u>
Mandatory Minimum Fine (\$):	None
Other Penalties:	
Community Service:	<u>2nd Off</u> (w/n 5 yrs)-Not less than <b>30 dys<sup>2</sup></b> §32-5A-191(c) & (d)
Restitution (eg Victim's Fund)	Yes Victims' Compensation Fund. §15-23-1 et seq. <b>Special Note:</b> 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:	<b>Special Fine.</b> In addition to any other fine, a person convicted of a DWI offense must pay a special fine of <b>\$100</b> . The funds collected from this fine are paid into an account which is used to assist persons who have spinal cord or head injuries. §32-5A-191.1(a) <b>Court Authorized Licensing Action.</b> In addition to any other sanction for a criminal violation of the traffic laws, the court may issue an order "forbidding" an offender from operating a motor vehicle for either a specified period of time or perpetually. An appellate court may modify this order. §32-5-316 <u>See Administrative Licensing Actions below.</u>
Administrative Licensing Actions:	
<u>Pre-DWI Conviction Licensing Action:</u>	
Administrative Per Se Law:	<b>Yes<sup>4</sup> &gt;0.08 (BAC/BrAC</b> See Footnote No. 2 on p. 3-1.) <u>1st Admin. Per Se Violation-Susp-90 dys (mand)</u> ; <u>2nd Alc. or Drug-Related Enforcement Contact<sup>5</sup> (w/n 5 yrs)-Susp-1 yr (mand)</u> ; <u>3rd Alc. or Drug-Related Enforcement Contact<sup>5</sup> (w/n 5 yrs)-Susp-3 yrs (mand)</u> ; <u>4th Alc. or Drug-Related Enforcement Contact<sup>5</sup> (w/n 5 yrs)-Susp-3 yrs (mand)</u> ; <u>5th or Sub Alc. or Drug-Related Enforcement Contact<sup>5</sup> (w/n 5 yrs)-Susp-5 yrs (mand)</u> §§32-5A-300, 32-5A-304 & 32-5A-305 See the Special Note on p. 3-4.
Other:	Under §§32-5A-195(k)(1) & (m), a person's license may be susp, <u>without</u> a preliminary hearing, for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). <b>Comment:</b> Such action could occur prior to a conviction.

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

<sup>2</sup>The 30 dy community service sanction may be used as an alternative to the 5 dy imprisonment term.

<sup>3</sup>After this sanction, a person may be placed on probation on the condition that they enroll in and successfully complete a chemical dependency program. If probation is granted, an offender may be placed on house arrest with electronic monitoring. §32-5A-191(h)

<sup>4</sup>**Important.** If the drunk driving criminal charges against the driver are either dismissed or *non prossed* or if the driver is found not guilty of the DWI offense, the admin. per se licensing action is rescinded. §32-5A-304(c)

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

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

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

Post DWI Conviction Licensing Action:

See Footnote No. 3 and the Special Note below.

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

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

Mandatory Minimum Term of  
Withdrawal:

1st off-90 dys<sup>2,3&4</sup>; 2nd off-1 yr; 3rd off-3 yrs; 4th or subsequent  
offs-Rev 5 yrs

Other:

Rehabilitation:

Alcohol Education:

1st or sub off-Yes<sup>5</sup> §32-5A-191(b) (¶2) & (i)

Alcohol Treatment:

1st or sub off-Yes<sup>5</sup> §32-5A-191(b) (¶2) & (i)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

**Impoundment.** For a sub off w/n 5 yrs, the registrations of all vehicles owned by the offender shall be suspended for the duration of their license suspension. There is a hardship exemption for other individuals. §32-5A-191(o)

Miscellaneous Sanctions

Not Included Elsewhere:

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

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

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

<sup>3</sup>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. §§13A-12-290 & 13A-12-291

<sup>4</sup>1st off-Operation of a School Bus and Day Care Vehicle Operators with a BAC/BrAC ≥0.02-Susp 1 yr (mand) §32-5A-191(c) 1st off-Persons under 21 yrs old driving with a BAC/BrAC ≥0.02 but <0.08-Susp 30 dys (mand) §32-5A-191(b)

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

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

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

Other Criminal Actions Related to DWI:

Homicide by Vehicle: State Has Such a Law:	<b>Yes</b> Two types of offenses (1) " <u>Homicide by Veh</u> "-Felony <sup>1</sup> §32-5A-192 (2) " <u>Criminally Negligent Homicide</u> " while DWI-Class C Felony §13A-6-4(a) & (c)
Sanctions: Criminal Sanction: Imprisonment (Term):	(1) " <u>Homicide by Veh</u> "-Not less than <b>1 yr</b> nor more than <b>5 yrs</b> §32-5A-192 (2) " <u>Criminally Negligent Homicide</u> " while DWI- <b>1 yr &amp; 1 dy to 10 yrs</b> §13A-5-6(a)(3) <b>None</b>
Mandatory Minimum Term: Fine (\$ Range):	<b>None</b> (1) " <u>Homicide by Veh</u> "-Not less than <b>\$500</b> nor more than <b>\$2,000</b> §32-5A-192 (2) " <u>Criminally Negligent Homicide</u> " while DWI-Not more than <b>\$5,000</b> §13A-5-11(a)(3)
Mandatory Minimum Fine: Administrative Licensing Action: Licensing Authorized and Type of Action: Length of Term of Licensing Withdrawal: Mandatory Action--Minimum Length of License Withdrawal: Other:	<b>None</b> <b>Rev</b> <sup>2</sup> §32-5A-195(j)(l) Rev period is not specified in the statute. <sup>3</sup> <b>None</b> See Court Authorized Licensing Action on p. 3-4.
<u>Driving While License Suspended or Revoked</u> <u>Where the Basis Was a DWI Offense*:</u> Sanction: Criminal: Imprisonment (Term): Mandatory Minimum Term of Imprisonment: Fine (\$ Range):	See Footnote Nos. 4 & 5 and Vehicle Impoundment below. <b>Misd</b> Not more than <b>180 dys</b> §32-6-19(a) <b>None</b> Not less than <b>\$100</b> nor more than <b>\$500</b> <sup>6</sup> §32-6-19(a)

<sup>1</sup>§13A-1-2(4) & *Whirley v. State*, 481 So.2d 1151 (Ala.Cr.App. 1985)<sup>2</sup>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.<sup>3</sup>However, a license or privilege to drive cannot be suspended for more than 1 yr. §32-5A-195(m)<sup>4</sup>Although §32-6-49.7(b) prohibits the operation of CMV while either disqualified or under an out-of-service order, the CMV law does not provide for provide specific sanctions for such violations. **Important.** However, under separate provisions of law, a CMV operator, who violates Federal Regulations (49 CFR 383.51) concerning alcohol and drug use and CMV operation (e.g., driving on an out-of-service order), commits a misdemeanor with the following sanctions: Jail for not more than 30 dys and/or a fine of not more than \$2,000.

Also, the court may prohibit the offender from operating a CMV for a period of time specified by the court or perpetually. §§2 &amp; 4 of House Bill 725

<sup>5</sup>A person's vehicle may be forfeited to the State, if they operate such vehicle while their license is either suspended or revoked for a drunk driving offense. §32-5A-203<sup>6</sup>An additional penalty of \$50 is assessed for the purpose of funding the Traffic Safety and the Police Officers Standards and Training Funds. §32-6-19 This assessment appears to be mandatory.**Vehicle Impoundment** If the offender's driving privileges were susp/rev because of a drunk driving of implied consent law violation, the vehicle used in the offense may be impounded by law enforcement officers. This impoundment does not apply if either a non-driver owner or other family member with a valid license is a passenger in the vehicle or there is an emergency or medical necessary jeopardizing life or limb. §32-6-19

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

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine: **None**  
Length of Term of License  
Administrative Licensing Actions:  
Type of Licensing Action  
(Susp/Rev): **Rev (discretionary) §32-6-19(a)**  
**See Court Authorized Licensing Action on p. 3-3.**  
**An additional period of 6 mos §32-6-19(a)**  
Withdrawal Action:  
Mandatory Term of License  
Withdrawal Action: **None**  
Other:  
  
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** However, the implied consent law does apply to dead persons.  
*Lankford v. Redwing Carriers, Inc.*, 344 So.2d 515 (Ala., 1977)

BAC Chemical Test Is Given to the  
the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

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

Minimum Age (Years) Possession:

**21**<sup>1</sup> §28-3A-25(a)(19)

Minimum Age (Years) Consumption:

**21** §28-3A-25(a)(19)

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

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

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

Yes §6-5-71<sup>1</sup>

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

Dram Shop Actions-Social Hosts:

None

Other:

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

Type of Criminal Action:

See Double Jeopardy on p. 3-8.

See Regulation 20-X-6-.02 which prohibits the sale of alcoholic  
beverages to persons "acting in a manner as to appear to be  
intoxicated." Reg. promulgated via §28-3-49.<sup>4</sup> It is a **misd.** to  
violate a regulation (§28-3-20).

Imprisonment:

Not more than **6 mos** §28-3-20<sup>5</sup>

Fine (\$ Range):

Not more than **\$500** §28-3-20<sup>5</sup>

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

<sup>2</sup>Note: This same case is also reported at 513 So.2d 958.

<sup>3</sup>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)

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

<sup>5</sup>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.

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Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:  
License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term of License Withdrawal:

See Double Jeopardy below.

**Yes Susp/Rev** §§28-3A-24 & 28-3A-26  
1st off-susp for not more than 1 yr or rev for 1 yr<sup>1</sup>; 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.<sup>1</sup>)  
§§28-3A-24 & 28-3A-26

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

See Double Jeopardy below.

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

Term of Imprisonment:

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

Fine (\$ Range):

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

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:  
License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

See Double Jeopardy and the Special Note below.

**Yes Susp/Rev** §§28-3A-24 & 28-3A-26  
1st off Susp-Not more than 1 yr; rev-1 yr<sup>1</sup>; 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.<sup>1</sup>)  
§§28-3A-24(d) & 28-3A-26

Anti-Happy Hour Laws/Regulations:

**Yes** Regulation 20-X-6-.14

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

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**Yes** §32-5A-330  
**No**

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

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

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

STATE:  
General Reference:

**ALASKA**  
Alaska Statutes

Basis for a DWI Charge:

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

Under the influence of intoxicating liquor<sup>1</sup> §28.35.030(a)(1)  
≥ **0.08**<sup>1,2&3</sup> §28.35.030(a)(2)  
> **0.08**<sup>3</sup> §28.35.033(a)(3)

Under the influence of (1) **A Controlled Substance**<sup>1</sup> or (2)  
Intoxicating Liquor and Another Substance<sup>1</sup>  
§28.35.030(a)(1) & (3)

Other:

Persons Under 21 Years Old. See p. 3-11.  
For Commercial Motor Vehicle Operators, see p. 3-12.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

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

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

**Yes** §28.35.031 See the Special Note below.

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

**No** Except as noted in "Other Information" below.

Other Information:

**Yes** (Criminal & Civil Cases) §§28.35.032(e) &  
28.35.285(c)

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

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

Blood:  
Urine:  
Other:

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

<sup>1</sup>The law defines the drunk driving offense as the crime of "driving while intoxicated" which includes driving while under the influence of intoxicating liquor/controlled substance or illegal per se at an alcohol concentration ≥0.08. §28.35.030

<sup>2</sup>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.

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

**Special Note:** This State's implied consent law also requires that a driver submit to a chemical test or tests (1) of their breath or blood for alcohol content or (2) of their blood or urine for a controlled substance if there is "reasonable grounds to believe that the person was operating or driving a motor vehicle in this state that was involved in an accident causing death or serious physical injury to another person." The sanctions for violating this requirement are the same as for violating the regular implied consent provisions. §28.35.031(g) However, the Alaska Court of Appeals has held that this provision violates the both U.S. Constitution's (4th Amendment) and the Alaska Constitution's prohibitions against unreasonable searches and seizures, because it does not provide for individual suspicion of criminal activity before a search can be undertaken. *Blank v. State*, 3 P.3d 359 (AlaskaApp. 2000) Note: There is a similar provision for CMV operators; see p. 3-12.

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Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §§28.35.030(h) & 28.35.032(l)

Sanctions for Refusal to Submit to a  
Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	<u>Infraction</u> (non-criminal offense)-Not more than <b>\$300</b> §§28.35.031(e) & 28.40.050(c) & (d)
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Administrative Licensing Action (Susp/Rev):	<b>None</b>
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. §28.33.031(d) It is a <b>Cl B</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 <b>90 dys</b> ; fine-not more than <b>\$1,000</b> . §§12.55.035(b)(4) & 12.55.135(b)

Refusal to Take <u>Implied Consent Chemical Test</u> : Criminal Sanction (Fine/Jail):	See the "Note" under Double Jeopardy on p. 3-11. <u>Cl A</u> misd-Not more than <b>1 yr</b> imprisonment/not more than <b>\$5,000</b> fine; <u>Cl C</u> felony-if 3rd or subsequent refusal w/n 10 yrs-Not more than <b>5 yrs</b> /not more than <b>\$50,000</b> fine §§12.55.035, 12.55.125, 12.55.135 and 28.35.032(f) & (q) 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 <sup>1</sup> are the same as for DWI offenses. These sanctions run concurrently with any other sanctions. §28.35.032(f) & (g)(4) See Footnote No. 2.
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Administrative Licensing Action (Susp/Rev):	<b>Rev</b> §§28.15.165(a)(1) & 28.15.181(a)(8) <u>1st Refusal-90 dys</u> (mand) License revocation periods, including the minimum mandatory periods, veh. forfeiture for <u>2nd and subsequent refusals</u> <sup>1</sup> are the same as for 1st and subsequent revocations for DWI offense convictions. §28.15.165(d)
Other:	<b>State Forfeiture</b> of the vehicle used in subsequent refusal offenses. This action is not mandatory. §28.35.036

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

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

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment/Fine:

Mandatory Minimum Term:

Mandatory Minimum Fine (\$):

Other Penalties:  
Community Service:

Restitution (eg Victim's Fund)

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

I. Cl A Misd-Not more than 1 yr/not more than \$5,000  
II. Cl C felony if 3rd or subsequent offense w/n 10 yrs-Not more than 5 yrs/not more than \$50,000

§§12.55.035, 12.55.125, 12.55.135 & 28.35.030

I. Cl A Misd offs\*: 1st off-72 cons hrs<sup>2</sup>; 2nd off-20 dys<sup>2</sup>; 3rd off-60 dys; 4th off-120 dys; 5th off-240 dys; 6th and sub. off-360 dys

II. Cl C felony offs: 3rd off-120 dys; 4th off-240 dys; 5th and sub. off-360 dys

§§28.35.030(b) & (n) and 28.35.032(g) & (p)

Important. See Electronic Monitoring below.

I. Cl A Misd offs\*: 1st off-\$250; 2nd off-\$500; 3rd off-\$1,000; 4th off-\$2,000; 5th off-\$3,000; 6th and sub. off-\$4,000

II. Cl C felony offs (3rd or sub off w/n 10 yrs)-\$5,000

Yes<sup>3</sup> 1st off-At least 24 hrs; 2nd off-At least 160 hrs  
§§28.35.030(k) & 28.35.032(o) Discretionary for subsequent offenses §12.55.055

Yes The court may order a defendant to pay direct compensation to a victim(s). §12.55.045

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

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

<sup>3</sup>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.

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

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

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

**\*Important.** The mandatory sanctions for a misdemeanor offense only apply if the offender has not been convicted of a felony offense. §§28.35.030(b) & (n) and 28.35.032(g) & (p)

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

Other:

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

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

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

Administrative Licensing Actions:  
Pre-DWI Conviction Licensing Action:

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

Administrative Per Se Law:

**Yes** ≥0.08 (BAC/BrAC See Footnote No. 3 on p. 3-9.) §28.15.165(a)(1) & (d) Licensing revocation periods, including the minimum mandatory periods, for 1st and sub admin. actions are the same as for 1st and sub revocations for DWI off convictions.

Other:

None

Post DWI Conviction Licensing Action:  
Type of Licensing Action  
(Susp/Rev):  
Term of License Withdrawal  
(Days, Months, Years, etc.):

Rev §28.15.181(a)(5) & (c)

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

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have either a percent by wgt. of alc. in the blood ≥0.04, a blood alcohol concentration ≥40 milligrams of alcohol per 100 milliliters of blood, or a breath alcohol concentration of ≥0.04 grams of alc. per 210 liters of breath, (2) are under the influence of intoxicating liquor or any controlled substance or (3) refuse to submit to a breath test. For either (1) a second violation or (2) a combination of two violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). For either (1) a subsequent violation or (2) a combination of more than two violations of any of the above listed items, there is a mandatory lifetime "disqualification". A person, who operates a CMV with a BAC/BrAC ≥0.04, while under the influence of any controlled substance or who refuses to submit to a breath test, is also subject to the regular DWI/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. **Special Note:** This State's CDL implied consent law also requires that a CMV operator submit to a chemical test or tests (1) of their breath or blood for alcohol content or (2) of their blood or urine for a controlled substance if there is "reasonable grounds to believe that the person was operating or driving a motor vehicle in this state that was involved in an accident causing death or serious physical injury to another person." Note: A similar provision in the regular implied consent law, §28.35.031(g), was declared unconstitutional by the Alaska Court of Appeals; see the Special Note on p. 3-9. §§28.15.165, 28.15.219, 28.33.030, 28.33.031(a)(1) & (2), 28.33.130, 28.33.140 and 28.35.032(f)

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

<p>Mandatory Minimum Term of Withdrawal:</p>	<p><u>1st off-90 dys or 30 dys</u> followed by a limited occupational license for 60 dys with participation in an alcohol education and treatment program §28.15.201(d); <u>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</u></p>
<p>Other: Rehabilitation: Alcohol Education: Alcohol Treatment: Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:</p>	<p>Yes<sup>1</sup> §28.35.030(c) Yes<sup>1</sup> §28.35.030(c)  Yes <b>State Forfeiture</b> of the vehicle used in subsequent DWI offenses. This action is not mandatory. §28.35.036</p>
<p>Terms Upon Which Vehicle Will Be Released: Other:</p>	<p>N/A <b>Local Forfeiture.</b> Under §28.35.038, municipalities may enact ordinances to impound/forfeit motor vehicles for violations of local DWI/chemical test refusal laws.</p>
<p>Miscellaneous Sanctions Not Included Elsewhere:</p>	<p>None</p>
<p><u>Other Criminal Actions Related to DWI:</u></p>	
<p><u>Homicide by Vehicle:</u> State Has Such a Law: Sanctions: Criminal Sanction: Imprisonment (Term): Mandatory Minimum Term: Fine (\$ Range): Mandatory Minimum Fine: Administrative Licensing Action: Licensing Authorized and Type of Action: Length of Term of Licensing Withdrawal:</p>	<p>No<sup>2</sup>             See Footnote No. 3.</p>

<sup>1</sup>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)

<sup>2</sup>In some circumstances, a DWI related death may be considered second degree murder. *Puzewicz v. State*, 856 P.2d 1178 (AlaskaApp. 1993)

<sup>3</sup>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)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum  
Length of License  
Withdrawal:  
Other:

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

Sanction:  
Criminal:  
Imprisonment (Term):

See Footnote No. 1.

Mandatory Minimum Term  
of Imprisonment:

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

Fine (\$ Range):  
Mandatory Minimum Fine:  
Administrative Licensing Actions:  
Type of Licensing Action  
(Susp/Rev):  
Length of Term of License  
Withdrawal Action:  
Mandatory Term of License  
Withdrawal Action:

**10 dys** Also a mandatory period of 80 hrs of community  
service. §28.15.291(b)(1)(C) & (b)(3).  
Not more than **\$5,000** §§12.55.035(b)(3)  
**\$500** §28.15.291(b)(1)(C) & (b)(3).

**Rev** §28.15.291(b)(4)

**Original rev extended not less than 90 dys**

**Original rev extended not less than 90 dys**

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No):

**No**

Grounds for Being Declared an  
Habitual Offender:  
Term of License Rev While  
Under Habitual Offender Status:  
Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status  
Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:  
Imprisonment (Term):  
Mandatory Minimum Term of  
Imprisonment:  
Fine (\$ Range):  
Mandatory Minimum Fine (\$):  
Licensing Actions (Specify):

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

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

State Has Such a Law (Yes/No):

No

BAC Chemical Test Is Given to the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

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

Minimum Age (Years) Possession:

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

Minimum Age (Years) Consumption:

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

Dram Shop Laws and Related Legal Actions:

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

**Yes I. Persons Who Hold Licenses Under the Alcoholic Beverage Law**-The law limits liability to situations where a licensee has served alcoholic beverages either (1) to a person under 21 years old or (2) to a drunken person in a "criminally negligent" manner. §§04.16.030, 04.21.020(a) & 04.21.080(a)(1)<sup>1&2</sup>

**II. Alcoholic Beverage Law Violators**-Persons, who serve alcoholic beverages to individuals without obtaining the appropriate licenses, are "strictly liable" for the injuries caused by such individuals, while in an intoxicated condition, after they consume such beverages. §04.21.020(b)

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

No Note: Previous case, *Nazareo v. Urie*, 638 P.2d 671 (Alaska 1981), was indirectly abrogated by the dram shop statute.

Dram Shop Actions-Social Hosts:

No<sup>3</sup> §04.16.020 & *Mulvihill v. Union Oil Co.*, 859 P.2d 1310 (Alaska 1993)

Other:

**Alcoholic Beverage Law Violators**-Persons, who serve alcoholic beverages to individuals without obtaining the appropriate licenses, are "strictly liable" for the injuries sustain by such individuals, while in an intoxicated condition, after they consume such beverages. §04.21.020(b)

<sup>1</sup>*Kavorkian v. Tommy's Elbow Room, Inc.*, 694 P.2d 160 (Alaska 1985) (rehearing, 711 P.2d 521 (Alaska 1985)).

<sup>2</sup>The dram shop law, §04.21.020(a), has been held constitutional. *Gonzales v. Safeway Stores, Inc.*, 882 P.2d 389 (Alaska 1994)

<sup>3</sup>Under §04.21.020(a), a social host is not liable for the injuries sustained by an intoxicated guest. *Chokwak v. Worley*, 912 P.2d 1248 (Alaska 1996)

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Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Cl A misd §§04.16.030 & 04.16.180

Not more than **1 yr** §12.55.135(a)

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

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

**Yes** §04.16.180

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

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

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Cl A Misd §§04.16.052 & 04.16.180

Not more than **1 yr** §12.55.135(a)

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

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

**Yes** §04.16.180

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

Anti-Happy Hour Laws/Regulations:

**Yes** §04.16.015

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

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

**Yes** Applies only to drivers §28.35.029

**Yes** Drivers only 13 Alaska Administrative Code 02.545(a)

JURISDICTION:  
General Reference:

**AMERICAN SAMOA**  
American Samoa Code Annotated (Updated through 1987)

Basis for a DWI Charge:

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

Chemical Breath Tests for Alcohol Concentration:

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

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

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

Adjudication of DWI Charges:

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

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:	

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

AMERICAN SAMOA

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

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	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:

<u>Pre-DWI Conviction</u> 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.):	<u>1st off-6 mos; 2nd off-2 yrs; 3rd off-Permanently</u> §22.0211
Mandatory Minimum Term of Withdrawal:	<u>1st off-6 mos; 2nd off-2 yrs; 3rd off-Permanently</u>

<sup>1</sup>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)

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

<sup>3</sup>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:	<b>Yes Felony</b> §§22.0706, 22.0708 & 46.3102(b) <sup>1</sup>
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than <b>5 yrs</b> §§22.0706 & 22.0708
Mandatory Minimum Term:	<b>None</b>
Fine (\$ Range):	Not more than <b>\$5,000</b> §§22.0706 & 22.0708
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Action:	
Licensing Authorized and	
Type of Action:	<b>Susp or Rev</b> §22.0203 See Footnotes Nos. 2, 3 and 4.
Length of Term of	
Licensing Withdrawal:	<u>1st off-180 dys; 2nd &amp; sub off-2 yrs</u> See Footnote Nos. 2 & 4.
Mandatory Action--Minimum	
Length of License	
Withdrawal:	<b>None</b>
Other:	

<sup>1</sup>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 these sections are the same.

<sup>2</sup>The suspension period may be doubled. §22.0213(b)

<sup>3</sup>Either suspension or revocation for the periods indicated.

<sup>4</sup>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.

AMERICAN SAMOA

Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

Imprisonment:

Mandatory Minimum Term  
of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action

(Suspension/Revocation):

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Other:

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

**90 dys** §22.0223

Not more than **\$5,000** §46.2101(a)(1)

**None**

**Susp** §22.0219

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

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

Habitual Traffic Offender Law:

Jurisdiction Has Such a Law (Yes/No):

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

Grounds for Being Declared an

Habitual Offender:

Term of License Revocation While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in 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): **n.a.**  
 Dram Shop Actions-Social Hosts:  
 Other:

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

Type of Criminal Action: **Class B Misd** §§27.0531 & 27.0534  
 Term of Imprisonment: **Not more than 6 mos** §46.2301(6)  
 Fine (\$ Range): **Not more than \$500<sup>1</sup>** §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.

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

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Other laws Related to Alcohol Use: (continued)

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

Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

**Class B Misd** §§27.0531 & 27.0534  
Not more than **6 mos** §46.2301(6)  
Not more than **\$500<sup>1</sup>** §46.2102(a)(2)

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes Susp/Rev** §27.0533  
1st off-30 dy susp; 2nd off-60 dy susp; 3rd off-Rev Note: The period of revocation is not specified in the statute.

Anti-Happy Hour Laws/Regulations:

**None**

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

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**Yes** §27.0532  
**Yes (Driver and passengers)** §27.0532

<sup>1</sup>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:  
General Reference:

**ARIZONA**  
Arizona Revised Statutes Annotated

Basis for a DWI Charge:

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

Under the influence of intoxicating liquor §28-1381(A)(1)  
I.  $\geq 0.08$ <sup>1&2</sup> and **Any Controlled Substance in a Person's Body**<sup>3&4</sup>  
§28-1381(A)(2) & (3)  
II.  $\geq 0.15$ <sup>5</sup> §28-1382(A)

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

Persons Under 21 Years Old. Operating a motor vehicle with any  
"Spirituous Liquor" in their body. §§4-244(33) & 4-246(B)  
 $\geq 0.08$ <sup>2</sup> §28-1381(G)(3)

Other:

Under the influence of (1) **Any Drug**, a vapor releasing substance  
containing a toxic substance or (2) a combination of liquor, drugs  
or toxic vapor releasing substance if the person is impaired to the  
slightest degree. §28-1381(A)(1)  
For Commercial Motor Vehicle Operators, see p. 3-27.

Chemical Breath Tests for Alcohol Concentration:

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

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

**Yes**<sup>6</sup> §28-1321(A)

**Yes**<sup>6</sup> §28-1321(A)

**Yes** (Criminal & Civil Cases) §28-1388(D)

I. Persons (e.g., medical facility personnel), who collect blood,  
urine or other bodily substances from drivers, may be requested  
by law enforcement authorities to supply samples of such  
substances to them for testing. §28-1388(E)

II. Blood or urine samples can also be obtained via search  
warrants. §28-1321(D)(1)

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

Blood:  
Urine:  
Other:

**Yes** §28-1321

**Yes** §28-1321

"Other bodily substances" §28-1321

<sup>1</sup>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.

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

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

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

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

<sup>6</sup>Under a **separate implied consent law**, a law enforcement office can request a driver to submit to a chemical test for either alcohol concentration or drug content if the driver is involved in an accident that caused either a death or a serious physical injury and either (1) there is "probable cause to believe" that the driver caused the accident or (2) the driver was issued a citation for a traffic offense (e.g., a drunk driving offense, racing on the highway, reckless driving, or other "moving traffic violation"). The sanctions for refusing to submit to this test are the same as for refusing to submit to test under the regular implied consent law (§28-1321). §28-673

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Adjudication of DWI Charges:

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

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	1st refusal-12 mo susp (mand); sub refusal (w/n 60 mos)-2 yr susp (mand) §28-1321(G)(3) & (L)
Other:	A person under 21 years old, who has been arrested for a violation of §4-244(33) (driving with any amount of "spirituous liquor" in their body) is subject to the implied consent law. §28-1321(A)(1)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Child Endangerment and Double Jeopardy below. <u>Important:</u> For persons under 18 yrs old, see Miscellaneous Sanctions on p. 3-28.
Imprisonment/Fine/Term:	I. 1st off-CI 1 misd-Not more than 6 mos (with 10 con dys), Not more than \$2,500; 2nd off <sup>2</sup> (w/n 60 mos)-CI 1 misd-Not more than 6 mos (with 90 dys), not more than \$2,500 II. 0.15 Offense-1st off-CI 1 misd-Not more than 6 mos (with 30 con dys), Not more than \$2,500; 2nd off <sup>2</sup> (w/n 60 mos)-CI 1 misd-Not more than 6 mos (with 120 dys), not more than \$2,500

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

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

**Child Endangerment.** A person commits a CI 6 felony (Aggravated DWI), if they violate the drunk driving laws while transporting a passenger who is < 15 yrs old. Sanctions: Imprisonment-1st Off-1 yr; with one prior felony conviction-1 to 2.5 yrs; with two or more prior felony convictions-3 to 4.5 yrs; fine-\$150,000. Minimum Sanctions: For 1st & 2nd offs the minimum sanctions for drunk driving offenses apply. The minimum applicable sanction will depended on whether the offender was convicted under §28-1381 or §13-1382 (0.15 offense); and, for 3rd or sub offenses, the minimum sanctions are the same as for multiple offenses under the Aggravated DWI law. §§13-604(A), (C) & (U)(1)(a), 13-701(C), 13-801, and 28-1383(A)(3), (F), (G) & (L)(2)

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

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

Mandatory Minimum Term:	<p>III. <b>Aggravated DWI*-Cl 4 felony-2½ to 12 yrs<sup>1</sup>, not more than \$150,000</b> §§13-604, 13-701, 13-707, 13-801, 13-802, 28-1381, 28-1382 &amp; 28-1383</p> <p><b>Special Note:</b> For sanctions related to Aggravated DWI based on a DWI offense <u>and</u> vehicle operation while suspended or revoked for DWI, see "Driving While Suspended or Revoked Where the Basis Was a DWI Offense" on p. 3-28.</p> <p><u>Persons Under 21 Years Old.</u> Operating a motor vehicle with any "<b>Spirituos Liquor</b>" in their body. Cl 1 misd-<b>Not more than 6 mos/not more than \$2,500</b> §§4-244(33) &amp; 4-246(B), 13-701, 13-707, 13-801 &amp; 13-802</p> <p>I. <u>1st off-24 cons hrs<sup>2</sup></u> §28-1381(J) <u>2nd off<sup>3</sup></u> (w/n 60 mos)-<b>30 con dys<sup>2</sup></b> §28-1381(L)</p> <p>II. <u>0.15 Offense-1st off-10 con dys<sup>2</sup></u> §28-1382(E); <u>2nd off<sup>3</sup></u> (w/n 60 mos)-<b>60 con dys<sup>2</sup></b> §28-1382(G)</p> <p>III. <u>Aggravated DWI*-3rd off</u> (w/n 60 mos)-<b>4 mos<sup>4</sup></b> §28-1383(D); <u>4th and sub. off</u> (w/n 60 mos)-<b>8 mos<sup>4</sup></b> §28-1383(E)</p> <p><u>Persons Under 21 Years Old.</u> Operating a motor vehicle with any "<b>Spirituos Liquor</b>" in their body. <b>None</b></p>
Mandatory Minimum Fine (\$):	<p>I. <u>1st off Cl 1 misd-\$250</u>; <u>2nd off Cl 1 misd</u> (w/n 60 mos)-<b>\$500</b>;</p> <p>II. <u>0.15 Offense- Cl 1 misd-\$250</u> (and a \$250 assessment); <u>2nd off Cl 1 misd</u> (w/n 60 mos)-<b>\$500</b> (and a \$250 assessment)</p> <p>III. <u>Aggravated DWI*- Cl 4 felony-None</u></p> <p><u>Persons Under 21 Years Old.</u> Operating a motor vehicle with any "<b>Spirituos Liquor</b>" in their body. <b>None</b></p>
Other Penalties:	
Community Service:	<p><u>1st &amp; 2nd offs (including 0.15 offs)-Yes<sup>3</sup></u> Discretionary with the court The number of hrs is not specified in the law. §§28-1381(I)(3) &amp; (K)(3) and 28-1382(D)(4) &amp; (F)(4); <u>3rd and sub off-Community service cannot be assigned.</u> §11-459(R)</p>
Restitution (eg Victim's Fund):	<p><b>Yes</b> A victims' compensation fund §41-2407 Where there was an economic loss to a victim, the <u>Court may order that all or any portion of the fine be allocated as restitution.</u> §13-804</p>
Other:	<p><b>Driver Training Course.</b> A person may be required to attend and successfully complete a driver training course. §28-1706</p>

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

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

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

<sup>4</sup>A limited furlough may be granted. §31-233(B)

<sup>5</sup>1st offenders are eligible of community service after they have severed 24 con hrs in jail. 2nd offenders are eligible for community service after they have served 15 con dys in jail. §§9-499.07(N) & 11-459(M)

**\*Definition of Aggravated DWI Based on Prior Offenses.** "Within a period of sixty months commits a third or subsequent violation of section 28-1381 [regular DWI offense], section 28-1382 [0.15 offense] or this section [§28-1383] or is convicted of a violation of section 28-1381, section 28-1382 or this section and has previously been convicted of any combination of convictions of section 28-1381 or 28-1382 or this section...." §28-1383(A)(2)

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

Other: (continued)

**Probation (Discretionary).** 1st or 2nd offense (including 0.15 offenses)-Not more than 5 yrs; **Aggravated DWI Offenses\***-Not more than 10 yrs §13-902(B)

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

Administrative Licensing Actions:

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

See Double Jeopardy on p. 3-24.

**Yes  $\geq 0.08$  ( $\geq 0.04$  for Commercial motor Vehicle Operators) (For BAC/BrAC Standards, see Footnote No. 2 on p. 3-23.) **Susp-Not less than 90 cons dys** (30 cons dys mand)<sup>1</sup> §§28-1321(B) and 28-1385(A) & (E)**

**Special Note:** The procedures of the admin. per se law also apply to persons who are under 21 years old and who have been arrested for a violation of §4-244(33) (driving with any amount of "spirituous liquor" in their body). **Comment:** The admin per se law does not appear to actually authorize a lic. susp. for a violation of §4-244(33). It may well be that the legislature intended to impose admin. per se license susps. for a §4-244(33) offense but the language used in the admin. per se law is not clear on this point.

Other:

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

Post DWI Conviction Licensing Action:

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

I. Except as noted in II, 1st off (including 0.15 offs)-**Susp-not less than 90 con dys nor more than 1 yr<sup>2</sup>; 2nd off** (including 0.15 offs)-**Rev-1 yr<sup>2</sup>; Aggravated DWI offenses\*-Rev-3 yrs**

II. Driving under the influence of a controlled substance or with any amount of a controlled substance in the body: 1st off or 2nd off (w/n 60 mos)-**Rev-1 yr<sup>2</sup>; Aggravated DWI offenses\*-Rev-3 yrs** §§28-1381(K)(4), 28-1382(F)(5), 28-1383(J)(1), 28-1387(D), 28-3304(A)(2), (8) & (9) and 28-3315

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

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

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

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

Mandatory Minimum Term of  
Withdrawal:

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Persons Under 18 Years Old. A person < 18 yrs old, who is convicted of either a DWI offense (under either §28-1381 or §28-1382 [0.15 offense]) or driving with any "spirituous liquor in their body" (under §4-244(33)), is subject a **susp for 2 yrs**. However, if they are convicted of an Aggravated DWI offense (§28-1383), they are subject to a **susp for 3 yrs**. This licensing actions is in addition to any other sanctions that may be imposed. This action is not mandatory. Restricted driving privileges are available. §28-3320

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

**ALL OFFENSES:** 1st off-90 con dys<sup>1&2</sup> 2nd off-1 yr<sup>2</sup> 3rd & sub off-3 yrs

1st or 2nd off-Yes<sup>3</sup> §28-1387(B)

1st, 2nd, 3rd or sub. offs-Yes<sup>3</sup> §28-1387(B)

See **Temporary Impoundment** on p. 3-29.

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

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

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

<sup>3</sup>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 completed such program. §28-3319(C)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥ 0.04 (For standards, see Footnote No. 2 on p. 3-23.) or (2) are under the influence of intoxicating liquor or a controlled substance. For a subsequent violation, the "disqualification" period is for life. However, for a 2nd violation, the "disqualification" period may be reduced to 10 yrs (mand). A CMV operator is subject to the normal DWI sanctions. Under the regular DWI law, it is illegal per se for a person to drive a CMV with a BAC/BrAC ≥ 0.04. Also, a CMV operator is subject to the sanctions and procedures of the admin. per se law if they operate a CMV with a BAC/BrAC ≥ 0.04. (Again, for BAC/BrAC standards, see Footnote No. 2 on p. 3-23.) §§28-101(2), 28-101(7), 28-1301, 28-1381(A)(4), 28-1385(A)(2)(b), 28-1501(3) & (5) and 28-3312 The State has also adopted Federal CDL disqualification (which are similar to the above actions) and out-of service provisions via §28-5204(B). Under these provisions, a person holding a CDL must be placed "out-of-service" for 24 hrs if they operate a CMV with any measurable or detectable amount of alcohol in their system. 49 CFR 383.51 & 392.5

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

Terms Upon Which Vehicle Will Be Released:	N/A
Other:	None

Miscellaneous Sanctions  
Not Included Elsewhere:

**Home Detention (Work Release).** Only 1st and 2nd DWI offenders (including 0.15 offenders) are eligible for the "home detention" (or work release) program. However, before starting this program 1st offenders must complete 24 con hrs in jail and 2nd offenders must complete 15 con dys in jail. §§9-499.07(N) and 11-459(M) & (R)

**Ignition Interlock.** The State licensing agency **SHALL** require (or the court **may** require) persons, who are convicted of the following offenses, to equip **all** the vehicles that they operate with "ignition interlock" devices for **12 mos** at the conclusion of the license susp/rev period or on the date of conviction whichever occurs later: (1) A 2nd drunk driving offense under §28-1381; (2) a 3rd or subsequent drunk driving offense under §28-1383 (Aggravated DWI); (3) a drunk driving offense where the offender is driving on either a suspended or revoked license for a prior DWI offense or a prior admin. per se violation (Aggravated DWI); (4) a 1st or 2nd 0.15 offense; and, (5) a drunk driving **child endangerment** offense. §§28-1381(K)(4), 28-1382(D)(5) & (F)(5), 28-1383(J)(1) and 28-3319(D) & (E)

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

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

**Prison Furlough.** Available for 3rd & sub. offenders §31-233  
**Drunk Driving Offenders (including 0.15 offenders) Under 18 Years Old.** 1st off-Incarceration for **24 con hrs**; sub off (w/n 60 mos)-Incarceration for **30 con dys** in a juvenile detention center or in the dept of juvenile corrections. In addition, 1st or sub offenders are subject to a fine of **\$100 to \$500** plus at least 80 hrs of community service. They must also undergo alcohol screening and may, depending upon the results of the screening, be required to attend an alcohol education or treatment program. §§8-232.01 and 8-343(A), (B) & (D)

Other Criminal Actions Related to DWI:Homicide by Vehicle:

State Has Such a Law:

No<sup>1</sup>

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. §§28-1704(1) &amp; 28-1715(D)(1)

Length of Term of

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

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

See Footnote No. 2 and Temporary Impoundment below.

Sanction:

Criminal:

Imprisonment (Term):

Cl 1 Misd-Not more than 6 mos Cl 4 Felony-Any DWI off and driving on a susp/rev lic. for a previous DWI conviction<sup>3</sup> (Aggravated DWI)-2½ to 12 yrs<sup>4</sup> §§13-701, 13-707, 13-801, 13-802, 28-1716, 28-1383 & 28-3473(B)Mandatory Minimum Term  
of Imprisonment:Cl 1 Misd off-48 cons hrs §28-3473(B) Cl 4 Felony off-4 mos §28-1383(D)

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

II. It is an "aggravating circumstance" for sentencing (incarceration) purposes for a person to commit either aggravated assault, negligent homicide, manslaughter or 2nd degree murder while driving with a BAC≥0.15. §13-702

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

<sup>3</sup>See "Forfeiture" under Vehicle Impoundment/Confiscation on p. 3-27.

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

**Temporary Impoundment.** An offender's vehicle may be immediately impounded for 30 dys if they have been arrested for either (1) driving while revoked where the revocation was for "any reason", (2) driving while suspended where the suspension was based on "a driving under the influence condition" (3) driving while suspended where the suspension was based on a drunk driving offense or (4) driving while suspended where the suspension was based on the frequency of traffic law violation convictions. §28-2511 However, the vehicle may be released prior to the end of the 30 dy period if either the offender's driving privileges have been reinstated or the offender's spouse enters into a 5 yr agreement with the State not to allow an "unlicensed driver" to operate the vehicle. §28-2512

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Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range):

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

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

Mandatory Minimum Fine:

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

Administrative Licensing Actions:

Type of Licensing Action  
(Susp/Rev):

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

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 yr of rev §28-3473(D) Cl 4 Felony-3 yrs §28-1383(I)

Mandatory Term of License

Withdrawal Action:

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

Habitual Traffic Offender Law:

State Has Such Law (Yes/No):

**No**

Grounds for Being Declared an  
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

**Yes §28-2642**

BAC Chemical Test Is Given to the  
the Following Persons:

Driver:

**Yes §28-2642**

Vehicle Passengers:

**No**

Pedestrian:

**No**

Other State Laws Related To Alcohol Use: (continued)Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

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

**21** (Yr Eff: 1985) §§4-101(16), 4-101(27) and 4-244(9) & (16)  
**21** There is an exemption for religious services or ceremonies.  
§§4-101(16), 4-101(27), 4-244(9) & 4-249  
**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:

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):  
"Dram Shop Law" Concept Has Been  
Adopted Via a Change to the Common  
Law Rule by Action of the Highest  
Court of Record in the State (Case  
Citation):

Yes §4-311<sup>1,2&3</sup>

Dram Shop Actions-Social Hosts:

Yes *Ontiveros v. Borak, et al.*, 667 P.2d 200 (Ariz. 1983)<sup>2&3</sup>, &  
*Brannigan et al. v. Ray Buck*, 667 P.2d 213 (Ariz. 1983)  
**Yes (Limited)** Liability is limited to the actions of intoxicated  
minors. §§4-301, 4-312(B), *Estate of Hernandez v. Board of  
Regents*, 866 P.2d 1330 (Ariz. 1994)\*, *Petolicchio v. Sanata Cruz  
County Fair*, 866 P.2d 1342 (Ariz. 1994), *Knoell v. Cerkenik-  
Anderson Travel, Inc.*, 891 P.2d 861 (Ariz.App. 1994), *Bruce v.  
Chas Roberts Air Conditioning, Inc.*, 801 P.2d 456 (Ariz.App.  
1990), *Keckonen v. Robles*, 705 P.2d 945 (Ariz.App. 1985), &  
*Andrews, Ex Rel. Woodward v. Eddie's Place*, 16 P.3d 801  
(Ariz.App. Div. 2 2000)<sup>3</sup>.  
**None**<sup>4</sup>

Other:

<sup>1</sup>The law, §4-311, limits liability to situations where the injury causing patron was either (1) "obviously intoxicated" or (2) "under the legal drinking age".

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

<sup>3</sup>In *Andrews*, the court noted that, within constitutional limitations, the legislature may either change or abrogate common law. However, the court went on to hold that the legislature did not specifically abrogate the holding in the *Ontiveros* decision. Thus, a person may bring a cause of action for damages either under the dram shop law or via common law negligence.

<sup>4</sup>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)

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

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Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

CI 1 Misd §§4-244(14) & 4-246(B)  
Not more than 6 mos §13-707(A)  
Not more than \$2,500 for individuals §13-802(A); not more than \$20,000 for businesses §13-803 Assessments. An offender is also subject to assessments which can be ≤60% of the fine imposed. §§12-116.01 & 12-116.02

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term of License Withdrawal:

Yes Susp or rev<sup>1</sup> §4-210(A)(9)  
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:  
Term of Imprisonment:  
Fine (\$ Range):

CI 1 Misd<sup>2</sup> §§4-244(9) & 4-246(B)  
Not more than 6 mos §13-707(A)  
Not more than \$2,500 for individuals §13-802(A); not more than \$20,000 for businesses §13-803 Assessments. An offender is also subject to assessments which can be ≤60% of the fine imposed. §§12-116.01 & 12-116.02

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

Yes Susp or rev<sup>1</sup> §4-210(A)(9)  
Length of term not fixed

Anti-Happy Hour Laws/Regulations:

Yes<sup>3</sup> §4-244(24)

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

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

Yes §4-251(A)(2)  
Yes Driver & passengers §4-251(A)(1)

<sup>1</sup>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

<sup>2</sup>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)

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

STATE:  
General Reference:

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Arkansas Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Intoxicated <sup>1</sup> §§5-65-102(1) & 5-65-103(a) <u>For Persons Under 21 Years Old-Under the Influence</u> <sup>1</sup> §5-65-303(a) See the Special Note below.
Illegal Per Se Law (BAC/BrAC):	≥0.08 <sup>2</sup> §§5-65-103(b) & 5-65-204(a) <u>For Persons Under 21 Years Old</u> >0.02 but <0.08 <sup>2</sup> §5-65-303(b) See the Special Note below.
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	Any Intoxicant <sup>3</sup> or Controlled Substance <sup>1</sup> §§5-65-102(1) & 5-65-103(a) <u>For Persons Under 21 Years Old-Under the Influence</u> <sup>1</sup> See the Special Note below.
Other:	For Commercial Motor Vehicle Operators, see p. 3-35.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	No <sup>4</sup> §§5-65-202 & 5-65-309(a)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §5-65-202
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) <i>Weaver v. City of Fort Smith</i> , 777 S.W.2d 867 (Ark. App. 1989), <i>Spicer v. State</i> , 799 S.W.2d 562 (Ark. App. 1990), & <i>Medlock v. State</i> , 964 S.W.2d 196 (Ark. 1998)

<sup>1</sup>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. §5-65-302(1)

<sup>2</sup>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 the chemical analysis provisions of the implied consent law, alcohol concentration means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§5-65-103(b), 5-65-104, 5-65-303(b) & 5-65-204(a)(1)

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

<sup>4</sup>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 ≥0.08. §5-65-202(a) A law enforcement officer can request a driver, who is under 21 years old, to submit to a chemical test (1) if the underage person has been arrested for any offense arising out of driving while under the influence or with a BAC ≥0.02 but <0.08, (2) if the underage person has been involved in an accident or (3) if a law enforcement officer has stopped the underage person based upon "reasonable cause to believe" that the underage person has been driving while under the influence or with a BAC >0.02 but <0.08. §5-65-309(a)

**Special Note:** Under §5-65-311(a), the sanctions for this offense are in addition to any other sanctions that may be applicable under other provisions of law. To complement this provision, §5-65-311(d) provides that a person under 21 years old may be prosecuted for a regular DWI offense if they have a BAC >0.05 but <0.08.

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Chemical Breath Tests for Alcohol Concentration:  
(continued)

Other Information:

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

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

Blood:	Yes <sup>1</sup>
Urine:	Yes <sup>1</sup>
Other:	None

Adjudication of DWI Charges:

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

Sanction for Refusal to Submit to a Chemical Test:

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

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	Persons Under 21 Years Old. <sup>4</sup> 1st off-\$100 to \$500 (and possible community service); 2nd off <sup>3</sup> -\$200 to \$1,000 and not less than 30 dys (mand) community service; 3rd or sub off <sup>3</sup> -\$500 to \$2,000 and not less than 60 dys (mand) community service §§5-65-305(a),5-65-306 & 5-65-110 Note: The minimum fines appear to be mandatory.
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<sup>1</sup>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) & 5-65-309(a)

<sup>2</sup>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 either pleaded guilty to or *non-contendere* to a 1st DWI offense, the court is prohibited from placing such persons on probation and later discharging the accused without adjudication after the probation period has been served. §5-65-108 For persons under 21 years old who have either pleaded guilty to or *nolo contendere* to a 1st offence of "driving while under the influence" or with a BAC of "≥0.02 but <0.08", the court is prohibited from placing such persons on probation prior to adjudication and discharging the accused without an adjudication of guilt and expunging the record. §5-65-308

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

<sup>4</sup>The fine is doubled if the offense is committed in a Highway Work Zone. §27-50-408(b)(1)(A) See Footnote No. 1 on p. 3-39.

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

Administrative Licensing Action  
(Susp/Rev):

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

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

Other:

None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment Term/Fine:

1st off-24 hrs to 1 yr/\$150 to \$1,000<sup>2</sup>; 2nd off (w/n 5 yrs)-7 dys-1 yr/\$400 to \$3,000<sup>2</sup>; 3rd off (w/n 5 yrs)-90 dys to 1 yr/\$900 to \$5,000<sup>2</sup>; 4th off (w/n 5 yrs)(Felony)-1 to 6 yrs/\$900 to \$5,000<sup>2</sup>; 5th and sub. offs (w/n 5 yrs)(Felony)-2 to 10 yrs/\$900 to \$5,000<sup>2</sup> §§5-65-111 & 5-65-112

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

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

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

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

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

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

Mandatory Minimum Term:

For Persons Under 21 Years Old who are convicted of "driving while under the influence" or with a BAC of  $\geq 0.02$  but  $< 0.08$  under §5-65-303: 1st off-\$100 to \$500; 2nd off<sup>1</sup>-\$200 to \$1,000; 3rd or sub off<sup>1</sup>-\$500 to \$2,000 §5-65-305(a) Note: There are no imprisonment sanctions for these offenses.

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

Mandatory Min. Fine (\$):

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

For Persons Under 21 Years Old who are convicted of "driving while under the influence" or with a BAC of " $\geq 0.02$  but  $< 0.08$ " under §5-65-303: 1st off-\$100; 2nd off<sup>1</sup>-\$200; 3rd or sub off<sup>1</sup>-\$500 §5-65-305(a) Note: These minimum fines appear to be mandatory.

**Special Note:** The sanctions that may be applied against a person under 21 years old, who is convicted of "driving while under the influence" or with a BAC of " $\geq 0.02$  but  $< 0.08$ ", are in addition to any other sanctions that may be applied against such an individual for any another offense committed under State law. §5-65-311(a)

Other Penalties:

Community Service:

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

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

III. For Persons Under 21 Years Old, who are convicted of "driving while under the influence" or with a BAC of  $\geq 0.02$  but  $< 0.08$  under §5-65-303 the court **shall** order public service work. 1st off-Time period is not specified; 2nd off-For not less than **30 dys (mand)**; 3rd of sub off-For not less than **60 dys (mand)** §5-65-306

Restitution

(eg, Victim's Fund)

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

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

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

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

Other:

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

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

See **Ignition Interlock** on p. 3-38.

**Yes<sup>1</sup> BAC/BrAC ≥ 0.08** (For standards, see Footnote No. 2 on p. 3-33.) or **While Intoxicated** (alcohol/drugs) 1st violation (BAC/BrAC ≥ 0.08 but < 0.15)-**Susp-120 dys<sup>2</sup>; 1st violation** (driving while intoxicated by a controlled substance)-**Susp-6 mos<sup>2</sup>; 1st violation** (BAC/BrAC ≥ 0.15)-**Susp-180 dys (mand) or 30 dys (mand) followed by restricted driving privileges<sup>2</sup> for 150 dys with ignition interlock use; 2nd violation** (BAC/BrAC ≥ 0.08) (w/n 5 yrs)-**Susp-24 mos (mand) or 1 yr (mand) followed by 12 mos of restricted driving privileges<sup>2</sup> with ignition interlock use; 3rd violation** (BAC/BrAC ≥ 0.08) (w/n 5 yrs)-**Rev-30 mos (mand) or 1 yr (mand) followed by 18 mos of restricted driving privileges<sup>2</sup> with ignition interlock use; 4th or sub violation** (BAC/BrAC ≥ 0.08) (w/n 5 yrs)-**Rev 4 yrs (mand)** §§5-65-104, 5-65-118, 5-65-120(b) & 5-65-402

For Persons Under 21 Years Old. "Driving while under the influence" or driving with a BAC/BrAC of "0.02 but < 0.08" under §5-65-303: 1st off-Susp 90<sup>2</sup>; 2nd off-Susp 1 yr (mand); 3rd or sub offs-Rev until the person reaches 21 or for 3 yrs whichever is longer (mand) §§5-65-120(b), 5-65-304(a) & (b) and 5-65-402

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

See Footnote Nos. 3 & 4.

Important. See the Special Note below.

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

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

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

<sup>4</sup>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

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

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

Mandatory Minimum Term of  
Withdrawal:

N/A

Other:

Rehabilitation:

Alcohol Education:

Yes §§5-65-104(h) & 5-65-115(a)<sup>1</sup>

Persons Under 21 Years Old, who either (1) are convicted of "driving while under the influence" or with a BAC  $\geq 0.02$  but  $< 0.08$  under §5-65-303 or (2) have refused to submit to a chemical test under 5-65-310, must complete an alcohol and driving education program. §5-65-307(a) This program must be completed before a person's license can be reinstated. §5-65-307(b) & (e)(1)

Alcohol Treatment:

Yes §5-65-115(a)<sup>1</sup>

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

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

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

Terms Upon Which Vehicle  
Will Be Released:  
Other:

N/A

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

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

Miscellaneous Sanctions  
Not Included Elsewhere:

**Ignition Interlock.** In addition to any other sanction for a DWI offense, the court (1) **may** for a 1st or 2nd off and (2) **must**, for a 3rd or sub off, if the offender can afford it, require them only to operate a motor vehicle equipped with an ignition interlock device. This requirement continues for up to 1 yr after the person's license is no longer suspended or revoked. However, if

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

<sup>2</sup>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.

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

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

Miscellaneous Sanctions  
Not Included Elsewhere: (continued)

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

**Highway Work Zone.**<sup>1</sup> The fine is **doubled** if the offense is committed in a Highway Work Zone. §27-50-408(b)(1)(A)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

I. Death caused by driving in a reckless or wanton manner in disregard of the safety of others (negligent homicide) - Class A Misdemeanor/Class C Felony<sup>2</sup> §27-50-307

II. Death caused by driving while intoxicated or with a BAC ≥0.08 (negligent homicide) - Class C Felony §5-10-105(a)

Sanctions:

Criminal Sanction:  
Imprisonment (Term):

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

Mandatory Minimum Term:  
Fine (\$ Range):

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

Mandatory Minimum Fine:  
Administrative Licensing Action:

**None**

Licensing Authorized and  
Type of Action:  
Length of Term of

**Rev** §§27-16-905(1) & 27-50-307(b)

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

**1 yr** §27-16-912

Other:

**1 yr** §§27-16-905(1) & 27-16-912

<sup>1</sup>An additional fine, which is equal to all of the other fines, is imposed for committing a "moving traffic violation" in a highway work zone when construction personnel are present. A "moving traffic violation" includes (1) driving while intoxicated, (2) under age driving while the influence and (3) refusal to submit to a chemical test. §27-50-408(b)(1)(A) & (e)

<sup>2</sup>**Comment:** Under §27-50-307, a person commits "negligent homicide" if they cause the death of another while operating motor vehicle in a reckless or wanton manner in disregard of the safety of others and provides that this offense "shall be included in and be a lesser degree of involuntary manslaughter." However, a "negligent homicide" offense, not related to drunk driving, is a Class A Misdemeanor (§5-10-105(b)) whereas, if such an offense is considered manslaughter, it would be a Class C Felony (§5-10-104(c)).

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Other Criminal Actions Related to DWI:  
(continued)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense\*:

See Footnote No. 1.

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 §27-16-303 Not more than \$1,000 if susp or rev is based on a DWI charge. §5-65-105

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

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

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

Length of Term of License

Withdrawal Action:

Original susp period is extended a like period. Original period of rev is extended 1 yr. §27-16-303

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):

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

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

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 §5-65-208(a)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes <sup>1</sup>
Vehicle Passengers:	Possible
Pedestrian:	Possible

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 <sup>2</sup> §§3-3-202 & 3-3-203 (Year Eff: 1935)
Minimum Age (Years) Possession:	21 <sup>2</sup> §§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 <u>shall not be</u> deemed to be in his possession."

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	The Arkansas Legislature has modified the holdings in the <i>Shannon</i> and <i>Jackson</i> cases noted below and has declared that, except in certain circumstances, the consumption of, rather than the service of, alcoholic beverages, is the proximate cause of injuries or property damage caused by intoxicated persons. §§16-126-103, 16-126-104 & 16-126-105 However, the State legislature has determined that "the knowing sale of alcoholic beverages by a retailer to a minor is contrary to the public policy of the State of Arkansas." §16-126-102
-------------------------------------	--

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

Yes<sup>3&4</sup> *Shannon v. Wilson*, 947 S.W.2d 349 (Ark. 1997), & *Jackson v. Cadillac Cowboy, Inc.*, 986 S.W.2d 410 (Ark. 1999)  
 No Social host liability is prohibited via statute. §16-126-106<sup>5</sup>

Dram Shop Actions-Social Hosts:

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

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

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

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

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

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Other State Laws Related To Alcohol Use:  
(continued)

Other:

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

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

Type of Criminal Action:

Term of Imprisonment:

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

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

Fine (\$ Range):

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

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

**Yes** Under certain conditions

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

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

Type of Criminal Action:

Term of Imprisonment:

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

Package Sales: (1) All alcoholic beverages except those noted below - (a) where "knowledge" is a factor<sup>3</sup>-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<sup>3</sup>-1st off-none;

<sup>1</sup>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).

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

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

Other State Laws Related To Alcohol Use: (continued)

Fine (\$ Range):

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

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

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

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

**Yes** Under certain conditions

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

See the Special Note concerning administrative fines below.

Anti-Happy Hour Laws/Regulations:

**No**

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

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

**No**

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

<sup>1</sup>State v. Jarvis, 427 S.W.2d 531 (Ark. 1968)

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

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

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STATE:

General Reference:

**CALIFORNIA**

West's Annotated California Codes

Basis for a DWI Charge:

See Bicycle Riders and Motorized Scooter Operators below.

Standard DWI Offense:

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

Illegal Per Se Law (BAC/BrAC):

≥ 0.08<sup>1,2&3</sup> Veh. Code §§23152(b) & 23153(b)

Presumption (BAC/BrAC):

≥ 0.08<sup>2</sup> Veh. Code §23610(a)(3)

Types of Drugs/Alcohol and Drugs:

Under the influence of (1) **Any Drug** or (2) a Combination of Alcohol and Any Drug<sup>4</sup> Veh. Code §§23152 & 23153

Other:

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

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Yes** Veh. Code §23612(h)<sup>5</sup> See Footnote No. 1 on p. 3-52.

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

Implied Consent Law:

Arrest Required (Yes/No):

**Yes** Veh. Code §23612

Implied Consent Law Applies to

Drugs (Yes/No):

**Yes** Veh. Code §23612(a)(1)

Refusal to Submit to Chemical Test

Admitted into Evidence:

**Yes** (Criminal & Civil Cases) Veh. Code §23612(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 Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:

**Yes** Veh. Code §23612

Urine:

**Yes (Limited)**<sup>6</sup> Veh. Code §23612

Other:

**None**

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

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

<sup>3</sup>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. *People v. Bransford*, 884 P.2d 70 (Cal. 1994)

<sup>4</sup>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

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

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

**Bicycle Riders and Motor Scooter Operators.** Bicycle riders and motor scooter operators are subject to the provisions of the drunk driving laws. Veh. Code §§21200(a) & 21221 Nevertheless, there are separate provisions that make it illegal either to ride a bicycle or to operate a motor scooter on a highway while under the influence of either alcohol or drugs. A person, who violates these provisions is subject to a fine of not more than \$250. Veh. Code §§21200.5 & 21221.5 In addition, for bicycle riders, the law provides that a rider ≥ 13 but < 21 yrs old, who violates Veh. Code §21200.5, is subject to license suspension under Veh. Code §13202.5 (See II under the Special Note on p. 3-52 for details on this license suspension.). Veh. Code §21200.5

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Adjudication of DWI Charges:

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

No

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

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

Yes<sup>1</sup> (Mand for sub offs) Veh. Code §§23646 se seq. and 23655

Sanctions for Refusal to Submit to a  
Chemical Test:

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

None

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

Other:

None

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

No

1st Refusal-Susp-1 yr (mand); 2nd Refusal (w/n 7 yrs)-Rev-2 yrs<sup>4</sup> (mand); 3rd Refusal (w/n 7 yrs)-Rev-3 yrs<sup>5</sup> (mand) Note: These sanctions also apply to persons under 21 yrs old, who are arrested for a violation of Veh. Code §23140 (driving with a BAC  $\geq 0.05$ ) and who refuse to submit to a test under the implied consent law. Veh. Code §§13353, 13353.4(a) & 23612  
See the Special Note on p. 3-49.

Other:

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

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

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

<sup>4</sup>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.

<sup>5</sup>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:

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

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

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

## Imprisonment/Fine:

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

Non-Injury DWI Off (with no previous DWI offs<sup>1</sup>-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<sup>1</sup> w/n 7 yrs-90 dys to 1 yr, \$390 to \$1,000

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

Non-Injury DWI Off (with three previous DWI offs<sup>1</sup> w/n 7 yrs-180 dys to 1 yr<sup>2</sup>, \$390 to \$1,000

See Felony/Misdemeanor below.

Injury Related DWI Off<sup>3</sup> (with no previous DWI offs)-90 dys to 1 yr, \$390 to \$1,000

Injury Related DWI Off<sup>4</sup> (with one previous DWI off<sup>1</sup> w/n 7 yrs)-120 dys to 1 yr<sup>2</sup>, \$390 to \$5,000;

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

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

<sup>1</sup>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 §23103) instead of a DWI charge is also considered a previous DWI offense. Veh. Code §23103.5(c)

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

<sup>3</sup>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 §23558

<sup>4</sup>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 §23566(b)

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

**Prior Drunk Driving Felony Offenses.** A person, either (1) who has been convicted either of a drunk driving offense (injury or non-injury offense) with a prior conviction w/n 10 yrs either for a felony drunk driving offense (injury or non-injury) or for a felony vehicle manslaughter offense related to drunk driving with gross negligence or (2) who has been convicted of a drunk driving offense (injury or non-injury offense) with a prior conviction either for a "gross vehicular manslaughter while intoxicated" offense or for a felony vehicle manslaughter offense related to drunk driving without gross negligence is subject to the following sanctions: (1) Incarceration in either a county jail or State prison for not more than 1 yr (or incarceration in the county jail from 180 dys to 1 yr if probation is granted) (either 48 con hrs or 10 dys of community service are mandatory); (2) a fine of not less than \$390 nor more than \$1,000; and, (3), unless a longer period would otherwise apply, license revocation for 4 yrs (24 mos mandatory with restricted driving after this period provided the offender participates in either a 18 or 30 month alcohol rehabilitation program). Veh. Code §§13352(a)(7), 23550.5, 23552, 23580 & 23600 See I under Miscellaneous Sanctions on p. 3-54.

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

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

Mandatory Minimum Term:

Non-Injury DWI off (with no previous DWI offs)-None<sup>1</sup>  
Non-Injury DWI off (with one previous DWI off w/n 7 yrs)-96 hrs  
(w/2 continuous periods of 48 hrs) <sup>1&2</sup>  
Non-Injury DWI off (with two previous DWI offs w/n 7 yrs)-30  
dys<sup>1&2</sup>  
Non-Injury DWI off (with three or more previous DWI offs w/n 7  
yrs)-180 dys<sup>1&2</sup>  
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<sup>2</sup>  
Injury related DWI off (with two or more previous DWI offs w/n 7  
yrs)-30 dys<sup>2</sup> 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

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

<sup>2</sup>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 alcohol incentive grant funds under 23 USC §408: One period of 48 con. hrs of imprisonment (jail, minimum security facility or inpatient rehabilitation facility) or 10 dys of community service. Veh. Code §23580 Note: The U.S. Congress has not authorized and appropriated funds for this grant program since 1994. As a result, the U.S. Dept. of Trans. has withdrawn the regulations, 23 CFR Part 1309, that implemented this program. 61 FR 23427 (May 13, 1996)

**Double Fines.** The law provides that the fine sanction is to be **double** the amount otherwise prescribed by law for persons, who commit a drunk driving offense on the segments of certain highways. The prescribed sanction applies on (1) Route 37, between the intersection with Route 121 and the intersection with Route 29, (2) Route 4, between the intersection with Cummings Skyway and the intersection with Route 80, (3) Route 74, (a) between the intersection with Route 5 and the intersection with the Riverside-Orange County line and (b) between the junction with Route 15 and the intersection with Seventh Street in the City of Perris, (4) Route 46, between the intersection with Route 101 and the junction with Route 41, (5) the Golden Gate Bridge, (6) Route 12, between the intersection with Walters Road in the City of Suisun and the intersection with Lower Sacramento Road in the City of Lodi, (7) Route 138, between the intersection with Avenue T and Pearblossom Highway and the intersection with Interstate Highway Route 15, (8) Route 101, between the intersection with Boronda Road and the intersection with the Benito-Monterey County Line, (9) Route 152, between the junction with Route 156 at the Don Pacheco "Y" and the intersection with Ferguson Road, (10) Route 2, between the city limits of La Canada Flintridge and the intersection with Route 39 and (11) County Road 16 (Carmel Valley Road) between the junction with Route 1 and the junction with Camp Stefani Road. Note: Additional forfeitures or assessments, which are based on the fine imposed, are to be calculated using only the base fine prior to the above enhancement. Streets and Highways Code §97(a) & (f)(1) and Veh. Code §42010 These sections are repealed January 1, 2004.

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

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

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

Other Penalties:

Community Service:  
Restitution (e.g., Victim's Fund)

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 below.

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

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

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

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. Gov't. Code §§53150 et seq.

**Juvenile Offenses Involving Alcohol.** I. Under Veh. Code §§23140, it is unlawful for a person under 21 yrs old to operate a motor vehicle if they have a BAC  $\geq 0.05$  (Standard: Percent by weight of alcohol in the blood). This statute was (1) held not to violate constitutional principles of equal protection of the laws and (2) was determined not to be constitutionally vague. *People v. Goslar*, 82 Cal.Rptr.2d 558 (Cal. App. 4 Dist. 1999) II. Offenders < 18 years old must participate in at an alcohol program for at least 3 months consisting of a minimum of 30 hours of activities (e.g., education, group counseling and individual interview sessions). Offenders  $\geq 18$  years old must complete a driving-under-the-influence program and are subject to license suspension until they complete such a program.

However, 1st offenders  $\geq 18$  yrs old only have to complete the education component of such program. Health and Safety Code §§11836 & 11837(c)(1) and Veh. Code §§13352.6 & 23502 **Licensing Action:** ALL persons < 21 years old, are subject to administrative license suspension if the operate a motor vehicle with a BAC  $\geq 0.05$ . See p. 3-51 for details. **Special Note:** A person under 21 years old who violates the regular DWI laws must also participate in either an alcohol education or rehabilitation program. Veh. Code §23520 If such person fails to complete such programs, their license may be either suspended or revoked until they either show proof of completion or until they are 21 years old. Veh. Code §24508

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

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is prohibited from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if they are convicted of driving a CMV while under the influence of alcohol or a controlled substance. For a subsequent conviction of driving A CMV while under the influence of alcohol or a controlled substance, a person is prohibited from operating such a vehicle for life. A person, who refuses to submit to a chemical test while operating a CMV, is subject to licensing sanctions (including license sanction enhancements) under the implied consent law; however, if they were transporting hazardous materials, the susp is for 3 yrs (mand). A CMV operator must be placed "out-of-service" for 24 hrs if they have a BAC  $\geq 0.01$  (Standard: Percent by weight of alcohol in the blood.). A CMV operator commits a DWI offense if they operate a CMV with a BAC/BrAC  $\geq 0.04$  (For standards, see Footnote No. 2 on p. 3-45.); a conviction for this offense subjects the offender to the same sanctions as would a conviction for any other DWI offense. Veh. Code §§13353(a), 15210(b) & (d), 15300, 15302, 23152(d), 23153(d) and 34501.15(a) Note: A person, who has been injured in a traffic accident caused by an intoxicated CMV operator, may recover treble damage from the operator's employer if the employer has "willfully failed" to comply with Federal CMV regulations related to alcohol use and controlled substances testing. Civil Code §3333.7(a) and Vehicle Code §34520(a)

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

Other (continued):

**EMS Cost.** (continued) Note: The law does not specifically require a DWI offense conviction as a condition of liability.

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

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

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

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

Heightened consideration is to be given to offenders with a BAC ≥0.20. Veh. Code §23575(a)(1)

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

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

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

<sup>1</sup>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)

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

See the Special Note below and Double Jeopardy on p. 3-47.  
**Yes** Persons 21 Years Old and Above-BAC ≥ 0.08<sup>1</sup> or Persons Under 21 Years Old-BAC ≥ 0.05/0.01<sup>1</sup> (See the Comment on p. 3-52.) 1st violation-Susp 4 mos (mand for persons under 21 years old) A person 21 yrs old and above, who participates in an alcohol education or treatment program, is subject to a mand license susp for 30 dys followed by restricted driving privileges, except as noted, for 60 dys for the purpose of either participating in the program or going to and from a place of employment. Following successful completion of the program, "unrestricted" driving privileges may be granted after the 60 dy restricted driving privileges. However, if the restricted license is used to go to and from a place of employment, the suspension with restrictions must be for 6 mos. Veh. Code §13353.7 2nd & sub. violations<sup>2&3</sup> (w/n 7 yrs)-Susp 1 yr (mand) Veh. Code §§13353.2, 13353.3 13353.4(a), 13380 & 13382 See Footnotes No. 4, 5, 6 & 7.

Other:

**Under Separate Provisions of Law, Persons Under 21 Years Old** are subject to a, **susp for not less than 1 yr** (30 dys mand) if a "preliminary breath test"<sup>4</sup> or "other chemical test" result indicates a "blood-alcohol concentration" ≥ **0.01**. After the mandatory susp period, restricted driving privileges are available based upon a critical need to drive. Veh. Code §§13353.3(b)(3), 13353.8, 13390 & 23136

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

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

<sup>2</sup>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 (appears to include any previous type of admin. per se action). Veh. Code §13353.3(b)(2)

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

<sup>4</sup>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. *Gikas v. Zolin*, 863 P.2d 745 (Cal. 1993), *Agresti v. Dept. of Motor Vehicles*, 7 Cal.Rptr.2d 353 (Cal.App. 5 Dist. 1992), & *Helmandollar v. Director, DMV*, 9 Cal.Rptr.2d 155 (Cal.App. 3 Dist. 1992)

<sup>5</sup>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(c)

<sup>6</sup>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)

<sup>7</sup>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)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Special Note:** There are two provisions of the California Vehicle Code that provide for special licensing sanctions against minors who violate the DWI laws. I. Under Veh. Code §13352.3, a person, who is < 18 yrs old and who is convicted of an alcohol driving offense, is subject to a license revocation (1) until they are 18, (2) for 1 yr or (3) per Veh. Code §13352 whichever period is longer. II. Under Veh. Code §13202.5, a person, who is  $\geq 13$  but < 21 years old and who is convicted either of a DWI (alcohol or drugs) offense or of a vehicle manslaughter offense, is subject to a license suspension for one (1) year. However, such person may be eligible for restricted driving privileges based on "a showing of a critical need to drive" (Veh. Code §13202.5(c)).

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

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

See the Special Note on p. 3-49.

Non-Injury DWI Off (with no previous DWI offs)-6 mos;  
Non-Injury DWI Off (with one previous DWI off w/n 7 yrs)-2 yrs;  
Non-Injury DWI Off (with two previous DWI offs w/n 7 yrs)-3 yrs<sup>1</sup>;

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

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

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

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

Mandatory Minimum Term of  
Withdrawal:

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

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

Non-Injury DWI Off (with two previous DWI offs w/n 7 yrs)-18 mos<sup>4</sup>;

Non-Injury DWI Off (with three or more previous DWI offs w/n 7 yrs)-24 mos<sup>4</sup>;

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

Injury Related DWI Off (with one previous DWI off w/n 7 yrs)-18 mos<sup>5</sup>;

Injury Related DWI Off (with two or more previous DWI offs w/n 7 yrs)-30 mos<sup>4</sup>

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

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

<sup>1</sup>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)

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

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

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

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

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

Other:

Rehabilitation:  
Alcohol Education:

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

Conditions of probation, which normally provide for a reduced period of incarceration, usually require a defendant to participate in an alcohol education/rehab. program for any DWI off conviction.<sup>1a2</sup> Veh. Code §§23161, et seq. and 13352 Note: a person convicted of a first DWI offense in a juvenile court must participate in and complete either an alcohol or drug education program. Veh. Code §§23154, 23538 & 23556 and Health and Safety Code §11837(a), (c) & (d)

**Yes** See Alcohol Education above.

**Important:** There are two vehicle impoundment laws.

Alcohol Treatment:  
Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

**Impoundment.**<sup>3</sup> A vehicle owned and driven by the offender may be impounded as follows for a DWI off (non-injury/injury): 1st or 2nd offs (w/n 5 yrs)-1 to 30 dys; subsequent offs (w/n 5 yrs) -1 to 90 dys Veh. Code §23594

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

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

Terms Upon Which Vehicle  
Will Be Released:

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

Other:

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

Miscellaneous Sanctions  
Not Included Elsewhere:

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

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

<sup>2</sup>1st offenders who have been placed on probation and who, at the time of the offense had either a BAC  $\geq 0.20$  or refused to submit to a chemical test, must be placed in a alc. education/counseling program for at least 6 months. Health & Safety Code 11837(c)(2)

<sup>3</sup>Under this impoundment/forfeiture law, no vehicle may be impounded or forfeited if another person has a community property interest in the vehicle and if it is the sole vehicle available to the defendant's immediate family. Veh. Code §§23594 & 23596

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

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

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

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Sanctions:

Criminal Sanction:

Imprisonment (Term):

See the Special Note below.

Yes Veh. Manslaughter<sup>1</sup> Penal Code §§17 191.5, 192(c) & 193

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

1. Death caused by driving a motor veh. not involving alcohol/drugs: a. with gross negligence - 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 §§23140<sup>2</sup>, 23152 or 23153: a. with gross negligence - **4, 6, or 10 yrs<sup>2&4</sup>**; b. without gross negligence - Not more than **1 yr** in the county jail (or **16 mos, 2 or 4 yrs** in the State prison)<sup>3</sup>.

None

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

None

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 §§23140<sup>2</sup>, 23152 or 23153: a. with gross negligence - **Rev - 3 yrs** (mand); b. without gross negligence - Same lic susp/rev

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

<sup>2</sup>Note: Veh. Code §23140 makes it illegal for a person under 21 years old to operate a motor vehicle with a BAC  $\geq 0.05$ .

<sup>3</sup>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

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

**Special Note:** I. 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. II. Gross vehicle manslaughter while intoxicated is not a lesser included offense of murder. As a result, a person can be tried for both offenses. *People v. Sanchez*, 16 P.3d 118 (Cal. 2001)

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Other Criminal Actions Related to DWI: (continued).

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

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

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

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

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

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

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

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

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

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

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

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

**Special Note:** The following sanctions apply if a person was driving while their license was either suspended or revoked and where the basis for the licensing action was either an implied consent refusal or an admin. per se violation. 1st off: Jail-Not more than **6 mos**; fine-**\$300<sup>4</sup> to \$1,000** Subsequent off (w/n 5 yrs)<sup>5</sup>: Jail-**10 dys (mand) to 1 yr**; fine-**\$500<sup>4</sup> to \$2,000** Veh. Code §14601.5 See Vehicle Forfeiture above.

Other:

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

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

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

Grounds for Being Declared an

Habitual Offender:

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

Term of License Rev While

Under Habitual Offender Status:

**None**

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

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

Sanctions Following a Conviction of

Driving While on Habitual Offender Status:

Imprisonment (Term):

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

<sup>1</sup>w/n 7 yrs

<sup>2</sup>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. Veh. Code §14601.3(a)

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Other Criminal Actions Related to DWI: (continued)

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

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

None

For "habitual traffic offender" status based on veh. homicide or DWI offenses: **\$2,000**

For "habitual traffic offender" status based on vehicle operation while susp/rev and after accumulating a "driving record": 1st off-\$1,000; 2nd and sub off (w/n 7 yrs)-**\$2,000**

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

None

None

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):  
BAC Chemical Test Is Given to the  
the Following Persons:

Yes Govt. Code §27491.25

Driver:

Yes

Vehicle Passengers:

Yes

Pedestrian:

Yes

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

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

21 Bus. & Prof. Code §§25658 & 25662 (Year Eff: 1933)

21 Possession in a public place; exception, possession under 21 is legal if the minor is acting via a parent's order. Bus. & Prof. Code §§25658 & 25662

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).

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:

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

Other:

A social host is not liable for the injuries sustained by an intoxicated guest. Civil Code §1714(c)

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

Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

Misd Bus. & Prof. Code §25602  
Not more than 6 mos Bus. & Prof. Code §25617  
Not more than \$1,000 Bus. & Prof. Code §25617  
See Special State Penalty (Fine) and Special County Penalty (Fine) on p. 3-50.

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term of License Withdrawal:

Yes susp or rev Bus. & Prof. Code §24200  
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:  
Term of Imprisonment:  
Fine (\$ Range):

See Footnote No. 1.  
Misd Cal. Const. Art. 20, §22 and Bus. & Prof. Code §25658(a)  
None<sup>2</sup>  
\$1,000 (mand) Bus. & Prof. Code §25658(e)(2)  
See Special State Penalty (Fine) and Special County Penalty (Fine) on p. 3-50.

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

Yes susp or rev Bus. & Prof. Code §§24200 & 25658.1(b)  
The length of susp/rev is not fixed by statute.

Anti-Happy Hour Laws/Regulations:

No

<sup>1</sup>A defendant must also perform at least 24 hrs of community service. Bus. & Prof. Code §256580(e)(2)

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

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Other State Laws Related To Alcohol Use: (continued)

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

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

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

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

STATE:  
General Reference:

**COLORADO**  
Colorado Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:

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

Illegal Per Se Law (BAC/BrAC):

II. Impaired by the consumption of alcohol §42-4-1301(1)(b)  
≥ 0.10<sup>1&2</sup> §42-4-1301(2)(a)

Presumption (BAC/BrAC):

Persons Under 21 Years Old-BrAC only ≥ 0.02 but < 0.05<sup>2</sup> (CI A  
Traffic Infraction) §42-4-1301(2)(a.5)

Types of Drugs/Drugs and Alcohol:

> 0.05 but < 0.10<sup>2</sup>-Driving while impaired; ≥ 0.10<sup>2</sup>-Driving under  
the influence §42-4-1301(5)(b) & (c)

Other:

(1) **Any Drug** or (2) a Combination of Alcohol and Drugs<sup>3</sup> (applies  
to both driving under the influence and driving while impaired)  
§§42-4-1301(1)(a) & 42-4-1301(1)(b)

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

It is an offense for habitual drug uses to operate a motor vehicle.

The sanctions for this offense are the same as for driving while  
under the influence. §42-4-1301(1)(c) & (9)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes §42-4-1301(6)

Implied Consent Law:

See Footnote No. 4.

Arrest Required (Yes/No):

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

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §42-4-1301(7)(a)(III)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) §42-4-1301(7)(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. §42-4-1301(7)(a)(IV) &  
*People v. Shepherd*, 906 P.2d 607 (Colo. 1995)

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

Blood:

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

Urine:

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

Other:

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

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

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

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

<sup>3</sup>A "drug" is defined as either (1) a substance, that is intended to cure or prevent disease, listed in the U.S. Pharmacopoeia, (2) a controlled substance or (3) toxic vapor or vapors including, but not limited to, glue sniffing and aerosol inhalation. §§12-27-303(7) & (13) and 42-4-1301(1)(d)

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

**COLORADO**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No Note: Deferred prosecution or deferred sentence of drunk driving offenses is available. §§16-7-401 & 16-7-403  
Yes<sup>1</sup> §42-4-1301(8) §

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

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

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):  
Administrative Licensing Action  
(Susp/Rev):  
Other:

No

No

None

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):  
Administrative Licensing Action  
(Susp/Rev):

None

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

Other:

None

Sanctions Following a Conviction for a DWI Offense:

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

Criminal Sanctions:

See Double Jeopardy below.

**Important.** See Sanctions for Driving with BAC/BrAC  $\geq 0.20$  under Miscellaneous Sanctions on p. 3-66.

Imprisonment:

Term (Day, Months, Years  
Etc.):

Driving under the influence/illegal per se, 1st Off (Misd)-5 dys to 1 yr; 1st Off<sup>3</sup>-70 dys to 1 yr; sub. off or BAC/BrAC  $\geq 0.20$  -90 dys to 1 yr; Driving while impaired (Misd)-1st Off-2 dys to 180 dys; 1st Off<sup>4</sup>-60 dys to 1 yr; sub off -45 dys to 1 yr §42-4-1301(9)  
Injury Related DWI Off (Vehicle Assault) (Class 4 Felony)-2 to 6 yrs (4 to 12 yrs if the victim was a pregnant woman)  
§§18-1-105(1)(a)(V)(A) & (13) and 18-3-205

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

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

<sup>3</sup>But where there has been a conviction for a driving while impaired off.

<sup>4</sup>But where there has been a conviction for a driving while under the influence off/illegal per se.

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

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

Mandatory Minimum Term:	<u>Driving Under the Influence/Illegal per se-1st off-1st off-None<sup>1</sup>; 1st off<sup>2</sup>-70 dys (7 dys<sup>3</sup>); sub off or BAC/BrAC ≥0.20-90 dys (10 dys<sup>3</sup>); Driving While Impaired-1st off-2 dys<sup>4</sup>; 1st off<sup>4</sup>-60 dys (6 dys)<sup>3</sup>; sub. off-45 dys (5 dys<sup>3</sup>)</u> §42-4-1301(9)
Fine: Amount (\$ Range):	See Miscellaneous Sanctions on p. 3-66. <u>Driving under the influence/illegal per se, 1st Off-\$300 to \$1,000; 1st Off<sup>2</sup>-\$450 to \$1,500; sub off or BAC/BrAC ≥0.20 - \$500 to \$1,500; Driving while impaired, 1st Off- \$100 to \$500; 1st Off<sup>4</sup>-\$400 to \$1,200; sub off-\$300 to \$1,000</u> §42-4-1301(9) <u>Injury Related DWI Off (Vehicle Assault) (Class 4 Felony)-\$2,000 to \$500,000</u>
Mandatory Minimum Fine (\$):	None
Other Penalties: Community Service:	<u>Driving under the influence/illegal per se, 1st Off-48 to 96 hrs (48 hrs mandatory); 1st Off<sup>2</sup>; -56 to 112 hrs (56 hrs mand); sub off or BAC/BrAC ≥0.20 -60 to 120 hrs (60 hrs mand), Driving While Impaired, 1st Off-24 to 48 hrs (24 hrs mand); 1st Off<sup>2</sup>-52 to 104 hrs (52 hrs mand); sub off-48 to 96 hrs (48 hrs mand)</u> §42-4-1301(9) Persons assigned to community service must pay fee of no more than \$60; this is used to keep the community service self-supporting and to purchase insurance. §42-4-1301(9)(g)(V)
Restitution (eg, Victim's Fund):	<u>Yes I. A victims' compensation fund</u> §24-4.1-100.1 et seq. <u>II. A defendant may be ordered to pay restitution as part of their sentence.</u> §16-18.5-101 et seq. Also, as a condition of probation a drunk driving defendant <b>shall</b> be required to make restitution. §42-4-1301(9)(h)
Other:	<b>Mandatory Parole.</b> Persons, who have been convicted of Vehicle Assault must be placed on parole for 3 yrs. §18-1-105 <b>Child Abuse (Child Endangerment).</b> A person is guilty of child abuse if they knowingly or reckless commit an act that either kills or injures a child (a person < 16 yrs old). A person commits a CI 2 felony where death results from such child abuse and is subject to imprisonment from 8 to 24 yrs and/or a fine from \$5,000 to \$1,000,000. A person commits a CI 3 felony where injury results from such child abuse and is subject to imprisonment from 4 to 12 yrs and/or a fine from \$3,000 to \$750,000. For either felony, there is mandatory parole for 5 yrs. §§18-1-105(1)(a)(III) & (V)(A) and 18-6-401(1), (2), (7)(a)(I) & (III) A drunk driving offender is guilty of child abuse if they either kill or injure a child who is riding in <u>another</u> vehicle that is involved in a collision with the offender's vehicle at the time of the offense. <i>People v. Deskins</i> , 927 P.2d 368 (Colo. 1996)

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

<sup>2</sup>But where there has been a conviction for a driving while impaired offense.

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

<sup>4</sup>But where there has been a conviction for a driving while under the influence or illegal per se.

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

Administrative Licensing Actions:  
Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

Post DWI Conviction Licensing Action:

Type of Licensing Action  
(Susp/Rev):

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

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

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

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

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

Driving while under the influence and illegal per se, 1st off-Susp<sup>1</sup> Not less than 1 yr; Driving while impaired, 1st off-1 yr<sup>2,3,4,5,6</sup> §§42-2-125(1)(b), (g) & (i), 42-2-127(9)(a) and 42-2-132 Injury Related DWI Off (Vehicle Assault) - 1 yr §§42-2-125(1)(a) & 42-2-132(2)(a)

<sup>1</sup>The revocation periods for admin. per se violations are mandatory unless a person participates in the "ignition interlock" program (under §42-2-126.1). Such a participant is eligible for probationary driving privileges after the following mandatory revocation periods: 1st violation-1 mo; and, 2nd or sub violation-3 mos See Ignition Interlock Program on p. 3-65.

<sup>2</sup>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. §§42-2-127(1)(a), (5), (12) & 14) and 42-2-132(1)

<sup>3</sup>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 §§42-2-125(1)(g) & 42-2-132(2) A conviction for either an impaired, under the influence of illegal per se influence or illegal per se off where there has been two previous alcohol driving off convictions of any type -- Rev §42-2-125(1)(i)

<sup>4</sup>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. §§42-2-125(1)(g) & 42-2-132(2) A conviction for either an impaired, under the influence of illegal per se influence or illegal per se off where there has been two previous alcohol driving off convictions of any type -- Revocation for an indefinite period. §42-2-125(1)(i)

<sup>5</sup>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. §§42-2-125(1)(b) & (2) and 42-2-132(2)

<sup>6</sup>For a 1st off, a person <21 yrs old or a provisional driver must have their license revoked for 1 yr. §§2-4-402(b), 42-2-125(g) & 42-2-132(2)

**Special Note:** The administrative per se law does not violate a person's constitutional right to due process of law. *Nefizger v. Department of Revenue*, 739 P.2d 224 (Colo. 1987)

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

Mandatory Minimum Term of  
Withdrawal:

Driving while under the influence and illegal per se, 1st off-None<sup>1</sup>;  
Driving while impaired, 1st off-None See Footnote Nos. 2 and 3.  
Injury Related DWI Off (Veh. Assault)-1 yr

Other:

Rehabilitation:

Alcohol Education:

Yes<sup>4</sup> §42-4-1301(9)

Alcohol Treatment:

Yes<sup>4</sup> §42-4-1301(9)

<sup>1</sup>A 1 yr probationary-restricted license may be issued for reasons of employment/alcohol education, et al. This license is renewal for additional 1 yr periods. §42-2-127(12) & (14)

<sup>2</sup>**Special Note:** If the first offender is a minor, a person under 21 yrs old (§2-4-402(b)), their license must be revoked for a 1 yr period. §§42-2-125(1)(g) & 42-2-132(2)

<sup>3</sup>I. A conviction for either an impaired, under the influence, or illegal per se off where there has been a previous alcohol driving off conviction of any type w/n a 5-yr period-**Rev 1 yr (1 yr mand)** notwithstanding the person's participation in an ignition interlock program). §§42-2-125(1)(g) & (2.3), 42-2-126.1(1) & (1.5) and 42-2-132(2) II. A conviction for either an impaired, under the influence of illegal per se influence or illegal per se off where there has been two previous alcohol driving off convictions of any type-**Rev 2 yrs (1 yr mand)** notwithstanding the person's participation in an ignition interlock program). §42-2-125(1)(i) & (2.3) and *Rogers v. Dept. of Revenue*, 841 P.2d 369 (Colo.App. 1992) See "**Ignition Interlock**" below.

<sup>4</sup>Administrative Per Se Licensing Action w/BAC ≥0.20-Alcohol Education or Treatment Program. §§42-2-126(7)(c)(II) & 42-2-132(2)(a)(II)(B)

**Ignition Interlock Program w/Restricted License (§42-2-132.5).** I. For either (1) an impaired, under the influence or illegal per se offense or (2) an habitual offender offence related to one of these alcohol offenses where there has been a previous alcohol driving offense conviction of any type w/n a 5-yr period, an offender **must** have installed ignition interlock devices on the vehicles they operate **and** are required to hold a restricted licensed license for at least **1 yr** prior to full license reinstatement. See also §42-2-125(2.3) & (2.4) and 42-4-1301(9)(g)(III). II. Early Reinstatement (§42-2-132.5(1.5) repealed July 1, 2002). A person, who has had their driving privileges revoked for more than 1 yr either (1) for driving while either impaired, under the influence or illegal per se or (2) for an admin. per se violation, is eligible for early license reinstatement with driving restrictions with the use of an ignition interlock device. The restrictions remain in effect for "the longer of one year or the total time period remaining on the license restraint prior to early reinstatement."

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person's privilege (i.e., their CDL) to operate a CMV is "revoked" for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration or drug content. (Note: For a 1st offense of operating a CMV "while under the influence of alcohol", the normal DWI license suspension sanctions apply. As a result, a person may be eligible for a probationary license for this offense. However, a person is not eligible for "probationary CDL" in circumstances where they operated a CMC with a BAC ≥0.04 but <0.10). For a either (1) a subsequent violation or (2) a combination of two or more violations of either driving while under the influence of alcohol or of any of the above listed items, the CDL is "cancelled" for life (10 yrs mand). In addition, a person who has any alcohol in their system is placed "out-of-service" for 24 hours. §§42-2-125(1)(b) & (2), 42-2-126(2)(a)(II) & (III), (6)(b)(III), (6)(b)(IV), (6)(b)(V) & (7)(a)(I), 42-2-127(1)(a) & (5)(b), 42-2-402(4) & (8) and 42-2-405 Persons <21 Years Old. A person <21 yrs old, who operates CMV with a BrAC only ≥0.02 but <0.04 (Standard: Grams of alc. per 210 liters of breath.), is subject to the following license revocations: 1st off-3 mos (30 dys mand with restricted driving privileges for the remainder of the revocation period); 2nd off-6 mos (mand); and 3rd or sub off-1 yr (mand). §42-2-126(2)(a)(IV) & (6)(b)

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

Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority: Terms Upon Which Vehicle Will Be Released: Other:	None
Miscellaneous Sanctions Not Included Elsewhere:	<p>I. A DWI offender may be sentenced to attend a "victim impact panel" for which they may be assessed a fee of not more than \$25. §42-4-1301(9)(h)</p> <p>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)</p> <p>III. A DWI offender is assessed the "cost" for alc/drug evaluation and supervision services. §42-4-1301(10)(d)</p> <p>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)</p> <p>V. <b>Traffic School.</b> A person, who violates the State's traffic laws, may be ordered by the court to attend a course of instruction on traffic laws, hazardous driving situations and accident prevention. §42-4-1717</p> <p>VI. <b>Sanctions for Driving with BAC/BrAC <math>\geq 0.20</math>.</b> If a driving while under the influence is reduced to driving while impaired but the defendant's BAC/BrAC was <math>\geq 0.20</math>, the sanctions imposed must, nevertheless, be for the former (greater) offense. §42-4-1301(9)(b)(IV)</p> <p>VII. <b>Persistent Drunk Driver Surcharge.</b> All drunk driving law offenders must pay a surcharge of <b>not less than \$25 nor more than \$500</b> to fund the Persistent Drunk Driver Cash Fund. §42-4-1301(9)(g)(II)</p> <p>VIII. DWI offenders must pay a fee of <b>\$25</b> which is deposited into the <u>crime victims compensation fund</u>. §24-4.1-119(c)</p>

**Persons Under 21 Years Old.** I. Infraction. A person <21 yrs old, who operates a motor vehicle with a BAC/BrAC  $\geq 0.02$  but  $\leq 0.05$  commits a CI A Traffic Infraction and is subject to a fine of **\$50**. §42-4-1301(2)(a.5) & 42-4-1701(4)(a)(I)(N) In addition, a person, who has been convicted of this offense is subject to license revocation for the following periods: 1st off-3 mos (30 dys mand with restricted driving privileges for the remainder of the revocation period); 2nd off-6 mos (mand); and 3rd or sub off-1 yr (mand). §42-2-125(1)(g.5), (2.5) & (2.7) II. Administrative Action. A person <21 yrs old, who operates a motor vehicle with either a BAC/BrAC  $> 0.05$  but  $< 0.10$  (Standards: Grams of alcohol per 100 milliliter of blood or grams of alcohol per 210 liters of breath.) or BAC (via breath analysis only)  $\geq 0.02$  but  $< 0.05$  (Standard: Grams of alcohol per 100 milliliter of blood.) is subject to license revocation via independent administrative action. §42-2-126(2)(a)(I.5) & (I.7) Via such action, a person's license is subject to license revocation for the following periods: 1st off-3 mos (mand) (However, if the person's BAC/BrAC was  $\leq 0.05$ , they are only subject to a 30 dys mand rev with suspension and restricted driving privileges for the remainder of the 3 mon period.); 2nd off-6 mos (mand); and 3rd or sub off-1 yr (mand). §42-2-126(6)(b) III. A person under 21 yrs old, who has been convicted of driving a motor vehicle with a BAC/BrAC  $\geq 0.02$  but  $\leq 0.05$ , has 5 points assessed against their driving record. §42-2-127(5)(b)(IV)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Reckless Driving Vehicle Homicide **Cl 4 Felony** §18-3-106(1)(a) & (c)

DWI Vehicle Homicide<sup>1</sup> **Cl 3 Felony** §18-3-106(1)(b) & (c)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Cl 4 Felony-presumptive range-**2 to 6 yrs** (4 to 12 yrs if the victim was a pregnant woman) §18-1-105(1)(a)(V)(A) & (13)

Cl 3 Felony-presumptive range-**4 to 12 yrs** (8 to 24 yrs if the victim was a pregnant woman) §18-1-105(1)(a)(V)(A) (13)

**None**<sup>2</sup>

Mandatory Minimum Term:

Fine (\$ Range):

Cl 4 Felony **\$2,000 to \$500,000** §18-1-105(1)(a)(III)(A)

Cl 3 Felony **\$3,000 to \$750,000** §18-1-105(1)(a)(III)(A)

**None**

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

**Rev** §§42-2-125(a) & 42-2-128

Length of Term of

Licensing Withdrawal:

**1 yr** §42-2-132(2)(a)

Mandatory Action--Minimum

Length of License

Withdrawal:

**1 yr** §42-2-132(2)(a)

Other:

Cl 4 Felony-Mandatory probation for 3 yrs §18-1-105(1)(a)(V)(A)

Cl 3 Felony-Mandatory probation for 5 yrs §18-1-105(1)(a)(V)(A)

See Traffic School above.

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

See Footnote No. 3 below and Traffic School on p. 3-66.

See Vehicle Forfeiture on p. 3-68.

Sanction:

Criminal:

Imprisonment (Term):

**Misd 1st off-30 dys to 1 yr; 2nd and subsequent offs-90 dys to 2 yrs** §42-2-138(1)(d)(I)

Mandatory Minimum Term

of Imprisonment:

**1st off-30 dys; 2nd and subsequent offs-90 dys** §42-2-138(1)(d)(I)

Fine (\$ Range):

**1st off-\$500 to \$1,000; 2nd and subsequent offs-\$500 to \$3,000**

§42-2-138(1)(d)(I)

Mandatory Minimum Fine:

**None**

<sup>1</sup>Homicide related to "driving under the influence" of alcohol or drugs. As used in this offense, "driving under the influence" means the operation of a vehicle by a person who has consumed alcohol or drugs to such a degree that they are "substantially incapable, either mentally or physically, or both mentally and physically, of exercising clear judgment, sufficient physical control, or due care in the safe operation of a vehicle." §18-3-106(1)(b)(IV) There is a rebuttable presumption that a person was under the influence of alcohol if they have an alcohol concentration of 0.10 or more. §18-3-106(2)(c) See Footnote Nos. 1 & 2 on p. 3-61.

<sup>2</sup>A vehicle homicide offender, who commits such offense while fleeing from another felony, must be sentenced at the mid-point range of the above presumptive ranges but not more than twice the maximum sentence. §18-1-105(9)(g)

<sup>3</sup>The sanctions given for driving while license is suspended or revoked for a drunk driving offense also apply to persons who operate a CMV during a CDL revocation or cancellation. §42-2-138(1)(d) However, the regular sanctions for the misd offense of driving while license is either suspended or revoked appear to apply to situations concerned with operating a CMV while under a CDL out-of-service order; for this offense, an offender is (1) subject to a jail term of 5 dys (mand) to 6 mos and/or a fine of \$50 (mand) to \$500 and (2), for a 2nd offense (w/n 5 yrs), is ineligible for a license for 3 yrs. §42-2-138(1)(a)

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Other Criminal Actions Related to DWI:  
(continued)

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

For a 2nd or subsequent offense w/n 5 yrs, the driver is not "eligible" for driving privileges. §42-2-138(1)(e)

Length of Term of License  
Withdrawal Action:

2nd and subsequent offenses-4 yrs §42-2-138(1)(e)

Mandatory Term of License  
Withdrawal Action:

2nd and subsequent offenses-4 yrs §42-2-138(1)(e)

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No):  
Grounds for Being Declared an  
Habitual Offender:

See Traffic School on p. 3-66.  
Yes §42-2-201 et seq.

(1) 3 or more serious offs within 7 yrs, (2) 10 or more convictions for offs of 4 points or more within 5 yrs or (3) 18 or more convictions of 3 points or less within 5 yrs. §42-2-202

Term of License Rev While  
Under Habitual Offender Status:

Rev 5 yrs<sup>1</sup> §42-2-205

Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status

CI 1 Misd<sup>2</sup> §42-2-206(1)(a)(I) See Vehicle Forfeiture below.

Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:

Imprisonment (Term):  
Mandatory Minimum Term of  
Imprisonment:

6 to 18 mos §18-1-106(1)

30 dys<sup>3</sup>

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

\$500 to \$5,000 §18-1-106(1)

\$3,000<sup>3</sup>

None

<sup>1</sup>See Ignition Interlock Program w/Restricted License on p. 3-65.

<sup>2</sup>Aggravated Driving. A person commits aggravating driving, a CI 6 felony, if they operate a motor vehicle while their license is still revoked for a being an habitual offender and they commit either a drunk driving offense, reckless driving, the offense of eluding a police office or a violation of the accident reporting requirements. §42-2-206(1)(b)(I) & (II) The sanctions for this felony are imprisonment from 1 yr to 18 mos (w/mandatory probation for 1 yr) and/or a fine from \$1,000 to \$100,000. §18-1-105(1)(a)(III)(A) & (V)(A)

<sup>3</sup>A person must be sentenced to either a mandatory jail term or a mandatory fine but may be sentenced to both. However, the mandatory jail or fine sanction may be suspended if the offender completes 40 (mand) to 300 hrs of community service. §42-2-206(1)(a)(II)

**Vehicle Forfeiture.** A vehicle used in the commission of a "felony" is subject to *in rem* civil forfeiture. §§16-13-302 & 16-13-303(1)(i) Via this law, the State was able to obtain forfeiture a driver's vehicle based upon the offense of driving after license revocation. Subsequently, such driver was subjected to criminal prosecution for such behavior. The court held that the subsequent criminal prosecution did not constitute double jeopardy. *People v. Ferrel*, 929 P.2d 65 (Colo.App. 1996) **Comment:** Driving while either suspended or revoked may be either a misdemeanor (e.g., §42-2-138) or a felony (e.g., §42-2-206) depending on the law violated. In *Ferrel*, the court did not state what criminal statute the offender had violated.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §42-4-1304

BAC Chemical Test Is Given to the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes (15 years of age or older)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 §12-47-901 (Year Eff: 1987)

Minimum Age (Years) Possession:

21 Applies to possession in public places and motor vehicles. There is an exemption for possession on private property with parental consent or for religious purposes. §§12-47-901 & 18-13-122

Minimum Age (Years) Consumption:

21 There is an exemption for consumption on private property with parental consent or for religious purposes. §18-13-122

Dram Shop Laws and Related Legal Actions:

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

Yes §12-47-801<sup>1&2</sup> Under this law, a licensee is liable for the injuries caused by a patron if the sale or service of alcoholic beverages was "willfully and knowingly" made either to such patron who was either under 21 years old or who was visibly intoxicated person.

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

Note: Dram shop case law (e.g., *Kerby v. Flamingo Club, Inc.*, 532 P.2d 975 (Colo. 1974)) has been abrogated by legislation. §12-47-801(1).

Dram Shop Actions-Social Hosts:

Yes (Limited) §12-47-801(4)<sup>1&2</sup> Liability is limited to the actions of those under the legal drinking age. Under the dram shop law, the service of alcoholic beverages must be "willfully and knowingly" made to persons under 21 yrs old.

Other:

None

<sup>1</sup>There is a separate dram shop law, §13-21-103, which provides that "[e]very husband, wife, child, parent, guardian, employer, or other person who is injured in person, or property, or means of support by any intoxicated person, or in consequence of the intoxication of any person, has a right of action, in his name, against any person who, by selling or giving away intoxicating liquors to any habitual drunkard, causes the intoxication, in whole or in part, of such habitual drunkard." Note: The law does not appear to put a monetary limit on the amount of damages that can be recovered under this law.

<sup>2</sup>Damage awards are limited to \$150,000. §12-47-801(3)(c) & (4)(c) However, these limits are adjusted each year to reflect the effects of inflation. §§2, 3, & 4 of Chapter 172, Session Laws of 1997, amending respectively §§12-46-112.5, 12-47-128.5 & 13-21-102.5

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Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

**Class 2 Misd** §§12-47-901(1)(a) & (5)(a)(I) and 12-47-903(2)

Term of Imprisonment:

**3 to 12 mos** §18-1-106

Fine (\$ Range):

**\$250 to \$1,000** §18-1-106

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes Susp or Rev** §12-47-601(1) See the Special Note below.

Length of Term of License Withdrawal:

**Susp-Not more than 6 mos<sup>1</sup>; Rev-Period not specified in the statutes**

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

Type of Criminal Action:

**Class 2 Misd** §§12-47-901(1)(a) & (5)(a)(I) and 12-47-903(2)

Term of Imprisonment:

**3 to 12 mos** §18-1-106

Fine (\$ Range):

**\$250 to \$1,000** §18-1-106

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes Susp or Rev** §12-47-601(1) See the Special Note below.

Length of Term License Withdrawal:

**Susp-Not more than 6 mos<sup>1</sup>; 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<sup>2</sup>** §12-47-901(1)(h) The law states that "it is unlawful for any person: to consume malt, vinous, or spirituous liquor in a public place." Of course, licensed premises are excepted.

<sup>1</sup>Summary suspension is allowed for not more than 15 days. §12-47-601(2)

<sup>2</sup>There is an exception for passengers at least 21 yrs old who are riding in either a luxury limousine or a chartered bus.

**Special Note:** If lieu of license suspension, the licensee may be allowed to pay an administrative fine. The fine shall be 20% of the estimated gross revenues of the sale of either alcoholic beverages or fermented malt beverages over the period of the proposed suspension. However, such a fine must be at least \$200 but cannot be more than \$5,000. §12-47-601(3)

STATE:  
General Reference:

**CONNECTICUT**  
Connecticut General Statutes Annotated and Regulations of Connecticut  
State Agencies (RCSA)

Basis for a DWI Charge:

Standard DWI Offense:	I. Under the influence of intoxicating liquor <sup>1</sup> §14-227a(a) II. Impaired by the consumption of intoxicating liquor §14-227a(b)
Illegal Per Se Law (BAC):	I. $\geq 0.10^2$ or $\geq 0.07^2$ if the driver has a previous conviction under §14-227a(a) §14-227a(a)(2) II. <u>Persons Under 21 Years Old</u> . BAC $> 0.02^{2&3}$ §14-227g(a) & (c)
Presumption (BAC):	<b>None</b>
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) <b>Any Drug</b> or (2) Any Drug and Intoxicating Liquor <sup>1</sup> §14-227a(a) Note: The impaired offense applies only to impairment by alcohol.
Other:	A person is "deemed" driving while impaired if they have a BAC $> 0.07$ but $< 0.10^2$ §14-227a(b) For Commercial Motor Vehicle Operators, see p. 3-73.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	<b>No</b>
Implied Consent Law:	
Arrest Required (Yes/No):	<b>Yes</b> §§14-227b & 14-227g(a)
Implied Consent Law Applies to Drugs (Yes/No):	<b>Yes</b> §14-227b(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	<b>Yes</b> (Criminal Cases) §14-227a(f)
Other Information:	<b>None</b>

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

Blood:	<b>Yes</b> §14-227(d)
Urine:	<b>Yes</b> §14-227(d)
Other:	<b>None</b>

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	<b>No</b> <sup>4</sup>
Anti-Plea Bargaining Statute (Yes/No):	<b>No</b> However, the law does require the State to give to the court, in open session, the reasons why a DWI charge was reduced or dismissed. §14-227a(g)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	<b>No</b> <sup>5</sup>

<sup>1</sup>The sanctions listed below for driving while "under the influence" apply to driving while under the influence of either intoxicating liquor (alcohol) or drugs.

<sup>2</sup>Standard: Percent by wgt. of alcohol in the blood. §§14-227a(a) & (b) and 14-227g(a)

<sup>3</sup>The sanctions for a violation of this offense are the same as for a violation of §14-227a(a), driving under the influence intoxicating liquor/illegal per se at either  $\geq 0.10$  or  $\geq 0.07$ . §14-227g(c)

<sup>4</sup>A pre-trial diversion program is available only for first DWI offenders. §§54-56g & 54-56e See the Rehabilitation Section on p. 3-74.

<sup>5</sup>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

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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): N/A  
Administrative Licensing Action (Susp/Rev): N/A  
Other: N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): None  
Administrative Licensing Action (Susp/Rev):

1st action (refusal)-Susp 6 mos (90 dys mand)<sup>1</sup>; 2nd action (refusal)<sup>2</sup>-Susp 1 yr (mand); sub action (refusal)<sup>2</sup>-Susp 3 yrs (mand) §§14-227b(i) & 14-227g(c) Under §54-56g(b), a person's participation in an alc. or treatment program does not effect the mand. lic. susp. Furthermore, for a 2nd or subsequent refusal, the person must satisfactorily complete an alcohol treatment program before their driving privileges can be reinstated. §14-227f

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment:

See Double Jeopardy below.

Under the Influence/Illegal per se: 1st off (misd)-Not more than 6 mos; 2nd off (w/n 10 yrs) (misd)-Not more than 2 yrs; 3rd or sub off (w/n 10 yrs) (felony)-Not more than 3 yrs §§14-227a(h), 53a-25 & 53a-26 Driving While Impaired (Infraction)-None Veh Assault-CI D felony (See Persistent Offender on p. 3-76.) Not more than 5 yrs §§53a-35a & 53a-60d

Mandatory Minimum Term:

Under the Influence/Illegal per se: 1st off-48 con hrs; 2nd off-120 con dys; 3rd and sub offs-1 yr

Fine:  
Amount (\$ Range):

Under the Influence/Illegal per se: 1st off (misd)-\$500 to \$1,000; 2nd off (w/n 10 yrs) (misd)-\$1,000 to \$4,000; 3rd and sub off (w/n 10 yrs) (felony)-\$2,000 to \$8,000 §§14-227a(h), 53a-25 & 53a-26 Driving While Impaired (Infraction)-Not more than \$400 §14-227a(i) Veh Assault-CI D felony-Not more than \$5,000 §§53a-41 & 53a-60d

Mandatory Minimum Fine (\$):

None

<sup>1</sup>After the 90 day mand period, a person is eligible for a "special permit" based on "a showing of significant hardship" to operate a motor vehicle either to and from a place of employment or, if necessary, in the course of a business or profession. §14-37a

<sup>2</sup>A previous action includes a prior administrative per se action. §14-227b(h)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Hickam*, 668 A.2d 1321 (Conn. 1995)

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

Other Penalties:

Community Service:

Under the Influence/Illegal per se: 1st off-100 hrs in lieu of the 48 hrs of mandatory imprisonment. For this alternative, the entire jail sentence is suspended and the required community service is to be performed as a part of probation.<sup>1</sup> 2nd and sub off (w/n 10 yrs)-100 hrs (mand) in addition to incarceration and as part of probation §§14-227a(h) & 14-227e

Restitution (eg Victim's Fund)

**Yes** Criminal injuries compensation fund §§54-209 & 54-215

Other:

**Special Cost.** A special cost of \$15 is imposed for a DWI offense conviction. §54-143(a)

**Incarceration Cost.** A defendant may be required to pay the cost of their incarceration. §18-85a

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

See Double Jeopardy on p. 3-72 and Injury Related Admin. Per Se below.

Administrative Per Se Law:

**Yes**  $\geq 0.10$  (BAC) or  $\geq 0.07$  (BAC) if the driver has a previous violation of §14-227a(a) For persons <21 yrs old- $\geq 0.02$  (BAC) (See Footnote No. 2 on p. 3-71 for the BAC standard.) §14-227b(c) & (n) 1st action-susp-90 dys<sup>2</sup>; 1st action if BAC  $\geq 0.16$ -susp-120 dys<sup>2</sup>; 2nd action<sup>3</sup>-susp-9 mos (mand); 2nd action if BAC  $\geq 0.16$ <sup>3</sup>-susp-10 mos (mand); sub. action<sup>3</sup>-susp-2 yrs (mand); sub. action if BAC  $\geq 0.16$ <sup>3</sup>-susp-2½ yrs (mand) §§14-37a and 14-227b(b) & (i) Under §54-56g(b), a person's participation in an alc. or treatment program does not effect the mandatory license suspension. And, for a 2nd or sub refusal, the person must satisfactorily complete an alcohol treatment program before their driving privileges can be reinstated. §14-227f

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 the length of this susp.

<sup>1</sup>Under separate provisions of law, an offender, who is sentenced to probation, may be required to perform community service. §53a-28(e)

<sup>2</sup>A person is eligible for a "special permit" based on "a showing of significant hardship" to operate a motor vehicle either to and from a place of employment or, if necessary, in the course of a business or profession. §14-37a **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.

<sup>3</sup>A previous action includes a prior refusal to submit to a chemical test. §14-227b(h)

**Injury Related Admin. Per Se.** A law enforcement officer, who obtains a chemical test result of a blood sample indicating a BAC  $\geq 0.10$  of an injured driver, shall report this result to the licensing agency. Such agency, based on a number of factors including whether there was probable cause of a drunk driving offense, may suspend the driver's license for 90 dys for a 1st and 1 yr for a sub. admin. per se violation. §14-227b(j)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's License (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs mand if transporting hazardous materials) if, while operating CMV, they (1) have a BAC  $\geq 0.04$  (Standard: Percent of alcohol by weight in the blood), (2) are convicted of driving while under the influence of intoxicating liquor or drugs or (3) refuse to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life. The lifetime "disqualification" may be reduced to 10 yrs (mand) if certain conditions are satisfied. Note: A person is not eligible for a "special permit" based on hardship. §§14-1(a)(11), (16) & (18), 14-37a and 14-44k

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

Post DWI Conviction Licensing Action:

Type of Licensing Action  
(Susp/Rev):

Under the Influence/Illegal per se: For 1st and 2nd offs-Susp; 3rd and sub off-Rev §14-227a(h) Driving While Impaired-None Veh Assault (DWI off)-Susp §53a-60d See Persons Under 18 Years Old below.

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

Under the Influence/Illegal per se: 1st off-1 yr; 2nd off-3 yrs; 3rd and sub off-Permanently Driving While Impaired-None Veh Assault (DWI off)-1 yr See Footnote No. 2.

Mandatory Minimum Term of  
Withdrawal:

Under the Influence/Illegal per se: 1st & sub offs-None<sup>142</sup> Driving While Impaired-None Veh Assault (DWI off)-1 yr

Persons Under 18 Years Old. Under §14-227a(j)(1), a person, under 18 years old, who is convicted of any DWI offense, has their license suspended either until they are 18 or for the normal suspension period for the offense convicted of which ever is the longer suspension period. Of course, persons under 18 years old can also have their driver's license revoked permanently for a 3rd conviction under §14-227a(a). §14-227a(h)

Other:  
Rehabilitation:  
Alcohol Education:  
Alcohol Treatment:

Yes For all DWI criminal offs §14-227a(k)  
Yes For all DWI criminal offs §14-227a(k) Note: Persons charged with a 1st DWI offense (any type) may be allowed to participate in an accelerated pre-trial rehabilitation/alcohol education program. If a defendant satisfactorily completes this program, the court may dismiss the drunk driving charges. §§54-56e & 54-56g Furthermore, for a 2nd or subsequent conviction, persons must satisfactorily complete an alcohol treatment program before their driving privileges can be reinstated. §14-227f

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:  
Terms Upon Which Vehicle  
Will Be Released:  
Other:

None

**Limited Impoundment.** The vehicle driven by a person, who has been arrested for driving either while under the influence of intoxicating liquor or with a BAC level  $\geq 0.10$ , shall be impounded for 48 hrs if the person's driving privilege was either suspended or revoked at the time of the offense. §14-227h  
**At Risk Driver.** The license of a person convicted of a violation of §14-227a(a), must be imprinted with the statement that they are an "at risk driver" on the reverse side of such license. §14-227a(j)(1)

<sup>1</sup>Note: The law does not specifically prohibit a court from reducing these susp periods.

<sup>2</sup>Special Note: These licensing actions are not mandatory. Based upon "a showing of significant hardship", a person is eligible for a "special permit" which may be used to operate a motor vehicle either to and from a place of employment or, if necessary, in the course of a business or profession. §14-37a If a person is convicted of driving while under the influence of intoxicating liquor while operating a motor vehicle on a "special permit", the period of revocation is twice as long as indicated above. §14-227a(j)(1)

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

Miscellaneous Sanctions  
Not Included Elsewhere:

See Civil Damages below.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes** I. If DWI Related, **Cl C felony** A person is guilty of manslaughter with a motor vehicle when, while operating a motor vehicle under the influence of intoxicating liquor or any drug or both, they cause the death of another person. §53a-56b  
II. Causing the death of another person while operating a motor vehicle with criminal negligence. **Cl D felony** §53a-57<sup>2</sup>  
III. Causing the death of another person while operating a motor vehicle with negligence. **Unclassified Misd** §§53a-26 & 14-222a<sup>2</sup>

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

I. **Cl C felony: 1 to 10 yrs** II. **Cl D felony: 1 to 5 yrs** III. **Unclassified Misd: Not more than 6 mos** §§14-222a, 53a-26, 53a-35a & 53a-56b

Mandatory Minimum Term:  
Fine (\$ Range):

**None**  
I. **Cl C felony: Not more than \$10,000** II. **Cl D felony: Not more than \$5,000** III. **Unclassified Misd: Not more than \$1,000** §§14-222a, 53a-26, 53a-41 & 53a-56b

Mandatory Minimum Fine:  
Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

I. **Cl C felony: Susp** §53a-56b II. **Cl D felony: See Footnote Nos. 2 & 3.** III. **Unclassified Misd: See Footnote Nos. 2 & 3.**

Length of Term of  
Licensing Withdrawal:

I. **Cl C felony: 1 yr** §53a-56b II. **Cl D felony: See Footnote Nos. 2 & 3.** III. **Unclassified Misd: See Footnote Nos. 2 & 3.**

Mandatory Action--Minimum  
Length of License  
Withdrawal:

I. **Cl C felony: 1 yr**<sup>1</sup> §53a-56b II. **Cl D felony: See Footnote Nos. 2 & 3.** III. **Unclassified Misd: See Footnote Nos. 2 & 3.**

Other:

See Civil Damages below.

<sup>1</sup>A person is not eligible for a "special permit" based on an occupational hardship. §14-37a

<sup>2</sup>**Historical Note:** Sec. 14-111(c), which imposed a licensing sanction (a susp for not less than 1 yr) for a violation of the motor vehicle laws related to a fatal accident (such as a violation of either §53a-57 or §14-222a), has been repealed. §23 of Public Act No. 95-260

<sup>3</sup>A suspension for a violation of §14-222a is via the point system. **Five (5) points** are assessed for a violation of this law. A **susp for 30 dys** is imposed if a person accumulates **> 10 points** w/n a 24 mo period. §14-137a and RCSA §§14-137a-5(e)(2) & 14-137a-8

**Comment:** There does not appear to be a specified licensing sanction for a violation of §53a-57. However, it may be possible to impose a license suspension for a violation of §53a-57 via §14-222a since this latter section is considered a lesser included offense of §53a-57. *State v. Klutts*, 521 A.2d 178 (Conn.App. 1987)

**Civil Damages.** (1) Either a person injured in person or property in a drunk driving related traffic accident or (2) a plaintiff in a wrongful death action related to a drunk driving offense may be entitled to double or treble civil damages provided the defendant was operating a motor vehicle deliberately or recklessly in violation of the drunk driving laws. §14-295

CONNECTICUT

Other Criminal Actions Related to DWI:  
(continued)

Other: (continued)

**Community Service.** An offender, who is sentenced to probation, may be required to perform community service. §53a-28(e)

**Persistent Offender.** A person, who has been convicted of DWI manslaughter or DWI Assault and who has a previous conviction for either of these offenses or a drunk driving violation under §14-227a w/n 10 yrs, may be incarcerated at the next higher level felony offense. §53a-40f Note: Cl B felony-1 to 20 yrs. §53a-35a

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

See Footnote Nos. 1 & 2.

Sanction:

Criminal:

Imprisonment (Term):

**Misd** Not more than 1 yr<sup>3</sup> §§14-215(c) & 53a-26(a)

Mandatory Minimum Term  
of Imprisonment:

**30 con dys**<sup>3</sup> §14-215(c)

Fine (\$ Range):

**\$500 to \$1,000**<sup>3</sup> §14-215(c)

Mandatory Minimum Fine:

**None**

Administrative Licensing Actions:

Type of Licensing Action

**1st off-Susp**<sup>3</sup>; **Subsequent off** (w/n 10 yrs)<sup>3&4</sup>-**Susp** §14-111(b)

(Susp/Rev):

Length of Term of License

**1st off-Not less than 1 yr**<sup>3</sup>; **Subsequent off** (w/n 10 yrs)-**Not less than 5 yrs**<sup>3</sup> §14-111(b)

Withdrawal Action:

Mandatory Term of License

Licensing action appears to be mandatory.<sup>5</sup> However, the licensing agency may have some authority to modify or cancel a suspension or revocation. §14-111(k)

Withdrawal Action:

**Special Note:** An offender, who is sentenced to probation, may be required to perform community service. §53a-28(e)

Habitual Traffic Offender Law:

No

State Has Such a Law (Yes/No):

Grounds for Being Declared an  
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of Driving

While on Habitual Offender Status:

<sup>1</sup>The Commercial Motor Vehicle Law prohibits a person from operating a CMV if they have been disqualified. A person convicted of this offense appears to have committed a violation; the sanction for this offense is a fine sanction of ≤\$100. §§14-44k(a), 14-164 & 53a-27(a)

<sup>2</sup>A person who operates a CMV after they have been placed "out-of-service" is subject to the following CDL disqualification periods: 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 (mand) to 5 yrs; 3rd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. If the offender was transporting passengers or hazardous materials, the disqualification periods are as follows: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. §14-44k(g)(1) & (2) In addition, such an offender is subject to a civil penalty of \$1,000 to \$2,500. §14-44k(g)(3)

<sup>3</sup>The sanctions given also apply to persons who operate a motor vehicle after their driving privileges have been suspended for an implied consent law violation.

<sup>4</sup>§§14-1(69) & 14-212(1)

<sup>5</sup>A person is not eligible for a "special permit" based on an occupational hardship. §14-37a

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 §14-227c**  
BAC Chemical Test Is Given to the  
the Following Persons:  
Driver: **Yes**  
Vehicle Passengers: **No**  
Pedestrian: **Yes**

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** (Year Eff: 1985) §§30-1(12) & 30-86  
Minimum Age (Years) Possession: **21** §30-89(b) Note: Applies only to possession in a public place.  
Exceptions: Employment or under an order of a physical or while  
accompanied by a parent or legal guardian who is over 21 years of age.  
Minimum Age (Years) Consumption: **None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes §30-102<sup>1</sup>**  
"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** Via a court of appeals decision, the provisions of the Dram Shop  
Law do not provide that it is the exclusive remedy for such actions. I.e.,  
a plaintiff can still bring a common law negligence action for injuries.  
*Davenport v. Quinn*, 730 A.2d 1184 (Conn.App. 1999)<sup>2</sup>  
Dram Shop Actions-Social Hosts: **Yes** *Kly v. Murphy*, 540 A.2d 54 (Conn. 1988) Applies to the actions of  
intoxicated minor guests.<sup>3&4</sup> For wanton and reckless misconduct in the  
furnishing of alcoholic beverages, see the above cases.  
Other: **None**

<sup>1</sup>For the same incident, the dram shop law limits damages to \$20,000 per person up to an aggregate amount of \$50,000 for all persons. These limits on damages were held to be constitutional. *Sanders v. Officer's Club of Connecticut*, 493 A.2d 184 (Conn. 1985)

<sup>2</sup>In prior cases, where there has been wanton and reckless misconduct in either the selling or furnishing of alcoholic beverages, the State supreme court has held that a common law negligence action can be maintained. *Kowal v. Hofler*, 436 A.2d 1 (Conn. 1980), & *Boehm v. Kish*, 517 A.2d 624 (Conn. 1986)

<sup>3</sup>In applying *Kly* case, the State supreme court has also held that bar patrons, who provided alcoholic beverages to minors, can be held liable for injuries caused by such minors while intoxicated. *Bohan v. Last*, 674 A.2d 839 (Conn. 1996)

<sup>4</sup>A parent is not liable, via a negligence action, for the injuries/damages caused by their intoxicated child if they did not supply alcoholic beverages to the child. *Rangel v. Parkhurst*, 779 A.2d 1277 (Conn.App. 2001)

CONNECTICUT

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 §30-86  
Term of Imprisonment: Not more than 1 yr §30-113  
Fine (\$ Range): Not more than \$1,000 §30-113

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): Yes Susp or rev §30-55  
Length of Term of License Withdrawal: Not stated in the statute

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

Type of Criminal Action: Misd §30-86<sup>1</sup>  
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<sup>2</sup>

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

<sup>1</sup>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

<sup>2</sup>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. §30-6a(c)(5)

STATE:  
General Reference:

DELAWARE  
Delaware Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol 21 §4177(a)(1)
Illegal Per Se Law (BAC/BrAC):	≥ 0.10 <sup>1&amp;2</sup> 21 §4177(a)(4) See the Historical Note below.
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) <b>Any Drug</b> or (2) a Combination of Alcohol and a Drug <sup>3</sup> 21 §4177(a)(2) & (3)
Other:	<u>Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor</u> <sup>4</sup> 21 §4177L(a) For Commercial Motor Vehicle operators, see p. 3-84. See DWI Bicycle below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	Yes <sup>5</sup> 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:	I. A person <u>may</u> be required to submit to a chemical test if there is probable cause of a DWI offense. However, if a person is <u>informed</u> of their statutory right to refuse to submit to a test and they exercise this right, a test <u>cannot</u> be administered by involuntary means. 21 §§2740, 2741(b) & 2742(a), <i>McCann v. State</i> , 588 A.2d 1100 (Del. 1991), and <i>Seth v. State</i> , 592 A.2d 436 (Del. 1991) II. A person <u>must</u> to submit to a chemical test if there is probable cause to believe that they committed a DWI offense that was related to an accident in which there was a death. 21 §2740 <b>Comment:</b> In death related DWI situations, it appears that a driver <u>cannot</u> refuse to submit to a test. Therefore, "forced" taking of blood samples for testing purposes may now be possible under these circumstances.

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

<sup>2</sup>Standard: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 21 §§4177(c)(1) & 4177L(b)

<sup>3</sup>The term "drug" includes (1) those drugs defined in Titles 11 and 16 (e.g., see schedule of controlled substances in Ch. 47 of Title 16) and (2) any substance or preparation which releases intoxicating vapors or fumes. 21 §4177(c)(7)

<sup>4</sup>An alcohol concentration ≥0.02 is "per se evidence" of having consumed alcoholic liquor. 21 §4177L(b) For standards, see Footnote No. 2 above.

<sup>5</sup>**Comment:** The law appears to only indirectly authorize PBT use.

**DWI Bicycle.** Separate provisions of law make it illegal to ride a bicycle while under the influence of either an intoxicating liquor or narcotic drugs. The sanctions for this offense are as follows: 1st off-a fine of \$150 to \$1,150; subsequent off (w/n 2 yrs of a prior offense)-an imprisonment term of 10 to 30 dys and/or a fine of \$400 to \$1,500. Note: A violation of this law is not entered on an offender's driver licensing record. 21 §4198J

**Historical Note:** In 1999, the State legislature amended 21, §4177(a)(5) to make it illegal for a person to driver with a BAC ≥0.10 w/n 4 hrs after driving if the BAC "is the result of an amount of alcohol present in, or consumed by the person when that person was driving." Prior law simply made it illegal for a person to drive with a BAC ≥0.10 w/n 4 yrs "after the time of driving." However, the State supreme court had held that the prior provision was "void for vagueness and constitutionally overbroad." *State v. Baker*, 720 A.2d 1139, 1151 (Del. 1998) Note: Another 1999 provision provides, that in order for a person to be found guilty under 21, §4177(a)(5), alcohol must have been consumed either before or during driving. 21, §4177(b)(2)

**DELAWARE**

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

Blood:	Yes 21 §2740
Urine:	Yes 21 §2740
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No <sup>1</sup>
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 (6 mos mand); 2nd Refusal<sup>2</sup> (w/n 5 yrs)- Rev 18 mos (mand); 3rd or Sub. Refusals<sup>2</sup> (w/n 5 yrs)-Rev 24 mos (mand) 21 §§2742(b)(1) & 2743(a) See the Special Note below and Footnote No. 2 on p. 3-82.

Other:	See Vehicle Impoundment/Confiscation on p. 3-83.
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Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: Imprisonment:	See the Special Note on p. 3-79 concerning bicycle riders. <u>1st Off</u> (Unclassified Misd 11 §4202(b))- <u>60 dys to 6 mos</u> ; <u>2nd off</u> <sup>3</sup> (w/n 5 yrs) (Unclassified Misd 11 §4202(b))- <u>60 dys to 18 mos</u> ; <u>3rd off</u> <sup>3</sup> (w/n 5 yrs) (Cl G felony)- <u>1 to 2 yrs</u> ; <u>4th and sub off</u> <sup>3</sup> (Cl E felony)- <u>2 to 5 yrs</u> 21 §§4177(d) & 4177B(e)(2) <u>Veh Assault</u> -2nd degree-Cl B misd-A DWI related injury where there has been negligent driving-Not more than <u>6 mos</u> 11 §§628 & 4206
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<sup>1</sup>A 1st offender cannot substitute the probation before judgment program for the one under 21 §4177B. 11 §4218(b)(4) Note: An offender is not eligible for the probation before judgement program if they have participated in it w/n a 5 yr period. 11 §4218(d)

<sup>2</sup>For the purpose of license sanction enhancement for refusing to submit to a chemical test, a prior DWI offense/admin. per se violation is considered the same as a prior refusal. 21 §2742(b)

<sup>3</sup>For sentencing purposes, all prior drunk driving offenses are considered. 21 §4177B(e)(2)

**Special Note:** The following licensing sanctions apply to persons <21 yrs old, who refuse to submit to chemical test, after they have been arrested for a violation of 21 §4177L(a) which prohibits these persons from driving while either consuming or after consuming alcoholic beverages. I. Refusal-Rev-2 mos (appears mand) II. Refusal where the person has had a one previous violation of 21 §4177L(a)-Rev-6 mos (appears mand) III. Refusal where the person has had two previous violations of 21 §4177L(a)-Rev-12 mos (appears mand) 21 §2742(b)(2)

Sanctions Following a Conviction for a DWI Offense:

<p>Criminal Sanctions: Imprisonment: (continued)</p>	<p><u>Vehicle Assault-1st degree-CI F felony-A DWI related serious injury where there has been negligent driving -Not more than 3 yrs 11 §§629 &amp; 4205(b)(6)</u></p>
<p>Mandatory Minimum Term:</p>	<p><u>Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-None</u>  <u>1st off-None</u> Imprisonment sanctions may be suspended. 21 §4177(e)  <u>2nd off (w/n 5 yrs)-60 dys; 3rd off (w/n 5 yrs)-3 con mos<sup>1</sup>; 4th and sub off-6 con mos<sup>1</sup> 21 §4177(d)</u>  <u>Special Note:</u> "House arrest" may be possible in lieu of incarceration despite the fact that, under 21 §4177(d), a person convicted of a second or subsequent DWI off may not receive a suspended sentence. See the Miscellaneous Sanctions on p. 3-84.  <u>Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-N/A</u></p>
<p>Fine: Amount (\$ Range):</p>	<p><u>1st Off-\$230 to \$1,150<sup>2</sup>; 2nd off (w/n 5 yrs)-\$575 to \$2,300<sup>2</sup>; 3rd off (w/n 5 yrs)-\$1,000 to \$3,000<sup>2</sup>; 4th and sub off-\$2,000 to \$6,000<sup>2</sup> 21 §4177(d); (1) <u>Veh Assault-2nd degree-CI B misd-Not more than \$1,500 11 §4206</u> (2) <u>Veh Assault-1st degree-CI F felony-The court may impose a fine as it deems appropriate 11 §4205(k)</u></u></p>
<p>Mandatory Minimum Fine (\$):</p>	<p><u>Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-None<sup>3</sup></u>  <u>1st Off-\$230<sup>2</sup>; 2nd off (w/n 5 yrs)-\$575<sup>2</sup>; 3rd off (w/n 5 yrs)-\$1,000<sup>2</sup>; 4th and sub off-\$2,000<sup>2</sup></u> Except in the case of a subsequent offender who is admitted into the "ignition interlock" program under 21 §4177F(a), these fines appear to be mandatory via 21 §4177(d) which provides that a DWI offender's sentence is not to be suspended.  <u>Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-N/A</u></p>
<p>Other Penalties: Community Service: Restitution (eg Victim's Fund)</p>	<p><u>Yes<sup>2&amp;4</sup> Discretionary 11 §4333A</u>  <u>Yes</u> (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)</p>

<sup>1</sup>This mand imprisonment sanction appears to be consecutive as early release, furlough and suspended sentence are prohibited.

<sup>2</sup>**Child Endangerment.** A person, who commits a drunk driving offense while transporting an individual < 17 yrs old, is subject to the following sanctions which are in addition to any other sanctions that are authorized by law this offense. 1st off-An additional fine of \$230 to \$1,150 and 40 hrs of community service benefiting children; subsequent off-An additional fine of \$575 to \$2,300 and 80 hrs of community service benefiting children. 21 §4177(d)(5) These sanctions do not apply to 1st offenders who are participating in the probation for judgement program. 21 §4177B

<sup>3</sup>If the offender does not have a license, 1st off-\$200; sub. off-\$400 to \$1,000 21 §4177L(a)

<sup>4</sup>The total number of community service hrs that may be imposed cannot exceed the maximum term of incarceration for the offense.

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

Other: **Assessment.** An additional amount equal to 15% of any fine (whether the fine is suspended or not ) is assessed against the defendant. The assessment is deposited in the Victim compensation fund. 11 §9012  
**Drunk Driving Offense While in Violation of Ignition Interlock Order.** A person, who has been convicted of a drunk driving offense while driving in violation of an order requiring them to only operate motor vehicles that are equipped with ignition interlock devices, is subject to additional imprisonment term of **60 dys** and an additional fine of **\$2,000**. 21 §4177(e)

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

**Yes** Based on probable cause of DWI (alcohol or drugs)<sup>1</sup> 1st off-Rev -3 mos (mand); 2nd off<sup>2</sup>-Rev-1 yr (mand); 3rd or subsequent offs-Rev -18 mos (mand)<sup>2</sup> 21 §§2742(c)(1) & 2743(b)

Other:

Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor<sup>3</sup>-1st off-Rev-2 mos (appears mand); sub. off-Rev-6 to 12 mos (6 mos appears mand) 21 §2742(c)(2)  
A license may be susp for not more than 1 yr if a person has "committed" an off requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing. 21 §§2733(a)(1) & (e) **Comment:** Such action could occur prior to a conviction.

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

1st off-Rev; 2nd off (w/n 5 yrs)-Rev; 3rd or subsequent off (w/n 5 yrs)-Rev 21 §4177A Veh Assault (1st & 2nd degrees)-Rev 21 §2732(a)(2) See the Special Note below.  
Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-Rev 21 §4177L(a)

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

1st off-1 yr; 2nd off (w/n 5 yrs)-1 yr; 3rd or sub. off (w/n 5 yrs)-18 mos Veh Assault (2nd degree)-1 yr; Veh Assault (1st degree)-2 yrs  
Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-1st off-2 mos; sub. off-6 to 12 mos

<sup>1</sup>Under 21 §2742(f)(2) with reference only to an admin. per se violation, an alcohol concentration  $\geq 0.10$  (See Footnote No. 2 on p. 3-79.) or a "positive indication of drugs" is conclusive evidence of a DWI (21 §4177) offense.

<sup>2</sup>For the purpose of license sanction enhancement, prior DWI offense/IMPLIED consent test refusal is considered the same as a prior admin. per se violation. 21 §2742(c)

<sup>3</sup>For persons <21 yrs old, an alcohol concentration  $\geq 0.02$  is "conclusive evidence" of vehicle operation while or after consuming alcoholic liquor. 21 §2742(f)(3) For alcohol concentration standards, see Footnote No. 2 on p. 3-79.

**Special Note:** For persons under 18 years old, license suspension/revocation until they are 21 (6 mos mand). After the mandatory period, a restricted license may be issued provided (1) there is a "critical need" for such a license and (2) the minor is attending an alcohol program. 1 §302(2) & (12) and 10 §§927(a)(6) & 1009(f) Also, under 21 §2707(b)(10), the licensing agency is not supposed to issue a license for either 2 yrs or until the person is 18 whichever is longer to anyone under 21 who has been convicted of either a DWI or any drug offense; the minimum period of 2 yrs appears to be mand.

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

Mandatory Minimum Term of  
Withdrawal:

1st off-90 dys<sup>1</sup> A conditional license may be issued after the first 90 dys of the rev period 21 §§4177B, 4177C & 4177E 2nd and subsequent offs-6 mos<sup>1</sup> A person may be permitted to apply for a driver's license after 6 mos provided they have satisfactorily completed an alcohol or drug instruction or rehabilitation program. 21 §§4177C(b) & 4177D Veh Assault (2nd degree)-1 yr; Veh Assault (1st degree)-2 yrs Persons Under 21 Years Old-Operation of Vehicle While or After the Consuming Alcoholic Liquor-1st off-2 mos; sub. off-6 mos These actions appear to be mandatory.

Other:

Rehabilitation:

Yes<sup>2</sup>

Alcohol Education:

Yes<sup>2</sup>

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

Note: Impoundment of a vehicle or surrender of license plates/registration (1st off-90 dys; sub off-1 yr) is authorized if the vehicle operator was operating his/her vehicle while they were under license susp or rev for a DWI off., implied consent refusal or other situations which require mandatory license revocation. 21 §2756(c)(1)

Ignition Interlock. Court Order. Under 21 §4177(e), the court, in addition to any other penalty, may order the defendant only to operate vehicles equipped with an "ignition interlock" device. This requirement must remain in effect for not less than 1 yr. Voluntary Participation in Ignition Interlock Program. First offenders, who have refused to submit to a chemical test, and 2nd or subsequent offenders are eligible for a regular Class D licenses via the licensing agency if they agree to install and use ignition interlock devices on the vehicles they operate. (1) If the original revocation was for 12 months, a person must agree to participate in the program for 14 months whereupon a conditional license is available after 1 month. (2) If the original revocation was for 12 months where there are no prior offenses but there is a refusal to submit to a chemical test, a person must agree to participate in the program for 14 months whereupon a conditional license is available after 2 months. (3) If the original revocation was for 18 months, a person must agree to participate in the program for 20 months whereupon a conditional license is available after 6 months. And, (4) if the original revocation was for 24 months, a person must agree to participate in the program for 26 months whereupon a conditional license is available after 12 months. Offenders must agree to complete an alcohol education or rehabilitation program following revocation. Note: Certain offenders are not eligible for this voluntary program. E.g., persons who have been convicted for drunk driving offenses related to death or serious injury or who are under license suspension or revocation. 21 §§2702(e) & 4177F

<sup>1</sup>I. 1st offenders are required to complete either a DWI education or rehabilitation program. 21 §4177(d)(1) II. 1st offenders, who elect to participate in probation before judgement program, are placed on probation and required to complete either a DWI education or rehabilitation program. However, offenders (1) whose blood alcohol concentration was ≥0.20, (2) who were driving on a suspended or revoked license, (3) who were involved in an injury causing accident or (4) who had 3 or more moving violations (w/n 2 yrs) are not eligible for this program. 21 §4177B(a) Such persons may also participate in the ignition interlock program. 21 §§4177B(g) & 4177F(d) III. Historical Note: The law, concerning the participation of subsequent offenders in either a DWI education or treatment program, may have been repealed. See §6 of Public Act 26 of 1995 which amended 21 §4177(f). Prior to this 1995 enactment, the law provided that these offenders could be "[o]rdered to complete a program of education or rehabilitation which may include in-patient treatment followed by such other programs as established by training facility" for a time not to exceed 15 mos and pay a fee not to exceed the maximum fine.

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

Miscellaneous Sanctions  
Not Included Elsewhere:

It appears that "house arrest" may be used as an alternative to imprisonment. 11 §§4332, 4347(j), 4391 et seq. See especially 11 §4392(c).

Other Criminal Actions Related To DWI:

Homicide by Vehicle:  
State Has Such a Law:

Yes<sup>1</sup> 1st degree (death caused by criminally negligent driving while DWI) **CI E felony** 11 §630A; 2nd degree (death caused by (1) criminally negligent driving or (2) negligent driving while DWI) **CI F felony** 11 §630

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

1st degree-Not more than 5 yrs; 2nd degree-Not more than 3 yrs 11 §4205

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

1st degree-2 yrs; 2nd degree-1 yr 11 §§630 & 630A  
1st & 2nd degrees-As deemed appropriate by the court 11 §4205(k)  
None

<sup>1</sup>A defendant may be required to pay restitution to a victim of a vehicle homicide offense. 11 §4202(c)(9)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC  $\geq 0.04$  (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of alcohol, a controlled substance or any drug or (3) refuse to submit to a chemical test for an alcohol concentration. A person is not eligible for an occupational CDL if they have been "disqualified". Note: The disqualification provision, 21 §2612(a)(5), only applies to a refusal to submit to a test to determine an alcohol concentration; however, the CMV implied consent provision, 21 §2614, applies to tests for either an alcohol concentration or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 dys mand). In addition, a CMV operator who has any measurable amount of alcohol (defined as having BAC/BrAC  $\geq 0.02$  but  $< 0.04$ ) in their system must be placed "out-of-service" for 24 hours. A CMV operator is also subject to the following criminal sanctions for violating driving while in violation of either the "disqualification" or "any measurable amount" provisions of the CMV/CDL statute: 1st off: Fine-\$200 to \$2,500; subsequent offense: Fine-\$500 to \$5,000, jail-not more than 90 days. 21 §§2603(2), (6), (7), (9), (18) & (21), 2607, 2612(a), (b) & (c), 2613, 2614(a) & (b) and 2622 Important. Separate provisions of law also make it an offense to operate a CMV with a BAC/BrAC  $\geq 0.04$  (Standard: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.) or while impaired by any drug or controlled substance. A person, who violates this law, is subject to the "disqualifications" noted above and the following criminal sanctions. For a 1st offense they are subject to a fine of \$25 to \$115. For a subsequent offense, they are subject to an imprisonment term of 10 to 30 dys and/or a fine of \$57.50 to \$230. However, a 2nd offense must occur w/n 12 mos of a 1st. Note: Prosecution under this law does not preclude prosecution under other provisions of law. 21 §§4177J & 4205(a)

Other Criminal Actions Related To DWI: (continued)

Administrative Licensing Action: Licensing Authorized and Type of Action:	<u>1st degree-Rev; 2nd degree-Rev</u> 21 §2732
Length of Term of Licensing Withdrawal:	<u>1st degree-4 yrs; 2nd degree-3 yrs</u>
Mandatory Action--Minimum Length of License Withdrawal:	<u>1st degree-4 yrs; 2nd degree-3 yrs</u>
Other:	None
 <u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:</u>	
Sanction: Criminal:	See the Special Note below.
Imprisonment (Term):	Misd (Unclassified) <u>1st off-30 dys to 6 mos; subsequent off (w/n 3 yrs)- 60 dys to 1 yr</u> 11 §§233(c) & 4202(b) and 21 §2756
Mandatory Minimum Term of Imprisonment:	<u>1st off-None<sup>1</sup>; subsequent off (w/n 3 yrs)-60 dys</u> 21 §2756
Fine (\$ Range):	<u>1st off-\$500 to \$1,000; subsequent off (w/n 3 yrs)-\$1,000 to \$4,000</u> 21 §2756
Mandatory Minimum Fine:	<u>1st off-\$500<sup>1&amp;2</sup>; subsequent off (w/n 3 yrs)-\$1,000</u> 21 §2756
Administrative Licensing Actions: Type of Licensing Action (Susp/Rev):	None <sup>3</sup>
Length of Term of License Withdrawal Action:	
Mandatory Term of License Withdrawal Action:	

<sup>1</sup>If the offense involved operating a motor vehicle while revoked where the revocation was based on a drunk driving offense related to either a death or an injury, there is a mandatory 30 dy period of imprisonment and a mandatory fine of \$2,000.

<sup>2</sup>If the original revocation was based on a drunk driving offense, the minimum mandatory fine is \$600. 21 §2756(a)

<sup>3</sup>See Vehicle Impoundment/Consication on p. 3-83.

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

**Special Note: I.** It is an unclassified misd to operate a CMV while either disqualified or under a CDL out-of-service order. For a 1st offense, a person is subject to a fine of from \$200 to \$2,500; for a subsequent offense, a person is subject to an imprisonment term of not more than 90 dys and/or a fine of from \$500 to \$5,000. 11 §§233(c) & 4202(b) and 21 §§2607(b) & 2622 II. Under separate provisions of law, the following sanctions may be imposed for a violation of an "out-of-service" order. **Fine:** A fine of \$1,000 to \$2,500. 21 §2612(h)(4) **Disqualification:** 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 to 5 yrs (1 yr mand); and, 3rd or subsequent violation (w/n 10 yrs)-3 to 5 yrs (3 yrs mand). If the driver was either transporting hazardous materials or driving a vehicle designed to transport > 15 persons, the following disqualification periods apply: 1st violation-180 dys (mand) to 2 yrs; 2nd violation (w/n 10 yrs)-3 to 5 yrs (3 yrs mand); and, 3rd or subsequent violation (w/n 10 yrs)-3 to 5 yrs (3 yrs mand). 21 §2612(h)(1), (2) & (3)

**DELAWARE**

Other Criminal Actions Related To DWI: (continued)

<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes 21 §2801 et seq. See Footnote No. 3.
Grounds for Being Declared an Habitual Offender:	3 serious or 10 minor moving violations within a 5-yr period
Term of License Rev While Under Habitual Offender Status:	Rev for 5 yrs if based on serious offs or for 3 yrs if based on minor moving violations
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Misd (Unclassified) 11 §§233(c) & 4202(b)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	1st off-90 dys to 30 mos <sup>4</sup> ; subsequent off-180 dys to 5 yrs <sup>4</sup> 21 §2810
Mandatory Minimum Term of Imprisonment:	1st off-90 dys <sup>4</sup> ; subsequent off-180 dys <sup>4</sup> 21 §2810
Fine (\$ Range):	1st off-not more than \$1,150; subsequent off-not more than \$2,300 21 §2810
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	None

Other State Laws Related to Alcohol Use:

<u>Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:</u>	
State Has Such a Law (Yes/No):	No
BAC Chemical Test Is Given to the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	

<sup>3</sup>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.

<sup>4</sup>Under 21 §2810, the court cannot suspended an imprisonment term. **Comment:** This in effect makes the minimum period of incarceration mandatory.

Other State Laws Related to Alcohol Use: (continued)Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21<sup>1</sup> (Year Eff. 1983) 4 §904(a) & (b)

Minimum Age (Years) Possession:

21 Does not apply to alcohol use in religious services or in the home. 4 §904(f)

Minimum Age (Years) Consumption:

21 Does not apply to alcohol use in religious services or in the home. 4 §904(f)

Dram Shop Laws and Related Legal Actions:

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

No

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

No Note: For cases denying liability, see *Wright v. Moffitt*, 437 A.2d 554 (Del. 1981)<sup>2</sup>, *Oakes v. Megaw*, 565 A.2d 914 (Del. 1989), *Samson v. Smith*, 560 A.2d 1024 (Del. 1989), and *Acker v. Cantinas, Inc.*, 586 A.2d 1178 (Del. 1991).

Dram Shop Actions-Social Hosts:

No (No cases)<sup>3</sup>

Other:

A licensee is not liable for the injuries sustained by an intoxicated patron. *Wright v. Moffitt*, 437 A.2d 554 (Del. 1981), & *McCall v. Villa Pizza, Inc.*, 636 A.2d 912 (Del. 1994)

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

Type of Criminal Action:

Misd (Unclassified) 4 §706 and 11 §§233(c) &amp; 4202(b)

Term of Imprisonment:

No See Footnote No. 1 on p. 3-88.

Fine (\$ Range):

Not more than \$100 4 §903(4) See Footnote No. 2 on p. 3-88.

See **Administrative Fine** on p. 3-88.

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

<sup>1</sup>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)

<sup>2</sup>The *Wright* case concerned a patron who brought a cause of action against a licensee for injuries they sustained as a result of becoming intoxicated at the licensee's establishment. At the conclusion of its decision, the court made a general statement that, in effect, held that a licensee is not liable for the injuries caused by an intoxicated patron to a third party (437 A.2d at 559).

<sup>3</sup>**Special Note:** A "business invitee" (employee) on the premises of a social host (employer) may have a cause of action against such social host for injuries sustained as a result of actions by an intoxicated guest. *DiOssi v. Maroney*, 548 A.2d 1361 (Del. 1988)

**DELAWARE**

Other State Laws Related to Alcohol Use: (continued)

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

Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

Misd (Unclassified) 4 §§708(a)(1) & 904(a) and 11 §§233(c) & 4202(b)  
No<sup>1</sup>  
Not more than \$250<sup>2</sup> 4 §904(a)  
See **Administrative Fine** below.

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):  
Length of Term License Withdrawal:

Yes Susp 4 §561(b)(1)  
Not specified by statute

Anti-Happy Hour Laws/Regulations:

No<sup>3</sup>

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

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

No  
Yes Applies only to drivers<sup>4</sup> 21 §4177J

<sup>1</sup>A person may be imprisoned for 30 dys for failure to pay the fine. 4 §§903 & 904(a)

<sup>2</sup>Under 4 §902, also authorized is a fine of \$500 to \$1,000; failure to pay this fine will subject a violator to 3 to 6 months in jail.

<sup>3</sup>"No more than 1 alcoholic beverage may be sold to a person less than fifteen minutes prior to closing...." 4 §727

<sup>4</sup>"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."

**Administrative Fines.** I. A licensee is subject to an administrative fine which cannot exceed 10% of the average gross monthly sales of alcoholic liquor over the 12 month period prior to the date of a finding of guilt provided this amount exceeds \$250. There is a mandatory minimum fine of \$250. 4 §914 II. In addition, a licensee, who violates the rules of the alcoholic beverage control commission, may choose to plead guilty to the violation and pay a voluntary administrative fine of not more than \$5,000. 4 §915

JURISDICTION:  
General References:

**DISTRICT OF COLUMBIA**  
D.C. Code and Weil's Code of D.C. Municipal Regulations  
(CDCR)

Basis for a DWI Charge:

Standard DWI Offense:

I. Under the influence of intoxicating liquor<sup>1</sup> §40-716(b)(1)(A)  
II. Impaired by the consumption of intoxicating liquor<sup>1</sup>  
§40-716(b)(2)

Illegal Per Se Law (BAC/BrAC):

≥ 0.08<sup>2&3</sup> §40-716(b)(1)(A)  
For Persons Under 21 Years Old-Operating a Vehicle with **Any**  
Measurable Amount of Alcohol in Either the Blood, Breath or  
Urine<sup>4</sup> §40-716(b)(1)  
**None**

Presumption (BAC):

Types of Drugs/Drugs and Alcohol:

Driving under the influence of (1) **Any Drug** or (2) a  
Combination of **Any Drug and Alcohol**<sup>1</sup> §40-716(b)(1)  
A BAC ≥ 0.05<sup>3</sup>, a UrAC of ≥ 0.06 percent by wgt. or a BrAC of  
≥ 0.24 micrograms of alcohol in 1 milliliter of breath constitutes  
*prima facie* evidence of either driving while under the influence  
or driving while impaired. §40-717.1(2) See Footnote No. 1 on  
p. 3-91 which gives *prima facie* levels under the D.C. Municipal  
Regulations.

Other:

For Commercial Motor Vehicle Operators, see p. 3-93.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Yes**<sup>5</sup> §40-716(b-1)

Implied Consent Law:

**Yes**<sup>5</sup> §40-502

Arrest Required (Yes/No):

Implied Consent Law Applies to

**Yes**<sup>5</sup> §40-502(a)

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

**Yes** (Criminal & Civil Cases) §40-505(c)

Other Information:

A person is required to submit a chemical test if they have been  
involved in an accident (regardless of whether there has been an  
injury) and they have been arrested for any DWI offense.  
§40-502(b) & *Marshall v. District of Columbia*, 498 A.2d 190  
(D.C.App. 1985)

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

Blood:

**Yes** §40-502

Urine:

**Yes** §40-502

Other:

**None**

<sup>1</sup>The driving while impaired offense applies only to the use of alcohol. The driving while under the influence offense applies to the use of either alcohol or drugs.

<sup>2</sup>This jurisdiction's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a BrAC of 0.38 micrograms or more of alcohol in 1 milliliter of breath or (2) a UrAC of 0.10 or more (percent by weight).

<sup>3</sup>The BAC standard is percent by weight of alcohol in the blood. §§40-716(b)(1) & 40-717.1

<sup>4</sup>The sanctions (criminal and administrative) against persons under 21 years old, who are convicted of operating a motor vehicle with any amount of alcohol in their system, are the same as for the offenses of illegal per se and driving while under the influence.

<sup>5</sup>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.

**DISTRICT OF COLUMBIA**

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 Subsequent offenders of ANY drunk driving must complete an alcohol/drug abuse assessment. §40-716(b)(6)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None
Refusal to Take <u>Implied Consent</u> 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. CDCR 18-3-310.7(a))
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: Imprisonment:	I. Illegal per se/Under the Influence (See Footnote No. 4 on p. 3-89.): 1st Off-Not more than 90 dys; 2nd Off <sup>1</sup> -(w/n 15 yrs)-Not more than 1 yr; 3rd and subsequent offs <sup>2</sup> (w/n 15 yrs)-Not more than 1 yr II. Impaired: 1st Off-Not more than 30 dys; 2nd Off <sup>3</sup> (w/n 15 yrs)-Not more than 1 yr; 3rd or sub. off <sup>4</sup> (w/n 15 yrs)-Not more than 1 yr §40-716(b)(1) & (2)
Mandatory Minimum Term: See Community Service on p. 3-91.	I. Illegal per se/Under the Influence (See Footnote No. 4 on p. 3-89.): 1st Off-If BAC ≥0.20 but <0.25-5 dys; if BAC >0.25-10 dys; 2nd Off <sup>1</sup> -(w/n 15 yrs)-5 dys; if BAC ≥0.20 but <0.25-10 dys; if BAC >0.25-20 dys; 3rd and subsequent offs <sup>2</sup> (w/n 15 yrs)-10 dys; if BAC ≥0.20 but <0.25-15 dys; if BAC >0.25-25 dys II. Impaired: 1st Off-None; 2nd Off <sup>3</sup> (w/n 15 yrs)-5 dys; 3rd or sub. off <sup>4</sup> (w/n 15 yrs)-10 dys §40-716(b)(1) & (2)
Fine: Amount (\$ Range):	I. Illegal per se/Under the Influence (See Footnote No. 4 on p. 3-89.): 1st Off-\$300; 2nd Off <sup>1</sup> (w/n 15 yrs)-\$1000 to \$5,000; 3rd and subsequent offs <sup>2</sup> (w/n 15 yrs)-\$2,000 to \$10,000

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

Mandatory Minimum Fine (\$):	II. Impaired: <u>1st Off-\$200 to \$300; 2nd Off</u> (See Footnote No. 3 on p. 3-90.) (w/n 15 yrs)- <u>\$300 to \$500; 3rd or sub. off</u> (See Footnote No. 4 on p. 3-90.) (w/n 15 yrs)- <u>\$1,000 to \$5,000</u> <b>None</b>
Other Penalties: Community Service:	I. Illegal per se/Under the Influence (See Footnote No. 4 on p. 3-89.): <u>1st Off-None; 2nd Off</u> -(w/n 15 yrs)-at least <b>30 dys</b> ; <u>3rd and subsequent offs</u> (w/n 15 yrs)-at least <b>60 dys</b> II. Impaired: <u>1st Off-None; 2nd Off</u> (w/n 15 yrs)-at least <b>30 dys</b> ; <u>3rd or sub. off</u> (w/n 15 yrs)-at least <b>60 dys</b> §40-716(b)(1) & (2)
Restitution (eg Victim's Fund)	<b>Yes</b> I. A Victim's Compensation Fund §3-421 et seq. Awards are limited to a maximum amount of \$25,000. §3-427(b) II. A defendant may be required to pay restitution to a victim. §16-711
Other:	<b>Assessments.</b> Offenders are required to pay the following assessments which are used to finance the Crime Victim's Compensation Fund: (1) Violations of §40-716 (drunk driving offenses)- <b>\$100 (mand)</b> ; serious traffic and misdemeanor offenses- <b>\$50 (mand) to \$250</b> ; and, felony offense- <b>\$100 (mand) to \$5,000</b> . §3-436 & <i>Parrish v. District of Columbia</i> , 718 A.2d 133 (D.C. 1998) <b>Child Endangerment.</b> For <u>any</u> drunk driving offense conviction where there was a passenger ≤17 yrs old, the driver is subject to an <u>addition</u> fine of \$500 to \$1,000 and 48 hrs (80 hrs if a sub off) of community service benefiting children. §40-716(b)(1)(D) <b>Ignition Interlock.</b> The District of Columbia Government is authorized to establish an "ignition interlock" program for persons who have been convicted of <u>any</u> subsequent drunk driving offense. §40-716.1
Administrative Licensing Actions: <u>Pre-DWI Conviction</u> Licensing Action: Administrative Per Se Law:	<b>Under the Influence of Intoxicating Liquor or Drugs<sup>1</sup></b> <u>1st violation-Susp 2 to 90 dys or Rev for 6 mos; sub. violation-Susp from 2 to 90 dys or rev</u> where the time period is discretionary but must be for definitive period of time. <sup>2</sup> Note: At the discretion of the licensing agency, the <u>suspension</u> may be from 2 to 90 dys "based upon the seriousness of the case." CDCR 18-3-302.5, 18-3-306.1 & 18-3-306.4 <b>None</b>
Other:	

<sup>1</sup>Either (1) a blood alcohol concentration >0.05 percent by weight of alcohol in the blood, (2) a urine alcohol concentration of ≥0.06 by weight of alcohol in the urine or (3) a breath alcohol concentration ≥0.24 micrograms of alcohol per 1 milliliter of breath is considered *prima facie* evidence of driving while under the influence of intoxicating liquor. CDCR 18-10-1034.3 See "Other" under Basis for a DWI Charge on p. 3-89 which gives *prima facie* levels under the D.C. Code.

<sup>2</sup>These licensing actions are not mandatory. A person is eligible for either limited or occupational driving privileges. CDCR 18-3-309.1 et seq. & 18-3-310.1 et seq.

DISTRICT OF COLUMBIA

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

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

I. Driving under the influence/illegal per se: **Rev** for all offs §§40-302(a), 40-716(d)(1) & CDCR 18-3-301.1  
II. Driving while impaired: Either **susp** or **rev** at the discretion of D.C. officials §40-302(a)  
Note: 12 points are assigned to a person's driving record for a violation of either I or II above. CDCR 18-3-303.2(n)

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

I. Driving under the influence/illegal per se<sup>1</sup>: **1st off-6 mos; 2nd off-1 yr; 3rd and sub. offs-2 yrs** §§40-302(a) & (b), 40-716(d) and CDCR 18-3-301.1 & 18-3-306.5  
II. Driving while impaired: **1st off-Susp from 2 to 90 dys<sup>2</sup> or Rev for 6 mos; sub.off-Susp from 2 to 90 dys<sup>2</sup> or Rev** where the time period is discretionary but must be for definitive period of time §40-302(a) and CDCR 18-3-306.1 & 18-3-306.4

Mandatory Minimum Term of  
Withdrawal:

I. Driving under the influence/illegal per se (See Footnote No. 1 below.): **1st off-6 mos; 2nd off-1 yr; 3rd and sub. offs-2 yrs**  
Note: No occupational hardship licenses shall be issued. CDCR 18-3-310.7(a)

II. Driving while impaired: **None** Note: Either a limited license (CDCR 18-3-309.1 et seq.) or a limited occupational hardship license (CDCR 18-3-310.1 et seq.) may be issued.

Other:  
Rehabilitation:  
Alcohol Education:  
Alcohol Treatment:  
Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:  
Terms Upon Which Vehicle  
Will Be Released:  
Other:

No

**Registration Revocation.** The registrations of any vehicle owned by a person, who has been convicted of driving under the influence of alcohol/drugs, shall be suspended for 1 yr. However, an exception may be made where either an individual (but not the offender) or a family member needs to use a vehicle either due to a hardship or for the necessities of life. CDCR 18-4-411.11(f) & 18-4-411.12

<sup>1</sup>See Footnote No. 4 on p. 3-89. **Special Note:** Sec. 40-716(d) authorizes lic rev for driving while under the influence/illegal per se offs. However, this section does not authorize such action against persons under 21 yrs old who are convicted of operating a motor vehicle with any measurable amount of alc in their body. Nevertheless, via legislation, CDCR 18-3-301.1 was amended to authorize such action against these young persons. §7 D.C. Act 10-214 of 1994

<sup>2</sup>At the discretion of the licensing agency, the suspension may be from 2 to 90 dys "based upon the seriousness of the case." CDCR 18-3-306.1

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

**Limited Impoundment.** Under §40-716(c-1), a vehicle driven by a person arrested for any drunk driving offense may be impounded for a limited time (24 hrs). However, a licensed registered owner of the vehicle, who was with the offender at the time of their arrest, may take immediate possession of the vehicle. Also, after authorization by the arrested person, the vehicle may be released to an individual who is a licensed driver.  
**Limited Registration Suspension.** The registrations of all vehicles owned by a person, who has been convicted of any drunk driving offense, must be suspended until the offender gives and maintains proof of financial responsibility. §§40-437 & 40-438

Miscellaneous Sanctions  
Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
Jurisdiction Has Such a Law:  
Sanctions:  
Criminal Sanction:  
Imprisonment (Term):  
Mandatory Minimum Term:  
Fine (\$ Range):  
Mandatory Minimum Fine:  
Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

Yes Felony Negligent Homicide §40-713

Not more than 5 yrs  
None  
Not more than \$5,000  
None

Rev §40-716(d)(2) and CDCR 18-3-301.1(b) & 18-3-306.5 Note: 12 points are assigned to a person's driving record. CDCR 18-3-303.2(m)

Length of Term of  
Licensing Withdrawal:

1st off - 6 mos; 2nd off - 1 yr; 3rd and subsequent offs - 2 yrs

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) if they are convicted of driving a CMV while under the influence of alcohol or a controlled substance. Under the influence of alcohol is defined to mean having a blood alcohol concentration  $\geq 0.04$ . For a second violation, the "disqualification" is from 10 yrs (mand) to life. For a third violation, the disqualification" is for life (mand). A CMV operator must be placed out-of service for 24 hrs if they are found (1) to have consumed alcohol, (2) to have any measurable or detectable amount of alcohol or (3) to be under the influence of an intoxicating beverage. §§40-1801(3) & (4) and 40-1806 and CDCR 18-3-1306.1(a), 18-3-1306.5 & 18-3-1322.1 and 18-3-1322.2 Note: I. Alcohol concentration standards for CMV operations are not specifically provided for in the D.C. Code. However, the code does make reference to the Federal CMV law on this subject. Federal regulations promulgated pursuant to this law provided that the standards for alcohol concentration are grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. 49 CFR 383.5. II. D.C. regulations have two provisions that define "driving under the influence of alcohol". The general definitions provision for the entire chapter on CMV operators, includes implied consent refusal as such an offense. However, the definition of this term, specifically related to the disqualification provision, does not. Compare CDCR 18-13-1306.12(a) with CDCR 18-13-1399.1 III. The following fines apply to CMV operators if they violate Federal regulations (49 CFR Parts 383 and 392) regarding alcohol use and CMV operation: 1st violation-\$500; 2nd violation (w/n 2 yrs)-\$1,000; 3rd or subsequent violation (w/n 2 yrs)-\$1,500. CDCR 18-14-1408.2(a)

DISTRICT OF COLUMBIA

Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum Length of License  
Withdrawal: 1st off - 6 mos; 2nd off - 1 yr; 3rd ans subsequent offs - 2 yrs  
Other: See Assessments on p. 3-91.

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense\*:

See Footnote No. 1.

Sanction:

Criminal:

Not more than 1 yr §40-302(e)

Imprisonment (Term):

Mandatory Minimum Term of Imprisonment:

None

Fine (\$ Range):

Not more than \$5,000 §40-302(e)

Mandatory Minimum Fine:

None See Assessments on p. 3-91.

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Rev/Susp

Length of Term of License

Withdrawal Action:

Extend the period of susp or rev for an additional period of time which is equal to the length of the original susp or rev period. §40-302 and CDCR 18-3-305.1 & 18-3-305.5

Mandatory Term of License

Withdrawal Action:

Licensing action is mandatory; no occupational license can be granted. CDCR 18-3-310.7(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):

<sup>1</sup>Neither the CMV law nor the general code provisions concerned with driving while suspended or revoked provide specific sanctions for operating a CMV during a CDL disqualification. However, the following fines appear to apply to CMV operators if they violate Federal regulations (49 CFR Part 391) regarding CDL disqualification: 1st violation-\$500; 2nd violation (w/n 2 yrs)-\$1,000; 3rd or subsequent violation (w/n 2 yrs)-\$1,500. It also appears that a CMV operator is subject to a fine of \$1,000 for violating an out-of-service order issued under Federal regulations. CDCR 18-14-1408.2(a)

\*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 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 Jurisdiction (Citation):

**Yes** *Rong Yao Zhou v. Jennifer Mall Rest., 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:  
 Other:

**No** (No appellate court cases<sup>1</sup>)  
 A licensee may be liable for either the injuries or death of an intoxicated minor patron. *Jarrett v. Woodward Bros., Inc.*, 751 A.2d 972 (D.C. 2000)

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

Type of Criminal Action: Unspecified but would probably be considered to be a misd.  
 Term of Imprisonment: Not more than **1 yr**  
 Fine (\$ Range): Not more than **\$1,000** §§25-121 & 25-132 See Assessments on p. 3-91.

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes** **Susp or rev<sup>2</sup>** §25-118  
 Length of Term of License Withdrawal: For rev, no new license shall be issued for **1 yr.**

<sup>1</sup>However, The U.S. District Court for the District of Columbia has noted in the past that the District of Columbia does not recognize social host liability. *Cartwright v. Hyatt Corp.*, 460 F.Supp. 80 (1978)

<sup>2</sup>Under §25-118(a), "an offer in compromise" may be made by the licensing authority in lieu of a suspension.

DISTRICT OF COLUMBIA

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.<sup>1</sup>  
§§25-121 & 25-132  
Not more than 1 yr  
Not more than \$1,000 See Assessments on p. 3-91.

Term of Imprisonment:  
Fine (\$ Range):

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

Yes Susp or rev<sup>2</sup> §§25-118 & 25-121  
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):  
Anti-Consumption Law (Yes/No):

Yes §25-128(a) & CDCR 18-22-2224  
Yes Driver and passengers §25-128(a)

<sup>1</sup>Anyone who offers, gives, provides or otherwise makes available alcoholic beverages to a person under 21 years old is subject not only to the criminal penalties noted but also to the following administrative sanctions. They are subject (1) to a fine of from \$100 to \$300 and (2) to suspension of their driving privileges (1st off-90 con. dys; 2nd off-180 dys; 3rd and sub. off-1 yr). §25-130(d) & (e)

<sup>2</sup>Under §25-118(a), "an offer in compromise" may be made by the licensing authority in lieu of a suspension.

STATE:  
General Reference:

**FLORIDA**  
Florida Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic beverages <sup>1</sup> §316.193(1)(a)
Illegal Per Se Law (BAC/BrAC):	≥ 0.08 <sup>1,2&amp;3</sup> §§316.193(1)(b) & (c) and 316.1932(1)(b)1
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of a <b>Controlled Substance or Chemical Substance</b> listed respectively in chapter 893 and §877.111 §§316.193(1)(a) & 316.1931
Other	1) A BAC/BrAC > 0.08 <sup>3</sup> is <i>prima facie</i> evidence of driving under the influence. <sup>4</sup> §316.1934(2)(c) See the Special Note below. 2) For Commercial Motor Vehicle Operators, see p. 3-101. 3) A DWI offender cannot be released from custody until either (1) they are no longer under the influence of alcohol or other chemical substance, (2) their BAC/BrAC is < 0.05 or (3) eight (8) hrs have elapsed from the time of their arrest. §316.193(9)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	Yes §§316.1932(4)(a) & 322.2616(17)
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §§316.1932(1)(a) & 322.2616(1)(b) <sup>5</sup> 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. <i>Kenson v. State</i> , 577 So.2d 694 (Fla.App. 3 Dist. 1991)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §316.1932(1)(a) Limited to the testing of urine.
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes <sup>6</sup> (Criminal Cases) §§316.1932(1)(a) & 316.1932(1)(b) A driver may be compelled (forced) to provide a blood sample for testing <u>only</u> if they have been involved in an accident resulting in either death or serious bodily injury. §316.1933(1) <sup>7</sup>
Other Information:	

<sup>1</sup>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)

<sup>2</sup>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.

<sup>3</sup>Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liter of breath. §§316.193(1)(b) & (c), 316.1932(1)(b)1 and 316.1934(2)(c)

<sup>4</sup>If the implied consent law's test procedures are not followed, the State can still introduce alcohol concentration, obtained via a blood sample, into evidence via common law. However, if this is done, the statutory "presumptions" cannot be used as they are based on alcohol concentrations obtained via the implied consent law. *State v. Miles*, 775 So.2d 950 (Fla. 2000)

<sup>5</sup>Under §322.2616(1)(b), a person under 21 yrs old may be lawfully detained and requested to submit to a chemical test if a there is probable cause to believe that they were driving while under the influence of alcohol or with any alcohol level.

<sup>6</sup>A refusal to submit to field sobriety testing is admissible into evidence at a DWI trial. §316.1932(4)(b), *State v. Taylor*, 648 So.2d 701 (Fla. 1995), *State v. Cook*, 659 So.2d 473 (Fla.App. 2 Dist. 1995), & *State v. Burns*, 661 So.2d 842 (Fla.App. 5 Dist. 1995)

<sup>7</sup>*State v. Staney*, 653 So.2d 422 (Fla.App. 3 Dist. 1995), *Robertson v. State*, 604 So.2d 783 (Fla. 1992), *Carbone v. State*, 564 So.2d 1253 (Fla.App. 4 Dist. 1990), & *State v. Perez*, 531 So.2d 961 (Fla. 1988)

**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 to the DWI offense to the defendant. *Wilhelm v. State*, 568 So.2d 1 (Fla. 1990). Notwithstanding this case, the statutory language was held constitutional in a prior decision. *State v. Rolle*, 560 So.2d 1154 (Fla. 1990). Note: A Federal court has held, in similar circumstances, that there was no constitutional infirmity. However, the Federal court did express its concern that a jury could be confused with the term "*prima facie*". Despite this concern, the court felt that no unconstitutional mandatory presumption had been created when this instruction was viewed in conjunction with the other jury instructions that were given. *Santiago Sanchez Defuentes v. Dugger*, 923 F.2d 801 (11th Cir. 1991)

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

Blood:	<b>Yes Limited</b> A blood test, for the purposes of implied consent, may be taken only if the driver appears for treatment at a medical facility and the administration of a breath/urine test is impractical or impossible. §316.1932(1)(b)
Urine:	<b>Yes Limited</b> 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:	<b>None</b>

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	<b>Yes</b> Applies to (1) DWI, (2) manslaughter resulting from the operation of a motor vehicle and (3) vehicle homicide offenses. §316.656(1)
Anti-Plea Bargaining Statute (Yes/No):	<b>Yes</b> Applies to (1) DWI where the alcohol concentration is 0.20 or more, (2) to DWI where there has been property damage, (3) to manslaughter related to the operation of a motor vehicle and (2) to vehicle homicide. §316.656(2)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	<b>No</b> However, all drunk driving offenders <b>must</b> undergo a "psychosocial evaluation". §316.193(5)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	<b>None</b>
Administrative Licensing Action (Susp/Rev):	<b>None</b>
Other:	<b>None</b>
Refusal to Take <u>Implied Consent Chemical Test</u> : Criminal Sanction (Fine/Jail):	<b>None</b>
Administrative Licensing Action (Susp/Rev):	<u>1st refusal</u> -Susp for <b>1 yr</b> (90 dys mand A hardship license is available after this mand period.); <u>Subsequent refusals</u> -Susp for <b>18 mos</b> (Mandatory) <sup>1</sup> §§322.2615(8)(a) & (10) and 322.271(2)(a) <u>Persons Under 21 Years Old</u> . <u>1st refusal</u> -Susp for <b>1 yr</b> (30 dys mand) <sup>2</sup> ; <u>Subsequent refusals</u> -Susp for <b>18 mos</b> (30 dys mand) <sup>2</sup> §322.2616(2), (9) & (11)

<sup>1</sup>**Comment:** The "actual" suspension period appears to be only 17 mos. The law provides that a person be issued a 30 dy temporary license at the time of arrest. However, since the law also provides that the suspension "commences" at the time of arrest, the person is only denied driving privileges for 17 mos. §322.2615(b)(1.a), (2) & (4) Unlike the mandatory suspension associated with a 1st refusal, the law does not provide that the mandatory suspension period start after the expiration of the 30 dy temporary license.

<sup>2</sup>The law provides that the suspension "commences" at the time notice is given. This is usually after the person has been stopped by a law enforcement officer. However, the 30 dy mand period begins after the temporary permit, issued at the time of the stop, expires. A hardship license is available after this mand period. §322.2616(9) & (11)

Sanctions for Refusal to Submit to a  
Chemical Test:

Other: Under §322.291, an implied consent law violator is required to complete a driver training course.

Sanctions Following a Conviction for a DWI Offense:

**Criminal Sanctions:** See Footnote Nos. 1 & 2 and Double Jeopardy below.  
**Imprisonment:** 1st Off (Misd)-Not more than 6 mos; 2nd Off (Misd)-Not more than 9 mos; 3rd Off (Misd)-Not more than 12 mos; 4th or sub. Off (3rd degree felony)-Not more than 5 yrs<sup>1</sup> §§316.193 & 775.08(2)

**Mandatory Minimum Term:** 2nd Off-10 dys (w/48 con hrs) if 2nd off was w/n 5 yrs of a previous DWI conviction §316.193(6); 3rd or sub. Off-30 dys (w/48 con hrs) if 3rd or sub. off was w/n 10 yrs of a previous DWI off §316.193(6)

**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

**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)  
**Crimes Compensation Trust Fund.** The following surcharges, costs and fines are paid into the Crimes Compensation Trust Fund: (1) A surcharge which is 5% of the fine; (2) a special cost of \$50; and, (3) if injury or death resulted from the offense, a special fine of not more than \$10,000. Note: This fine is contingent on the offender's

<sup>1</sup>For under the influence offenses involving: (1) Property damage or personal injury-Misd of the 1st degree-Not more than 1 yr in jail, a fine of not more than \$1,000; (2) serious bodily injury-3rd degree felony-Not more than 5 yrs in prison, a fine of not more than \$5,000; or, (3) a BAC/BrAC ≥0.20 or a passenger under 18 years old (**child endangerment**): 1st Off-Not more than 9 mos in jail, a fine of \$500 to \$1,000; 2nd Off-Not more than 12 mos in jail, a fine of \$1,000 to \$2,000; 3rd Off-Not more than 12 mos in jail, a fine of \$2,000 to \$5,000 Note: The minimum mandatory sanctions for "regular" DWI offense convictions also apply to these offenses. §§316.193(3) & (4), 775.082, 775.083 and 775.084

<sup>2</sup>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)(k)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Freeman v. State*, 611 So.2d 1260 (Fla.App. 2 Dist. 1992) (review denied by the Florida Supreme Court, 623 So.2d 493)(cert. den., 510 U.S. 957, 114 S.Ct. 415, 126 L.Ed.2d 361 (1993)), *Gomes v. State*, 621 So.2d 578 (Fla.App. 3 Dist. 1993), *Davison v. MacKinnon*, 656 So.2d 223 (Fla.App. 5 Dist. 1995) & *Colby v. State*, 675 So.2d 1025 (Fla.App. 4 Dist. 1996)

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

Other: (continued)

**Crimes Compensation Trust Fund.** (continued) ability to pay. §§960.25, 775.0835(1) & 938.03

**Special Court Cost.** A court cost of **\$135** is added to any fine and is distributed as follows: **\$25** is deposited into the EMS Trust Fund; **\$50** is deposited into the Criminal Justice Standards and Training Trust Fund; and, **\$60** is deposited into the Brain and Spinal Cord Injury Rehabilitation Trust Fund. §938.07

**Alcohol/Drug Assessment.** In addition to any other fine, a defendant may be assessed an amount not to exceed the maximum fine authorized for the offense. This assessment is used to finance alcohol and drug programs. §§893.13, 893.16 & 893.165

**Reinstatement Fee.** In addition to any other license reinstatement fee, a person, who has been either convicted of a DWI offense or found in violation of the admin. per se law, must pay a special fee of **\$105**. This fee is paid into the Accident Reports Trust Fund. §322.12(2)

**Program Fee.** A defendant, attending a DWI program, is assessed a **\$10** fee which is used to support such program. §25.387(3)(a)

**Special Note:** Under §322.291, a defendant is required to complete a driver training course.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Double Jeopardy on p. 3-99.

**Yes**  $\geq$  **0.08 BAC/BrAC** §§316.193 & 322.2615(1)(a) See Footnote No. 3 on p. 3-97. A violation-Susp 6 mos (30 dys mand A restricted hardship license may be issued after this mand period.) A violation where there has been two or more DWI offenses-**Susp 1 yr** (mand)<sup>1</sup> §§316.193, 322.2615(1)(a), (1)(b), (8)(b) & (10) and 322.271(2)(a)

Persons Under 21 Years Old.  $\geq$  **0.02 BAC/BrAC** 1st violation-Susp 6 mos (30 dys mand); Subsequent violations-Susp 1 yr (30 dys mand) If BAC/BrAC is  $\geq$  0.05, the suspension remains in effect until the driver completes a substance abuse course. §322.2616(1)(a), (2), (9) & (11) See Footnote No. 2 on p. 3-98.

Other:

Under §§322.27(a)(1) & 322.28(1), a person's license may be susp for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing and could occur prior to a conviction.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st Off<sup>2&3</sup>-Rev; 2nd Off<sup>2&3</sup> (w/n 5 yrs)-Rev; 3rd Off<sup>2&3</sup> (w/n 10 yrs)-Rev; 4th off<sup>2&3</sup>-Rev §322.28 **Special Note:** Rev is permanent

<sup>1</sup>**Comment:** The "actual" suspension period appears to be only 11 mos. The law provides that a person be issued a 30 dy temporary license at the time of arrest. However, since the law also provides that the suspension "commences" at the time of arrest, the person is only denied driving privileges for 11 mos. §322.2615(b)(1.b), (2) & (4) Unlike the mandatory suspension associated with an admin. per se violation where there has not been a prior drunk driving offense, the law does not provided that the mandatory suspension period start after the expiration of the 30 dy temporary license.

<sup>2</sup>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.

<sup>3</sup>This revocation applies to both non-injury and injury related DWI offense convictions. §322.28(2)

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

<p>Term of License Withdrawal (Days, Months, Years, etc.):</p>	<p>if there is an alcohol off in connection with a veh manslaughter/homicide off. §§322.26 &amp; 322.28(2)(e)</p>
<p>Mandatory Minimum Term of Withdrawal:</p>	<p><u>1st Off-180 dys-1 yr</u>; <u>2nd Off</u> (w/n 5 yrs)-Not less than <b>5 yrs</b>; <u>3rd off</u> (w/n 10 yrs)-Not less than <b>10 yrs.</b>; and <u>4th off-Permanent</u> §322.28</p> <p><u>1st Off-None</u><sup>1</sup>; <u>2nd Off</u> (w/n 5 yrs)-<b>12 mos</b><sup>2</sup>; <u>3rd Off</u> (w/n 10 yrs)-<b>24 mos</b><sup>2</sup>; <u>4th Off-Permanent</u> §§322.271(2)(b) &amp; 322.28</p>
<p>Other: Rehabilitation: Alcohol Education:</p>	<p><b>Yes</b> A substance abuse course/alcohol treatment program is required for a defendant convicted of any DWI off. §§316.193(5) &amp; 322.291 Such a course must be successfully completed by defendants who have been convicted of either two DWI offs (w/n 5 yrs) or 3 such offs (w/n 10 yrs) before their license can be restored. §322.03(2)</p>
<p>Alcohol Treatment:</p>	<p>See Alcohol Education above. If BAC/BrAC is ≥0.05, drivers &lt;21 yrs old must complete a substance abuse course. §322.2616(2)(c)</p>
<p>Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:</p>	<p><b>Yes (Limited)</b>-A drunk driving offender's vehicle is subject to <b>forfeiture</b>, if at the time of the DWI offense, they were driving on a suspended or revoked license for a prior drunk driving offense. §§322.34(9)(a) &amp; 932.701(2)(a)(8)</p>
<p>Terms Upon Which Vehicle Will Be Released:</p>	<p><b>None</b></p>

<sup>1</sup>A temporary restricted use license for business/employment may be issued. Generally, a person must have completed a substance abuse course prior to being issued this type of license. §322.271(2)(a)

<sup>2</sup>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)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if they are convicted of the following offenses: They drive a CMV while (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. (Note: A "conviction" includes an administrative determination as well as a criminal law conviction.) For either (1) a subsequent conviction or (2) a combination of two or more convictions of any of the above listed items, the "disqualification" is permanent. (**Comment:** There is an inconsistency in the law. Under §322.64(1)(b) & (8)(b), if the "disqualification" is based on a violation of §316.193 with an unlawful blood alcohol level (i.e., a BAC ≥0.08), the periods of "disqualification" are six (6) months for a first violation and one (1) year of a subsequent one. This obviously is inconsistent with the previously listed "disqualifications" as provided in §§322.61 and 322.64(8)(a).) A CMV operator, who has any amount of alcohol in their system, must be placed "out-of-service" for 24 hours and is subject to a moving violation civil penalty of \$52 plus a \$5 assessment. §§318.18(3) & (12), 322.01(3), 322.01(8), 322.01(14), 322.01 (29), 322.39, 322.61(3), 322.61(4), 322.61(5), 322.62, 322.63, 322.64(1)(b) & (8), 775.082(4)(b), 775.083(1)(e) & Ch. 90-253

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

Other:

**Impoundment or Immobilization.** 1st off-10 dys<sup>1</sup>; 2nd off (w/n 5 yrs)-30 dys<sup>2</sup>; 3rd off (w/n 10 yrs)-90 dys<sup>2</sup> §316.193(6)(a), (b) & (c)  
Note: These actions are conditions of mandatory probation. The court may decide not to order vehicle impoundment or immobilization if the family of the vehicle owner "has no other public or private or public means of transportation." §316.193(6)(g)

Miscellaneous Sanctions  
Not Included Elsewhere:

**Medical Facility Visitation Requirement.** A DWI offender under 18 years old may be ordered by the court to visit medical facilities that treat victims of traffic accidents. §322.0602

**Ignition Interlock.** A DWI defendant, who is placed on probation and who is otherwise "permitted" to operate a motor vehicle, may be required to operate vehicles equipped with "ignition interlock" devices for not less than 6 mos. §316.1937 In addition, the licensing agency may require any person seeking reinstatement of their driving privileges to use an "ignition interlock" device on their vehicle. §322.271(2)(d) This requirement can apply to either occupational restricted or "regular" driving privileges. However, there is a limited exemption in situations where such a person is operating a vehicle while in the course of employment.

**Probation Requirements.** A court, under its general probation powers, may require a person convicted of a DWI offense (1) to place a **bumper sticker** on their vehicle that identifies them as a convicted DWI offender, who is operating a motor vehicle on a restricted license, or (2) to place, at their own expense, an advertisement in a local newspaper along with their photograph that identifies them as DWI offender. These probation conditions have been held to be constitutional under both the Federal and State constitutions. *Lindsay v. State*, 606 So.2d 652 (Fla.App. 4 Dist. 1992), & *Goldschmitt v. State*, 490 So.2d 123 (Fla.App. 2 Dist. 1986) Such a condition can also require a person to abstain from the use of alcohol. *Spry v. State*, 750 So.2d 123 (Fla.App. 2 Dist. 2000)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

See Footnote No. 3.  
**Yes I. DWI (DUI) Manslaughter** (a death related to a drunk driving offense)-Felony 2nd degree  
**II. Manslaughter** (death related to veh. operation where there is negligent action without lawful justification)-Felony 2nd degree

<sup>1</sup>Applies only to vehicles used in the offense or to one vehicle owned by the offender. This action may not be concurrent with probation or imprisonment. §316.193(6)(a)

<sup>2</sup>Applies to all vehicles owned by the offender. This action may not be concurrent with probation or imprisonment but must, unlike 1st offenses, be concurrent with the driver's license revocation. §316.193(6)(b) & (c)

<sup>3</sup>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 either suspended or revoked and where the basis of the suspension or revocation was (1) a 2nd DWI off, (2) veh. manslaughter, (3) veh. homicide or (4) a DWI off. that requires an enhanced sanction. See Footnote No. 1 on p. 3-99. Sanctions: Jail-not more than 5 yrs (§775.082(3)(d)); fine-not more than \$5,000 (§775.083(1)(c)).

Other Criminal Actions Related to DWI: (continued)

<p>Sanctions: Criminal Sanction: Imprisonment (Term):</p> <p>Mandatory Minimum Term: Fine (\$ Range):</p> <p>Mandatory Minimum Fine: Administrative Licensing Action: Licensing Authorized and Type of Action: Length of Term of Licensing Withdrawal:</p> <p>Mandatory Action--Minimum Length of License Withdrawal:</p> <p>Other:</p>	<p>III. <u>Veh Homicide</u> (death related to reckless veh. operation)-Felony 2nd degree §§316.193(3)(c)(3), §782.07 &amp; 782.071</p> <p>Felony 2nd degree-Not more than <b>15 yrs</b> §775.082(3)(c)</p> <p><b>None</b> Felony 2n degree-Not more than <b>\$10,000</b> §775.083(1)(b)</p> <p><b>None</b></p> <p><b>Rev</b> (All offenses) §322.28(3)(e) &amp; (5)(a)</p> <p>I. <u>DWI (DUI) Manslaughter-3 yrs</u> (minimum) II. <u>Manslaughter-3 yrs</u> (minimum); if related to a DWI offense conviction-<b>Permanent</b> III. <u>Veh Homicide-3 yrs</u> (minimum); if related to a DWI offense conviction-<b>Permanent</b> §322.28(2)(e) &amp; (5)(a)</p> <p>I. <u>DWI (DUI) Manslaughter-3 yrs</u> II. <u>Manslaughter-3 yrs</u>; if related to a DWI offense conviction-<b>5 yrs</b><sup>1</sup> III. <u>Veh Homicide-3 yrs</u>; if related to a DWI offense conviction-<b>5 yrs</b><sup>1</sup> §322.28(2)(e) &amp; (5)(a) A defendant may be required to pay restitution to a victim. §775.089 I. A defendant must complete a driver training course. §322.291, II. The court may order a person to serve 120 hrs of community service is either a trauma center or hospital. §782.071(4) III. See Crimes Compensation Trust Fund on p. 3-99.</p>
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Driving While License Suspended or Revoked  
Where the Basis Was a DWI Offense\*:

<p>Sanction: Criminal: Imprisonment (Term):</p>	<p>See Footnote No. 2 and the Special Note below.</p> <p><u>1st off</u> (Misd 2nd degree)-Not more than <b>60 dys</b>; <u>2nd off</u> (Misd 1st degree)-Not more than <b>1 yr</b>; <u>3rd or sub off</u> (Felony 3rd degree)-Not more than <b>5 yrs</b> §§322.34(2) &amp; 775.082</p>
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<sup>1</sup>After 5 yrs, a person is eligible for restricted occupational driving privileges for not less than 1 yr and unrestricted privileges thereafter. Before being granted these privileges, the person must demonstrate that they have been drug-free for 5 yrs and that they have completed a substance abuse driver training course. Following the granting of such privileges, the person must continue to participate in a substance abuse program. §322.271(4)

<sup>2</sup>A person, who has had their driving privileges revoked for either a DWI or vehicle homicide offense and who causes either a death or a serious bodily injury while operating vehicle while still revoked for these offenses, commits a 3rd degree felony. The sanctions for this offense are a term of incarceration of not more than 5 yrs and/or a fine of not more than \$5,000. §§322.34(3), 775.082 & 775.083

\*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked and the person knew that their driving privileges had been suspended or revoked. §322.34(2) If the person had no knowledge of such action and they operate a motor vehicle, they commit a moving traffic infraction. §322.34(1) The sanction for such an infraction is not more than \$500 (\$60 if the person does not request a hearing). §§318.14(5), 318.18(3)(a) & 322.34(1)

**Special Note:** The following sactions apply if a person operates a CMV during a CDL disqualification: 1st off (1st Degree misd) a jail term ≤ 1 yr and/or a fine ≤ \$1,000; 2nd or sub off (3rd Degree felony) an imprisonment ≤ 5 yr and/or a fine ≤ \$5,000. And, for both 1st and subsequent offenders, driving privileges cannot be restored for an additional 3 mos. §322.28(3) & 322.34(4)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	<b>None</b>
Fine (\$ Range):	<u>1st off</u> -Not more than \$500; <u>2nd off</u> -Not more than \$1,000; <u>3rd and sub off</u> -Not more than \$5,000 §775.083
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Actions:	See Footnote No. 1.
Type of Licensing Action (Susp/Rev):	<u>1st off</u> -Susp/Rev; <u>2nd and sub offs</u> -Susp/Rev §322.28(3)
Length of Term of License Withdrawal Action:	<u>1st off</u> -An additional <b>3 mos</b> ; <u>2nd and sub offs</u> -An additional <b>3 mos</b> §322.28(3)
Mandatory Term of License Withdrawal Action:	<b>No</b> A restricted hardship license may be issued. §322.271
Habitual Traffic Offender Law: State Has a Such Law (Yes/No):	<b>Yes</b> §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:	<b>Rev-5 yrs</b> §322.27(5) Note: After 12 mos, the offender may have his/her driving privileges restored. §322.271(1)(b) Under §322.291, a driver training course must be completed.
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	3rd Degree felony §322.34(5)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than <b>5 yrs</b> §775.082
Mandatory Minimum Term of Imprisonment:	<b>None</b>
Fine (\$ Range):	Not more than \$5,000 §775.083
Mandatory Minimum Fine (\$):	<b>None</b>
Licensing Actions (Specify):	<b>Rev period extended an additional 3 mos</b> §322.28(3)

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

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

- Driver:
- Vehicle Passengers:
- Pedestrian:

**No**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

**21<sup>2</sup>** (Year Eff: 1985) §562.11(1)(a) & (2)

<sup>1</sup>I. The vehicle used in the offense, if it is owned of the driver, is impounded by law enforcement officials. The vehicle remains impounded until the owner presents proof either (1) of insurance or (2) of sale of the vehicle to another person. §322.34(5)

II. See Vehicle Impoundment/Confiscation on p. 3-101.

<sup>2</sup>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)

Other State Laws Related To Alcohol Use: (continued)

Minimum Age (Years) Possession:	21 Except for employment purposes §562.111
Minimum Age (Years) Consumption:	None <sup>1</sup>
<u>Dram Shop Laws and Related Legal Actions:</u>	
State Has a Dram Shop Law (Yes/No):	Yes Limited §768.125 See Footnote Nos. 2 ,3 & 6.
"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 <sup>4</sup>
Dram Shop Actions-Social Hosts:	Limited <i>Bankston v. Brennan</i> , 507 So.2d 1385 (Fla. 1987), & <i>Newsome v. Haffner</i> , 710 So.2d 184 (Fla.App. 1 Dist. 1998) <sup>5</sup> , & <i>Trainor v. Estate of Hanson</i> , 740 So.2d 1201 (Fla.App. 2 Dist. 1999) <sup>5</sup>

<sup>1</sup>Under §562.11(1)(a), it is illegal for a licensee to allow a minor to consume alcoholic beverages on their premises.

<sup>2</sup>This law limits liability to damages caused either (1) by selling or furnishing alcoholic beverages to persons under the legal drinking or (2) by knowingly serving alcoholic beverages to persons who are habitually addicted to alcohol. *Peoples Restaurant v. Shbo*, 591 So.2d 907 (Fla. 1991) **Comment:** Concerning this law, several things should be kept in mind. I. For injuries caused by a minor, the injured party must prove that alcoholic beverages were "willfully and unlawfully" served to the minor by the licensee. For injuries caused by an habitual drunkard, the injured party must prove that alcoholic beverages were only "knowingly" served by the licensee. Also, the service on multiple drinks on one occasion is not sufficient to establish that a patron was an habitual drunkard. However, serving multiple drinks on numerous occasions is circumstantial evidence of such behavior. *Ellis v. N.G.N. of Tampa*, 586 So.2d 1042 (Fla. 1991), & *Fleuridor v. Surf Café*, 775 So.2d 411 (Fla.App. 4 Dist. 2001) II. Also, liability does not apply in situations where injury causing habitual drunkards are sold alcoholic beverages in closed containers. Liability only occurs if such persons are served alcoholic beverages for consumption on the premises. *Persen v. Southland Corp.*, 656 So.2d 453 (Fla. 1995)

<sup>3</sup>A licensee may be held liable for the actions of an intoxicated minor to whom they have not sold alcoholic beverages. Such is the case if an under age person is allowed to purchase alcoholic beverages where the licensee is "on notice" that the purchaser will give such beverages to another minor who could become intoxicated and cause injury to a third party. I.e., the licensee is considered to have sold or furnished alcoholic beverages to both minors. *O'Neale v. Hershoff*, 634 So.2d 644 (Fla.App. 3 Dist. 1994)

<sup>4</sup>The law limits this type of liability. It appears that previous case law has been abrogated by this statute. *Migliore v. Crown Liquors of Broward, Inc.*, 448 So.2d 978 (Fla. 1984), & *Bennett v. Godfather's Pizza, Inc.*, 570 So.2d 1351 (Fla.App. 3 Dist. 1990)

<sup>5</sup>I. Despite the *Bankston* decision above, an employer may be held liable, via a respondeat superior, for the negligent actions of an intoxicated employee while attending a convention related to the employer's business. The court considered the employee to be "in the course and scope of his employment". *Carroll Air Systems, Inc. v. Greenbaum*, 629 So.2d 914 (Fla.App. 4 Dist. 1993)

II. In *Newsome* and *Trainor*, a social host may be held liable for a minor's injuries or death that occurred after the minor consumed alcoholic beverages at a social function given by the host. These cases are based on §856.015 which makes it a criminal offense to host an "open house party" (a general social gathering of persons) where the social host has knowledge that alcoholic beverages are being consumed by minors. The courts held that a violation of this statute, which results in either an injury or a death to a minor, creates a cause of action (negligence per se) by either the minor or the minor's estate against the social host.

<sup>6</sup>I. A patron, who is a known "habitual drunkard," can hold a licensee liable, under the dram shop law, for injuries they sustain as a result of becoming intoxicated at the licensee's establishment. *Ellis v. N.G.N. of Tampa*, 586 So.2d 1042 (Fla. 1991) II. Under the dram shop law, a licensee may be liable for the injuries or death (including suicide) of an intoxicated minor patron. *Kirkman Road Sports Pub and Restaurant, Inc. v. Dempsey*, 723 So.2d 384 (Fla.App. 5 Dist. 1998) Licensees may also be liable for injuries to intoxicated minor patrons which are indirect in nature. E.g., a minor, due to their intoxication, was injured in a traffic accident while riding with minor driver who was also intoxicated. The court reasoned that the minor passenger's intoxication could have obscured his judgement as to the danger of riding with a drunk driver. *Nieves v. Camacho Clothes, Inc.*, 645 So.2d 507 (Fla.App 5 Dist. 1994) In another case, the court held that a licensee may be held liable for the death of an intoxicated minor patron who was shot and killed by another person in self defense. The minor's intoxication lead him into an altercation with an adult which resulted in the shooting. *Sipes v. Altertson's, Inc.*, 728 So.2d 1243 (Fla.App. 5 Dist. 1999)

FLORIDA

Other State Laws Related to Alcohol Use: (continued)

Other:	See Footnote No. 7 on p. 3-105.
<u>Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
Type of Criminal Action:	None <sup>1</sup>
Term of Imprisonment:	None
Fine (\$ Range):	None
<u>Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	No <sup>1</sup>
Length of Term of License Withdrawal:	N/A
<u>Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:</u>	
Type of Criminal Action:	Misd 2nd degree §562.11(1)(a)
Term of Imprisonment:	Not more than 60 dys §775.082
Fine (\$ Range):	Not more than \$500 §775.083
<u>Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes Susp or rev <sup>2</sup> §561.29(1)(a) & (w)
Length of Term License Withdrawal:	Time period is not specified in the statute.
<u>Anti-Happy Hour Laws/Regulations:</u>	No
<u>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:</u>	
Open Container Law (Yes/No):	Yes Driver and Passengers §316.1936
Anti-Consumption Law (Yes/No):	Yes Driver and Passengers §316.1936

<sup>1</sup>It is a 2nd degree misd (jail-not more than 60 days; fine-not more than \$500) for a person (e.g., a licensee) to sell or dispose of intoxicating liquors to an individual after the seller or dispenser has written notice that such individual is an habitual drunkard. §§562.50, 775.082 & 775.083 A licensee is also subject to license suspension under §561.29(1)(a) & (b).

<sup>2</sup>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:

General Reference:

Basis for a DWI Charge:

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

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

Other:

Chemical Breath Tests for Alcohol Concentration:

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

**GEORGIA**

Code of Georgia Annotated (Code of 1981)

See the Special Note below.

Under the influence of alcohol §40-6-391(a)(1)  
≥0.08<sup>1&2</sup> or **Any Amount of a Controlled Substance or Marijuana** (in the blood or urine)<sup>3</sup> §§40-1-1(1), 40-6-391(a)(5) & (6) and 40-6-392(b)(4) & (c)(.1)  
Persons Under 21 Years Old-≥0.02<sup>1,2&4</sup> §§40-6-391(k)(1) & 40-6-392(c)(2) See Court Decision below.

**None**

(1) Under the influence of **Any Drug**, (2) under the intentional influence of **Any Glue, Aerosol, or Other Toxic Vapor** or (3) under the combined influence of alcohol and/or any of the previous substances §40-6-391(a)(2), (3) & (4)  
For Commercial Motor Vehicle Operators, see p. 3-113.

**No**<sup>5</sup>

**Yes**<sup>6</sup> §40-5-55(a)

**Yes** §40-5-55(a)

**Yes**<sup>7</sup> (Criminal Cases) §40-6-392(d), *Hassell v. State*, 442 S.E.2d 261 (Ga.App. 1994)<sup>8</sup>, *Allen v. State*, 494 S.E.2d 229 (Ga.App. 1997), & *Brinson v. State*, 503 S.E.2d 599 (Ga.App. 1998)

<sup>1</sup>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 (0.02 for persons under 21 years old) or more.

<sup>2</sup>Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §40-1-1(1)

<sup>3</sup>The law, making it illegal to operate a motor vehicle with any amount of a control substance or marijuana in the blood or urine, where there is no evidence of impairment by drugs, has been held to be constitutional on "rational basis" grounds as a legitimate exercise of legislative authority to protect the public safety. However, the exemption to this offense, that allows persons to operate motor vehicles in situations where they were legally entitled to use a controlled substance(s)/marijuana, was held unconstitutional; the court concluded that there was no "rational basis" to exclude these persons. §40-6-391(a)(5) & (6), *Stevenson v. State*, 453 S.E.2d 18 (Ga. 1995), and *Love v. State*, 517 S.E.2d 53 (Ga. 1999)

<sup>4</sup>Except as noted, the sanctions for this offense are the same as for any other drunk driving offense.

<sup>5</sup>Law enforcement officers are using preliminary breath testing devices without express legislative authorization. Such use has not been subject to court challenge. However, the Georgia Supreme Court has noted such use. *Keenan v. State*, 436 S.E.2d 475 (Ga. 1993) See also *White v. State*, 503 S.E.2d 891 (Ga.App. 1998), and *State v. Stansbury*, 505 S.E.2d 564 (Ga.App. 1998).

<sup>6</sup>**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 in either serious injury or death. §40-5-55(a)

<sup>7</sup>Refusal to submit to a PBT can also be admitted into evidence at a DWI trial. *Keenan v. State*, 436 S.E.2d 475 (Ga. 1993)

<sup>8</sup>Note: If proper warnings are not given, evidence of refusal may not be admissible. *State v. Leviner*, 443 S.E.2d 688 (Ga.App. 1994)

**Special Note:** The courts have held that §40-6-391 establishes one offense namely that of "driving under the influence". Subsection (a)(1), the standard DWI offense, and subsection (a)(5), the 0.10 (formally 0.12) illegal per se offense, represent two (2) different methods of proving this "one" offense. *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))

**Court Decision.** The State supreme court has held that §40-6-391(k), which makes it illegal for a person under 21 yrs old to operate a motor vehicle with an alcohol concentration ≥0.02, does not violate such a person's right to equal protection of the laws under either the State or Federal constitutions. *Barnett v. State*, 510 S.E.2d 527 (Ga. 1999)

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Chemical Breath Tests for Alcohol Concentration:  
(continued)

Other Information: Refusal to submit to alco-sensor (PBT), Horizontal Gaze Nystagmus and field sobriety tests can be admitted into evidence. *Turner v. State*, 504 S.E.2d 229 (Ga.App. 1998)

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

Blood: Yes<sup>1</sup> §40-5-55(a)  
Urine: Yes<sup>1</sup> §40-5-55(a)  
Other: "Other Bodily Substance" §40-5-55(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): No<sup>2</sup>  
Anti-Plea Bargaining Statute (Yes/No): No<sup>2</sup>  
Pre-Sentencing Investigation Law (PSI) (Yes/No): Yes 1st off (discretionary); 2nd or sub off (mand) §§40-5-1(9), 40-5-63.1 & 40-6-391(c)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a 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): See Footnote No. 1 on p. 3-110.  
Administrative Licensing Action (Susp/Rev): None  
Susp 1 yr (mand) §40-5-67.1(d)

Sanctions Following a Conviction for a DWI Offense: See Footnote Nos. 1 & 2 on p. 109.

Criminal Sanctions: See Double Jeopardy below.  
Imprisonment: 1st off (Misd)-10 dys to 12 mos; 2nd off (w/n 5 yrs) (Misd)-90 dys to 12 mos; 3rd and subsequent offs (w/n 5 yrs) (High and Aggravated Misd)-120 dys to 12 mos §40-6-391(c) & (k)

<sup>1</sup>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)

<sup>2</sup>The court cannot except a *nolo contendere* plea in two situations. (1) For a violation of the illegal per se provision, where the offender's BAC or BrAC was  $\geq 0.15$  or (2) for a violation of §40-6-391(k), where a person under 21 years old was operating a motor vehicle with a BAC or BrAC  $\geq 0.02$ . §§40-6-391(k)(3) & 40-6-391.1(a)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the admin per se law, may also be subsequently prosecuted for DWI. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Jackson v. State*, 462 S.E.2d 802 (Ga.App. 1995), *Nolen v. State*, 463 S.E.2d 504 (Ga.App. 1995), *Kirkpatrick v. State*, 464 S.E.2d 882 (Ga.App. 1995), *Howard v. State*, 465 S.E.2d 281 (Ga.App. 1995), *Walsh v. State*, 469 S.E.2d 526 (Ga.App. 1996), *Martinez v. State*, 471 S.E.2d 551 (Ga.App. 1996), and *Smith v. State*, 471 S.E.2d 591 (Ga.App. 1996)

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

See Footnote Nos. 1 & 2 below.

Mandatory Minimum Term:	<u>Persons Under 21 Years Old:</u> These offenders must be kept segregated from all other offenders. §17-10-3.1(b) Also, such persons, if convicted of operating a motor vehicle with a BAC/BrAC level $\geq 0.02$ , at the discretion of the court may be sentenced to serve imprisonment time either on weekends or during nonworking hours. §17-10-3.1(a) <u>1st off-24 hrs<sup>3</sup></u> if BAC/BrAC was $\geq 0.08$ ; <u>2nd off</u> (w/n 5 yrs) (Misd)- <u>72 hrs<sup>3</sup></u> ; <u>3rd and sub offs</u> (w/n 5 yrs) (High and Aggravated Misd)- <u>15 dys<sup>3</sup></u>
Fine: Amount (\$ Range):	<u>1st off</u> (Misd)- <u>\$300 to \$1,000</u> ; <u>2nd off</u> (w/n 5 yrs) (Misd)- <u>\$600 to \$1,000</u> ; <u>3rd and subsequent offs</u> (w/n 5 yrs)(High and Aggravated Misd)- <u>\$1,000 to \$5,000</u> §40-6-391(c) & (k)
Mandatory Minimum Fine (\$):	<u>1st off</u> (Misd)- <u>\$300</u> ; <u>2nd off</u> (w/n 5 yrs) (Misd)- <u>\$600</u> ; <u>3rd and subsequent offs</u> (w/n 5 yrs)(High and Aggravated Misd)- <u>\$1,000</u> or a \$500 fine on condition that the defendant undergoes an alcohol or drug treatment program (§40-6-391(g)(2)) In cases of "extreme hardship", the fine may be paid in installments. For sub offs, half of the fine may be suspended if the offender participates in a treatment program. §40-6-391(g)
Other Penalties: Community Service:	<u>1st off</u> (Misd)-Not less than <u>40 hrs</u> (40 hrs mand) <sup>3</sup> ; <u>2nd off</u> (w/n 5 yrs)(Misd)-Not less than <u>30 dys</u> (30 dys mand) <sup>3</sup> ; <u>3rd and subsequent offs</u> (w/n 5 yrs)(High and Aggravated Misd)-Not less than <u>30 dys</u> (30 dys mand) <sup>3</sup> §40-6-391(c)
Restitution (eg Victim's Fund)	<u>Persons Under 21 Years Old</u> with an alcohol concentration of $< 0.08$ : <u>1st off</u> -Not less than <u>20 hrs</u> (20 hrs mand); <u>2nd or sub off</u> -Not less than <u>40 hrs</u> (40 hrs mand) §40-6-391(c)(1)(C), (c)(2)(C) & (c)(3)(C) <b>Yes</b> (1) A defendant may have to pay restitution (or other relief to a victim) as a condition of probation. §17-14-1 et seq. (2) A victim may also receive payment from the State's victims' compensation fund. §17-15-1 et seq. Awards are limited to a maximum amount of \$1,000. §17-15-8(c)
Other:	<b>Photo, Name &amp; Address Publication.</b> For a <u>2nd or sub offs</u> , a defendant's name, address and photograph shall be published in the "legal organ of the appropriate county." §40-6-391(j) <b>Special Fine for the Peace Officer's Annuity and Benefit Fund.</b> <sup>4</sup> An additional fine equal to 5% of the original fine is imposed and deposited into this fund. §15-21-131

<sup>1</sup>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 15 years**. §40-6-394 DWI while operating a **school bus** imprisonment from **1 to 5 yrs** and/or a fine of **\$1,000 to \$5,000**. §40-6-391.3

<sup>2</sup>**Child Endangerment.** It is a separate offense to transport a child under 14 yrs old while DWI. The sanctions for this offense are as follows: 1st off (misd)-jail 1 to 5 mos; fine \$200 to \$500; 2nd off (misd)-jail 3 mos to 1 yr; fine \$400 to \$1,000; 3rd and sub. off (felony)-jail 1 to 3 yrs; fine \$1,000 to \$5,000. §§16-12-1(d) & 40-6-391(l)

<sup>3</sup>An offender is subject to both a period of mand jail and mand community service. *Gidey v. State*, 491 S.E.2d 406 (Ga.App. 1997)

<sup>4</sup>**Special Penalty for the Brain and Spinal Injury Trust Fund.** An additional fine equal to 10% of the original fine is imposed and deposited into this fund. §§15-21-149, 15-21-150 & Article III, §IX, ¶VI(k) of the State Constitution

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

Other: (continued)

**Assessment.** An assessment penalty of \$25 or 10 percent of the original fine whichever is less. This penalty is used to support the Crime Victims Emergency Fund. §§15-21-112 & 15-21-115

**Probation.** If jail is <12 mos, mandatory probation for any period of time not served in confinement. §40-6-391(c) 2nd and sub offenders on probation must install **ignition interlock** devices on all of the vehicles they own and only operate vehicles equipped with such devices. Such use begins when the offender is issued limited driving privileges and must last for **6 mos.** §§42-8-111 & 42-8-112 See the Special Note below.

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

See Double Jeopardy on p. 3-108.

**Yes<sup>1</sup> ≥0.08 BAC/BrAC** (≥0.02 for persons under 21 yrs old) See Footnote No. 2 on p. 3-107. §§40-5-67.1(c) & 40-5-67.2(a)  
1st action-Susp 1 yr (License reinstatement after 30 dys and after completion of an Alcohol or Drug Use Risk Reduction Program. However, limited driving privileges may be granted at any time.  
2nd action (w/n 5 yrs)-Susp 3 yrs (License reinstatement after either (1) a 18 mos susp or (2), if they are on probation for a drunk driving offense, 12 mo susp followed by 6 mos use of an **ignition interlock** device with restricted driving privileges.) Before a license can be reinstated, an offender must have completed an Alcohol or Drug Use Risk Reduction Program. 3rd and sub action (w/n 5 yrs)-Susp 5 yrs (2 yrs mand) After 2 yrs, a person may be issued a "probationary" driver's license. If they are on probation for a drunk driving offense, the offender can only operate vehicles equipped with **ignition interlock** devices for the first 6 mos of probationary driving privileges. Before a license can be reinstated or a probationary license issued, an offender must have completed an Alcohol or Drug Use Risk Reduction Program. §§40-5-64(a)(1) & (e), 40-5-67.1, 40-5-67.2 and 42-8-112

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

Persons ≥21 Years Old<sup>2</sup>: For all DWI offenses: 1st off-Susp; 2nd off-Susp; 3rd off (w/n 5 yrs)-Rev (See Habitual Traffic Offender Law on p. 3-114.) §§40-5-62(a)(1), 40-5-63, 40-5-64, 42-8-111 & 42-8-112 DWI-Serious Injury-Susp §40-5-63(d)  
Persons Under 21 Years Old: For a violation §40-6-391, the same licensing actions as above. §40-5-57.1(b)(2)

<sup>1</sup>If a person is "acquitted" of a drunk driving offense under §40-6-391, the implied consent refusal or administrative per se suspension is terminated. However, this suspension does not terminate in cases where a person has pleaded *nolo contendere* to a such an offense. §40-5-67.1(g)(4)

<sup>2</sup>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

**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.

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

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

Persons ≥ 21 Years Old: I. Alcohol and Non-controlled Substance (Drug) DWI Offenses: 1st off-12 mos<sup>1</sup>; 2nd offs-3 yrs<sup>1</sup>; 3rd off-5 yrs (See Habitual Traffic Offender Law on p. 3-114.)  
DWI-Serious Injury-3 yrs  
II. Controlled Substance DWI Offenses: 1st off-Not less than 180 dys; 2nd off-3 yrs; 3rd off-5 yrs §§40-5-63(a) & 40-5-75(a)  
Persons Under 21 Years Old: For a violation §40-6-391, the same licensing sanctions as above. §40-5-57.1(b)(2)

Mandatory Minimum Term of  
Withdrawal:

Persons ≥ 21 Years Old: I. Alcohol and Non-controlled Substance (Drug) DWI Offenses: 1st off-None<sup>1&2</sup>; 2nd off-License reinstatement after either (1) a 18 mos susp or (2), if they are on probation for a drunk driving offense, 12 mo susp followed by 6 mos use of an ignition interlock device with restricted driving privileges. 3rd off (w/n 5 yrs)-2 yrs After 2 yrs, a person may be issued a "probationary" driver's license. If they are on probation for a drunk driving offense, the offender can only operate vehicles equipped with **ignition interlock** devices for the first 6 mos of probationary driving privileges (See Habitual Traffic Offender Law on p. 3-114. §§40-5-63(a)(3) & 42-8-112 DWI-Serious Injury-3 yrs  
II. Controlled Substance DWI Offenses: 1st off-180 dys; 2nd off-1 yr; 3rd off-2 yrs<sup>3</sup> §§40-5-63(a) & 40-5-75(a)  
Persons Under 21 Years Old: 1st off- If BAC was <0.08-6 mos; if BAC was ≥0.08-12 mos; 2nd or sub off-mand licensing actions as noted above. §40-5-57.1(b)(2)

Other:  
Rehabilitation:  
Alcohol Education:  
Alcohol Treatment:

**Yes** See Alcohol Treatment below.  
**Yes** I. For a 1st or 2nd DWI conviction listed under admin. action I or II on p. 3-111, a person's license cannot be reinstated until they have completed an alcohol or drug risk reduction program. §40-5-63(a)(1) & (2)  
II. For 2nd or 3rd DWI offense convictions, a defendant must complete an "alcohol or drug use reduction program" **and**, if an evaluation indicates that treatment is necessary, a substance treatment program before their license can be restored. §§40-5-62(b), 40-5-63(a)(2) & 40-5-63.1

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

**Yes Forfeiture** (Appears to be Mandatory) A person's vehicle

<sup>1</sup>For a 1st drunk driving offense convictions, the license suspension period may be limited to only 120 days. Under §40-5-63(a)(1), 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.  
<sup>2</sup>For a 1st DWI offense conviction, a defendant may receive for limited driving privileges in cases of "extreme hardship." §40-5-64  
<sup>3</sup>Driving privileges (license) may be reinstated after this period provided the offender has completed a drug treatment program and a refusal to allow such privileges (issue such a license) would cause "extreme hardship".

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

Terms Upon Which Vehicle  
Will Be Released:  
Other:

Miscellaneous Sanctions  
Not Included Elsewhere:

**Forfeiture** (continued) is subject to forfeiture if they are convicted of a 4th DWI offense and such off occurred while they were operating a vehicle in habitual offender status based on 3 prior DWI convictions. §40-6-391.2 In lieu of forfeiture and based on the financial hardship to the defendant's family, the court may order that the vehicle's title be transferred to another family member who is licensed and who needs the vehicle for employment or other family needs. §40-6-391.2(i)

**None**  
**See License Plates Surrendered** on p. 3-114.

The court has the authority to order a defendant "to wear a fluorescent pink plastic bracelet imprinted with the words 'D.U.I. CONVICT' ...." (436 S.E.2d at 794) as a condition of probation. *Ballenger v. State*, 436 S.E.2d 793 (Ga.App. 1993)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes** Three Types: **I.** Vehicle Homicide in the first degree (Felony)-Death where there is no "malice aforethought" but where there is either reckless driving or a DWI offense.  
**II.** Vehicle Homicide in the Second Degree (Misd)-Where the death is caused "without an intention to do so" and where there is neither reckless driving nor a DWI offense.  
**III.** Vehicle Homicide in the First Degree (Felony)-Death where the defendant is an "Habitual Violator", his/her license has been revoked and there is no "malice aforethought". §§16-1-3(5) (defines a felony offense) & 40-6-393

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

**I.** 3 to 15 yrs (§40-6-393); **II.** Not more than 12 mos (§17-10-3(a)(2)); **III.** 5 to 20 yrs (§40-6-393)

Mandatory Minimum Term:  
Fine (\$ Range):

**I.** None; **II.** None; **III.** 1 yr (§40-6-393)

**I.** None<sup>1</sup>; **II.** Not more than \$1,000 (§17-10-3(a)(2)); **III.** None<sup>1</sup>  
**See Special Fine for the Peace Officer's Annuity and Benefit Fund** on p. 3-109.

Mandatory Minimum Fine:

**None** (This applies to all veh. homicide offs)

<sup>1</sup>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 much as they would have, no doubt, been convicted of more than 3 serious traffic offenses w/n 5 yrs and would, therefore, be subject once again to the Habitual Violator Law (§40-5-58).

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action: Licensing Authorized and Type of Action: Length of Term of Licensing Withdrawal:	See the Comment on p. 3-112.  Susp/Rev §§40-5-54(a)(1), 40-5-58 & 40-5-63  <u>I. Susp-3 yrs</u> (§40-5-63(e))/ <u>Rev-5 yrs</u> if "Habitual Violator"; <u>II. 1st off-Susp-12 mos; 2nd off (w/n 5 yrs)-Susp-5 yrs; 3rd off (w/n 5 yrs)-"Habitual Violator"-Rev-5 yrs</u> <u>III. Rev-5 yrs</u>
Mandatory Action--Minimum Length of License Withdrawal:	<u>I. Susp-3 yrs</u> (§40-5-63(e))/ <u>Rev-5 yrs</u> if "Habitual Violator" (§40-5-58(f)); <u>II. 1st off-Susp-None; 2nd off (w/n 5 yrs)-Susp-120 dys; 3rd off (w/n 5 yrs)-"Habitual Violator"-Rev-2 yrs</u> <u>III. Rev-2 yrs</u>
Other:	None
<u>Driving While License Suspended or Revoked</u> <u>Where the Basis Was a DWI Offense*:</u> Sanction: Criminal: Imprisonment (Term):	See Footnote No. 1.  <u>1st off-2 dys to 12 mos (misd); 2nd and sub. off (w/n 5 yrs)(high and aggravated misd)-10 dys to 12 mos</u> §40-5-121(a)
Mandatory Minimum Term of Imprisonment:	<u>1st off-2 dys; 2nd and sub. off (w/n 5 yrs)-10 dys</u> §40-5-121(a) Op. Atty. Gen. U92-4
Fine (\$ Range):	<u>1st off-\$500 to \$1,000; 2nd and sub. off (w/n 5 yrs)-\$1,000 to \$2,500</u> §40-5-121(a) See <b>Special Fine for the Peace Officer's Annuity and Benefit Fund</b> on p. 3-109.
Mandatory Minimum Fine:	<u>1st off-\$500; 2nd and sub. off (w/n 5 yrs)-\$1,000</u> §40-5-121(a) & Op. Atty. Gen. U92-4

<sup>1</sup>It is a misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a fine of not less than \$500 and a CDL suspension for 6 mos. §§40-5-146(b) & 40-5-159(c) In addition, a person, who violates an out-of-service order, is subject to the following disqualification periods: 1st violation-90 dys to 1 yr; 2nd violation-1 to 5 yrs; and, 3rd or sub. violation-3 to 5 yrs. The minimum period of disqualification appears to be mandatory. §40-5-151(g)

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

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 yr (mand) (not less than 3 yrs (3yrs mand) if transporting hazardous materials) if they are convicted of driving a CMV (1) with a BAC/BrAC/UrAC ≥0.04 percent by weight of alcohol or more in the blood, breath or urine (Note: The usual standards for alcohol concentrations in the blood (grams of alc. per 100 milliliters of blood), breath (grams of alc. per 210 liters of breath) or urine (grams of alc. per 67 milliliters of urine) are listed in the CMV law. However, since the disqualification provisions use the term "percent by weight", there is a question as to whether such standards apply to these provisions.), (2) while under the influence of alcohol or any drug or (3) of a refusal to submit to a chemical test for alcohol concentration. (Note: The CMV implied consent provision, §40-5-153, applies to the testing for both an alcohol concentration and for the presence of drugs; however, the disqualification provision, §40-5-151(a)(2), applies only to a refusal to submit to a test for an alcohol concentration.) For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). It is a misd. to operate a CMV with a BAC ≥0.04; the only sanctions for this offense are the fines associated with DWI offense convictions. In addition, a CMV operator, who has any measurable amount of alcohol in their system, must be placed "out-of-service" for 24 hours. §§40-5-67.1(c), 40-5-142(2), (7), (9), (10) & (21), 40-5-151, 40-5-152, 40-5-153, 40-6-391(i) and 40-6-392(c)(1)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp/Rev §40-5-121(b)(2) & (c)

Length of Term of License

Withdrawal Action:

Original susp or rev period is extended 6 mos

Mandatory Term of License

Withdrawal Action:

Original susp or rev period is extended 6 mos

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes §40-5-58

Grounds for Being Declared an

Habitual Offender:

3 or more serious violations w/n 5 yrs

Term of License Rev While

Under Habitual Offender Status:

Rev 5 yrs<sup>1</sup> §40-5-62(c)(1) See License Plates Surrendered below.

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Felony<sup>2</sup> §§16-1-3(5) & 40-5-58(c)(1) & (2)

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

1 to 5 yrs §40-5-58(c)(1) & (2)

Mandatory Minimum Term of

Imprisonment:

None

Fine (\$ Range):

Not less than \$750 §40-5-58(c)(1) If habitual offender status was based only on DWI offense convictions, not less than \$1,000 §40-5-58(c)(2) See Special Fine for the Peace Officer's Annuity and Benefit Fund on p. 3-109.

Mandatory Minimum Fine (\$):

None

Licensing Actions (Specify):

None

<sup>1</sup>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 drunk driving offense convictions and the offender is placed on probation, the use of a probationary license is conditioned of the use of an ignition interlock device for 6 mos after a probationary license has been issued. §42-8-112(b)(3) **Special Note:** A probationary license is not available if (1) the person's regular license has been revoked for a DWI related death (§40-5-58(f)), (2) the person has been convicted of any other motor vehicle related death (§40-5-58(e)(1)(B)) or (3) the person has been convicted of violating either the alcoholic beverage control law or the controlled substances law. (§40-5-58(e)(1)(D)).

<sup>2</sup>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)

**License Plates Surrendered.** A 2nd or sub drunk driving offender must have the license plates of all the vehicles they own surrendered to the court. Specially numbered plates may be issued for such vehicles provided the offender has a limited or probationary license or some other member of the offender's household has a valid license and there is a hardship requiring the use of a vehicle or vehicles.. Such special plates shall not constitute probable cause to stop a motor vehicle. §40-2-136

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

**Possible** §§45-16-27 & 45-16-46 and Ops. Att. Gen. U79-10 & U80-56 Test via the coroner or medical examiner.<sup>1</sup>

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)<sup>2&3</sup> 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**<sup>4</sup>

Dram Shop Actions-Social Hosts:

**Yes**<sup>4</sup> **Limited** §51-1-40(b) See the Special Note below.

Other:

A patron, who has been injured by a intoxicated patron at a social function, may bring a cause of action against the social host for damages. The cause of action is based on negligence in failing to maintain a safe premises. *Borders v. Board of Trustees, VFW*, 500 S.E.2d 362 (Ga.App. 1998)

<sup>1</sup>At the request of either a coroner or police officer, the medical examiner may take a blood sample from a person, who has been killed, for the purpose of determining the presence of intoxicating substances in such person. §45-16-46

<sup>2</sup>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. *Eldridge v. Aronson*, 472 S.E.2d 497 (Ga.App. 1996), & *McNamee v. A.J.W.*, 519 S.E.2d 298 (Ga.App. 1999)

<sup>3</sup>Sec. 51-1-40 has been held not to violate the due process clause of the U.S. Constitution. *Riley v. H & H Operations, Inc.*, 436 S.E.2d 659 (Ga. 1993)

<sup>4</sup>**Comment:** The following case law, it appears, has been abrogated, at least in part, by the dram shop law (§51-1-40(b)): *Sutter v. Hutchings*, 327 S.E.2d 716 (Ga. 1985); *Bishop v. Fair Lanes Bowling, Inc.*, 623 F.Supp. 1195 (D.C. Ga. 1985) (reversed and remanded on other grounds, 803 F.2d 1548 (11th Cir. 1986)); and, *Tibbs v. Studebaker's of Savannah*, 362 S.E.2d 377 (Ga.App. 1987).

**Special Note:** Action is limited to the selling, furnishing or serving of alcoholic beverages either (1) to persons under the legal drinking age (in a willful, knowing and unlawful manner) or (2) to persons who are "in a state of noticeable intoxication" **and** only for injuries and damages resulting from the operation of a motor vehicle "when the sale, furnishing, or serving is the proximate cause of such injury or damage." *Perryman v. Lufan, Inc.*, 434 S.E.2d 112 (Ga.App. 1993), *Kappa Sigma Intern. Fraternity v. Toole*, 473 S.E.2d 213 (Ga.App. 1996), *Pass v. Bouwsma*, 522 S.E.2d 484 (Ga.App. 1999), and *Birnbrey, Minsk & Minsk, LLC v. Yirga*, 535 S.E.2d 792 (Ga.App. 2000) A motor vehicle passenger can recover damages from a licensee for any injuries they may have sustained in an accident while riding with an intoxicated driver who had become inebriated at the licensee's establishment. Liability applies even if the passenger also consumed alcoholic beverages with the vehicle operator at the establishment prior to the accident. A passenger is not considered a "consumer" under the dram shop law. *Griffen Motel Co. v. Strickland*, 479 S.E.2d 401 (Ga.App. 1996)

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Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

Misd §§3-1-2(2), 3-3-9, 3-3-22 & 17-10-3  
Not more than 12 mos  
Not more than \$1,000 See Special Fine for the Peace Officer's Annuity and Benefit Fund on p. 3-109.

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term of License Withdrawal:

Yes Susp or cancellation §3-2-3  
2 yrs

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

Type of Criminal Action:  
  
Term of Imprisonment:  
Fine (\$ Range):

1st off- Misd Subsequent offs- Misd of a high and aggravated nature. §§3-1-2(2), 3-3-23, 3-3-23.1, 17-10-3 & 17-10-4  
For 1st and subsequent off-Not more than 12 mos  
1st off- Not more than \$1,000; Subsequent off- Not more than \$5,000 See Special Fine for the Peace Officer's Annuity and Benefit Fund on p. 3-109.

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

Yes Susp or cancellation §3-2-3  
2 yrs

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

Yes Applies to drivers and passengers §40-6-253  
Yes Applies to drivers and passengers §40-6-253

JURISDICTION:  
General References:

**GUAM**  
Guam Code Annotated (Updated through August 1999)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an alcoholic beverage Title 16, §§18101(a) and 18102(a) & (c)
Illegal Per Se Law (BAC):	$\geq 0.08$ ( $\geq 0.04$ if $< 18$ yrs old) <sup>1</sup> Title 16, §18102(b), (d) & (g)(1)
Presumption (BAC):	$\geq 0.08$ <sup>1</sup> Title 16, §18103(a)(2)
Types of Drugs/Drugs and Alcohol:	Under (1) the influence of any controlled substance <sup>1</sup> or (2) the combined influence of an alcoholic beverage and any controlled substance <sup>1</sup> Title 16, §18102(a) & (c)
Other:	

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes Title 16, §18201(a) & (b)
Implied Consent Law Applies to Drugs (Yes/No):	Yes Title 16, §18201(b)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) Title 16, §18201(f)
Other Information:	

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

Blood:	Yes Title 16, §18201(a)
Urine:	
Other:	

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	Note: Criminal proceeding in a drunk driving case cannot be suspended, stayed or dismissed if the defendant participates in an alcohol education/treatment program. Title 16, §18115
Anti-Plea Bargaining Statute (Yes/No):	Note: The reasons for a dismissal of or change of charge from a drunk driving offense must be noted for the record. Title 16, §18118
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol Assessment as a condition of probation Title 16, §18301

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:	

<sup>1</sup>Percent by wgt. of alcohol in the blood which is defined statutorily as grams of alcohol per 100 milliliters of blood. Title 16, §18101(b)  
A "controlled substance" means a substance listed under Guam's Uniform Controlled Dangerous Substances Act (Title 9, Ch. 67). Title 16, §18101(d)

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

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

**None**

1st refusal-Susp for 6 mos; 2nd refusal (w/n 5 yrs)-Rev for 2 yrs; sub. refusal (w/n 5 yrs)-Rev for 3 yrs Title 16, §18202 These licensing actions appear to be mandatory and are to run consecutively to license suspensions/revocations for drunk driving offenses. Title 16, §18204.

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment:  
Term (Day, Month, Years, Etc.):

(1) Non-Injury Related DWI Off-1st off (Misd)-48 hrs to 1 yr; 2nd off (Misd)(w/n 5 yrs)-7 dys to 2 yrs; 3rd off(3rd Degree felony)(w/n 5 yrs)-90 dys to 5 yrs; sub. off (w/n 5 yrs)(felony)-1 to 6 yrs Title 16, §§18104, 18105, 18106 & 18107

(2) Injury Related DWI off (Vehicular Negligence)-3rd Degree Felony-Not more than 5 yrs<sup>1</sup> Title 9, §§1.19(b) & 80.30(c) and Title 16, §18110

Mandatory Minimum Term:

Non-Injury Related DWI Off-1st off-48 hrs; 2nd off-7 dys 3rd off-90 dys; sub. off-1 yr See Footnote No. 1.

Amount (\$ Range):

(1) Non-Injury Related DWI-Off-1st off-\$1,000 to \$5,000; 2nd off-\$2,000 to \$5,000; 3rd off-\$3,000 to \$5,000; sub. off-\$4,000 to \$7,000

(2) Injury Related DWI (Vehicular Negligence)-Not more than \$5,000 Title 9, §80.50(b)

Mandatory Min. Fine (\$):

Non-Injury Related DWI Off-1st & sub off-The law is not clear but the above minimum fine sanctions may be mandatory. See Footnote No. 1.

Other Penalties:

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

A defendant may be ordered by the court to pay restitution to a victim. Title 9, §80.53 & Title 16, §18104(a)

Other:

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

**None**

<sup>1</sup>The mandatory sanctions associated with non-injury related drunk driving offenses may also apply to injury related ones. However, the law is not clear on this matter.

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

Post DWI Conviction Licensing Action:

Type of Licensing Action  
(Suspension/Revocation):

**Susp/Rev** Title 16, §§3111(f), 18104, 18105, 18106, 18107, 18123 & 18124

**Special Note:** The law is not clear but these licensing actions appear to apply to both injury and non-injury related drunk driving offenses.

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

1st off (Misd)-Susp for 6 mos; 2nd off-Susp for 1 yr; 3rd off-Rev for not less than 2 yrs; sub. off-Rev for not less than 5 yrs

Mandatory Minimum Term of  
Withdrawal:

1st off-None (Limited driving may be granted for employment purposes.); 2nd off-Susp-1 yr; 3rd off-2 yrs; sub. off-5 yrs

Other:

Rehabilitation:

Alcohol Education:

Either Alcohol Education or Treatment as a condition of probation. Title 16, §18301

Alcohol Treatment:

See Alcohol Education above.

Vehicle Impoundment/Confiscation:

**Forfeiture.** For a 3rd or sub off, the vehicle used in the offense is subject to forfeiture. Title 16, §18108

**Special Note:** In lieu of forfeiture, the offender's license may be suspended for 5 yrs (mand). Title 16, §18108

**Impoundment (discretionary).** 1st off-1 to 30 dys; sub. off (w/n 5 yrs)-30 to 90 dys Title 16, §18112

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

**Child Endangerment.** A person commits a 3rd Degree felony if they injury a passenger who is < 16 yrs while in violation of the drunk driving law. Title 16, §18109 The sanctions for this offense are imprisonment for not more than 5 yrs and/or a fine of not more than \$5,000 Title 9, §§80.30(c) & 80.50(b)

**Condition of Probation.** As a condition of probation for drunk driving offense, an offender must agree not to consume alcohol or a controlled substance. Title 16, §18303(b)(2)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

Jurisdiction Has Such a Law:

**Yes** 2nd Degree felony Title 16, §18111 & Title 9, §80.50(a)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

(1) Death caused by the operating of a motor vehicle-Not more than 8 yrs

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term:	(2) Death resulting from a violation of the drunk driving law- 5 to 15 yrs (1) Death caused by the operating of a motor vehicle-None (2) Death resulting from a violation of the drunk driving law- 5 yrs
Fine (\$ Range):	(1) Death caused by the operating of a motor vehicle-\$10,000 (2) Death resulting from a violation of the drunk driving law-\$10,000
Mandatory Minimum Fine:	
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Rev Title 16, §3111(e)(1)
Length of Term of Licensing Withdrawal:	1 yr
Mandatory Action--Minimum Length of License Withdrawal:	1 yr (appears to be mandatory)
Other:	
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:</u>	
Sanction:	
Criminal:	
Imprisonment (Term):	Misd-Not more than 1 yr Title 9, §80.34(a) and Title 16, §§3109 & 3109.1
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not more than \$1,000 Title 9, §80.50(c)
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action (Suspension/Revocation):	Susp/Rev Title 16, §3111(k)
Length of Term of License Withdrawal Action	(1) <u>For Operating While Suspended</u> -Extend period of suspension for a like period (2) <u>For Operating While Revoked</u> -An additional 1 yr period of revocation
Mandatory Term of License Withdrawal Action:	(1) <u>For Operating While Suspended</u> -Extend period of suspension for a like period (2) <u>For Operating While Revoked</u> -An additional 1 yr period of revocation
Other:	
<u>Habitual Traffic Offender Law:</u>	
Jurisdiction Has Such a Law (Yes/No):	No
Grounds for Being Declared an Habitual Offender:	

\*There is no statutory provision that is specifically prohibits a person from operating a motor vehicle once their driving privileges have been suspended or revoked. The sanctions given are for the offense displaying or possessing a revoked or suspended license. Title 16, §3109(b) **Comment.** The law providing making it illegal to operate a motor vehicle on either a suspended or revoked license was repealed (Title 16, §3110). However, the licensing sanction associated with this violation was not repealed (Title 16, §3111(k)).

Other Criminal Actions Related to DWI: (continued)

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.) Title 11, §§3419, 3420 & 3619  
 Minimum Age (Years) Possession: 18 Title 11, §3619  
 Minimum Age (Years) Consumption:

Dram Shop Laws and Related Legal Actions:

Jurisdiction Has a Dram Shop Law (Yes/No): No<sup>1</sup>  
 "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 Title 11, §§3418 & 3617  
 Term of Imprisonment: Not more than 1 yr Title 9, §80.34(a)  
 Fine (\$ Range): Not more than \$1,000 Title 9, §80.50(c)

<sup>1</sup>Note: Under Title 20, §§2101 & 2102, a person, who suffers a loss as a result of someone's illegal act, may recover damages.

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Other Laws Related To Alcohol Use: (continued)

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):  
Length of Term of License Withdrawal:

**Yes Susp/Rev** Title 11, §§3611 & 3616  
Time period for either susp or rev is not specified in the statute.

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

Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

**Petty Misd** Title 11, §§3611 & 3616  
Not more than **60 dys** Title 9, §80.34(b)  
Not more than **\$500** Title 9, §80.50(d)

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes Susp/Rev** Title 11, §§3611 & 3616  
Time period for either susp or rev is not specified in the statute.

Anti-Happy Hour Laws/Regulations:

**No** However, Title 11, §3432 prohibits the service of more than 1 drink at a time to any person.

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

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**Yes** Title 16, §§18121 & 18122  
**Yes<sup>1</sup>** Driver and Passengers Title 16, §§18119 & 18120

<sup>1</sup>Note: Under separate statutory authority, a person shall not consume any alcoholic beverage on any public highway or road. Title 11, §3423

ITEM:  
Reference:

**HAWAII**  
Hawaii Revised Statutes

Basis for a DWI Charge\*:

Standard DWI Offense:	Under the influence of alcohol <sup>1</sup> §291E-61(a)(1)
Illegal Per Se Provision (BAC/BrAC):	≥ 0.08 <sup>2&amp;3</sup> §291E-61(a)(3) & (4)
Presumption (BAC/BrAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of <b>Any Drug</b> <sup>4&amp;5</sup> §291E-61(a)(2)
Other:	<u>Person Under 21 Years Old. &gt; 0.02 but &lt; 0.08</u> <sup>3&amp;6</sup> §291E-64(a) A BAC/BrAC ≥ 0.08 is "competent evidence" of being under the influence of an intoxicant. §291E-3(a) For Commercial Motor Vehicle Operators, see p. 3-126.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Provision:	No <sup>7</sup>
Implied Consent Provision:	
Arrest Required (Yes/No):	Yes §291E-11(b)(1)
Implied Consent Provision Applies to Drugs (Yes/No):	Yes §291E-11(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	No (Criminal & Civil Cases) However, there is an exception for administrative hearings related to test refusals. §291E-16
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 the driver was under the influence of alcohol or drugs. §291E-21(c)

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

Blood:	Yes §291E-11(a)
Urine:	Yes §291E-11(a)
Other:	None

<sup>1</sup>"Alcohol" means the product of distillation or any fermented liquid, regardless of whether rectified, whatever may be the origin thereof, and includes ethyl alcohol, lower aliphatic alcohol and phenol as well as synthetic ethyl alcohol but not denatured or other alcohol that is considered not potable under the customs laws of the United States. §291E-1

"Under the influence of alcohol" means an amount of alcohol sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty. §291E-1

<sup>2</sup>In addition, the illegal per se provisions make it an offense to operate a motor vehicle with a breath alcohol concentration ≥ 0.08.

<sup>3</sup>"Alcohol concentration" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §291E-1

<sup>4</sup>"Drug" means any controlled substance as defined in schedules I through IV of Chapter 329 or its metabolites. §291E-1

<sup>5</sup>Under the influence of any drug that impairs the person's ability to operate a vehicle in a careful and prudent manner. §§291E-1 & 291E-61(a)(2)

<sup>6</sup>The law prohibits a person < 21 yrs old from driving with any measurable amount of alcohol concentration. This is defined as an alcohol concentration equal to or greater than 0.02 but less than 0.08. §§291E-1 & 291E-64(a)

<sup>7</sup>Eventhough the law does not specifically authorize the use of PBTs, it does limit PBT test results to "determining probable cause for the arrest" and provides that such a test is not a substitute for the usual evidential blood, breath or urine test under the implied consent law. §§291E-1 & 291E-11(f)

\*Except for offenses under §291E-64 concerning persons < 21 yrs old, the offenses listed are collectively referred to as "operating a vehicle under the influence of an intoxicant." An "intoxicant" means alcohol or any drug as defined above. §§291E-1 & 291E-61(a)

**HAWAII**

Adjudication of DWI Charges:

Mandatory Adjudication Provision (Yes/No): **No**  
Anti-Plea Bargaining Provision (Yes/No): **No**  
Pre-Sentencing Investigation Provision (PSI) (Yes/No): **Yes** Substance abuse assessment is required. §§291E-61(d) & 291E-62(d)

Sanctions for Refusal to Submit to a BAC Chemical Test:

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

Refusal to Take Implied Consent Chemical Test:  
Criminal Sanction (Fine/Jail): **None**  
Administrative Licensing Action (Suspension/Revocation):

Other: **Important.** See Footnote No. 1 p. 3-126.  
**1st alcohol enforcement contact<sup>1</sup>-Rev-1 yr** (A restricted conditional license may be issued after 30 dys for employment purposes. §291E-44); **2nd alcohol enforcement contact<sup>1</sup>** (w/n 5 yrs)-**Rev-2 yrs (mand)**; **3rd alcohol enforcement contact<sup>1</sup>** (w/n 7 yrs)-**Rev-for 4 yrs (mand)**; **4th or subsequent alcohol enforcement contact<sup>1</sup>** (w/n 10 yrs)-**Rev for Life** §291E-41(b) & (d)  
**Persons Under 21 Years Old.** Persons <21 yrs old, who are arrested for driving with a measurable amount of alcohol concentration and who refuse to submit to a chemical test, are subject to the following licensing sanctions: **1st refusal-Susp-12 mos (mand)**; **subsequent refusal** (w/n 5 yrs)-**Susp-2 yrs (mand) to 5 yrs** §291E-65

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment<sup>2</sup>: **See Persons Under 21 Years Old on p. 3-125.**  
Term (Day, Month, Years, Etc.): **1st offense-48 hrs to 5 dys; 2nd offense** (w/n 5 yrs)-**5 to 14 dys; 3rd offense** (w/n 5 yrs)-**10 to 30 dys; 4th or subsequent offense**(w/n 10 yrs) (Class C Felony)-**Not more than 5 yrs<sup>3</sup>** §291E-61(b)  
Mandatory Minimum Term: **1st offense-48 hrs<sup>2</sup>; 2nd offense** (w/n 5 yrs)-**5 dys** (w/ at least 48 con hrs (See community service.); **3rd offense** (w/n 5 yrs)-**10 dys** (w/ at least 48 con hrs); **4th or subsequent offense**(w/n 10 yrs) (Class C Felony)-**10 dys** (w/ at least 48 con hrs) §291E-61(b)  
Fine:  
Amount (\$ Range): **1st offense-\$150 to \$1,000; 2nd offense** (w/n 5 yrs)-**\$500 to \$1,500; 3rd offense** (w/n 5 yrs)-**\$500 to \$2,500; 4th or subsequent offense**(w/n 10 yrs) (Class C Felony)-**Not more than \$10,000<sup>3</sup>** §291E-61(b)  
Mandatory Min. Fine (\$): **1st offense-\$150<sup>2</sup>; 2nd offense** (w/n 5 yrs)-**\$500; 3rd offense** (w/n 5 yrs)-**\$500; 4th or subsequent offense**(w/n 10 yrs) (Class C Felony)-**None** §291E-61(b)

<sup>1</sup>"Alcohol Enforcement Contact" means either a refusal, an admin. per se action, ANY offense involving driving with an unlawful alcohol concentration or a drunk driving offense. §291E-1

<sup>2</sup>A person must be sentenced to one of these sanctions but may be sentenced to more than one. §291E-61(b)

<sup>3</sup>See §§701-107(5), 706-640 & 706-660 in the Hawaii Penal Code.

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

Other Penalties:

Community Service: 1st offense-72 hrs (See Footnote No. 2 on p. 3-124.); 2nd offense (w/n 5 yrs)-Not less than **240 hrs** (as an alternative to imprisonment) §291E-61(b)

Restitution

(eg Victim's Fund):

Other:

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action\*:

Administrative Per Se Provision: Yes 1st alcohol enforcement contact<sup>1</sup>-Rev for 3 mos to 1 yr (A restricted conditional license may be issued after 30 dys for employment purposes. §291E-44); 2nd alcohol enforcement contact<sup>1</sup> (w/n 5 yrs)-Rev for 1 yr (mand) to 2 yrs; 3rd alcohol enforcement contact<sup>1</sup> (w/n 7 yrs)-Rev for 2 yrs (mand) to 4 yrs; 4th or subsequent alcohol enforcement contact<sup>1</sup> (w/n 10 yrs)-Rev for Life (mand) §291E-41(b)

Other:

Post DWI Conviction Licensing Action\*:

Type of Licensing Action

(Suspension/Revocation): 1st offense-Susp; 2nd offense (w/n 5 yrs)-Susp; 3rd offense (w/n 5 yrs)-Rev; 4th or subsequent offense (w/n 10 yrs) (Class C Felony)-Rev §291E-61(b)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st offense-90 dys or 30 dys w/ restricted driving privileges for the remaining 60 dys for employment purposes; 2nd offense (w/n 5 yrs)-1 yr; 3rd offense (w/n 5 yrs)-1 to 5 yrs; 4th or subsequent offense (w/n 10 yrs) (Class C Felony)-1 to 5 yrs §291E-61(b)

Mandatory Minimum Term of

Withdrawal:

1st offense-30 dys; 2nd offense (w/n 5 yrs)-1 yr; 3rd offense (w/n 5 yrs)-1 yr; 4th or subsequent offense (w/n 10 yrs) (Class C Felony)-1 yr §291E-61(b)

Other:

Rehabilitation:

Alcohol Education: See Alcohol Treatment below.

<sup>1</sup>"Alcohol Enforcement Contact" means either a refusal, an admin. per se action, ANY offense involving driving with an unlawful alcohol concentration or a drunk driving offense. §291E-1

\*The licensing sanctions imposed cannot exceed the longer of those imposed either under the administrative per se law or via a conviction for a drunk driving offense. §291E-32(b)

**Persons Under 21 Years Old.** The following sanctions apply to persons <21 yrs old, who operate a motor vehicle with "a measurable amount of alcohol concentration." 1st offense-(1) Attendance at an alcohol abuse education/counseling program, (2) 180 dy license suspension or 30 dy (mand) suspension with a 150 dy restricted driving privileges for employment purposes and (3) one or more the following discretionary sanctions: Not more than 36 hrs of community service; or, a fine of \$150 to \$500. 2nd offense (w/n 5 yrs of a prior alcohol enforcement contact)-(1) 1 yr (mand) license suspension and (2) any of the following discretionary sanctions: Not more than 50 hrs of community service; or, a fine of \$300 to \$1,000. 3rd offense (w/n 5 yrs of 2 prior alcohol enforcement contacts)-(1) 2 yr (mand) license suspension and (3) any of the following discretionary sanctions: Not more than 100 hrs of community service; or, a fine of \$300 to \$1,000. §291E-64 See the definition of "alcohol enforcement contact" in Footnote No. 1 above.

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

Alcohol Treatment:	<u>1st offense-14 hr</u> substance abuse rehabilitation program including education and counseling or other program as deemed appropriate by the court; <u>2nd or subsequent offenses-Treatment</u> if recommended via an assessment §291E-61(b)(1)(A) & (d)
Vehicle Impoundment/Confiscation: Authorized by Specific Provisions:	<b>Admin. Registration Revocation.</b> <sup>1</sup> The registrations of ALL of the vehicles owned by a <u>2nd or subsequent</u> DWI (alc or drugs) offender, must be revoked for the same periods of time as for a <u>2nd or subsequent</u> licensing action under the admin. per se law. Special registrations w/special plates may be issued in hardship situations concerning co-owners or other household members. §§291E-B, 291E-33(c), 291E-34(10), 291E-37(e), 291E-38(l) & 291E-41
Terms Upon Which Vehicle Will Be Released: Other:	
Miscellaneous Sanctions Not Included Elsewhere:	<b>Child Endangerment.</b> Offenders ≥18 yrs old, who were operating a motor vehicle with a passenger < 15 yrs old at the time of the offense, are subject to the following <u>additional mandatory</u> sanctions: (1) A mandatory fine of \$500; and, (2) and 48 con hrs of imprisonment. However, the total imprisonment time imposed for 1st, 2nd or 3rd offenses cannot exceed 30 dys. §291E-61(b)(5) <b>Compensation Fund.</b> A person, who has been convicted of a criminal offense, must pay the following fees into the State Criminal Injuries Compensation Fund: For a <u>felony off-\$100 to \$500</u> ; for a <u>misd-\$50</u> ; and, for a <u>petty misd-\$25</u> . §351-351 <b>Bodily Injury Related to Motor Vehicle Operation.</b> I. <u>Serious bodily injury caused by negligent vehicle operation</u> (negligent injury in the 1st degree)-Cl C felony: Jail-Not more than 5 yrs; fine-Not more than <b>\$10,000</b> . 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 ( <b>child endangerment</b> ).

<sup>1</sup>**Admin. Registration Revocation for Refusal.** If a person refuses to submit to a chemical test under the implied consent law, §291E-11, the registrations of ALL the vehicles they own must be revoked for the same period of time as for a refusal licensing action. §291E-41(d) & (e) Special registrations w/special plates may be issued in hardship situations concerning co-owners or other household members. §291E-B

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥0.04 percent by weight (Percent by weight is defined to mean grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of alcohol, a controlled substance or any drug which impairs driving ability or (3) refuse to submit to a chemical test for an alcohol concentration. Note: The CMV "disqualification" provision, based on refusal, applies only to a refusal to submit to a chemical test for alcohol concentration; however, the CMV implied consent provision applies to the testing for both alcohol or controlled substances. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). In addition, a CMV operator who has a BAC/BrAC ≥0.01 must be placed "out-of-service" for 24 hours. §§286-2, 286-231, 286-240, 286-242 & 286-243

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

Miscellaneous Sanctions  
Not Included Elsewhere: (continued)

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:

See Compensation Fund on p. 3-126.  
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

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:  
Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:  
Length of Term of  
Licensing Withdrawal:  
Mandatory Action--Minimum  
Length of License  
Withdrawal:

None

See the **Special Note** below.

**Special Note:** There are no specific licensing sanctions associated with these vehicle homicide offenses. However, the law does provide for the following licensing sanctions. (1) A person is subject to a mandatory 1 yr license revocation if they are convicted of "manslaughter resulting from the operation of a motor vehicle." §§286-124, 286-126 & 707-702 (2) In addition, a person is subject to discretionary license suspension or revocation if they have been either convicted of a felony "in the commission of which a motor vehicle is used, or convicted of a violation ... of any traffic law or regulation ... involving a vehicle in motion." If a person's license is ordered to be suspended, the suspension cannot be for more than 5 yrs. If their license is ordered to be revoked, the revocation is for a mandatory period of 1 yr. §§286-125 & 286-126

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Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked  
Where the Basis Was a DWI Offense<sup>1</sup>:

Sanctions:

Criminal:

Imprisonment (Term):

See Compensation Fund on p. 3-126.

1st offense-3 con dys to 30 dys; 2nd offense (w/n 5 yrs)-30 dys; subsequent offense (w/n 5 yrs)-1 yr §291E-62(a) & (b)

Mandatory Minimum Term of Imprisonment:

1st offense-3 con dys; 2nd offense (w/n 5 yrs)-30 dys; subsequent offense (w/n 5 yrs)-1 yr §291E-62(a) & (b)

Fine (\$ Range):

1st offense-\$250 to \$1,000; 2nd offense (w/n 5 yrs)-\$1,000; subsequent offense (w/n 5 yrs)-\$2,000 §291E-62(a) & (b)

Mandatory Minimum Fine:

1st offense-\$250; 2nd offense (w/n 5 yrs)-\$1,000; subsequent offense (w/n 5 yrs)-\$2,000 §291E-62(a) & (b)

Administrative Licensing Actions:

Type of Licensing Action (Suspension/Revocation):

ALL offenses-Revocation §291E-62(a) & (b)

Withdrawal Action:

1st offense-An additional period or 1 yr; 2nd offense (w/n 5 yrs)-An additional period of 2 yrs; subsequent offense (w/n 5 yrs)-Permanent §291E-62(a) & (b) Note: These revocation periods are to commence after the offender has been released from imprisonment. §291E-62(b)

Mandatory Term of License of Withdrawal Action:

The above revocation periods are mandatory.

Other:

Habitual Traffic Offender Provision:

State Has Such a Law (Yes/No):

No

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):

<sup>1</sup>I. It is a misd to operate a CMV following CDL disqualification w/ the following sanctions: A jail term of not more than 1 yr, a fine of \$500 to \$1,000 and disqualification for not less than 1 yr and up to life. §§286-235(b), 286-249(a) & 701-107(3)

II. It is a misd to operate a CMV during a CDL out-of-service order. The sanctions for this offense are a fine of \$1,000 to \$2,500 and disqualification for not less than 1 yr and up to life with the following specific disqualification periods: 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub off (w/n 10 yrs)-3 yrs (mand) to 5 yrs. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or 15 or more persons: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 yrs (mand) to 5 yrs. §§286-235(b), 286-240(g) & (h), 286-249(b) & 701-107(3)

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

## Accidents:

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

Possible §841-3 Indirect chemical test via the coroner

Driver:

Possible

Vehicle Passengers:

Possible

Pedestrian:

Possible

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21<sup>1</sup> (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) &amp; (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 2980)<sup>2</sup>

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 (Hawaii App. 1993)

Other:

Licensees are not liable for either the injuries sustained by or the deaths of their intoxicated patrons including minor patrons. *Bertelmann v. Tass Associates*, 735 P.2d 930 (Hawaii 1987), & *Winters v. Silver Fox Bar*, 797 P.2d 51 (Hawaii 1990)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 &amp; 281-102

Fine (\$ Range):

Not more than \$1,000<sup>3</sup>

<sup>1</sup>Notwithstanding the prohibitions contained in §281-78, a university or college student, who is under the legal drinking age, may participate in wine tasting as part of a course of study in food and beverage control, club management or classical food and beverage management offered by the University of Hawaii. §304-55

<sup>2</sup>Under some circumstances, a licensee may be held liable for the actions of an intoxicated minor to whom they have not sold alcoholic beverages. Such is the case if an under age person is allowed to purchase alcoholic beverages where it is "reasonably foreseeable" that the purchaser will give such beverages to another minor who could become intoxicated and cause injury to a third party. *Reyes v. Kuboyama*, 870 P.2d 1281 (Hawaii 1994)

<sup>3</sup>See Compensation Fund on p. 3-126.

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Other State Laws Related To Alcohol Use: (continued)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

**Yes Susp or Rev**

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

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

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

**Misd<sup>1</sup>**

Not more than **6 mos**

Not more than **\$1,000<sup>2</sup>** §§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):

Length of Term License Withdrawal:

**Yes Susp or Rev**

Not specified in the statute Note: A civil penalty of not more than \$2,000 may be assessed in lieu of a license susp or rev. §§281-78, 281-91 & 281-10

**Special Note:** In Hawaii, alcoholic beverage licensing and enforcement is under the authority of the various county liquor commissions. §281-17

Anti-Happy Hour Laws/Regulations:

**Yes (City & County of Honolulu) Rule 78.5 (regulation)<sup>3</sup>**

Note: Under §281-78.5(a), persons licensed to sell alcoholic beverages are prohibited from engaging in practices that promote the excessive consumption of such beverages. To supplement this prohibition, the various county liquor commissions are required, under §281-78.5(b), to promulgate regulations which prohibit specific practices that promote such excessive consumption. **Comment:** Except for the City and County of Honolulu, such regulations may or may not be concerned with prohibiting or limiting the sale of an unlimited quantity of alcoholic beverages at a fixed price.

<sup>1</sup>Under §712-1250.5, it is a misdemeanor to promote intoxicating liquor to a minor: Jail-not more than 1 yr (§706-663) and/or a fine-not more than \$2,000 (§706-640(4))

<sup>2</sup>See Compensation Fund on p. 3-126.

<sup>3</sup>This regulation was promulgated by the Liquor Commission of the City and County of Honolulu and applies only to these places.

Other State Laws Related To Alcohol Use: (continued)

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

Open Container Law (Yes/No):

Yes<sup>1</sup> §§291-3.1(a) & 291-3.2(a)

Anti-Consumption Law (Yes/No):

Yes<sup>1</sup> Driver and passengers §§291-3.1(b), 291-3.2(b) & 291-3.3

<sup>1</sup>There is an exception in the case of motor vehicles for hire. §291-3.4

HAWAII

STATE:  
General Reference:

**IDAHO**  
Idaho Code (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):	≥0.08 <sup>1&amp;2</sup> §18-8004(1)(a) <u>Persons Under 21 Years Old</u> ->0.02 but <0.08 <sup>2</sup> §18-8004(1)(d)
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) <b>Any Drug</b> , (2) Intoxicating Substance (3) Any Narcotic Drug, (4) a Combination of Any Drug and Alcohol <sup>3</sup> §§18-8004(1)(a) & 18-8004(5)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	No <sup>4</sup> The implied consent law, §18-8002, applies to CMV DWI offenses committed under §18-8004(1)(b) & (c).
Implied Consent Law Applies to Drugs (Yes/No):	Yes §18-8002(1)
Refusal to Submit Chemical Test Admitted into Evidence:	Yes (Criminal Cases) <i>State v. Bock</i> , 328 P.2d 1065 (1958)
Other Information:	Under §18-8002(6)(b), a law enforcement officer may order a

<sup>1</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of 0.08 or more or (2) a urine alcohol concentration of 0.08 or more.

<sup>2</sup>Standards: Grams of alc. per 100 cubic centimeters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §18-8004(4)

<sup>3</sup>Under §37-2732C, it is misdemeanor to be under the influence of a controlled substance on either a public roadway, a public conveyance, public property or private property. See the cited section for details.

<sup>4</sup>"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.

\*Under separate provisions of law, it is a misdemeanor to operate either a snowmobile or allterrain vehicle on either a public roadway or highway while under the influence of either alcohol, drugs or any other intoxicating substance. The sanctions for this offense are a jail term for not more than 6 mos and/or a fine of not more than \$300. §§18-113 & 67-7114

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** I. A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/Alcohol Concentration in a "Bodily Substance" ≥0.04 (For standards, see Footnote No. 2 above.), (2) are under the influence of alcohol or a controlled substance (not all drugs) or (3) refuse to submit to a chemical test for an alcohol concentration (not drugs). For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). II. A person, who operates a CMV with an alcohol concentration ≥0.04 but <0.08 or while under the influence of alcohol/any drug/intoxicating substances, commits a DWI offense and is subject to same criminal sanctions as other DWI offenders. III.

Under separate provisions, A person, who operates a CMV with an alcohol concentration ≥0.08 or while under the influence of alcohol/any drug/intoxicating substances, commits a DWI offense and is subject to same criminal sanctions as other DWI offenders. IV. For II or III, the administrative (licensing) sanctions for a 1st DWI offense do not apply but they do apply for subsequent ones.

**Comment:** It would appear that a CMV operator, who is a 1st offender and who is only charged with a CMV DWI offense under either II or III (§§18-8004(1)(b) and 18-8004(1)(c) respectively), (not a DWI offense applicable to all drivers), is not subject to licensing actions against their "regular" driving privileges. Of course, the CDL "disqualification" provided for in I would still apply. V. In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§49-104(9), 49-105(6), 49-123, 49-335 (Reference is made to 49 CFR part 383.), 18-8002(3)(a), 18-8004(1)(b), (1)(c) & (6), 18-8004(4) and 18-8005(2), (3) & (4)

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Chemical Breath Tests for Alcohol Concentration:  
(continued)

Other Information: (continued)

"qualified person" to withdraw blood from a driver for evidential purposes in cases where there is probable cause to believe that such driver has committed either a DWI aggravated or homicide offense. **Comment:** This provision appears to allow law enforcement officers to obtain a blood sample via force.

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

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

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): No  
Anti-Plea Bargaining Statute (Yes/No): No  
Pre-Sentencing Investigation Law (PSI) (Yes/No): Yes (Alcohol Evaluation Required) §§18-8004A(1)(d), (2)(e) & (3)(e) and 18-8005(9)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a 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 and Double Jeopardy below.  
Imprisonment: 1st off Misd-Not more than 6 mos; 1st off with BAC/BrAC

**Special Note:** If a person is convicted of a DWI offense and they have had within the past 10 yrs a prior conviction for either (1) a DWI felony offense, (2) Aggravated DWI or (3) DWI Vehicle Homicide, they are guilty of a felony. The sanctions for this offense are as follows: Jail-not more than 5 yrs; fine-not more than \$5,000; and license suspension from 1 to 5 yrs after release from imprisonment (a 1 yr license suspension after release from imprisonment is mandatory). §18-8005(5) & (7)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Talavera*, 905 P.2d 633 (Idaho 1995), & *State v. Reichenberg*, 915 P.2d 14 (Idaho 1996)

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

Imprisonment: (continued)

≥0.20-Misd-Not more than **1 yr**; 2nd off (w/n 5 yrs) Misd-**10 dys to 1 yr**; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs Felony-Not more than **5 yrs**; 3rd & sub off (w/n 5 yrs) or 4th or sub off (w/n 10 yrs) Felony-Not more than **5 years** Aggravated DWI off where there is bodily harm or disfigurement Felony-Not more than **10 years** §§18-8004C(1)(a) & (2)(a), 18-8005 and 18-8006  
Persons Under 21 Years Old (0.02 Offense)-1st off Misd-None; 2nd off Misd-Not more than **30 dys**; 3rd and sub off Misd-Not more than **6 mos** §18-8004A(2)(a) & (3)(a)

Mandatory Minimum Term:

1st off-None; 1st off with BAC/BrAC ≥0.20-**10 dys** (must serve 48 con hrs)<sup>1</sup>; 2nd off (w/n 5 yrs)-**10 dys** (must serve 48 con hrs w/5 dys in jail)<sup>1,2,3&4</sup>; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-**30 dys**<sup>1</sup>; 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs)-**30 dys** (must serve 48 con hrs w/10 dys in jail)<sup>1,3&4</sup> Aggravated DWI off where there is bodily harm/disfigurement-**30 dys** (must serve 48 con hrs)<sup>1</sup> §§18-8004C, 18-8005 & 18-8006  
Persons Under 21 Years Old (0.02 Offense)-1st off-None; 2nd off-**5 dys**; 3rd & sub off-**10 dys** §18-8004A(2)(a) & (3)(a)

Fine:  
Amount (\$ Range):

1st off-Not more than \$1,000<sup>2</sup>; 1st off with BAC/BrAC ≥0.20-Not more than **\$2,000**<sup>2</sup>; 2nd off (w/n 5 yrs)-Not more than **\$2,000**<sup>2</sup>; 2nd or sub off with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-Not more than **\$5,000**<sup>2</sup>; 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs)-Not more than **\$5,000**<sup>2</sup> Aggravated DWI off where there is bodily harm/disfigurement-Not more than **\$5,000**<sup>2</sup> §§18-8004C(1)(b) & (2)(b), 18-8005 and 18-8006  
Persons Under 21 Years Old (0.02 Offense)-1st off-Not more than \$1,000; 2nd off-\$500 to \$2,000; 3rd and sub off-\$1,000 to \$2,000 §18-8004A(1)(a), (2)(b) & (3)(b)

<sup>1</sup>**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.

<sup>2</sup>The court may assign an offender to a work detail program w/n the custody of the count sheriff during the period of incarceration. §18-8005(4)(a)

<sup>3</sup>**Comment on Mandatory Jail for Drunk Driving Offenses:** I. Although not clear, the law appears to provide for a 10 dy mand jail sentence even if the offender is sentenced to the State penitentiary. §18-8005(5)(a) II. In addition, for persons sentenced to State prison, Idaho administrative rules imply that there is a minimum imprisonment term since parole hearings can only be held after a person has been incarcerated for certain fixed time periods (e.g., for a 5 to 7 yr sentence, the first hearing is 15 mos from the date of incarceration). IDAPA 50.01.01.250.02 III. Statutory and case law that indicated that probation without any imprisonment time appears to have been amended/abrogated with respect to DWI cases. I.e., the law now appears to require 5 dys in jail for a 2nd off and 10 dys in jail for a subsequent one. §§19-2513, 19-2601(3) & (5) and *State v. Lafferty*, 870 P.2d 1337 (IdahoApp. 1994)

<sup>4</sup>Idaho law provides that the 5 and 10 dy mand jail sentences for 2nd and sub offenders respectively are as required by 23 USC §164. The Federal regulations to this U.S. Code provision provide that such sentence for repeat DWI law offenders must be served in either "a jail, minimum security facility, community corrections facility, house arrest with electronic monitoring inpatient rehabilitation or treatment center or other facility, provided the individual under confinement is in fact being detained." 23 CFR 1275.3(h)

<sup>5</sup>A defendant is also assessed a special fine of \$10 which is paid into a crime victims' compensation account. §72-1025 And, a \$15 surcharge is added to all fines for the purpose of purchasing ignition interlock and electronic monitoring devices. §18-8010

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

Mandatory Minimum Fine (\$):	Regular DWI offenses and Aggravated DWI-None <u>Persons Under 21 Years Old (0.02 Offense)-1st off-None; 2nd off-\$500<sup>6</sup>; 3rd and sub off-\$1,000</u> <b>Comment:</b> The law is not clear. These fines may not be mandatory.
Other Penalties: Community Service:	<b>Possible</b> Although not specifically authorized by statute, community service could be a condition of probation. §19-2601
Restitution (eg Victim's Fund)	<b>Yes</b> (1) Under §19-5304, a person, who has been convicted of any criminal offense, may be ordered to pay restitution to a victim. (2) <u>Aggravated DWI off</u> -paid by the defendant to a victim §18-8006(1)(e) And, (3) there is also a victims' compensation fund. §72-1001 et seq.
Other:	<b>Ignition Interlock.</b> For ANY drunk driving offense, a defendant is required to only operate a motor vehicle equipped with an "ignition interlock" device after any licensing action. the court shall require use of this device for a period of time not in excess of the defendant's probation period. §§18-8004A(2)(d) & (3)(e), 18-8004C(2)(e), 18-8005(4)(f) & (5)(e) and 18-8008(1) & (2) <b>Electronic Monitoring.</b> 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. §18-8008(3)
Administrative Licensing Actions: <u>Pre-DWI Conviction</u> Licensing Action: Administrative Per Se Law:	See Double Jeopardy on p. 3-134 and the Special Note below. <b>Yes</b> (1) $\geq 0.08$ (BAC/BrAC/UrAC See Footnote No. 2 on p. 3-133.) or (2) under the influence of either alcohol, drugs or an intoxicating substance <u>1st Violation-Susp 90 dys</u> (30 dys mand followed by 60 dys restricted driving privileges); <u>2nd or subsequent violation</u> (w/n 5 yrs)- <u>Susp 1 yr</u> (mand) §18-8002A Under §49-326(a)(1) & (5), a person's license may be susp for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., veh. homicide) <sup>1</sup> . Such action may be taken <u>without</u> a preliminary hearing. <b>Comment:</b> Such action could occur prior to a conviction.
Other:	
<u>Post DWI Conviction</u> Licensing Action: Type of Licensing Action (Susp/Rev):	See the Special Notes below and on p. 3-134.  <u>1st off-Susp<sup>2</sup>; 1st off</u> with BAC/BrAC $\geq 0.20$ - <u>Susp</u> ; <u>2nd off-Susp<sup>2</sup>; 2nd or sub off</u> with a BAC/BrAC $\geq 0.20$ where there has been a previous offense at or above 0.20 w/n 5 yrs- <u>Susp</u> ; <u>3rd &amp; sub off-Susp<sup>2</sup></u> <u>Aggravated DWI off-Susp</u> §§18-4004C(1)(e) & (2)(e), 18-8005 and 18-8006

<sup>1</sup>These provisions do not apply to DWI offense convictions since such convictions result in license suspension not revocation.

<sup>2</sup>If the offender is a minor (a person under 18 years old), their license is suspended or denied for either an additional period of 1 yr or until the person reaches 21 which ever period is longer following the end of any regular period of suspension or revocation. This licensing action appears to be mandatory. §§18-8005(11) & 32-101

**Special Note:** If an offender is subject to licensing action for both an administrative per se law and a criminal drunk driving offense conviction, the license suspension periods are to run concurrently unless the court order to the contrary. §18-8002A(7)(e)

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

Term of License Withdrawal (Days, Months, Years, etc.):	<p><u>Persons Under 21 Years Old (0.02 Offense)-1st off-Susp; 2nd off-Susp; 3rd and sub off-Susp</u> §18-8004A(1)(b), (2)(c) &amp; (3)(d)</p> <p><u>1st off-30 to 150 dys; 1st off</u> with BAC/BrAC ≥0.20-1 yr after release from confinement; <u>2nd off-1 yr</u> after release from confinement; <u>2nd or sub off</u> with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-1 to 5 yrs after release from confinement; <u>3rd &amp; sub off-1 to 5 yrs</u> after release from confinement <u>Aggravated DWI off-1 to 5 yrs</u> after release from confinement §§18-4004C(1)(e) &amp; (2)(e), 18-8005 and 18-8006</p>
Mandatory Minimum Term of Withdrawal:	<p><u>Persons Under 21 Years Old (0.02 Offense)-1st off-1 yr; 2nd off-Not more than 2 yrs; 3rd and sub off-1 yr</u> or until the person reaches 21 whichever is greater §18-8004A(1)(b), (2)(c) &amp; (3)(d)</p> <p><u>1st off-30 dys<sup>1</sup>; 1st off</u> with BAC/BrAC ≥0.20-1 yr after release from confinement; <u>2nd off-1 yr</u> after release from confinement; <u>2nd or sub off</u> with a BAC/BrAC ≥0.20 where there has been a previous offense at or above 0.20 w/n 5 yrs-1 after release from confinement; <u>3rd &amp; sub off-1 year</u> after release from confinement <u>Aggravated DWI off-1 year</u> after release from confinement §§18-4004C(1)(e) &amp; (2)(e), 18-8005 and 18-8006</p> <p><u>Persons Under 21 Years Old (0.02 Offense)-1st off-90 dys</u> (restricted driving privileges may be granted after this mand period); <u>2nd off-1 yr; 3rd and sub. off-1 yr</u> §18-8004A(1)(b), (2)(c) &amp; (3)(d)</p>
Other: Rehabilitation: Alcohol Education: Alcohol Treatment:	<p>A DWI offender may be required to participate in an alcohol treatment program by the court. §§128-8004A(1)(d), (2)(e) &amp; (3)(e) and 18-8005(12)</p>
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority: Terms Upon Which Vehicle Will Be Released: Other:	<p>No</p> <p>None</p>
Miscellaneous Sanctions Not Included Elsewhere:	<p><b>Surcharge.</b> A mandatory \$15 surcharge is added to all fines. Funds collected from this surcharge are deposited into a special account which is used either (1) to purchase ignition interlock or electronic monitoring devices or (2) for misdemeanor drunk driving offense probation programs. §18-8010</p> <p><b>Child Endangerment.</b> It is an offense for a person &gt; 18 years old to operate a motor vehicle in violation of the drunk driving</p>

<sup>1</sup>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)

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

**Child Endangerment.** (continued) laws while transporting a "minor." If there is no injury or death associated with this offense, it is a misdemeanor with a jail term of not more than 6 mos and/or a fine of not more than \$300. However, if the child is either injured or killed, it is a felony with imprisonment of 1 to 10 yrs (unless a more severe penalty is authorized by law.) §§18-113 & 18-1501(3)

**Labor on Public Works.** An offender may be required to perform labor on Federal, State or other governmental works. §20-617

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes** There are three (3) types of vehicle manslaughter offs. Death as a result of either (1) an unlawful act not amounting to a felony where gross negligence is involved (Felony), (2) a DWI off (Felony) or (3) death as a result of an unlawful act not amounting to a felony where there is no gross negligence (Misd). §§18-111, 18-4006(3) & 20-201 et seq.

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

Death as a result of either (1) gross negligence or (2) a DWI off-Not more than **10 years**; (3) death as a result of an unlawful act not amounting to gross negligence - Not more than **1 year** §18-4007(3)

Mandatory Minimum Term:  
Fine (\$ Range):

**None**  
Death as a result of either (1) gross negligence or (2) a DWI off-Not more than **\$10,000**; (3) death as a result of an unlawful act not amounting to gross negligence - Not more than **\$2,000** §18-4007(3)

Mandatory Minimum Fine:  
Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

**None**  
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:

**Court Suspension.** In addition, an offender's license "may be suspended for a time determined by the court." §18-4007(3)(a)

Other:

Death as a result of either (1) gross negligence or (2) a DWI offs-**1 yr**; (2) Death as a result of an unlawful act not amounting to gross negligence-**1 yr** §§49-325(a) & 49-326(5)  
Note: A temporary restricted license cannot be issued following revs based on vehicle manslaughter. §49-325(2)

Other Criminal Actions Related to DWI: (continued)

Other: (continued)	<u>Death of a Parent</u> -If a parent of a minor was fatally injured, the offender may be required to pay child support until the minor reaches 18 yrs old. §18-4007(3)(c)
<u>Driving While License Suspended or Revoked</u> Where the Basis Was a DWI Offense:	See Footnote No. 1 and the Special Note below.
Sanction: Criminal: Imprisonment (Term):	<u>1st off</u> Misd-Not less than <b>2 dys to 6 mos</b> ; <u>2nd off</u> Misd (w/n 5 years)- <b>20 dys to 1 yr</b> ; <u>3rd and subsequent offs</u> Misd (w/n 5 years)-Not more than <b>1 yrs</b> §18-8001
Mandatory Minimum Term of Imprisonment:	<u>1st off</u> Misd- <b>2 dys<sup>2</sup></b> ; <u>2nd off</u> Misd (w/n 5 years)- <b>20 dys<sup>2</sup></b> ; <u>3rd and subsequent offs</u> Misd (w/n 5 years)- <b>30 dys</b> Note: A defendant may be assigned to a work release program within the custody of the county sheriff. However, they are not eligible for community service in lieu of imprisonment. §18-8001(3)(a), (4)(a), (5)(a) & (8)
Fine (\$ Range):	<u>1st off</u> Misd-Not more than <b>\$500</b> ; <u>2nd off</u> Misd (w/n 5 years)-Not more than <b>\$1,000</b> ; <u>3rd and subsequent offs</u> Misd (w/n 5 years)-Not more than <b>\$3,000</b>
Mandatory Minimum Fine: Administrative Licensing Actions: Type of Licensing Action (Susp/Rev):	<b>None</b> <u>1st off</u> - <b>Susp</b> ; <u>2nd off</u> (w/n 5 years)- <b>Susp</b> ; 3rd and subsequent offs (w/n 5 years)- <b>Susp</b> §18-8001
Length of Term of License Withdrawal Action:	<u>1st off</u> (Misd)-License susp for an additional <b>6 mos</b> ; <u>2nd Off</u> (Misd) (w/n 5 yrs)-License susp for an additional <b>1 yr</b> ; <u>3rd and subsequent offs</u> (Misd) (w/n 5 yrs)-License suspended for an additional <b>2 yrs</b> §18-8001
Mandatory Term of License Withdrawal Action:	<u>1st off</u> - <b>None<sup>3</sup></b> ; <u>2nd off</u> (w/n 5 yrs)-An additional susp for <b>30 dys mand<sup>4</sup></b> ; <u>3rd and subsequent offs</u> (w/n 5 yrs)-An additional susp for <b>90 dys</b> is mand. <sup>4</sup> §18-8001(3)(c), (4)(c) & (5)(c)

<sup>1</sup>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)

<sup>2</sup>The court may assign an offender to a work detail program w/n the custody of the count sheriff during the period of incarceration. §18-8001(1)(a) & (4)(a)

<sup>3</sup>Restricted licenses available for employment or education reasons or family health needs. §18-8001(3)(c)

<sup>4</sup>After the mand suspension period, a person is eligible for a restricted license for employment or education or family health needs. §18-8001(4)(c) & (5)(c)

**Special Note:** I. The law (§18-8001) provides that the sanctions given also apply to persons who operate a CMV during a CDL disqualification. II. **Comment:** Idaho law does not appear to make it a criminal offense to operate a CMV following a CDL out-of-service order. Notwithstanding, the law does provide for the following disqualification periods against persons "convicted of an out-of-service order": 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 (mand) to 5 yrs; 3rd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or 16 or more persons: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 (mand) to 5 yrs. §49-335(8)

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Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No): No  
Grounds for Being Declared an  
Habitual Offender:  
Term of License Rev While  
Under Habitual Offender Status:  
Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status  
Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:  
Imprisonment (Term):  
Mandatory Minimum Term of  
Imprisonment:  
Fine (\$ Range):  
Mandatory Minimum Fine (\$):  
Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic  
Accidents:  
State Has Such a Law (Yes/No): Yes §49-1314  
BAC Chemical Test Is Given to the  
the Following Persons:  
Driver: Yes  
Vehicle Passengers: No  
Pedestrian: Yes

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:  
Minimum Age (Years) Sale/Purchase: 21 (Year Eff: 1987) §§23-312, 23-603, 23-615(1) & 23-1401(2)  
Minimum Age (Years) Possession: 21 §23-949 There is an employment exemption for persons who  
are at least 19 yrs old. §§23-949, 23-1013, 23-1023 & 23-1334  
Minimum Age (Years) Consumption: 21 §23-949 There is an exemption for the home consumption of  
beer and wine. §§23-1023 & 23-1334

Dram Shop Laws and Related Legal Actions:  
State Has a Dram Shop Law (Yes/No): Yes §23-808 Note: This law limits liability to situations where  
the patron/guest was either (1) obviously intoxicated or (2)  
intoxicated and under the legal drinking age.

Other State Laws Related To Alcohol Use: (continued)

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

Dram Shop Actions-Social Hosts:  
Other:

Note: Case law (e.g., *Alegria v. Payonk*, 619 P.2d 135 (1980)) may have been abrogated via legislation. §23-808  
Yes §23-808 See the Note above.

A social guest, who is under the legal drinking age and who sustains injuries as a result of the consumption of alcoholic beverages at a function given by a social host, does not have cause of action against the such host under the dram shop act for such injuries.<sup>1</sup> *Coughlan v. Beta Theta Pi*, 987 P.2d 300 (Idaho 1999)

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

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

I. State liquor dispensary employees (pkg. sales)-Misd §§23-312 & 23-601

II. State authorized licensees (beer, wine & liquor by the drink)-Misd §§18-113, 23-605 and 23-615(2) & (3)

I. State liquor dispensary employees (pkg. sales)-3 mos to 1 yr;  
II. State authorized licensees (beer, wine & liquor by the drink)-not more than 6 mos

I. State liquor dispensary employees (pkg. sales)-\$300 to \$1,000;  
II. State authorized licensees (beer, wine & liquor by the drink)-not more than \$300

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):

Length of Term of License Withdrawal:

I. State authorized licensees (beer, wine & liquor by the drink)-Susp or Rev<sup>2</sup> §§23-933, 23-1037 & 23-1331

II. The court must include in its judgement of a licensee, who is convicted of a violation of the alcoholic beverage control code, Title 23, a forfeiture of the alcoholic beverage license or permit. §23-608

For revs for all licensees, no stated rev period in the law. For retail sale of beer, a susp of not more than 6 mos. § 23-1037(1)

<sup>1</sup>However, a social host might be liable for such injuries if it can be established that they assumed a special duty of care to protect the guest.

<sup>2</sup>As an alternative to license suspension action, a licensee may be allowed to pay a monetary payment not to exceed \$5,000. §§23-933(2), 23-1037(2) & 23-1331(2)

IDAHO

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

I. State liquor dispensary employees (pkg. sales)-Misd §§23-312 & 23-601

II. State authorized licensees (beer, wine & liquor by th drink)-1st off-Misd; 2nd or subsequent off-Felony §§18-112, 18-113, 23-603 & 23-615(1)

Term of Imprisonment:

I. State liquor dispensary employees (pkg. sales)-3 mos to 1 yr;  
II. State authorized licensees (beer, wine & liquor by the drink)-1st off-Not more than 6 mos; 2nd or subsequent off-Not more than 5 yrs

Fine (\$ Range):

I. State liquor dispensary employees (pkg. sales)-\$300 to \$1,000;  
II. State authorized licensees (beer, wine & liquor by the drink)-1st off-Not more than \$300; 2nd or subsequent off-Not more than \$50,000

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

I. State authorized licensees (beer, wine & liquor by the drink)-Susp or Rev<sup>1</sup> §§23-603<sup>2</sup>, 23-933, 23-1037 & 23-1331

II. The court must include in its judgement of a licensee, who is convicted of a violation of the alcoholic beverage control code, Title 23, ), a forfeiture of the alcoholic beverage license or permit. §23-608

Length of Term of License Withdrawal:

For revs for all licensees, no stated rev period in the law. For retail sale of alcoholic beverages (beer, wine or liquor by the drink), a susp of not more than 6 mos. § 23-603

<sup>1</sup>As an alternative to license suspension action, a licensee may be allowed to pay a monetary payment not to exceed \$5,000. §§23-933(2), 23-1037(2) & 23-1331(2)

<sup>2</sup>Under §23-603, the licensee is also subject to an administrative fine. Note: The law establishes no limits for this fine.

Other State Laws Related To Alcohol Use: (continued)Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

Yes §§23-505<sup>1</sup> & 23-1333<sup>2</sup>

Anti-Consumption Law (Yes/No):

Yes §23-505<sup>1</sup>

<sup>1</sup>This law has two provisions. The first, prohibits a driver or passenger from either breaking open or consuming alcoholic liquor (but not beer) while such beverage is being transported. The second provision prohibits any person from drinking or possessing an open container of alcoholic liquor, beer or wine while in "actual the vehicle is on a public highway or right-of-way of a public highway". However, there is an exemption allowing for the consumption of these alcoholic beverages by passengers in (1) motor vehicles designed and used for compensation or (2) the living quarters of recreational vehicles. §§23-105 & 23-505

<sup>2</sup>This statute prohibits either a driver or a passenger from possessing any wine in an open container while in a motor vehicle on a public highway.

IDAHO

STATE:  
General Reference:

**ILLINOIS**  
West's Smith-Hurd Illinois Compiled Statutes Annotated

Basis for a DWI Charge:

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

Under the influence of alcohol 625 ILCS 5/11-501(a)(2)  
≥ 0.08<sup>1&2</sup> or Any Amount<sup>3</sup> of Cannabis, Controlled Substance or  
Intoxicating Compound (Under the Use of Intoxicating  
Compounds Act<sup>4</sup>) or 625 ILCS 5/11-501(a)(1) & (6)<sup>5</sup>

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

≥ 0.08 625 ILCS 5/11-501.2(b)(3)  
Under the influence of (1) Any Drug (2) an Intoxicating  
Compound or (3) a Combination of Any Drug, Intoxicating  
Compound<sup>3</sup> and Alcohol 625 ILCS 5/11-501(a)(3), (4) & (5)

Other:

For Commercial Motor Vehicle Operators, see p. 3-148.  
See **Snowmobiles and Golf Carts** below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:  
Implied Consent Law:

Yes<sup>6&7</sup> 625 ILCS 5/11-501.5(a)  
**Important.** See Injury/Death Related Implied Consent Law on p.  
3-147 and School Bus Operators on p. 3-151.

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

Yes<sup>8</sup> 625 ILCS 5/11-501.1

Drugs (Yes/No):  
Refusal to Submit to Chemical Test  
Admitted into Evidence:

Yes 625 ILCS 5/11-501.1(a)

Yes (Criminal & Civil Cases) 625 ILCS 5/11-501.2(c)(1) &  
11-501.6(f), *People v. Thomas*, 558 N.E.2d 656 (Ill.App. 2 Dist.  
1990), and *People v. Garriott*, 625 N.E.2d 780 (Ill.App. 4 Dist.  
1993)

Other Information:

If there is probable cause<sup>9</sup> of "driving while under the influence"

<sup>1</sup>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.  
625 ILCS 5/11-501.2(a)(5)

<sup>2</sup>Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. 625 ILCS 5/11-501.2(a)(5)

<sup>3</sup>As found in the breath, blood or urine "resulting from unlawful use or consumption." 625 ILCS 5/11-501(a)(6)

<sup>4</sup>For a list of "intoxicating compounds", see 720 ILCS 690/1.

<sup>5</sup>The provision of the drunk driving law, that makes it an offense to operate a motor vehicle with any amount of cannabis or controlled substance in the body, was held to be constitutional under both the State and Federal constitutions. *People v. Fate*, 636 N.E.2d 549 (Ill. 1994), & *People v. Gassman*, 622 N.E.2d 845 (Ill.App. 2 Dist. 1993)

<sup>6</sup>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. The law allows a defendant to introduce PBT test results into evidence at a DWI trial. The State does not have this same right. *State v. Rose*, 643 N.E.2d 865 (Ill.App. 4 Dist. 1994)

<sup>7</sup>Under an 18 month pilot program, the use of a "pupillimeter" may be substituted for a preliminary breath test device. 625 ILCS 5/11-501.5(b)

<sup>8</sup>**Persons Under 21 Years Old.** Under a separate implied consent law, a law enforcement officer may request that a person, who is under 21 years old, submit to a chemical test of either their blood, breath or urine for alcohol concentration if there is "probable cause to believe" that such person has consumed any amount of alcohol. An actual DWI arrest is not required. 625 ILCS 5/11-501.8(a)

<sup>9</sup>In addition to statutory law, case law provides that for the purpose of determining blood alcohol concentration, a blood sample may be taken by force for a DWI offense (injury or non injury related) as long as the police have "probable cause" of such offense. *People v. Byrd*, 574 N.E.2d 1269 (Ill.App. 4 Dist. 1991), & *People v. Yant*, 570 N.E.2d 3 (Ill.App. 2 Dist. 1991)

**Snowmobiles and Golf Carts.** I. A separate law makes it illegal for a person to operate a snowmobiles either (1) under the influence of alcohol or drugs or (2) have an alcohol concentration ≥ 0.10 (not 0.08) or with any amount of a controlled substance or cannabis in their system. The details of these provisions are not reported in this Digest. For further information, see 625 ILCS 40/5-7 et seq. & 625 ILCS 10-1 et seq. II. In addition, all of the State's drunk driving law provisions (i.e., implied consent, admin. per se, et al.) and the "open container" law apply to the operation of golf carts on roadways. 625 ILCS 5/11-1428(f)

**ILLINOIS**

Chemical Breath Tests for Alcohol Concentration:  
(continued)

Other Information: (continued)

related to a death or injury to another person, the driver must submit to chemical test of their blood, breath or urine for alcohol concentration or drug content. 625 ILCS 5/11-501.2(c)(2)

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

Blood: **Yes** 625 ILCS 5/11-501.1 & 5/11-501.8  
Urine: **Yes** 625 ILCS 5/11-501.1 & 5/11-501.8  
Other: **None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**  
Anti-Plea Bargaining Statute (Yes/No): **No<sup>1</sup>**  
Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** Alcohol or Drug Evaluation (screening required) with appropriate treatment. 625 ILCS 5/11-501(e)

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): See the Special Note on p. 3-150.  
See School Bus Operators on p. 3-151.  
**Important.** See Persons Under 21 Years Old below.  
1st refusal-Susp for **6 mos** Note: A Judicial Driving Permit is available. See Footnote No. 2 (under Admin. per se) on p. 3-150 for details. Also, restricted driving privileges are available under 625 ILCS 5/6-206(c)(3); Subsequent refusals<sup>2</sup> (w/n 5 yrs)-Susp for **3 yrs** (2 yrs mandatory) See Footnote No. 5 on p. 3-150. 625 ILCS 5/6-206(c)(3), 6-206.1, 6-208.1 & 11-501.1

<sup>1</sup>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)

<sup>2</sup>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 The mandatory license suspension provisions for subsequent refusals by a person >21 yrs old have been held constitutional on both equal protection and due process of law grounds. *People v. Fisher*, 705 N.E.2d 67 (Ill. 1998)

**Persons Under 21 Years Old.** See Footnote No. 6 on p. 3-145. Persons under 21 years old, who refuse to submit to a chemical test for alcohol concentration under 625 ILCS 5/11-501.8(a), are subject to the following sanctions: 1st refusal-Susp **6 mos** (30 dys mand Restricted driving privileges may be issued after 30 dys.); Sub refusal-Susp **2 yrs** (12 mos mand Restircted driving privileges may be issued after 12 mos.) 625 ILCS 5/6-208.2 See Footnote No. 8 on p. 3-150. Important. After a hearing, the State Secretary of State has the authority to "rescind" this licensing action. 625 ILCS 5/6-206(c)(3) & 6-208.2(a)

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

Other:

**Injury/Death Related Implied Consent Law.** Under another separate and independent implied consent law, 625 ILCS 5/11-501.6 (See the Historical Note below), if a law enforcement officer has arrested a driver under any provision of the vehicle code and the driver has been involved in an accident that has resulted in either an injury or a fatality, the officer may request that the person submit to a chemical test of their blood, breath or urine for the purpose determining either the alcohol or drug content in such person's blood. Note: This law, like its predecessor, does not provide for individualized suspicion of impairment. If a driver refuses to submit to such a test, their driving privileges are suspended as follows: 1st Refusal-6 mos; a refusal where the driver has had a previous license suspension for either (1) a DWI offense conviction or (2) a refusal/admin. per se action under 625 ILCS 5/11-501.1-2 yrs These suspensions, however, are not mandatory. If a driver requests a hearing, the State can modify the suspension order or issue a restricted license for employment, educational or medical purposes. 625 ILCS 5/6-208.1, 11-500 and 11-501.6(a), (c) & (e) Important. A person subject to this implied consent law is still subject to the provisions of 625 ILCS 5/11-501.1. I.e., the driver must comply with both implied consent laws. Note: This revised statute (625 ILCS 5/11-501.6) was held not to violate the unreasonable search and seizure provisions of either the Federal or State constitutions. *Fink v. Ryan*, 673 N.E.2d 281 (Ill. 1996)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment:

Mandatory Minimum Term:

See Community Service/0.16 on p. 3-148, Double Jeopardy on p. 3-149 and Footnote No. 3 on p. 3-153.

See **Aggravated Driving** below.

1st & 2nd offs (Class A misd)-Less than 1 yr; 3rd & subsequent offs<sup>182</sup> (Class 4 felony)-1 to 3 yrs 625 ILCS 5/11-501 and 730 ILCS 5/5-8-1(a)(7) & 5-8-3(a)(1)

2nd off (w/n 5 yrs)-5 dys; 3rd & subsequent off (w/n 5 yrs)-10 dys (if probation or conditional discharge is granted) 625 ILCS 5/11-501(c), (d) & (h) and 730 ICLS 5/5-5-3(c)(3) & 5-6-1(d)

<sup>1</sup>This offense is defined as "Aggravated Driving Under the Influence of Alcohol or Drugs or a Combination of Both" and includes a 2nd off where there has been a prior DWI related reckless homicide off. 625 ILCS 5/11-501(d)

**Aggravated Driving.** The following offenses are also defined as Cl 4 felony "Aggravated Driving" offenses: (1) Driving a school bus while DWI while the bus is occupied by school children (imprisonment-1 to 3 yrs/fine-not more than \$25,000); (2) causing a DWI related accident which results in either great bodily harm or permanent disability or disfigurement (imprisonment-1 to 12 yrs/fine-not more than \$25,000) or (3) driving in a 20 MPH school or construction zone in violation of the drink driving law and causing an accident that resulted in bodily harm (but not great bodily harm with disability or disfigurement) (imprisonment-1 to 3 yrs/fine-not more than \$25,000). As a condition of probation or conditional discharge an offender must serve either 10 dys of imprisonment or 60 dys 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)(1) & (2) & (h)

**Historical Note:** In 1993, 625 ILCS 5/11-501.6 was amended to make the law constitutional and to provide for additional administrative bases for suspending a driver's license for drunk driving activities. As originally written, a law enforcement officer could request that a person, via "implied consent", submit to a chemical test of their blood, breath or urine for alcohol or drug content based only on "probable cause" that the person was responsible for an accident that resulted in either an injury or a death. There was neither a requirement that there be "probable cause" of an offense (e.g., DWI) nor a need for individualized suspicion of impairment. Because the statute provided for no probable cause of an offense, the Illinois Supreme Court declared 625 ILCS 5/11-501.6 unconstitutional under both the State and Federal constitutions on unreasonable seizure grounds. *King v. Ryan, Secretary of State*, 607 N.E.2d 154 (Ill. 1992)

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

<p>Fine: Amount (\$ Range):</p> <p>Mandatory Minimum Fine (\$):</p>  <p>Other Penalties: Community Service:</p>   <p>Restitution (eg Victim's Fund)</p> <p>Other:</p>	<p><b>Child Endangerment.</b><sup>1</sup> Jail sanctions are <b>enhanced</b> as follows if the driver was transporting a person &lt;16 years old: <b>1st off-2 dys; 2nd off-10 dys; 3rd off-30 dys; 4th or sub off-90 dys</b> 625 ILCS 5/11-501(c-3)</p> <p>See the Special Note on p. 3-147.</p> <p><b>1st &amp; 2nd offs-</b>Not more than <b>\$2,500</b>; <b>3rd &amp; subsequent offs-</b>Not more than <b>\$25,000</b> 730 ICLS 5/5-9-1(a)(1) &amp; (2)</p> <p><b>Child Endangerment.</b><sup>1</sup> For a <b>1st or 2nd off</b> (w/n 5 yrs), an <b>additional \$500</b> fine is mand if the at the time of the offense the driver was transporting a person &lt;16 years old. 625 ILCS 5/11-501(c)</p> <p>I. <b>2nd off</b> (w/n 5 yrs)-A minimum of <b>30 dys</b> (<u>Alternative</u> to the term of 5 dys of mandatory imprisonment) 625 ILCS 5/11-501(c) &amp; (d) and 730 ICLS 5/5-5-3(c)(3)</p> <p>II. For a <b>3rd or sub off</b> where the offender has been granted either probation or conditional discharge, they must be sentenced to serve a minimum (mand) term of either <b>60 dys</b> of community service or 10 dys of imprisonment. 625 ILCS 5/11-501(h)</p> <p>III. <b>Child Endangerment.</b><sup>1</sup> If the defendant was transporting a person &lt;16 yrs old, they are subject to the following <b>additional</b> mand. periods of community service: <b>1st off-5 dys; 2nd off</b> (w/n 5 yrs)-<b>10 dys</b>. 625 ILCS 5/11-501(c)</p> <p><b>Yes</b> For all offs <b>Paid</b> directly by a defendant to a victim. 730 ICLS 5/5-5-3(b)(7), 5-5-6 &amp; 5-6-3.1(c)(9) There is also a victims' compensation fund. 740 ILCS 45/1 et seq.</p> <p><b>Ignition Interlock.</b> The State Secretary of State <b>shall</b> require the use of "ignition interlock" devices on <b>all</b> vehicle owned/used by 2nd or subsequent DWI/ALR law violator or where there has been a combination of two or more DWI/ALR violations. Note: The law does not provide for a time period for "ignition interlock" use. However, the State <b>must</b> promulgate regulations concerning certification and use of these devices. 625 ILCS 5/6-205(c)(<del>1</del>2&amp;3) &amp; (h), 5/6-206(c)(3)(<del>1</del>3) and 5/11-501(i)</p>
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<sup>1</sup>**Child Endangerment/0.16.** Under other provision of law, 625 ILCS 11-501(c-4) & 730 ILCS 5/5-5-3(c)(4.1)(10), in **addition** to any other sanctions, a person, convicted a drunk driving offense is subject to the following sanctions if they (1) were transporting a child <16 yrs old or (2) had a BAC/BrAC ≥0.16: **1st off**-100 hrs (mand) community service/\$500 (mand) fine; **2nd off** (w/n 10 yrs)-2 dys (mand) jail/\$1,250 (mand) fine; **3rd off** (w/n 20 yrs)-90 dys (mand) jail/\$2,500 (mand) fine; and, **4th or sub off-** Cl 2 felony-3 to 7 yrs imprisonment and a fine of not more than \$25,000 (\$2,500 mand) w/ no eligibility for probation/conditional discharge. **Comment:** These sanctions, as applied to child endangerment, conflict in some respects with those noted 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 12 mos (12 mos mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) have **any** amount of cannabis or a controlled substance in their blood, breath or urine resulting from the unlawful use of the substance, (3) are under the influence of alcohol or drugs or (4) refuse to submit to a chemical test or tests for alcohol or drug concentrations For either (1) a subsequent violation or (2) a combination of two violations of any of the above listed items, the "disqualification" is for life (10 yrs mand); however, there is a mandatory lifetime disqualification if, after the driver's CDL has been reinstated after the 10 yr mandatory period, they commit another violation as noted above. In addition, a CMV operator who has any amount of alcohol or other drug(s) in their system must be placed "out-of-service" for 24 hours. 625 ILCS 5/1-115.3, 6-500, 6-514, 6-515 & 6-517

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

Other: (continued)

**Visitation Program.** DWI offenders, who are under 21 years old, may be ordered by the court to participate in a special visitation program. An offender may be required to visit either (1) a rehabilitation facility that cares for DWI victims, (2) a facility that cares for persons who are terminally ill from alcoholism, or (3) a morgue to observe persons who have been killed as a result of DWI related accidents. 625 ILCS 5/11-501.7

**Additional Fees.** I. A fee of up to \$30 may be assessed against DWI offenders for court costs. 55 ILCS 5/5-1101(a) II. 2nd or sub. DWI offenders must be assessed \$100 fee which is used to finance DWI education programs. 55 ILCS 5/5-1101(d)

**Surcharge.** Every offender is assessed a surcharge of \$4 for every \$40 (or fraction thereof) of a fine imposed. 730 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)

**EMS Cost.** A DWI offender is liable for the cost of any appropriate emergency response. Such cost shall not exceed \$500 per public agency. 625 ILCS 5/11-501(f) & 730 ILCS 5/5-5-3

**Trauma Center Fund.** A convicted drunk driving law offender must pay a fee of \$25. This fee is deposited into the Trauma Center Fund and is used to pay for hospital trauma care. 705 ILCS 105/27.6(b) & 730 ILCS 5/5-9-1(c-5)

**Crime Laboratory Costs.** A convicted drunk driving law offender must be assessed a fee of \$150 to cover the cost of any chemical analysis that was performed on their blood or urine. 730 ILCS 5/5-9-1.9

**Administrative Costs (Fee).** A person, who either has been convicted of or has had their license suspended for a drunk driving offense, is assessed a \$25 fee to defray administrative costs. 730 ILCS 5/5-9-1(c-5)

**Equipment Costs.** In addition to any other sanctions, an offender must pay a fine of \$100 for a 1st off and \$200 for a sub off, which is used to purchase law enforcement equipment related to the "prevention of alcohol related criminal violence". 625 ILCS 5/11-501(j)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *People v. Dvorak*, 658 N.E.2d 869 (Ill.App. 2 Dist. 1995), *People v. Fasbinder*, 663 N.E.2d 1052 (Ill.App. 4 Dist. 1996), *People v. Eck*, 664 N.E.2d 1147 (Ill.App. 5 Dist. 1996), & *People v. Lopeman*, 665 N.E.2d 881 (Ill.App. 3 Dist. 1996) Note: The Illinois Supreme Court has held that a person is not subjected to double jeopardy if they are prosecuted for a drunk driving offense following a licensing action for a refusal to submit to a chemical test under the implied consent law. *People v. Lavariega*, 676 N.E.2d 643 (Ill. 1997)

## ILLINOIS

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

Administrative Licensing Actions:

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

Important. See the Special Administrative Per Se Law below, Ignition Interlock on p. 3-148 and School Bus Operators on p. 3-151.

See Double Jeopardy on p. 3-149 and the Special Note below.

**Yes  $\geq 0.08$**  (BAC/BrAC See Footnote No. 2 on p. 3-145.) or **Any Amount<sup>1</sup> of Cannabis, Controlled Substance or Intoxicating Compound 1st action-3 mos susp<sup>2x3</sup>** (not mand) **subsequent action<sup>4</sup>** (w/n 5 yrs)<sup>5</sup>-**1 yr susp (mand)<sup>6</sup>** 625 ILCS 5/6-206(a)(31), 6-206.1, 6-208.1(a) & 11-501.1

**Persons Under 21 Years Old.** Under a separate admin per se law, persons under 21 years old, who have BAC/BrAC  $> 0.00$  but  $< 0.08$ <sup>7a&8</sup> are subject to the following sanctions: **1st violation-Susp 3 mos** (30 dys appears mand Restricted driving privileges may be issued after 30 dys.); **Sub violation-Susp 1 yr (mand)<sup>9</sup>** 625 ILCS 5/6-208.2 & 5/11-501.8 Note: A Judicial Driving Permit (JDP) is not authorized by law. *People v. Schmit*, 676 N.E.2d 11 (Ill.App. 3 Dist. 1997) Important. After a hearing, the State Secretary of State has the authority to "rescind" this licensing action. 625 ILCS 5/6-206(c)(3) & 6-208.2(a)

**Special Administrative Per Se Law:** Under another separate and independent admin. per se law, 625 ILCS 5/11-501.6, the State may susp a license where (1) a person has been arrested for any vehicle code violation, (2) there has been an accident that

<sup>1</sup>As found in the breath, blood or urine "resulting from unlawful use or consumption." 625 ILCS 5/11-501.1

<sup>2</sup>A Judicial Driving Permit (JDP) may be issued after the first 30 days of the susp period have passed. However, the licensing agency, it appears, can issue a restricted lic. for any part or all of this susp period. A JDP may be issued following either an admin. per se law violation or an implied consent law chemical test refusal. The court may require a person to only operate motor vehicles that are equipped with **ignition interlock** devices as a condition for issuing a JDP. 625 ILCS 5/6-206.1(a) Important: A JDP cannot be issued to a person under 18 years old. 625 ILCS 5/6-206.1(a)(4)(iv)

<sup>3</sup>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).

<sup>4</sup>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

<sup>5</sup>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/BrAC  $\geq 0.08$ ), the admin. per se action cannot be considered a prior offense in determining enhanced licensing sanctions for implied consent law refusals or subsequent admin. per se actions/DWI offenses. 625 ILCS 5/11-500

<sup>6</sup>A person is not eligible for a "restricted driving permit" under 625 ILCS 5/6-205(c). 625 ILCS 5/6-208.1(g)

<sup>7</sup>Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 625 ILCS 5/11-501.8(b)(v)

<sup>8</sup>A person under 21 years old is not subject to these licensing sanctions if the alcohol concentration was the result of alcohol consumed either as part of a religious service or as per prescribed medication. 625 ILCS 5/11-501.8(e)

<sup>9</sup>If a person under 21 years old is convicted of a drunk driving offense, any period of suspension imposed under 625 ILCS 5/6-208.2 for a refusal or admin per se action under 625 ILCS 5/11-501.8 is credited toward the minimum period of revocation imposed for the conviction. 625 ILCS 5/6-208.2(d)

**Special Note:** The administrative per se/implied consent law does not violate a person's constitutional rights to due process of law or equal protection of the laws. *People v. Esposito*, 521 N.E.2d 873 (Ill. 1988), *People v. Gerke*, 525 N.E.2d 68 (Ill. 1988), & *People v. Fisher*, 705 N.E.2d 67 (Ill. 1998)

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

Other:

Post DWI Conviction Licensing Action:  
Type of Licensing Action (Susp/Rev):  
Term of License Withdrawal  
(Days, Months, Years, etc.):

Mandatory Minimum Term of  
Withdrawal:

**Special Administrative Per Se Law:** (continued) resulted in either an injury or fatality and (3) the driver submits to a chemical test that indicates a BAC/BrAC  $\geq 0.08$  or the presence of any amount of cannabis/controlled substance resulting from unlaw use in their blood or urine. Driving privileges are suspended as follows: 1st Action-3 mos; an admin. per se action where the driver has had a previous license suspension for either (1) a DWI offense conviction or (2) a refusal/admin. per se action under 625 ILCS 5/11-501.1-1 yr. These suspensions, however, are not mandatory. If a driver requests a hearing, the State can modify the suspension order or issue a restricted license for employment, educational or medical purposes. 625 ILCS 5/6-208.1, 11-500 and 11-501.6(a), (c) & (e) **Important.** A person subject to this admin. per se law is still subject to the provisions of 625 ILCS 5/11-501.1. I.e., the driver is subject to license susp under both admin. per se laws.

I. Under 625 ILCS 5/6-206(a)(1) & 6-208, a person's license may be susp/rev for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). I.e., such action can occur prior to a conviction (see the case cited below) and may be taken without a preliminary hearing. A post action hearing is available. The law establishing this type of action has been held constitutional. *People Ex Rel Eppinga v. Edgar*, 492 N.E.2d 187 (Ill. 1986) (*cert. den.*, 479 U.S. 914 (1986))

II. Under 625 ILCS 5/6-301.3, the State may "invalidate" a driver's license based either on a certified court order or as per administrative rule.

**School Bus Operators.** A person's privilege to operate a school bus is canceled administratively for 3 yrs if, while operating such a vehicle, they either (1) refuse to submit to a chemical test for alcohol concentration following a traffic offense arrest or (2) submit to such a test which indicates they were driving with an alcohol concentration  $> 0.00$ .<sup>1</sup> 625 ILCS 5/6-106.1a & 6-106.1b

**Rev** 625 ILCS 5/6-205, 6-208 & 11-501 See Footnote No. 3.

1st off-1 yr; 2nd off (w/n 20 yrs)-5 yrs; 3rd off-10 yrs; sub off-Permanent<sup>2</sup> 625 ILCS 5/6-208(b)(1), (2), (3) & (4)

1st off-None (A hardship license may be issued. 625 ILCS 5/6-205(c) & (i) ); 2nd off (w/n 20 yrs)-1 yr<sup>2</sup>; 3rd off-1 yr<sup>2</sup>; sub off-1 yr<sup>2&3</sup> 625 ILCS 5/6-205(i) & 5/6-208(b)(1), (2), (3) & (4)

<sup>1</sup>This sanction does not apply if the alcohol concentration was the result of alcohol consumed as part of a religious service or ceremony or for medical purposes. 625 ILCS 5/6-106.1a(e)

<sup>2</sup>A restricted license may be issued after this period. 625 ILCS 5/6-205(c) & (i)

<sup>3</sup>A "person may not make application for a license" if they have been convicted of a 4th or sub off. 625 ILCS 5/6-208(b)(4)

<sup>4</sup>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. 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. For a 2nd or sub off, a restricted license cannot be issued unless the offender operates vehicles that are equipped with **ignition interlock** devices. 625 ILCS 5/6-205(d)

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

Other:  
Rehabilitation:  
Alcohol Education:

Note: Thirty dollars (\$30) of the \$60 license reinstatement fee following an admin. per se suspension is deposited into the Drunk and Drugged Driver Prevention Fund. This fund is used to provide "evaluation and remedial education programs" to indigent persons charged with DWI. 20 ILCS 305/4-102

Alcohol Treatment:  
Vehicle Impoundment/Confiscation:

**Forfeiture (Not Mandatory).** A vehicle is subject to forfeiture if it is used with the knowledge and consent of the owner in either (1) a 3rd or sub DWI offense or (2) a 2nd DWI off where the offender has had a prior alcohol/drug related reckless homicide driving offense. 720 ILCS 5/36-1 (¶1) Based on a showing of "financial hardship", the vehicle will not be forfeited but its title must be transferred to either a spouse or other family member. 720 ILCS 5/36-1 (¶5)

Authorized by Specific  
Statutory Authority:  
Terms Upon Which Vehicle  
Will Be Released:  
Other:

**Limited Impoundment.** I. Following a DWI arrest, a person's vehicle may be impounded for not more than 12 hrs by law enforcement officers if such officers "reasonably believe" that the arrested person, upon release, will commit another DWI offense. 625 ILCS 5/4-203(e) II. If the offender is the registered owner of the vehicle: 2nd off-Impoundment for 24 hrs; 3rd off-Impoundment for 48 hrs. However, with the owner's consent, the vehicle may be released sooner to a person who is a competent driver. 625 ILCS 5/4-203(e-5)

Miscellaneous Sanctions  
Not Included Elsewhere:

**Special Note:** Under 730 ILCS 5/5-6-1 & 5-6-3.1, a DWI offender may be placed in a court supervised diversion program. However, an offender cannot be placed in such a program if they either have had a previous DWI conviction or have been in such a diversion program within 5 yrs of the charged off. As a supervision condition, they may be required to only operate motor vehicles that equipped with ignition interlock devices.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes** Reckless homicide (Death must be the result of reckless action of the accused driver.)-Cl 3 felony. However the offense is a Cl 2 felony<sup>1&2</sup> if the defendant was under the influence of alcohol or drugs at the time of the offense 720 ILCS 5/9-3

<sup>1</sup>The Class 2 Felony offense for DWI reckless homicide was held constitutional on "equal protection" grounds. *People v. Warwick*, 621 N.E.2d 282 (Ill.App. 2 Dist. 1993)

<sup>2</sup>Note: The law provides that being under the influence of alcohol or drugs (in the same manner as a DWI offense) at the time of the violation is presumed evidence of a reckless act. 720 ILCS 5/9-3(b)

Other Criminal Actions Related to DWI: (continued)

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Cl 3 felony-2 to 5 yrs 730 ILCS 5/5-8-1(a)(6); Cl 2 felony-3 to 14 yrs (if two or more person where killed, 6 to 28 yrs) 730 ILCS 5/9-3(e) & (e-5)
Mandatory Minimum Term:	None
Fine (\$ Range):	Cl 3 & 2 felonies-Not more than \$25,000 730 ICLS 5/5-9-1(a)(1) See Court Costs (Fees) on p. 3-149.
Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Rev <sup>1</sup> 625 ILCS 5/6-205(a)(1)
Length of Term of Licensing Withdrawal:	<u>1st off-2 yrs; 2nd off (w/n 20 yrs)-5 yrs; 3rd off-10 yrs; 4th and sub offs-Permanent</u> 625 ILCS 5/6-208(b)(1), (2), (3) & (4)
Mandatory Action--Minimum Length of License Withdrawal:	None Under 625 ILCS 5/6-205(c), a restricted license may be issued.
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:</u>	See Footnote Nos. 2 & 3.
Sanction:	
Criminal:	
Imprisonment (Term):	<u>1st off-Cl A misd-Less than 1 yr; subsequent off-Cl 4 felony-1 to 3 yrs</u> 625 ILCS 5/6-303(a), (d), (d-2) & (d-3) and 730 ILCS 5/5-8-1(a)(7) & 5/5-8-3(a)(1)

<sup>1</sup>A person, who has been convicted of "reckless homicide", is not eligible for a license until 24 mos after their release from imprisonment. 625 ILCS 5/6-103(15) & 5/6-208(b)(1)

<sup>2</sup>I. It is a Cl A misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term of less than 1 yr and/or a fine of not more than \$1,000. II. Persons convicted of operating a CMV after disqualification are subject to a 1 yr license revocation. This revocation does not appear to be mandatory. III. A person who operates a CMV after they have been place "out-of-service" is subject to the following CDL disqualification periods: 1st off-6 mos; 2nd off (w/n 10 yrs)-1 yr; 3rd or sub off (w/n 10 yrs)-3 yrs. If the offender was transporting passengers or hazardous materials, the disqualification periods are as follows: 1st off-1 yr; 2nd off (w/n 10 yrs)-3 yrs; 3rd of sub off (w/n 10 yrs)-5 yrs. 625 ILCS 5/6-205(12)(a) & (c), 5/6-208, 5/6-507(b), (d) & (e), 5/6-514(i) and 730 ILCS 5/5-8-3(a)(1) & 5/5-9-1(1)(2)

<sup>3</sup>**DWI While Suspended or Revoked.** A person, who commits a DWI offense while their driving privileges are still suspended or revoked for either a DWI offenses, implied consent law violation or vehicle homicide, is subject to the following sanctions: 1st or 2nd off (Cl 4 felony)-Imprisonment from 1 to 3 yrs and/or a fine of not more than \$25,000; 3rd off (Cl 3 felony)-Imprisonment from 2 to 5 yrs and/or a fine of not more than \$25,000 and, if the court grants probation or conditional discharge, a person must serve either 10 dys of incarceration or 60 dys of community service; and, 4th or sub off (Cl 2 felony)-Imprisonment from 3 to 7 yrs and/or a fine of not more than \$25,000 and a person is not eligible for either "probation, a term of periodic imprisonment or conditional discharge". 625 ILCS 5/11-501(c-1) & (h), 730 ILCS 5/5-8-1(a)(5) & (6) and 730 ILCS 5/5-5-3(c)(2)(S) & 5/5-9-1(a)(1) Important. If a person commits a DWI offense while their driving privileges are still under either revocation or suspension for a previous DWI offense, they are subject to one of the following mandatory sanctions: (1) 30 con dys of imprisonment; (2) 40 dys of 24 hr periodic imprisonment; or, (3) 720 hrs of community service. 730 ILCS 5/5-5-3(c)(4.1) A vehicle is subject to forfeiture if it is used with the knowledge and consent of the owner in the above offenses. 720 ILCS 36-1 (¶1) Based on a showing of "financial hardship", the vehicle will not be forfeited to the State. However, its title must be transferred to a spouse or other family. 720 ILCS 36-1 (¶5)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term  
of Imprisonment:

1st off-10 cons dys (or community service See below.); 2nd off-30 dys (or community service See below.); 3rd off-30 dys; 4th or sub off-180 dys 625 ILCS 5/6-303(c), (d), (d-2) & (d-3) and 730 ICLS 5/5-5-3(c)(4), (4.3), (4.5) & (4.6) and 5/5-6-3(e)

Fine (\$ Range):

1st off-Not more than \$2,500; sub off-Not more than \$25,000 730 ICLS 5/5-9-1(a)(1) & (2) See Court Costs (Fees) on p. 3-149.

Mandatory Minimum Fine:  
Administrative Licensing Actions:  
Type of Licensing Action  
(Susp/Rev):  
Length of Term of License  
Withdrawal Action:

None

**Susp or rev** 625 ILCS 5/6-303(b)

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:  
Other:

Same as above.

**Community Service.** 1st off-30 dys (alternative to jail); 2nd off-300 hrs (alternative to imprisonment) 625 ILCS 5/6-303(c) & (d) and 730 ILCS 5/5-5-3(c)(4) & (4.3)

**Vehicle Impoundment/Immobilization.** If the offender is the registered owner of the vehicle: 2nd off-Impoundment for 24 hrs; 3rd off-Impoundment for 48 hrs. However, with the owner's consent, the vehicle may be released sooner to a person who is a competent driver. 625 ILCS 5/4-203(e-5) 4th off-Seizure of the offender's vehicle license plates and vehicle immobilization for a period of time to be determined by the court. 625 ILCS 5/6-303(c-2)

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No):  
Grounds for Being Declared an  
Habitual Offender:  
Term of License Rev While  
Under Habitual Offender Status:  
Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status:  
Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:  
Imprisonment (Term):  
Mandatory Minimum Term of  
Imprisonment:  
Fine (\$ Range):  
Mandatory Minimum Fine (\$):  
Licensing Actions (Specify):

No

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

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

**Yes** 55 ILCS 5/3-3013

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

Dram Shop Laws and Related Legal Actions:

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

**Yes**<sup>1,2&3</sup> 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**<sup>2</sup>

Dram Shop Actions-Social Hosts:

**No**<sup>2</sup> *Charles v. Seigfried*, 651 N.E.2d 154 (Ill. 1995)

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:

**Less than 1 yr** 730 ICLS 5/5-8-3(a)(1)

Fine (\$ Range):

**\$500 (mand) but not more than \$2,500** 235 ILCS 5/6-16(a) & 730 ICLS 5/5-9-1(a)(2) See Court Costs (Fees) on p. 3-149.

Administrative Actions Against Owners 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 "willful" violation of the law. 235 ILCS 5/7-12

<sup>1</sup>Damages for personal injuries or to property are limited to \$30,000. Loss of means of support is limited to \$40,000.

<sup>2</sup>In the *Seigfried* case as well as in previous decisions (e.g., *Cunningham v. Brown*, 174 N.E.2d 153 (Ill. 1961)), the Illinois Supreme Court has held that the Dram Shop Law is the exclusive remedy in all dram shop type liability situations. See also *Wakulich v. Mraz*, 751 N.E.2d 1, (Ill.App. 1 Dist. 2001).

<sup>3</sup>Under the judicially created doctrine of "complicity", a licensee may not be liable for the injuries sustained by a third party from one of the licensee's intoxicated patrons if the third party contributed to the intoxication of such patron. *Nelson v. Araiza*, 372 N.E.2d 637 (Ill. 1978), *Walter v. Carriage House Hotels, Ltd.*, 646 N.E.2d 599 (Ill. 1995), & *Graham v. United National Investors, Inc.*, 745 N.E.2d 1287 (Ill.App. 4 Dist. 2001)

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Other State Laws Related To Alcohol Use: (continued)

Length of Term of License Withdrawal:	Not specified in the statute. <sup>1&amp;2</sup>
<u>Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:</u>	
Type of Criminal Action:	Cl A Misd 235 ILCS 5/6-16(a)
Term of Imprisonment:	Less than 1 yr 730 ICLS 5/5-8-3(a)(1)
Fine (\$ Range):	\$500 (mand) but not more than \$2,500 235 ILCS 5/6-16(a) & 730 ICLS 5/5-9-1(a)(2) See Court Costs (Fees) on p. 3-149.
<u>Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:</u>	
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. <sup>3&amp;4</sup>
<u>Anti-Happy Hour Laws/Regulations:</u>	Yes 235 ILCS 5/6-28 <sup>5</sup>
<u>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:</u>	
Open Container Law (Yes/No):	Yes <sup>6</sup> 625 ILCS 5/11-502
Anti-Consumption Law (Yes/No):	Yes <sup>6</sup> A person cannot consume alcoholic beverages while operating a limousine, chartered bus, moto home or mini moto home. 625 ILCS 5/11-502(c)

<sup>1</sup>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 addition to revoking/suspending a local license, the licensee may be required pay an administrative fine of \$1,000 for a 1st offense, \$1,500 for a 2nd offense (w/n 12 mos) and \$2,500 for a 3rd or subsequent offense (w/n 12 mos); however, the maximum or total fine amount that may be imposed during any licensing period is \$15,000. 235 ILCS 5/3-12 & 7-5

<sup>2</sup>If a license has been revoked, the formally licensed premises cannot be re-licensed for 1 yr. 235 ILCS 5/7-13

<sup>3</sup>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 addition to revoking/suspending a local license, the licensee may be required to pay an administrative fine of \$1,000 for a 1st offense, \$1,500 for a 2nd offense (w/n 12 mos) and \$2,500 for a 3rd or subsequent offense (w/n 12 mos); however, the maximum or total fine amount that may be imposed during any licensing period is \$15,000. 235 ILCS 5/3-12 & 7-5

<sup>4</sup>If a license has been revoked, the formally licensed premises cannot be re-licensed for 1 yr. 235 ILCS 5/7-13

<sup>5</sup>Rollin Foods v. Village of Glendale Heights, 646 N.E.2d 12 (Ill.App. 2 Dist. 1995)

<sup>6</sup>The law prohibits either drivers or passengers from consuming or possessing alcoholic beverages within the passenger area of a motor vehicle. There are exceptions for passengers who are riding in either limousines, chartered buses, motor homes or mini motor homes.

STATE:  
General Reference:

**INDIANA**  
Burn's Indiana Statutes Annotated

Basis for a DWI Charge:

See **School Bus Operators** below.

Standard DWI Offense

Operating a vehicle while intoxicated<sup>1</sup> (Cl C Misd) IC9-30-5-2(a)  
Operating a vehicle while intoxicated and endangering a person<sup>1</sup>  
(Cl A Misd) IC9-30-5-2(b)

Illegal Per Se Law (BAC/BrAC)

I.  $\geq 0.08$  but  $< 0.15$ <sup>2</sup> (Cl C Misd) IC9-30-5-1(a) & 9-30-5-4(a)(1)  
II.  $\geq 0.15$  (Cl A Misd) IC9-30-5-1(b)  
III. **Any Amount of a Controlled Substance**<sup>3,4&5</sup> (Cl C Misd)  
IC9-30-5-1(c) & 9-30-5-4(a)(2)  
Persons Under 21 Years Old.  $\geq 0.02$  but  $< 0.08$ <sup>2</sup> (Cl C Infraction)  
IC9-30-5-8.5

Presumption (BAC/BrAC):

$\geq 0.08$ <sup>2&6</sup> IC9-30-6-15(b)(2)  
Persons Under 21 Years Old.  $\geq 0.02$ <sup>2</sup> is a presumption of a  
violation of IC9-30-5-8.5. IC9-30-6-15(c)

Types of Drugs/Drugs and Alcohol:

Operating a vehicle while intoxicated (Cl A Misd) IC9-30-5-2 &  
IC9-13-2-86 Important. See Footnote No. 1 for a definition of the  
term "intoxicated".

Other:

A BAC/BrAC  $\geq 0.08$ <sup>2</sup> is also *prima facie* evidence of intoxication.  
IC9-13-2-131  
A BAC/BrAC  $\geq 0.05$  but  $< 0.08$  is relevant evidence of  
intoxication. IC 9-13-2-151  
For Commercial Motor Vehicle Operators, see p. 3-158.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Limited** PBT for injury/death offenses IC9-30-7-2, -3

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

<sup>1</sup>The term "intoxicated" is defined as under the influence of alcohol, a controlled substance (as defined under IC 35-48-1), a drug other than alcohol or a controlled substance or a combination of alcohol, controlled substance or drugs so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties. IC9-13-2-86

<sup>2</sup>Standards: "Alcohol Concentration Equivalent" means grams of alcohol per either 100 milliliters of blood or 210 liters of breath. IC9-13-2-131, 9-13-2-151, 9-30-5-1(a), 9-30-5-5, 9-30-5-4(a), 9-30-5-8.5, 9-30-6-15(b)(2), 9-30-8-2, 9-30-10-4 & 9-30-15-3

<sup>3</sup>This State's illegal per se law also makes in an offense (Cl C misd) for a person to operate a motor vehicle with any amount of a controlled substance in their blood. An appellate court has held that this provision does not violate (1) either equal protection or due process of law under the U.S. Constitution, (2) the 8th Amendment under the U.S. Constitution and (3) the privileges and immunities clause of the Indiana Constitution. *Shepler v. State*, 758 N.E.2d 966 (Ind.App. 3 Dist. 2001)

<sup>4</sup>Exception: It is a defense to this offense if it is shown that the defendant was using a controlled substance via a valid prescription. IC9-30-5-1(c)

<sup>5</sup>Note: Although the language of the statute clearly applies only to controlled substances in the blood, the Indiana Supreme Court has held that the State can present evidence of other bodily substances (e.g., urine) to establish this fact. *Rhodes v. State*, 675 N.E.2d 698 (Ind. 1997) Previous decisions by the Indiana Court of Appeals, which held that evidence of such drugs in a person's urine alone was not sufficient to prove the presence of these drugs in the blood, have been abrogated by the *Rhodes* case. *Moore v. State*, 645 N.E.2d 6 (Ind.App. 1 Dist. 1994), *Hoornaert v. State*, 652 N.E.2d 874 (Ind.App. 1995), & *Estes v. State*, 656 N.E.2d 528 (Ind.App. 1995)

<sup>6</sup>Under IC9-30-6-15(b)(2), a chemical test indicating a BAC  $\geq 0.08$  is to be taken as a presumption of such BAC.

**School Bus Operators.** It is a Class A Misd. to consume either alcohol or a controlled substance within six (6) hours of operating a school bus. IC20-9.1-3-1.6 Sanctions: Jail-not more than 1 yr; fine-not more than \$5,000. IC35-50-3-2

INDIANA

Chemical Breath Tests for Alcohol Concentration:  
(continued)

Refusal to Submit to Chemical Test  
Admitted into Evidence:  
Other Information:

**Yes** (Criminal & Civil Cases) IC9-30-6-3(b)  
I. In accidents where there has been either a fatality or a serious injury, a blood sample may be obtained via force from a driver suspected of any DWI offense. IC9-30-6-6(g) & (h)  
II. In order to insure that offenders are <0.08 BAC/BrAC prior to pre-trial release, the law provides a chart to guide law enforcement officers on the number of hours a person should be held based on their BAC/BrAC. IC35-33-1-6

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

Blood:  
Urine:  
Other:

**Yes**<sup>1</sup>  
**Yes**<sup>1</sup>  
**Any other bodily substance**<sup>1</sup>

Adjudication of DWI Charges:

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

**No**  
**No**  
**Yes** Mandatory for sub alcohol driving offenses. IC9-30-5-15

Sanctions for Refusal to Submit to a Chemical Test:

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

Cl C Infraction-Not more than \$500 IC9-30-7-5(a) & 34-28-5-4(c)  
**Susp-Not more than 1 yr** IC9-30-7-5(b)

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

**Yes Limited**<sup>2</sup>  
**1 yr susp**<sup>2&3</sup> May not be mandatory if there is a DWI conviction.<sup>3</sup>  
IC9-30-6-9(a) See Footnote No. 2 on p. 3-161.

<sup>1</sup>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)

<sup>2</sup>Under a separate implied consent law, a driver, involved in a fatal or serious bodily injury accident, may be asked by a law enforcement officer to submit to a chemical test. A person does not have to submit to this test if offered but refusal is a Cl C Infraction with a possible a fine of not more than \$500. The court may impose a license suspension for not more than 1 yr. IC9-27-5-4(b), IC9-30-7-1 to 9-9-30-7-5 & IC34-4-32-4(c) Since the law does not require that person submit to a test, it was held not to violate Federal and State constitutional provision against unreasonable searches and seizures. *Griswold v. State*, 725 N.E.2d 416 (Ind.App. 2000)

<sup>3</sup>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)

**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  $\geq 0.04$  (For standards, see Footnote No. 1 on p. 3-157.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life. However, for a second violation only, the CDL may be reinstated after 10 yrs. It is a Cl C Infraction for a person to operate a CMV with a BAC  $\geq 0.04$  but  $< 0.08$ . The sanction of this offense is a fine of not more than \$500. IC9-24-6-8 et seq. & IC34-4-32-4(c)

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

Other:

Note: A driver's license may be reinstated if the DWI charges are dismissed. IC9-30-6-11(a)(1)  
None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,  
Etc.):

See Double Jeopardy below.

1. Intoxicated off/Illegal per se off BAC/BrAC  $\geq 0.08$  but  $< 0.15$ -Cl C Misd-Not more than **60 dys** 2. Endangerment Intoxicated off/Illegal per se off BAC/BrAC  $\geq 0.15$ -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<sup>1</sup>-A fixed term of **1½ yrs** 4. A serious injury where a person has been operating a vehicle with a BAC/BrAC  $\geq 0.08$ , with a schedule I or II controlled substance or while intoxicated-1st off-Cl D felony<sup>1</sup>-A fixed term of **2 yrs**; sub off<sup>2</sup> (w/n 5 yrs)-Cl C felony-A fixed term of **4 yrs** IC9-30-5-1, -2, -3 -4 & -5, IC35-50-2-6 & -7 and IC35-50-3-2, -4 & -5

Persons Under 21 Years Old. BAC/BrAC  $\geq 0.02$  but  $< 0.08$ -Cl C Infraction<sup>2</sup>-None

Mandatory Minimum Term:

1) A conviction for **ANY** alcohol related driving off, where there has been a **one** previous conviction for **ANY** type of alcohol driving off, **5 dys** (w/ 48 con hrs) 2) A conviction for **ANY** alcohol related driving off, where there has been **two or more** previous convictions for **ANY** type of alcohol driving off, **10 dys** (w/ 48 con hrs) IC9-13-2-130<sup>3</sup> & IC9-30-5-15 See Community Service on p. 3-160 and Miscellaneous DWI Sanctions on p. 3-162.

Fine:

Amount (\$ Range):

1. Intoxicated off/Illegal per se off BAC/BrAC  $\geq 0.08$  but  $< 0.15$ -Cl C Misd-Not more than **\$500** IC35-50-3-4; 2. Endangerment Intoxicated off/Illegal per se off BAC/BrAC  $\geq 0.15$ -Cl A Misd-Not more than **\$5,000** IC35-50-3-2 3. Either 1 or 2 above if there has been a previous intoxicated off (w/n 5 yrs)-Cl D felony-Not more than **\$10,000** IC35-50-2-6 4. A serious injury where a person has been operating a vehicle with a BAC/BrAC  $\geq 0.08$ , with a schedule I or II controlled substance or while intoxicated-1st or sub off (w/n 5 yrs)-Cl D or C felony respectively-Not more than **\$10,000** IC35-50-2-6 IC35-50-2-5 & -6

<sup>1</sup>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

<sup>2</sup>A Class C infraction is a civil (not a criminal) violation.

<sup>3</sup>A prior conviction for "driving while intoxicated" is defined to mean a prior violation of IC9-30-5-1 thru IC 9-30-5-9. IC9-13-2-130

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Schrefler v. State*, 660 N.E.2d 585 (Ind.App. 1996)

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

Mandatory Min. Fine (\$):	Persons Under 21 Years Old. BAC/BrAC $\geq 0.02$ but $< 0.08$ -CI C Infraction <sup>2</sup> -Not more than \$500 IC9-30-5-8.5 & IC34-4-32-4(c) None
Other Penalties: Community Service:	For a <u>2nd alcohol off</u> , mandatory community restitution or service of 30 dys in lieu of imprisonment. For a <u>3rd or sub alcohol off</u> , mandatory community restitution or service of 60 dys in lieu of imprisonment. IC9-13-2-130 & IC9-30-5-15 See Footnote No. 3 on p. 3-159.
Restitution (eg Victim's Fund)	Yes The court may order a defendant to pay direct compensation to a victim of not more than \$1,000. IC9-30-5-17 & IC35-50-5-3 There is also a victims' compensation fund. IC16-7-3.6-1 et seq.
Other:	<b>Alcohol and Drug Countermeasures Fee.</b> All DWI offenders are assessed a fee of \$200 for alcohol and drug countermeasures programs. IC33-19-6-10 <b>Emergency Medical Services Fund.</b> 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 <b>Victim Impact Program.</b> A defendant may be ordered by the court to participate in programs with DWI offense victims. IC9-30-14 <b>Visitation Program.</b> A defendant may be required to visit emergency care facilities, coroner facilities or alcoholism treatment centers. IC9-30-14-3(3)
Administrative Licensing Actions: <u>Pre-DWI Conviction Licensing Action:</u> Administrative Per Se Law:	See Double Jeopardy on p. 3-159 and the Special Note below. <b>Yes<sup>1</sup></b> Based on BAC/BrAC <i>prima facie</i> evidence $> 0.08$ <u>1st and sub offs-susp</u> up to 180 dys or until the DWI charges have been disposed of which ever occurs first. IC9-30-6-9(b) A person may be granted restricted driving privileges after 30 dys. IC9-30-6- 9(e) Such privileges, however, cannot be granted if the person has been convicted of a serious injury/death related DWI off. or if they have been convicted of a previous DWI off. IC9-24-15-6.5 A person may also be issued a restricted license under IC9-30-5-11 et seq. if they have not been convicted of a DWI offense. IC9-24-15-9 If DWI charges are dismissed or the defendant is found not guilty of the DWI off, the court shall order the driver's license reinstated. IC9-30-6-11

<sup>1</sup>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

**Special Note:** The administrative per se law does not violate a person's constitutional right to due process of law. *Ruge v. Kovach*, 467 N.E.2d 673 (Ind. 1984)

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

Other:	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)
<u>Post DWI Conviction</u> Licensing Action:	See <b>License Suspension and DWI Charge Deferral &amp; License Suspension and Probation Following Conviction</b> on p. 3-162.
Type of Licensing Action (Susp/Rev):	<b>Susp All offs</b> IC9-30-5-8.5 & IC9-30-5-10
Term of License Withdrawal (Days, Months, Years, etc.):	<u>1st off</u> (Illegal per se/Intoxicated)- <b>90 dys to 2 yrs</b> ; <u>2nd or subsequent off</u> (Illegal per se/Intoxicated) (w/n 10 yrs but more than 5 yrs from a first off)- <b>180 dys to 2 yrs</b> ; <u>2nd or subsequent off</u> (Illegal per se/Intoxicated) (w/n 5 yrs)- <b>1 to 2 yrs</b> ; <u>Injury Related off</u> (where a person has been operating a vehicle with a BAC/BrAC ≥0.08, with a schedule I or II controlled substance or while intoxicated)- <b>2 to 5 yrs</b> IC9-30-5-10 <sup>1</sup> <u>Persons Under 21 Years Old</u> . BAC/BrAC ≥0.02 but <0.08 - Not more than <b>1 yr</b> IC9-30-5-8.5
Mandatory Minimum Term of Withdrawal:	<u>1st off</u> (Illegal per se/Intoxicated)- <b>30 dys (90 dys)<sup>2</sup></b> ; <u>2nd or subsequent off</u> (Illegal per se/Intoxicated) (w/n 10 yrs but more than 5 yrs from a first off)- <b>180 dys<sup>3</sup></b> ; <u>2nd or subsequent off</u> (Illegal per se/Intoxicated) (w/n 5 yrs)- <b>1 yr<sup>3</sup></b> ; <u>Injury Related off</u> (where a person has been operating a vehicle with a BAC/BrAC ≥0.08, with a schedule I or II controlled substance or while intoxicated)- <b>2 yrs<sup>3</sup></b> IC9-24-15-9, IC9-30-5-10 & IC9-30-5-12 <u>Persons Under 21 Years Old</u> . BAC/BrAC ≥0.02 but <0.08- <b>None</b>
Other: Rehabilitation: Alcohol Education: Alcohol Treatment:	<b>Yes<sup>4</sup></b> <b>Yes<sup>4</sup></b>
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	<b>No</b>

<sup>1</sup>IC9-13-2-130 defines the phrase "previous conviction of operating while intoxicated" to include any DWI offense under IC9-30-5.  
<sup>2</sup>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  
<sup>3</sup>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) See **Ignition Interlock** on p. 3-162.  
<sup>4</sup>IC9-30-5-15(a)(2) & (b)(2), 9-30-9-3, 9-30-9-6 and 12-23-14-1 See **License Suspension and DWI Charge Deferral & License Suspension and Probation Following Conviction** on p. 3-162.

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

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 Elsewhere:

"Home detention" may be ordered in lieu of the minimum imprisonment sentence for certain offenses including DWI. "Home detention" may also be ordered as a part of probation. IC35-38-1-21, 35-38-2-2(a)(15), 35-38-2.5 & 35-38-3-5 It appears that this sanction, however, does not circumvent the mandatory jail/community service requirements for 2nd and sub. DWI offenders. IC35-38-3-5(a)(4)

**Ignition Interlock.** I. Under IC9-30-8-1 and 9-30-5-16, as a condition for obtaining probationary driving privileges, the court may require a defendant to use only vehicles equipped with "ignition interlock" devices for a term established by the court with the limitation that such term cannot exceed the maximum prison sentence. II. Other provisions of law also provide that a person convicted of an illegal per se/intoxicated offense (w/n 5 yrs or w/n 10 yrs but more than 5 yrs of a previous conviction) may be granted probationary (restricted) driving privileges on the condition that they only operate vehicles that are equipped with ignition interlock devices. IC9-30-5-10(c) & (d)

**Persons Under 21 Years Old.** Under separate provisions of the law, the court may suspend the driving privileges of a person under 21 years if they have any "alcohol present in a bodily substance." IC9-24-18-12

Other Criminal Actions Related to DWI

Homicide by Vehicle:  
State Has Such a Law:

**Yes I.** A death where a person has been operating a vehicle with a BAC/BrAC  $\geq 0.08$  (See Footnote No. 1 on p. 3-157.), with a schedule I or II controlled substance or while intoxicated -1st off- Cl C felony; sub off<sup>1</sup> (w/n 5 yrs)-Cl B felony IC9-30-5-1, -2, -3 -4 & -5, IC35-50-2-5, 6 & -7 and IC35-50-3-2, -4 & -5

<sup>1</sup>A previous offense includes any prior drunk driving offense conviction.

**License Suspension and DWI Charge Deferral.** For 1st offenders (except those offenses related to serious injury/death), the DWI charges may be deferred and dismissed. The law provides for two (2) different deferral schemes depending upon the court hearing the case. (1) Under IC9-25-6-10, 9-30-9-3 & 9-30-9-5, the charges may be deferred for up to 4 yrs. As part of the deferral, the court may suspend a defendant's license from 2 to 4 yrs. However, it appears that the court must suspend a defendant's license for 1 yr. The court may grant restricted driving privileges after this 1 yr period. In addition, the defendant may be required to participate in an alcohol treatment program. And, (2) DWI charges may be deferred under IC16-13-6.1-15.1(6). If deferral is made under this section, a driver's license is to be suspended for at least 90 dys but not more than 2 yrs. A 30 dy suspension is mandatory.

**License Suspension and Probation Following Conviction.** In certain circuit courts, persons convicted of a DWI offense may be placed on probation and referred to an alcohol abuse deterrent program. As part of the probation, the court may suspend a defendant's license from 90 dys to 4 yrs. However, it appears that a defendant's license must be suspended for 30 dys. After this 30 dy period, the court may grant probationary (restricted) driving privileges. IC9-30-9-3, 9-30-9-6 & 9-30-9-7

Other Criminal Actions Related to DWI: (continued)

<p>Sanctions: Criminal Sanction: Imprisonment (Term):</p> <p>Mandatory Minimum Term:</p> <p>Fine (\$ Range): Mandatory Minimum Fine: Administrative Licensing Action: Licensing Authorized and Type of Action:</p> <p>Length of Term of Licensing Withdrawal:</p> <p>Mandatory Action--Minimum Length of License Withdrawal:</p> <p><u>Driving While License Suspended or Revoked</u> <u>Where the Basis Was a DWI Offense*:</u> Sanction: Criminal: Imprisonment (Term):</p>	<p>II. <u>Involuntary Manslaughter</u> where the death is related to vehicle operation and the defendant has committed or attempted to commit either a Cl C felony, Cl D felony or Cl A Misd (e.g., driving while intoxicated) that imposes a risk of serious bodily injury-Cl D felony IC35-42-1-4 &amp; 35-50-2-7</p> <p>III. <u>Involuntary Manslaughter</u> where the death is related to veh operation and the killing of a fetus-Cl D felony IC35-42-1-4</p> <p><u>Cl B felony-A fixed term of 10 yrs Cl C felony-A fixed term of 4 yrs Cl D felony-A fixed term of 1½ yrs</u> Note: There are mandatory imprisonment sanctions in cases involving offenders who have prior felony convictions. See IC35-50-2-2 for details. <u>Cl B, C or D felonies-Not more than \$10,000</u> <u>None</u></p> <p>I. A death where a person has been operating a vehicle with a BAC ≥0.08, with a schedule I or II controlled substance or while intoxicated-<u>Susp 9-30-5-8.5 &amp; 9-30-5-10</u></p> <p>II. <u>Involuntary Manslaughter-Susp/Rev<sup>1</sup></u> IC9-24-15-1-2 &amp; IC30-4-6(b)(1) &amp; (d)(2)</p> <p>I. A death where a person has been operating a vehicle with a BAC ≥0.08, with a schedule I or II controlled substance or while intoxicated-<u>2 to 5 yrs</u></p> <p>II. <u>Involuntary Manslaughter-2 to 5 yrs</u></p> <p>For either I or II above, there appears to be a mandatory licensing action for <u>2 yrs</u>.</p> <p>See Footnote No. 2.</p> <p>I. Cl A Misd-Not more than <u>1 yr</u> IC9-24-19-3 &amp; IC35-50-3-2</p>
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<sup>1</sup>Registration "certificates" may also be susp/rev for not less than two (2) but no more than five (5) years of any person who has been convicted of either "involuntary" manslaughter or "reckless homicide" resulting from the operation of a motor vehicle. This appears to be mandatory. IC9-24-15-1-2 & IC30-4-6(b)(1) & (d)(2)

<sup>2</sup>I. It is a Cl C misd to operate a CMV during a CDL disqualification. The sanctions for this offense are a jail term of not more than 60 dys and/or a fine of not more than \$500. IC9-24-6-16 & IC35-50-3-4 II. If a person operates a CMV during a Federal 24 hr out-of-service order under 49 CFR 392.5, which prohibits driving a CMV either while under the influence or with any "measured alcohol concentration", they are subject to the following sanctions. A CDL disqualification as follows: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. If the CMV operator was driving a CDL either containing hazardous materials or designed to carry more than 15 persons, the CDL disqualification periods are as follows: 1st violation-180 dys (mand) to 2 yrs; and, sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. For any violation, a civil fine of \$1,000. IC9-13-2-120.5, 9-24-6-10.5 & 9-24-6-19

\*These sanctions apply when a person operates a motor vehicle while their license is suspended/revoked and where the licensing action was the result of the commission of a criminal offense (e.g., DWI). IC 9-24-19-3 & IC35-41-1-19

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Other Criminal Actions Related to DWI: (continued)

Imprisonment (Term): (continued)

II. Where there is Bodily Injury-Cl D Felony-A fixed term of 1½ yrs IC35-50-2-7 Under certain conditions, this may be reduced to a Cl A Misd. IC35-50-2-7(b)

III. Where there is a Death-Class C Felony-A fixed term of 4 yrs IC35-50-2-6

Mandatory Minimum Term of Imprisonment:

Note: There are mandatory imprisonment sanctions in cases involving offenders who have prior felony convictions. See IC35-50-2-2 for details.

Fine (\$ Range)

Cl A Misd-Not more than \$5,000 IC35-50-3-2 Cl C or D Felony-Not more than \$10,000 IC35-50-2-6 & IC35-50-2-7

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

None

Susp IC9-24-19-5

Length of Term of License  
With drawal Action:

90 dys to 2 yrs IC9-24-19-5

Mandatory Term of License  
Withdrawal Action:

90 dys IC9-24-19-5

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No):  
Grounds for Being Declared an  
Habitual Offender:

Yes IC9-30-10-1 et seq.

I. 2 convictions (w/n 10 yrs) for traffic law violations related to death offs as listed in IC9-30-10-4(a) (e.g., DWI resulting in death)

II. 3 convictions (w/n 10 yrs) for major offs as listed in IC9-30-10-4(b) (e.g., DWI & reckless driving)

III. 10 convictions for any moving violations (w/n 10 yrs) IC9-30-10-4(c) However, one of these must have been a conviction for an off listed in either IC9-30-10-4(a) or IC9-30-10-4(b).

Term of License Rev While  
Under Habitual Offender Status:

I. For 2 traffic law violations related to death offs convictions under IC9-30-10-4(a)-10 yr Susp IC9-30-10-5(b)(1)

II. For 3 major off convictions under IC9-30-10-4(b)-10 yr susp<sup>1,2</sup> IC9-30-10-5(b)(2)

<sup>1</sup>After 5 yrs, a probationary restricted license may be issued provided that offender has not been convicted of a death related offense under IC9-30-10-4(a). In addition, if one of the offenses under IC9-30-10-4(b) was for a drunk driving offense, the offender must complete a rehabilitation program before such restricted license can be issued. IC9-30-10-9(b) See Footnote No. 2 for an additional basis for issuing probationary restricted licenses.

<sup>2</sup>After 3 yrs, a probationary restricted license may be issued the offender's status is based on a violation of IC9-30-10-4(b) & (c). In order to be eligible for such a license, the offender must establish, among other things, that (1) they have not been convicted of an offense death related offense as listed in IC9-30-10-4(a) and (2) they only have been convicted of either (1) driving without a license based on infractions or driving without a license for a subsequent time. IC9-30-10-9(d)

<sup>3</sup>A probationary restricted license may be issued at any time to an habitual offender who operates a vehicle for commercial or business purposes and where the habitual offender status is based on a violation of IC9-30-10-4(c). In order to be eligible for such driving privileges, the offender must establish, among other things, that they have not been convicted either (1) for death related offense listed in IC9-30-10-4(a) or (2) for three offenses listed in IC9-30-10-4(b). IC9-30-10-9(a) See Footnote No. 2 for an additional basis for issuing probationary restricted licenses.

<sup>4</sup>An habitual offender cannot obtain hardship driving privileges under IC9-24-15. IC9-24-15-9 & IC9-30-10-14(c)

Other Criminal Actions Related to DWI: (continued)

<p>Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:</p>	<p>III. For 10 convictions of moving violations under IC9-30-10-4(c)-5 yr susp See Footnotes 2 &amp;3 on p. 3-164. IC9-30-10-5(b)(3) See Footnote No. 4 on p. 3-164.</p>
<p>Sanctions Following a Conviction of Driving While on Habitual Offender Status:</p>	<p>CI D Felony IC9-30-10-16 At the court's discretion, a 1st offender may be sentenced for a Class A Misd. See Footnote No. 1 on p. 3-159.</p>
<p>Imprisonment (Term):</p>	<p>CI D Felony-1 ½ yrs; CI A Misd-Not more than 1 yr IC35-50-2-7 &amp; IC35-50-3-1</p>
<p>Mandatory Minimum Term of Imprisonment:</p>	<p>None</p>
<p>Fine (\$ Range):</p>	<p>CI D Felony-Not more than \$10,000; CI A Misd-Not more than \$5,000</p>
<p>Mandatory Minimum Fine:</p>	<p>None</p>
<p>Licensing Actions (Specify):</p>	<p>For a <u>CI D Felony conviction-Forfeiture of license for life</u><sup>1</sup> IC9-30-10-16(c)                  Note: It is CI 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 &amp; 35-50-2-6 and <i>Austin v. State</i>, 700 N.E.2d 1191 (Ind.App. 1998) For a <u>CI A Misd conviction</u>-the court on its own discretion may add an <b>additional susp period</b> (time period to be set by the court) to any suspensions already imposed. IC9-30-10-16(c)</p>

Other State Laws Related to Alcohol Use:

<u>Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:</u>	
State Has Such a Law (Yes/No):	Yes <sup>2</sup> IC9-27-5-4(a)
BAC Chemical Test Is Given to the Following Persons:	
Driver:	Yes <sup>2</sup> IC9-27-5-4(a)
Vehicle Passengers:	No
Pedestrian:	Yes for persons ≥15 yrs old <sup>2</sup> IC9-27-5-4(a)

<sup>1</sup>After 10 yrs, a person may petition the court for reinstatement of their license. IC9-30-10-14(a)(1) However, under some circumstances, offender's license may be reinstated after only 3 yrs. For early reinstatement, the offender must not have been convicted of a death related offense listed in IC9-30-10-4(a) and the life time suspension must have based on traffic infractions. IC9-30-10-14(e)  
<sup>2</sup>The State Department of Toxicology in conjunction with the Office of Highway Safety may require "appropriate agencies" to collect "necessary specimens" (w/n 4 hrs) from either drivers or pedestrians who are killed in traffic accidents. IC9-27-5-4(a)

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### Other State Laws Related To Alcohol Use: (continued)

#### Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21<sup>1</sup> (Year Eff: 1934) IC7.1-1-3-25, 7.1-5-7-1, 7.1-5-7-8 & 7.1-5-10-22

Minimum Age (Years) Possession:

21 IC7.1-5-7-7(a)(1)

Minimum Age (Years) Consumption:

21 IC7.1-5-7-7(a)(2)

#### Dram Shop Laws and Related Legal Actions:

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

Yes IC7.1-5-10-15.5<sup>2&3</sup> **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<sup>3</sup> *Picadilly, Inc. v. Colvin*, 519 N.E.2d 1217 (Ind. 1988)<sup>2</sup>, *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<sup>2&3</sup> *Gariup Const. Co. v. Foster*, 519 N.E.2d 1224 (Ind. 1988)<sup>3</sup>, *Ashlock v. Norris*, 475 N.E.2d 1167 (Ind. App. 3 Dist., 1985)<sup>3</sup>, *Delta Tau Delta v. Johnson*, 712 N.E.2d 968 (Ind. 1999)<sup>4</sup> & IC7.1-5-10-15.5<sup>2&3</sup>

Other:

An alcoholic beverage licensee is liable for the injuries or death of an intoxicated patron, who is over 21 yrs old, if two conditions are proven. (1) The licensee knew that the patron was visibly intoxicated when they were served alcoholic beverages. And, (2) the furnishing of such beverages was the proximate cause of the injury or death. IC7.1-5-10-15.5(c).<sup>5</sup>

<sup>1</sup>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

<sup>2</sup>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. *Weida v. Dowden*, 664 N.E.2d 742 (Ind. App. 1996), *Vanderhoek v. Willy*, 728 N.E.2d 213 (Ind. App. 2000), & *Culver v. McRoberts*, 192 F.3d 1095 (7th Cir. 1999) 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. A licensee is not normally liable for the injuries resulting from the criminal conduct (e.g., murder) of an intoxicated patron. Such conduct is either not foreseeable or is an intervening act that breaks the necessary probable cause for liability under the Dram Shop Act. *Merchants Nat. Bank v. Simrell's Sports Bar*, 741 N.E.2d 383 (Ind. App. 2000)

<sup>3</sup>**Historical Note:** After April 1, 1986, common law dram shop actions were restricted by IC7.1-5-10-15.5. The *Gariup Const. Co.* & *Ashlock* decisions were based on factual situations that occurred prior to this date.

<sup>4</sup>In the *Delta Tau Delta* case, a guest at a fraternity house was attacked by another guest who was intoxicated. The State supreme court held that the dram shop law did not apply in this social host liability situation since there was no indication to the social host (the fraternity) knew that the injury causing guest was visibly intoxicated. Note: The court, however, did find that the social host was liable under the common law for failure to maintain a safe place for guests.

<sup>5</sup>**Historical Note & Comment:** The dram shop law was amended in 1996 to limit the scope of liability in situations where an adult patron has been injured or killed as a result of their own (voluntary) intoxication. The legislature apparently felt that such an amendment was necessary in order to limit the holding in *National R.R. Passenger Corp. v. Everton by Everton*, 655 N.E.2d 360 (Ind. App. 1995)

Other State Laws Related To Alcohol Use: (continued)Criminal Action Against Owners or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

**Cl B Misd** IC7.1-5-1-8, 7.1-5-10-15, 7.1-5-10-22 and 35-50-3-3Not more than **180 dys** IC7.1-3-23-3Not more than **\$1,000** Note: An administrative fine of not more than \$1,000 may also be imposed.Administrative Actions Against Owners or Establishments that Serve Alcoholic Beverages to Intoxicate Patrons:

License of Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

**Yes**<sup>1</sup> IC7.1-3-23-2, 7.1-3-23-5 and 7.1-5-10-22

For revs, no period is specified in the statute IC7.1-3-23-6 For susps, not more than 30 dys IC7.1-3-23-7

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

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

**Cl C Misd**<sup>2</sup> IC7.1-5-7-8, 7.1-5-10-22 and 35-50-3-4Not more than **60 dys**Not more than **\$500** Note: An administrative fine of not more than \$1,000 may also be imposed. IC7.1-3-23-3Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawn:

**Yes** IC7.1-3-23-2, 7.1-3-23-5, 7.1-3-23-26.1 and 7.1-5-10-22

For revs, no period is specified in the statute. IC7.1-3-23-6 For susps, not more than 30 dys. IC7.1-3-23-7

Anti-Happy Hour Laws/Regulations:**Yes** IC7.1-5-10-20Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

**Yes** However, the law only applies if the vehicle operator has a BAC/BrAC  $\geq 0.04$  (For standards, see Footnote No. 1 on p. 3-157.). The sanctions for this offense apply only to drivers. IC9-30-15-3

Anti-Consumption Law (Yes/No):

**Yes** Drivers only IC9-30-15-4<sup>1</sup>A employee or bartender who is convicted of serving alcoholic beverages to an intoxicated person is subject to mandatory revocation of their permit to serve such beverages. IC7.1-3-18-9(f) & IC7.1-3-18-11(f) Note: The permit may be suspended pending the disposition of the charges. IC7.1-3-23-7(b)(2)<sup>2</sup>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."

INDIANA

20th Edition

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STATE:  
General Reference:

IOWA  
Iowa Code Annotated

Basis for a DWI Charge:

Standard DWI Offense: Illegal Per Se Law (BAC/BrAC):	Under the influence of an alcoholic beverage <sup>1</sup> §321J.2(1)(a) $\geq 0.10$ <sup>1,2,3</sup> or <b>Any Amount of a Controlled Substance in the Blood or Urine</b> <sup>4</sup> §§321J.1(1) and 321J.2(1)(b) & (c)
Presumption (BAC):	<b>None</b>
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) <b>Any Drug</b> or (2) Any Combination of Drugs Including an Alcoholic Beverage <sup>1</sup> §321J.2(1)(a)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	<b>Yes</b> §321J.5
Implied Consent Law:	
Arrest Required (Yes/No):	<b>No</b> <sup>5</sup> §321J.6(1)
Implied Consent Law Applies to Drugs (Yes/No):	<b>Yes</b> §321J.6
Refusal to Submit a Chemical Test Admitted into Evidence:	<b>Yes</b> (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

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

Blood:	<b>Yes</b> §321J.6(2)
Urine:	<b>Yes</b> §321J.6(2)
Other:	<b>None</b>

<sup>1</sup>A drunk driving offense is described as "operating while intoxicated". However, "operating while intoxicated" is defined as operating a vehicle while under the influence of an alcoholic beverage or illegal per se. Note: Under §321J.1(2), "[a]lcoholic beverage includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption."

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

<sup>3</sup>Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §§321.1(1) & 321J.1(1)

<sup>4</sup>There is an "affirmative defense" if the controlled substance was present because of a valid prescription. §321J.2(7) & (8)

<sup>5</sup>A request to submit to a test is based either on (1) reasonable grounds of either a drunk driving offense or a violation of §321J.2A (persons under 21 yrs old driving with a BAC/BrAC  $\geq 0.02$ ) and any one of the following: (a) An arrest; (b) an accident resulting in injury or death; (c) a PBT refusal; or, (d) a PBT BAC/BrAC reading of  $\geq 0.10$  (for CMV operators, PBT BAC/BrAC reading of  $\geq 0.04$  and for persons under 21 yrs old PBT BAC/BrAC reading of  $\geq 0.02$ ) or (2) on reasonable grounds that the driver was under the influence of drugs or a combination of drugs and alcohol but a PBT BAC/BrAC reading is  $< 0.10$ . §321J.6(1)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC  $\geq 0.04$  (For standards, see Footnote No. 3 above.), (2) are under the influence of alcohol, other drug or a controlled substance or (3) refuse to submit to a chemical test for alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has violated 49 CFR 392.5 (e.g., consumed any alcohol within 4 hours of operating a CMV) must be placed "out-of-service" for 24 hours. §§321.1(1) & (11), 321.208, 321.208A, 321J.6 and 321J.8(3)

IOWA

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No <sup>1</sup>
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes An offender must, at their own expense, submit to a substance abuse evaluation. §§321J.2(3)(b), 321J.3 & 321J.17 Also, the court may order an evaluation if it thinks that the defendant "regularly abuses alcohol or other controlled substance". §901.4A

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	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-1 yr (90 dys mand); 2nd or subsequent refusal <sup>2</sup> -2 yrs (1 yr mand) §§321J.9 & 321J.20 See Footnote No. 3 and the Special Note below. See Civil Penalty on p. 3-172.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy on p. 3-171.
Imprisonment:	See Alcohol Treatment on p. 3-173.
Term (Day, Month, Years, Etc.):	1st off (Serious misd)-Not more than 1 yr; 2nd off (w/n 12 yrs) (aggravated misd)-Not more than 2 yrs; 3rd and sub off (w/n 12 yrs) (Cl D felony)-Not more than 5 yrs (or up to 1 yr in the county jail §902.9); Serious Injury related to a drunk driving off (Class D felony)-Not more than 5 yrs (or up to 1 yr in the county jail) §§321.12(4), 321J.2(2) & (3), 707.6A(3), 902.9, 903.1 and 907.3(3)(c)

<sup>1</sup>Ist offenders, who have BAC <0.15, are eligible for deferred judgement. §907.3 However, such persons are subject to a license revocation from 30 (mand) to 90 dys. A 90 dy revocation is mandatory if the offender refused to submit to a chemical test. §321J.4(3)  
<sup>2</sup>A prior drunk driving offense conviction or a prior admin. per se violation is considered the same as a previous refusal for license sanction enhancement purposes. §321J.9(1) Note: These offenses stay on a person's driving record for 12 yrs. §321.12(4)  
<sup>3</sup>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)

**Special Note:** I. For either a 1st or subsequent refusal, a restricted license may be issued by the licensing agency provided the minimum period of license revocation has expired. A restricted license may only be used for education, treatment or employment purposes. §321J.20(1) However, a person must install an "ignition interlock" system on the vehicle(s) they operate as a condition for obtaining a restricted license. §§321J.9(2)(b) & 321J.20(6) Important. The court is prohibited from issuing a temporary restricted license for employment purposes to persons who refuse to submit to a chemical test and who are <21 yrs old. §321J.4(9)

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

Mandatory Minimum Term:	1st off (Serious misd)- <b>48 hrs</b> (Limited Application) <sup>1</sup> ; 2nd off (w/n 12 yrs) (aggravated misd)- <b>7 con dys</b> <sup>2&amp;3</sup> ; <b>3rd and sub offs</b> (w/n 12 yrs) (Cl D felony)- <b>30 con dys</b> (limited) <sup>3&amp;4</sup> ; <b>Serious Injury</b> related to a drunk driving off (Class D felony)- <b>None</b>
Fine: Amount (\$ Range):	<b>1st off</b> (Serious misd)- <b>\$500/\$1,000</b> <sup>5</sup> ; <b>2nd off</b> (w/n 12 yrs) (Aggravated misd)- <b>\$1,500 to \$5,000</b> ; <b>3rd and sub offs</b> (w/n 12 yrs) (Cl D felony)- <b>\$2,500 to \$7,500</b> ; <b>Serious Injury</b> related to a drunk driving off (Class D felony)- <b>\$750 to \$7,500</b> See Civil Penalty on p. 3-172.
Mandatory Min. Fine (\$):	<b>1st off</b> (serious misd)- <b>\$500/1,000</b> <sup>1&amp;5</sup> (Limited Application) (See community service below.); <b>2nd off</b> (Aggravated misd)- <b>\$1,500</b> ; <b>3rd and sub offs</b> (Cl D felony)- <b>\$2,500</b> ; <b>Serious Injury</b> related to a drunk driving off (Class D felony)- <b>\$750</b>
Other Penalties: Community Service:	I. <b>1st off</b> (serious misd)-Community service in lieu of part of or all of the fine. §321J.2(2)(a) II. Under separate provisions, the court may order either a 1st or sub offender to perform community service which is equivalent in value to any fine which has been imposed. The value of the community service to be performed is based on the Federal minimum wage. §909.3A
Restitution (eg Victim's Fund)	<b>Yes</b> I. For any drunk driving offense, the court may order the defendant to make restitution for any damages resulting from the offense. §321J.2(8) Note: Court ordered restitution is possible under §910.1 et seq. II. In addition, a victim is eligible for restitution from the State's crime victim reparation fund. §912.1 et seq.
Other:	<b>Special Note:</b> Deferred judgment is allowed for a 1st DWI off. During such deferment their license is revoked 30 to 90 dys. The same mand lic rev periods and temporary restricted license provisions apply as for DWI. §§321J.4(2) & 907.3

<sup>1</sup>For a 1st offense, there is a mandatory imprisonment sentence of 48 hrs and fine as indicated if the offender (1) had a BAC/BrAC > 0.15, (2) refused to submit to a chemical test under implied consent law or (3) committed a drunk driving offense that injured another person. §§321J.2(3)(a) & 907.3(2)

<sup>2</sup>This sentence may not be deferred or suspended. §321J.2(3)(a)

<sup>3</sup>For 2nd and subsequent offenders the 7 dy and 30 dy jail sanctions respectively must be served consecutively. §321J.2(3)(d) However, if consecutive minimum jail terms would cause a hardship on the defendant or if there is insufficient jail space, the minimum terms may be served in segments of at least 48 hrs. If this is done, the defendant must perform community service. The period of community service is decided by the court and is based upon that which the court has "deemed appropriate". §321J.2(3)(d) See Alcohol Treatment on p. 3-173.

<sup>4</sup>An offender is subject to a 30 con day mandatory minimum incarceration sanction only if the court sentences them to county jail. However, if they are sentenced to the State Department of Corrections, there is no mandatory minimum incarceration sentence. *State v. Dist. Court for Mahaska County*, 620 N.W.2d 271 (Iowa 2000)

<sup>5</sup>If there is no personal injury or property damage, the fine may be reduced to a not less than \$500 provided the offender presents to the court a temporary restricted license at the end of the minimum period of ineligibility. §321J.2(2)(a)(2)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Kocher*, 542 N.W.2d 556 (Iowa 1996), & *State v. Krebs*, 562 N.W.2d 423 (Iowa 1997)

IOWA

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

Other: (continued)

**Surcharges.** A surcharge of 30% of the fine actually imposed is assessed against anyone convicted of a State criminal offense and a drug abuse resistance education surcharge of \$5. §911.2

**Civil Penalty.** A separate (i.e., additional) civil penalty of \$200 is assessed against a person who has had their license revoked as a result of either a DWI conviction, admin. per se violation or implied consent law refusal. Part of the money collected from this penalty is placed in a victim reparation fund. This penalty must be paid before restricted driving privileges can be granted. §321J.17(1)

**Emergency Response Costs.** The court may order an offender to pay the costs of an emergency response resulting from a drunk driving offense. The cost cannot exceed \$500 for each public agency for each response. §321J.2(8)

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

See the Special Note below and Double Jeopardy on p. 3-171.  
**Yes** (1)  $\geq 0.10$  (BAC/BrAC/UrAC See Footnote No. 3 on p. 3-169.) (2) **The Presence of a Controlled Substance or Other Drug**<sup>1</sup> (3) **A Combination of Alcohol and Another Drug in Violation of the DWI Law** (§321J.2) 1st violation-Rev 180 dys (30 dys mand; if the offender is <21 yrs old-60 dys); 2nd or sub violation<sup>2</sup> (w/n 12 yrs)-**Rev 1 yr** (mand) See Footnote No. 1 on p. 3-173. §§321J.12 & 321J.20 **Important.** If a defendant is under 18 years old, the period of revocation shall be either as indicated or until the person reaches 18 whichever is the longer revocation period. §321J.4(6)

Persons Under 21 Years Old  $\geq 0.02$  but  $< 0.10$  (BAC/BrAC/UrAC See Footnote No. 3 on p. 3-169.) 1st violation-Rev 60 dys<sup>3</sup>; 2nd or sub violation (w/n 12 yrs)-**Rev 90 dys** (mand) §§321J.2A & 321J.12(5) A restricted license is not available from either the licensing agency or the courts. §§321J.4(9) & 321J.20(2)

Other:

Under §§321.210 & 321.212, a person's license may be suspended for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

<sup>1</sup>**Comment:** It would appear that, indirectly, the "affirmative defense" noted in Footnote No.4 on p. 3-169 would also apply to admin. actions. Under §321J.13(2)(c), evidence of this violation under the DWI law must be considered prior to an admin. licensing action. Thus, since the "affirmative action" would mitigate the DWI offense, it would also appear to mitigate the admin. action as well.

<sup>2</sup>A prior drunk driving offense conviction or a prior refusal to submit to a chemical test is considered the same as a previous admin. per se violation for license sanction enhancement purposes.

<sup>3</sup>A 1st offender may participate in a substance abuse awareness program. §321J.25(4)

**Special Note:** I. An admin. per se violator or DWI defendant, who is under 21 years old, is not eligible for restricted driving privileges. §321J.4(9) II. If an admin. per se violator or DWI defendant is under 18 years old, the period of revocation shall be either as indicated or until the person reaches 18 whichever is the longer revocation period. §321J.4(6)

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

Post DWI Conviction Licensing Action: Type of Licensing Action (Susp/Rev):	See the Special Note on p. 3-172.  <u>1st off-Rev; 2nd off</u> (w/n 12 yrs)-Rev; <u>3rd and sub. offs</u> (w/n 12 yrs)-Rev; Any DWI off conviction where there has been a serious injury-Rev §§321.12, 321J.2(2)(a) & (3) and 321J.4
Term of License Withdrawal (Days, Months, Years, etc.):	<u>1st off-180 dys-1 yr; 2nd off</u> (w/n 12 yrs) <sup>1</sup> -2 yrs; <u>3rd and sub. offs</u> (w/n 12 yrs) <sup>1</sup> -6 yrs DWI off involving serious injury-1 yr <sup>2</sup> §§321J.2(2)(a) & 321J.4
Mandatory Minimum Term of Withdrawal:	<u>1st off-30 dys</u> <sup>3</sup> / <u>60 dys</u> if the offender was <21 yrs old/ <u>90 dys</u> if there was a chemical test refusal; <u>2nd off-1 yr</u> <sup>3</sup> ; <u>3rd and sub offs-1 yr</u> <sup>3</sup> §§321J.4 & 321J.20
Other: Rehabilitation: Alcohol Education:	<b>Yes</b> 1st and sub §§321J.2(2)(a), 321J.3, 321J.17(2) & 321J.22 See Footnote No. 2 on p. 3-172.
Alcohol Treatment:	<b>Yes I.</b> Based upon a substance abuse evaluation, a court may order a DWI offender to attend a treatment program. Such a program could include inpatient treatment. The time the offender spends in this inpatient treatment program is credited towards their sentence. §321J.3 <b>II.</b> Under separate provisions of law, the court may commit a subsequent offender, as a condition for suspending a sentence, to an inpatient treatment program for alcoholism or drug addiction. Again, the time the offender spends in this program is credited towards their sentence. §321J.3(2) <b>III.</b> In addition, under §901.5(8), the court may order a defendant to complete a treatment program pursuant to an evaluation for alcohol or drug abuse conducted under §901.4A.
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority: Terms Upon Which Vehicle Will Be Released: Other:	<b>No</b>  <b>Impoundment or Immobilization.</b> For a 2nd or sub off, the vehicle owned <u>and</u> used by the defendant in the offense "is subject to either impounded or immobilized for either the period of the driver's license rev or for 180 dys whichever is longer." <sup>4</sup> §321J.4B(2)(a), (5)(d), (7)(a) & (7)(b)

<sup>1</sup>A previous off includes either an admin. per se action or an implied consent law violation. §321J.4(1)

<sup>2</sup>In addition to any other revocation or suspension.

<sup>3</sup>**Special Note:** For a drunk driving offense conviction (including injury related offenses) or for an admin. per se violation, the licensing agency may issue a person a restricted license after the minimum mandatory license revocation period has expired. The restricted license may only be used for education, treatment or employment purposes. **Important.** The court is prohibited from issuing a temporary restricted license for employment purposes to offenders or admin. per se violators who are <21 yrs old. §321J.4(9) Note: Such a license is not available via the licensing agency. §321J.20(2) See Ignition Interlock under Miscellaneous Sanctions on p. 3-174.

<sup>4</sup>Law enforcement authorities seize the vehicle's license plates (and, if the vehicle is in custody, its registration). New registration plates shall not be issued until the above period expires. However, either a non-resident co-owner or a family member (where the family has only one vehicle) may have this action rescinded provided an ignition interlock system is installed on the vehicle. §321J.4B(12)(c)

**IOWA**

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

Miscellaneous Sanctions  
Not Included Elsewhere:

Important. See the Special Note & Comment below.

I. **Ignition Interlock.** (1) A DWI offender may be required to install ignition interlock devices on the vehicles they own. (2) A 2nd or subsequent offender, after the mandatory license revocation period, may be granted restricted driving privileges provided they install ignition interlock devices on all of the vehicles they own. And, (3) prior to reinstating the driving privileges to a 2nd or sub offender, the State shall require such person to install ignition interlock devices on all of the vehicles they own for 1 yr. §§321J.17 & 321J.4

II. Persons sentenced to the county jail may be assigned to "**home detention**" instead of incarceration. §356.26

III. (1) A 2nd or sub offender is prohibited from either purchasing or registering a motor vehicle during a period of impoundment or immobilization or lic. rev. (2) During this period, a vehicle cannot be sold or have its title transferred. §321J.4B(1)(a)(1) (2)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes** If death is unintentional and is related to drag racing-Class D felony If death is related to reckless driving-Class C felony If death is related to a drunk driving offense-Class B felony §707.6A

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

Class D felony-Not more than **5 yrs** §902.9(4)  
Class C felony-Not more than **10 yrs** §902.9(3)  
Class B felony-Not more than **25 yrs** §902.9(1)  
If death is related to reckless driving-**10 yrs**<sup>2</sup> §902.12  
If death is related to drunk driving-**25 yrs**<sup>2</sup> §902.12  
Class D felony-**\$750 to \$7,500**<sup>1</sup> §902.9(4)  
Class C felony-**\$1,000 to \$10,000**<sup>1</sup> §902.9(3)  
Class B felony-None

Mandatory Minimum Term:

Fine (\$ Range):

<sup>1</sup>A surcharge of 30% of the fine actually imposed is assessed against any person who is convicted of a State criminal offense. §911.2  
<sup>2</sup>A person is not eligible for parole or work release. However, their sentence may be reduced for "good conduct time". §902.12

**Special Note & Comment (Child Endangerment):** Iowa's criminal law provides for sanctions against persons who either abuse or neglect a child under their control. The criminal law defines a child as a person < 14 yrs old. §702.5 I. The Iowa Supreme Court has held that a parent can be charged with child neglect (recklessly exposing their child to a danger), a Class C felony, if, while transporting their child, they operate a motor vehicle in an intoxicated condition. §726.3 & *State v. Caskey*, 539 N.W.2d 176 (Iowa 1995) II. There is the possibility that general criminal law provisions concerning child endangerment may apply as well in such a situation. The child endangerment law makes it an offense to create a situation where a child is exposed to a "substantial risk". This offense is an aggravated misdemeanor unless the child is injured in which case it is a Class C felony. §726.6 However, 3 or more offenses within 12 months against the same child, where at least one of the offenses was an injury, is a Class B felony. §726.6A III. The sanctions for these offenses are as follows: Class B felony-incarceration for not more than 50 yrs (Note: Normally, for a Class B felony conviction, a person is subject to an imprisonment term of not more than 25 yrs. However, the law specifically doubles this term in the case of multiple child endangerment convictions where there has been an injury in at least one case.); Class C felony-incarceration for not more than 10 yrs and/or a fine of not more than \$10,000; and, aggravated misdemeanor-incarceration for not more than 2 yrs and/or a fine of not more than \$5,000 §§726.6, 902.9 & 903.3

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine:	Class D Felony-\$750 C felony-\$1,000
Administrative Licensing Action: Licensing Authorized and Type of Action:	Rev §§321.209(1), 321J.4(5) & 707.6A(1)(a)
Length of Term of Licensing Withdrawal:	1 yr §321.212(1)(a) 6 yrs if DWI §707.6A(1)
Mandatory Action--Minimum Length of License Withdrawal:	1 yr §321.212(1)(a) 2 yrs if DWI related Restricted driving privileges are available after this 2 yr revocation period. <sup>1</sup> §§321J.4(5) & (8), 321J.20(2) & 707.6A(1)
Other:	I. <b>Civil Penally.</b> There is a civil penalty of \$200 (if the offender is ≤19 yrs old, the civil penalty is \$50). §321.218A If the death was related to drunk driving offense, the civil penalty is \$200 (applies to all offenders regardless of age). §321J.17 II. For DWI related deaths, the offender may be required attend either alcohol education or treatment programs. §707.6A III. <b>Special License Suspension.</b> Prior to an adjudication of a person for vehicle homicide related to either reckless driving or drunk driving, their license is suspended until the completion of the judicial proceedings. If they are not convicted, their license is reinstated. §321.210C IV. In addition to any other pecuniary damages, an offender must pay at least \$150,000 in restitution to a victim's estate. §910.3B & <i>State v. Klawonn</i> , 609 N.W.2d 515 (Iowa 2000)
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:</u>	See Footnote No. 1 and the Special Note below.
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):	\$1,000 to \$1,500 §§321J.21 & 903.1(1)(b) See Footnote 1 on p. 3-174. There is also a Civil Penalty of \$200. §321J.17
Mandatory Minimum Fine:	\$1,000 §321J.21

<sup>1</sup>I. It is a simple misd to operate a CMV during a CDL disqualification. The sanctions for this offense are a jail term of not more than 30 dys or a fine of \$50 (may be mand) to \$500 and an additional disqualification period which is to equal to the original. §§321.218(5) & (6) and 903.1(1)(a) II. A person, who operates a CMV while under a CDL out-of-service order, is subject to a "scheduled fine" of \$100 and to a CDL disqualification. The disqualification periods are as follows: 1st violation-90 dys; 2nd violation (w/n 10 yrs)-1 yr; 3rd and subsequent violation (w/n 10 yrs)-3 to 5 yrs. §§321.208, 321.208A & 805.8(2)(z)

<sup>2</sup>A restricted license may be issued by the court provided such a license is needed in order for the person to remain employed. §321J.4(8)  
Note: Such a license is not available via the licensing agency. §321J.20(2) An offender must install an "ignition interlock" system on the vehicle(s) they operate as a condition for obtaining a restricted license. This requirement must last for at least 1 yr unless a longer period is ordered by the court under §321J.4. §§321J.4(8) & 321J.20(6)

**Impoundment & Forfeiture.** A motor vehicle is subject to impoundment (but not immobilization) if it is driven by a person, whose license is still under revocation for a drunk driving offense. See Impoundment on p. 3-173 for details. However, 2nd or subsequent violation, the vehicle is subject to forfeiture. §321J.4(2) & (6)

**Special Note:** It is a serious misdemeanor for a person to operate a vehicle in violation of an impoundment or immobilization order. §321J.4B(12) The sanctions for this offense are an imprisonment term ≤1 yr and/or a fine of \$250 to \$1,500. §903.1 In addition, the vehicle used in the offense must be forfeited. §321J.4B(9)

**IOWA**

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:  
Type of Licensing Action  
(Susp/Rev): **Susp or rev §321J.21 See Impoundment and Forfeiture below.**  
Length of Term of License  
Withdrawal Action: **Original Susp/Rev extended an additional like period §321J.21**  
Mandatory Term of License  
Withdrawal Action: **None §321J.21 See Footnote No. 2 on p. 3-175.**

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No): **Yes 321.555, 321.560 & 321.561**  
Grounds for Being Declared an  
Habitual Offender: **3 or more serious offs (w/n 6 yrs) or 6 or more minor offs (w/n 2 yrs)**

Term of License Rev While  
Under Habitual Offender Status: **If based on serious offs-2 to 6 yrs<sup>1</sup>; if based on minor offs-1 yr**

Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status **Aggravated misd §§321.561 & 903.1**

Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status: **Not more than 2 yrs**

Imprisonment (Term): **None**  
Mandatory Minimum Term of  
Imprisonment: **\$500 to \$5,000<sup>2</sup> See Footnote No. 1 on p. 3-174.**  
Fine (\$ Range): **\$500 appears to be mand.**  
Mandatory Minimum Fine (\$): **Same as for driving while revoked.**  
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 (Yr Eff: 1986) §§123.3(19), 123.47, 123.49(2)(h) & 123.59**

<sup>1</sup>I. If habitual offender status is based only on the operation of vehicles while license is either suspended, revoked or barred, a person is eligible for restricted driving privileges based on a showing of extreme hardship. II. If habitual offender status is based on DWI and vehicle homicide offenses and the offender is not otherwise eligible for a restricted license, they may, nevertheless, receive such a license provided (1) such a license is needed in order for the person to remain employed, (2) the person installs an "ignition interlock" system in their vehicle(s) and (3) the minimum period of license revocation has expired. §§321.215, 321.560 & §321J.4(98) This scheme was held constitutional. *Iowa Dept. of Transp. v. Pottawattamie Cty.*, 592 N.W.2d 41 (Iowa 1999)

<sup>2</sup>There is a civil penalty of \$200 (if the offender is <19 yrs old, the civil penalty is \$50). §321.218A

Other State Laws Related To Alcohol Use: (continued)

Minimum Age (Years) Possession:	<b>21</b> There are exemptions for medical reasons, employment and home use with parental consent. §123.47
Minimum Age (Years) Consumption:	<b>None</b>
<u>Dram Shop Laws and Related Legal Actions:</u>	
State Has a Dram Shop Law (Yes/No):	<b>Yes</b> §123.92 <sup>1</sup>
"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):	<b>Yes</b> <sup>1</sup> <i>Lewis v. State</i> , 256 N.W. 2d 181 (Iowa 1977), & <i>Haafke v. Mitchell</i> , 347 N.W.2d 381 (Iowa 1984)
Dram Shop Actions-Social Hosts:	<b>Yes Limited</b> Liability limited to injuries caused by minors (persons under the legal drinking age) who are knowingly served alcoholic beverages by social hosts. In order to be liable, the social host must "physically" serve alcoholic beverages to the minor. §§123.49(1) & 123.92 <sup>2</sup>
Other:	<b>None</b>
<u>Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
Type of Criminal Action:	See the Special Note below. <b>Simple misd</b> §§123.49(1), 123.50(1) & 903.1(1)(a)
Term of Imprisonment:	Not more than <b>30 dys</b>
Fine (\$ Range):	<b>\$50 to \$500</b> <sup>3</sup> (A \$50 fine appears to be mand.)
<u>Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	<b>Yes Susp or rev</b> <sup>4</sup> §§123.39, 123.40 & 123.50(2)

<sup>1</sup>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 been judicially interpreted to mean immediate consumption. *Eddy v. Casey's General Store, Inc.*, 485 N.W.2d 633 (Iowa 1992), & *Paul v. Ron Moore Oil Company*, 487 N.W.2d 337 (Iowa 1992) Note: The dram shop law abolished "common law negligence actions" against persons who furnish alcoholic beverages to minors. *Hoth v. Meisner*, 548 N.W.2d 152 (Iowa 1996)

<sup>2</sup>In *Bauer v. Dann*, 428 N.W.2d 658 (1988), the Iowa Supreme Court held that §123.49(1) only abolished social host liability associated with the service of alcoholic beverages to intoxicated adult guests; i.e., previous case law, *Clark v. Mincks*, 364 N.W.2d 226 (Iowa 1985), establishing such liability was abrogated by this law. See also *Fullmer v. Tague*, 500 N.W.2d 432 (Iowa 1993) A business social host is not liable for the actions of an intoxicated adult employee in situations where the employer hosted an employee party where alcoholic beverages are served gratuitously. *Summerhays v. Clark*, 509 N.W.2d 748 (Iowa 1993)

<sup>3</sup>See Footnote No. 1 on p. 3-174.

<sup>4</sup>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)

**Special Note:** I. Sec. 123.91 provides for additional sanctions for persons who violated the liquor laws. For a 2nd offense, a person commits a serious misdemeanor; the sanctions for this offense are jail term of not more than 1 yr and/or a fine of not more than \$1,000 (§903.1(1)(b)). For a subsequent offense, a person commits an aggravated misdemeanor; the sanctions for this offense are imprisonment for not more than 2 yrs and/or a fine of not more than \$5,000 (§903.1(2)).

II. Sec. §123.59 also make an offense to sell alcoholic beverages to persons under 21 years old. It is a serious misdemeanor (1st off) to violate §123.59 and the sanctions for this offense are jail term of not more than 1 yr and/or a fine of not more than \$1,000 (§903.1(1)(b)).

IOWA

Other State Laws Related To Alcohol Use: (continued)

Length of Term of License Withdrawal:

Susp not more than 1 yr Rev 2 yrs  
Civil Penalty (Fine): Not more than \$1,000 §123.39(1)(a)

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

Type of Criminal Action:

See the Special Note on p. 3-177.  
Simple misd (a scheduled violation) §§123.3(19), 123.47, 123.49(2)(h), 123.50(1) & 805.8(10)(a)

Term of Imprisonment:

None

Fine (\$ Range):

Licensee (Permittee)-\$1,500<sup>1</sup> §805.8(10)(a)  
Employee of Licensee (Permittee)-\$500<sup>1</sup> §805.8(10)(a)

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes 1st off - None<sup>2</sup>; 2nd off (w/n 2 yrs) - Susp; 3rd off (w/n 3 yrs) - Susp; 4th off (w/n 3 yrs) - Rev §§123.39, 123.40 & 123.50(3) See Footnote No. 3.

Length of Term License Withdrawal:

1st off - None<sup>2</sup>; 2nd off (w/n 2 yrs) - 30 dys; 3rd off (w/n 3 yrs) - 60 dys; 4th off (w/n 3 yrs) - 2 yrs  
Civil Penalty. 2nd off (w/n 2 yrs) or 3rd off (w/n 3 yrs)-\$1,500 §123.50(3)(b) & (c) Comment: This civil penalty appears to apply only to licensees (permittees).  
Important. See Footnote No. 3.

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

Yes Drivers and passengers §§321.284 & 321.284A There is an exception in the case of passengers who are riding either in vehicles for compensation or in the living quarters of either a motor home, mobile home, travel trailer or fifth-wheel travel trailer. §321.284A(2)

Anti-Consumption Law (Yes/No):

Yes Driver and passengers §123.46 The law states that "it is unlawful for any person to use or consume alcoholic liquors or beer upon the public streets or highways..."

<sup>1</sup>See Footnote No. 1 on p. 3-174.

<sup>2</sup>For a 1st offense, the license is not suspended but the violator is assessed a "civil penalty" of \$500. If the violator does not pay this assessment, the license is suspended for 14 dys. §123.50(3)(a)

<sup>3</sup>It appears that the following administrative or civil sanctions could be imposed via separate statutory authority. Under §123.39(1)(a), it may also be possible to suspend a license for not more than 1 yr and/or impose a civil penalty of not more than \$1,000. Note: a conviction for a violation of the liquor control laws is not a prerequisite either to a license suspension/revocation or to a civil penalty. §123.39(1)(c)

STATE:

**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):

≥0.08<sup>1&2</sup> §8-1567(a)(1), (a)(2) & (q)(1)

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) **Any Drug** or (2) a Combination of Alcohol and Drugs §8-1567(a)(4) & (5)

Other:

A BAC/BrAC ≥0.08<sup>2</sup> is *prima facie* evidence that the defendant was under the influence of alcohol. §8-1005(b)

No person, who is an habitual user of narcotics, shall operate or attempt to operate a motor vehicle. §8-1567(b)

For Commercial Motor Vehicle Operators, see p. 3-182.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes §8-1012

Implied Consent Law:

Arrest Required (Yes/No):

Yes<sup>3</sup> §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(i) & *State v. Rubick*, 827 P.2d 780 (Kan.App. 1992)

Other Information:

A blood test may be administered (with or without a search warrant) without the driver's consent in situations where there is probable cause of any DWI offense and there was either a serious injury or the death of another person.<sup>4</sup> §8-1001(k)

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

Blood:

Yes §8-1001(a)

Urine:

Yes §8-1001(a)

Other:

**Other Bodily Substances** §8-1001(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

Yes §8-1567(o) Certain diversion programs are excepted.<sup>5</sup>

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

Yes Alc. & Drug Evaluation Required §§8-1008(c) & (d) and 8-1567<sup>6</sup>

<sup>1</sup>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.

<sup>2</sup>Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §§8-1013(a)(1) & 8-1567(r)(1)

<sup>3</sup>No arrest is required if the person has been involved in a motor vehicle accident resulting in property damage, personal injury or death.

<sup>4</sup>Based on §8-1001(a) & (b), a blood test for BAC of a driver, who is unconscious and involved in an injury causing accident, may be taken without their consent and without a DWI arrest. However, probable cause of DWI is needed. *State v. Murry*, 21 P.3d 528 (Kan. 2001)

<sup>5</sup>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 alcohol concentration at the time of arrest was 0.20 or more; or (4) they were involved in an accident which has resulted in either a death or a bodily injury. §§8-1567(l)(5), 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.

<sup>6</sup>Note: General pre-sentence investigation requirements are codified under §§21-4603 and 21-4604.

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Sanctions for Refusal to Submit to a Chemical Test:

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

**Yes Infraction** A fine of not more than \$500 §§21-3105(2) & 21-4503(4) Ninety dollars (\$90) if a person pleads guilty or no contest under the uniform fine schedule. §8-2118(c)

Administrative Licensing Action  
(Susp/Rev):  
Other:

**None**  
**None**

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

**None**

1st occurrence-Susp 1 yr (mand); 2nd occurrence-Susp 2 yrs; 3rd occurrence-Susp 3 yrs (mand); 4th occurrence-Susp 10 yrs; 5th or sub occurrence-Permanent Rev §§8-1002(a) & 8-1014(a)  
**None**

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment:

See Double Jeopardy below.  
1st off (Cl B nonperson misd)-48 con hrs to 6 mos<sup>1</sup>; 2nd off (Cl A Nonperson misd)-90 dys to 1 yr; 3rd off (Nonperson Felony)-90 dys to 1 yr<sup>2</sup>; 4th or sub off (Nonperson Felony)-90 dys to 1 yr<sup>2</sup>  
§§8-1567(d), (e), (f) & (g)

Mandatory Minimum Term:

Important. For sanctions related to the injury of a pregnant woman, see Miscellaneous Sanctions on p. 3-183.  
1st off-48 con hrs<sup>1</sup>; 2nd off-5 con dys (w/ 48 con hr After this, the person may be placed on work release or receive house arrest.); 3rd off-90 dys (w/ 48 con hr After this, the person may be placed on work release or receive house arrest.); 4th or sub off-90 dys (w/ 72 hrs After this, the person may be placed on work release.) §8-1567(d), (e), (f) & (g) See Miscellaneous Sanctions on p. 3-183.  
Note: I. "Imprisonment" includes "any restrained environment" under the control of a court and law enforcement agency. §8-1567(r)(2) However, incarceration for a felony drunk driving offense is not to be served in a facility operated by the State secretary of corrections. §21-4704(i)  
II. All offenses committed by a person during their lifetime are considered in determining the number of prior offenses. §8-1567(l)(3)

<sup>1</sup>Under §§12-4415, 12-4416 or 22-2906 et seq. a defendant may enter a diversion program for a 1st off and have the drunk driving criminal charges dismissed after the program has been successfully completed.

<sup>2</sup>**Special Note:** The drunk driving law, §8-1567, provides for different sanctions for a nonperson felony offense than are provided for in the State's sentencing guidelines grid. See Sentencing Guidelines on p. 3-184. However, under §21-4704(i), the sanctions in the drunk driving law prevail over those in the grid.

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Mertz*, 907 P.2d 847 (Kan. 1995)

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

<p>Fine: Amount (\$ Range):</p>	<p><u>1st off-\$500 to \$1,000</u>; <u>2nd off-\$1,000 to \$1,500</u>; <u>3rd off-\$1,500 to \$2,500</u><sup>1</sup>; <u>4th or sub off-\$2,500</u><sup>1</sup> §8-1567(d), (e) (f) &amp; (g) See Footnote No. 2.</p>
<p>Mandatory Minimum Fine (\$):</p>	<p><u>1st off-\$500</u><sup>3</sup>; <u>2nd off-\$1,000</u><sup>3</sup>; <u>3rd off-\$1,500</u><sup>3</sup>; <u>4th or sub off-\$2,500</u><sup>3</sup> §8-1567(d), (e) (f) &amp; (g) However, community service may be performed in lieu of a fine. §8-1567(j)</p>
<p>Other Penalties: Community Service:</p>	<p><u>1st off-100 hrs</u> (in lieu of imprisonment) §8-1567(d); <u>1st and subsequent offs</u>-May be ordered in lieu of fine. A \$5 credit is allowed on the fine for every hr of community service. §8-1567(j)</p>
<p>Restitution (eg Victim's Fund)</p>	<p><b>Yes</b> (1) Direct compensation by defendants to victims as a condition of probation/parole. §§8-1019(c), 21-4603(2)(c), (d) &amp; (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.</p>
<p>Other:</p>	<p><b>"Ignition interlock"</b> device use required for 1 yr after license reinstatement for a 2nd, 3rd or 4th off. §8-1014(b)(2) <b>Assessments.</b> I. Unless they are indigent, a defendant must pay an assessment of <b>\$125</b>. This assessment is deposited into an alcohol and drug safety fund. §8-1008(e) II. An offender is assessed <b>\$7</b> in addition to any fine. This assessment is used to fund various law enforcement and crime victim activities. §§8-249(b) &amp; 12-4117 and Kansas Administrative Regulations 92-52-9</p>
<p>Administrative Licensing Actions: <u>Pre-DWI Conviction</u> Licensing Action: Administrative Per Se Law:</p>	<p>See Double Jeopardy on p. 3-180. <b>Yes</b> <math>\geq 0.08</math> (BAC/BrAC See Footnote No. 2 on p. 3-179.) §§8-1013(a) &amp; (h), 8-1014(b) and 8-1015(a) <u>1st occurrence</u><sup>4</sup>-Susp <b>30 dys</b> (mand) and <b>330 dys</b> restricted driving privileges (See Special Note on p. 3-182.); <u>2nd, 3rd or 4th occurrence</u><sup>4</sup>-<b>Susp-1 yr</b> (mand) followed use an ignition interlock for 1 yr; <u>5th or sub occurrence</u><sup>4</sup>-<b>Permanent Rev</b> (mand) §§8-1001, 8-1002, 8-1014(b) &amp; 8-1015(c) <b>Persons Under 21 Years Old.</b> <math>\geq 0.02</math> but <math>&lt; 0.08</math> (BAC/BrAC See Footnote No. 2 on p. 3-179.) <u>1st occurrence</u><sup>4</sup>-Susp <b>30 dys</b> (mand) and <b>330 dys</b> restricted driving privileges; <u>2nd or sub occurrence</u><sup>4</sup>-<b>Susp-1 yr</b> (mand) §§8-1014(c), 8-1015 &amp; 8-1567a(f)</p>
<p>Other:</p>	<p><b>None</b></p>

<sup>1</sup>**Special Note:** This fine sanction is listed in the drunk driving law. However, §21-4503a(a)(3) provides for a possible fine of up to \$100,000 for the conviction of a Severity Level 9 Felony offense.

<sup>2</sup>An "assessment" of \$110 is levied against persons who are either convicted of a drunk driving offense or who enter a diversion program. The "assessment" funds are used to support community-based alcohol and drug safety action programs. §8-1008(c)

<sup>3</sup>*State v. Kitzman*, 727 P.2d 491 (Kan. 1986)

<sup>4</sup>An "occurrence" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction. §8-1013(e)

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

Post DWI Conviction Licensing Action:

Type of Licensing Action  
(Susp/Rev):

1st, 2nd, 3rd or 4th occurrence<sup>1</sup>-Susp; 5th or sub occurrence<sup>1</sup>-  
**Permanent Rev** §§8-1001, 8-1002 & 8-1014(b)

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

1st occurrence<sup>1</sup>-**30 dys**; 2nd, 3rd or 4th occurrence<sup>1</sup>-**1 yr** followed  
use an ignition interlock for 1 yr; 5th or sub occurrence<sup>1</sup>-  
**Permanent Rev**

Mandatory Minimum Term of  
Withdrawal:

1st occurrence<sup>1</sup>-**30 dys** (mand) and **330 dys** restricted driving  
privileges; 2nd, 3rd or 4th occurrence<sup>1</sup>-**1 yr** (mand) followed by  
use an ignition interlock for 1 yr; 5th or sub occurrence<sup>1</sup>-  
**Permanent Rev** (mand) §§8-1001, 8-1002, 8-1014(b) & 8-  
1567(d)

**Special Note (1st offenses):** (1) A person's driving privileges are  
restricted to operating a motor vehicle for educational,  
employment and medical purposes. (2) In lieu of restricted  
driving privileges, the court may require the person to operate  
only vehicles equipped with an "ignition interlock" device.  
§§8-292 & 8-1015

Other:  
Rehabilitation:  
Alcohol Education:

1st off-As a condition of probation, parole, etc., a defendant must  
complete either an alcohol education or treatment program.  
§8-1567(d) Note: Attendance at an alcohol education or treatment  
program could be a condition for issuing a restricted license.  
§8-1015

Alcohol Treatment:

2nd off-As a condition of probation, suspended sentence or  
parole, an offender shall be required to complete an inpatient or  
outpatient treatment program. 3rd off-As a condition of parole, an  
offender may be required to complete an inpatient or outpatient  
treatment program 4th or sub offs-Following release from  
incarceration, the offender is required to participate in a inpatient  
or outpatient alc. treatment program. Then, the offender is placed  
in a 1 yr mand post release supervision program with aftercare.  
§8-1567(e), (f) & (g)

<sup>1</sup>An "occurrence" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction. §8-1013(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/BrAC  $\geq 0.04$  (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of alcohol or any drug or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). A person, operating a CMV with either an alcohol concentration  $\geq 0.04$  or while under the influence of alcohol or drugs, in addition to being subject to the regular DWI criminal sanctions, is subject to the following "special" sanctions: Jail for 48 consecutive hours to 6 months and/or a fine of \$200 to \$500. Note: Such a person may not be subject to administrative actions against their normal driving privileges. Also, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§8-1001(g), 8-1002, 8-2,128(b), 8-2,128(f), 8-2,128(h), 8-2,128(i), 8,128(s), 8-2,136, 8-2,137, 8-2,142 & 8-2,144

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

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:  
Terms Upon Which Vehicle  
Will Be Released:  
Other:

No

**License Plate Revocation.** For a 4th or subsequent DWI conviction, the license plate of the vehicle used in the offense may be revoked for 1 yr. §8-1567(q)

Miscellaneous Sanctions  
Not Included Elsewhere:

Under §21-4603b, a defendant may be sentenced to "house arrest". The defendant may be required to use an electronic monitoring system while participating in a "house arrest" program. 2nd and sub DWI offenders must, nevertheless, serve at least 48 con hrs of imprisonment. §8-1567(g)

**Injury to a Pregnant Woman.** It is a Severity Level 5 Person Felony to injure a pregnant woman while violating the DWI law. The sanctions for this offense are an imprisonment term of 50 to 55 mos and/or a fine of not more than \$300,000. See Sentencing Guidelines on p. 3-184. §§21-3441, 21-4503a(a)(2) & 21-4704

**Child Endangerment.** If at the time of the offense, a person was driving with a passenger < 14 yrs old, the incarceration sanction is increased by 1 mo which is consecutive to any other sanction. However, the court may order house arrest, work release or other conditional release during this 1 mo period. §8-1567(h)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes Involuntary Manslaughter**-An unintentional death associated with a DWI or other driving offenses. Severity Level 4 Person Felony §21-3442

**Vehicle Homicide**-Death caused by the operation of a vehicle in a manner which causes unreasonable risk. Class A Person Misd §21-3405

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

Severity Level 4 Person Felony-62 to 69 mos<sup>1</sup> See Sentencing Guidelines below.

Class A Misd-Not more than 1 yr §§21-4502 & 21-4704

**None**

Mandatory Minimum Term:  
Fine (\$ Range):

Severity Level 4 Person Felony-Not more than **\$300,000** §21-4503a(a)(2)

Class A Misd-Not more than **\$2,500** §21-4503(b)(1)

<sup>1</sup>For 2nd or 3rd convictions, the incarceration sanction may be increased by twice or three times these time periods respectively. §21-4504(a) & (b)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine:	None
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	<u>DWI Related Involuntary Manslaughter-Susp<sup>1</sup></u> <u>Vehicle Homicide-Rev §8-254</u>
Length of Term of Licensing Withdrawal:	<u>DWI Related Involuntary Manslaughter-Same as for drunk driving offenses.</u> <u>Vehicle Homicide-Not more than 1 yr §8-256</u>
Mandatory Action--Minimum Length of License Withdrawal:	<u>DWI Related Involuntary Manslaughter-Mandatory suspensions are the same as for DWI offenses.</u> <u>Vehicle Homicide-None</u> Restricted driving privileges may be granted. §8-254(b)
Other:	<b>Assessment.</b> For the <u>Vehicle Homicide</u> offense (§21-3405), an offender is assessed \$7 in addition to any fine. This assessment is used to fund various law enforcement and crime victim activities. §§8-249(b) & 12-4117 and Kansas Administrative Regulations 92-52-9
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:</u>	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	<u>1st off (CI B Nonperson Misd)-Not more than 6 mos; 2nd or sub off (CI A Nonperson Misd)-Not more than 1 yr; §8-262, 21-4502 &amp; 21-4704</u>

<sup>1</sup>Drunk driving related suspension.

**Sentencing Guidelines.** Imprisonment sanctions for felony offenses are determined by a sentencing guidelines grid and supporting statutory provisions. For a Severity Level 9 Nonperson Felony, the grid provides for an imprisonment sanction of **7 to 9 mos** but, nevertheless, "presumes" that a non-incarceration sanction will be imposed. The imprisonment sanction can only be imposed if aggravating circumstances warrant. For a Severity Level 4 Person Felony, there is a "presumed" incarceration sanction of **62 to 69 mos**. These imprisonment periods, as listed in the grid, may be increased (by not more than twice the maximum sentence listed in the grid) depending upon the aggravating circumstances. However, if sufficient mitigating circumstances exist, the court may either decrease the imprisonment sentence or not impose an incarceration sanction. The grid also provides for increased incarceration periods for subsequent felony offenses. §§21-4704, 21-4716 & 21-4719

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

**Special Note:** It is a CI B misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term of not more than 6 mos and/or a fine of not more than \$1,000. §§8-2,132(b) & (c), 21-4502(1)(b) and 21-4503(b)(2) In addition, for a violation of a CDL out-of-service order, a person is disqualified from operating a CMV for the following periods: 1st violation-90 dys; 2nd violation-1 yr; and, 3rd or subsequent violation-3 yrs. These disqualifications appear to be mandatory. §8-2,136(c)

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	<u>2nd and sub. off-5 dys</u> <sup>1&amp;2</sup> §8-262(a)(3)
Fine (\$ Range):	<u>1st off-Not more than \$1,000; 2nd off-Not more than \$2,500; 3rd and subsequent off-Not more than \$100,000</u> §21-4503a(a)(3) and (b)(1) & (2)
Mandatory Minimum Fine:	<b>\$100</b> appears to be mand. §8-262(a)(3)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	<b>Susp or rev</b> §8-262(b)
Length of Term of License Withdrawal Action:	The original suspension/revocation is extended for an additional period of <b>90 dys.</b> §8-262(b)
Mandatory Term of License Withdrawal Action:	See above.
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	<b>Yes</b> §§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:	<b>3 yrs</b> §§8-286 & 8-288
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	Severity Level 9 Nonperson Felony §8-287
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	<b>7 to 9 mos</b> <sup>3</sup> §21-4704
Mandatory Minimum Term of Imprisonment:	<b>None</b>
Fine (\$ Range):	Not more than <b>\$100,000</b> <sup>3</sup> §21-4503a(a)(3)
Mandatory Minimum Fine (\$):	<b>None</b>
Licensing Actions (Specify):	<b>None</b>

<sup>1</sup>*State v. Harpool*, 788 P.2d 281 (Kan. 1990)<sup>2</sup>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) & *State v. Gee*, 8 P.3d 45 (Kan.App. 2000)<sup>3</sup>This sanction applies to offenses committed after 7/1/93. See Sentencing Guidelines on p. 3-184.

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Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

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<sup>1</sup> §§41-715, 41-727(a) & 41-2721(a) There is an employment exception.

Minimum Age (Years) Consumption:

21<sup>1</sup> §§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)<sup>2</sup>

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)

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

Type of Criminal Action:

Misd §41-715<sup>3</sup>

Term of Imprisonment:

Not more than 30 dys<sup>3</sup> §41-715

Fine (\$ Range):

\$100 to 250<sup>3</sup> §41-715

<sup>1</sup>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

<sup>2</sup>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.

<sup>3</sup>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

Other State Laws Related To Alcohol Use: (continued)Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

**Yes Rev<sup>1</sup>** §§41-314, 41-2611(f) & 41-2626

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:

Type of Criminal Action:

See the Special Note below.

C I B Person Misd (Furnishing alcoholic liquor or cereal malt beverages to any person under 21 yrs of age) §§21-3610 &amp; 21-3610a

Term of Imprisonment:

Not more than **6 mos** §21-4502(1)(b)

Fine (\$ Range):

Not more than **\$1,000<sup>2</sup>** §21-4503(2)(b)Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

See the Special Note below.

**Yes Susp or Rev** §§41-2611(f), 41-2626 & 41-2708(a)

Not specified for alcoholic beverages with an alcoholic content of more than 3.2%. For cereal malt beverages (alcoholic beverages with an alcoholic content below 3.2%), license revocation for 6 mos.

Anti-Happy Hour Laws/Regulations:**Yes** §§41-2640(a)(3) & 41-2722(a)(4)Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

**Yes** §8-1599

Anti-Consumption Law (Yes/No):

**Yes (Limited)<sup>3</sup>** Driver and passengers §41-719(a)<sup>1</sup>Appears only to apply to the service of alcoholic beverages containing more than 3.2% alcohol.<sup>2</sup>There is a mand. min. fine of \$200. §§21-3610 & 21-3610a(b)<sup>3</sup>The law only applies to the consumption of alcoholic beverages which have an alcoholic content > 3.2% alcohol by wgt. I.e., the law does not prohibit the consumption of cereal malt beverages which have an alcoholic content ≤ 3.2% alcohol by wgt.**Special Note:** It is a misdemeanor for a "liquor by the drink" licensee to allow a person under 21 years old to consume either alcoholic liquor or cereal malt beverages on the licensed premises. The sanctions for this offense are a jail term on not more than 30 dys, a fine of from \$100 to \$250, a "civil fine" of not more than \$1,000 and/or license suspension/revocation. §§41-2601(f), 41-2615, 41-2626 & 41-2633a(a)

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STATE:  
General Reference:

**KENTUCKY**  
Kentucky Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the Influence of Alcohol §189A.010(1)(b) <sup>1</sup>
Illegal Per Se Law (BAC/BrAC):	≥ <b>0.08</b> <sup>2&amp;3</sup> §§189A.010(1)(a) <sup>1</sup> & 189A.005(1) <u>Persons Under 21 Years Old</u> , ≥ <b>0.02</b> <sup>3</sup> §189A.010(1)(e) <sup>4</sup> & (6) <sup>1</sup>
Presumption (BAC):	<b>None</b> <sup>5</sup>
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) <b>Any Substance</b> or (2) a combination of alcohol and any substance which may impair one's driving ability §189A.010(1)(c) & (d) <sup>1</sup>
Other:	For Commercial Motor Vehicle Operators, see p. 3-193.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	<b>Yes</b> §§189A.100 & 281A.230 (Commercial Motor Vehicle Operators)
Implied Consent Law:	
Arrest Required (Yes/No):	<b>No</b> §189A.103(1) & (3) Only reasonable grounds that a drunk driving offense has been committed are needed in order to request that a person submit to a chemical test.
Implied Consent Law Applies to Drugs (Yes/No):	<b>Yes</b> §189A.103(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	<b>Yes</b> (Criminal Cases) §189A.105(2)(a)(1) & <i>Commonwealth v. Hager</i> , 702 S.W.2d 431 (Ky. 1986)
Other Information:	If a person has been arrested for <u>any</u> drunk driving offense related to either a death or physical injury, the law allows a court to issue a search warrant requiring that either a blood or a urine sample be obtained for chemical testing. §189A.105 & <i>Combs v. Commonwealth</i> , 965 S.W.2d 161 (Ky. 1998) <b>Special Note:</b> If a person has an alcohol concentration >0.15, they must be detained at least 4 hrs following their arrest. §189A.110

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

Blood:	<b>Yes</b> §189A.103(1)
Urine:	<b>Yes</b> §189A.103(1)
Other:	<b>None</b>

<sup>1</sup>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).

<sup>2</sup>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.

<sup>3</sup>Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §§189.005(1) & 189A.005(1)

<sup>4</sup>Prior law, that also established a special offense against persons <21 yrs old, who operate a motor vehicle with BAC/BrAC ≥0.02, was held not to violate a persons's Federal or State constitutional rights to equal protection of the law. *Commonwealth v. Howard*, 969 S.W.2d 700 (Ky. 1998)

<sup>5</sup>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 ≥0.080 (See Footnote No. 3 above.).

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Adjudication of DWI Charges:

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

**No**  
**Yes** Plea bargaining is not allowed if either one of the three following conditions exist: (1) Either a defendant  $\geq 21$  yrs old a BAC/BrAC  $\geq 0.08$ , (2) a defendant  $< 21$  yrs old a BAC/BrAC  $\geq 0.02$  or (3) a defendant refused to submit to a chemical test under the implied consent law. Does not apply if the State's witnesses are unavailable for trial or the chemical test results are in error. The court must record the reasons for any change in the original charges. §189A.120

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

**No** Note: A DWI offender must undergo an alcohol assessment as part of their mandatory alcohol education or treatment program. §189A.040

Sanctions for Refusal to Submit to a Chemical Test:

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

**None**  
**None**  
**None**

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

**None**

If a person is **NOT** convicted of a drunk driving offense **AND** they refused to submit to a chemical test under the implied consent law, they are subject to the same administrative licensing sanctions as if they had been convicted of such offense. §§189A.070(1) & 189A.107(2)

Other:

**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment:

See **Aggravating Circumstances** on p. 3-191.  
1st off (Cl B misd)-**48 hrs to 30 dys**<sup>1</sup>; 2nd off (w/n 5 yrs) (Cl A misd)-**7 dys to 6 mos**<sup>1</sup>; 3rd off (w/n 5 yrs) (Cl A misd)-**30 dys to 12 mos**; 4th and sub off (w/n 5 yrs) (Cl D Felony)-**1 to 5 yrs** §§189A.010(5), 532.020 & 532.060

Mandatory Minimum Term:

Persons Under 21 Years Old. BAC  $\geq 0.02$  but  $< 0.08$ -**None**  
1st off-**48 hrs/2 dys**<sup>1&2</sup> (4 dys if there are aggravating circumstances); 2nd off (w/n 5 years)-**7 dys**<sup>3</sup> (with 48 con hrs)<sup>1</sup> (14 dys if there are aggravating circumstances); 3rd off-**30 dys**<sup>3</sup> (with 48 con hrs) (60 dys if there are aggravating circumstances); 4th and sub offs-**120 dys** (with 48 con hrs) (240 dys if there are aggravating circumstances) §189A.010(5)(a), (6), (7), (8) & (9)

<sup>1</sup>**Weekend Confinement.** For either a 1st or 2nd offense, a defendant, except for any mandatory 48 hr jail term that has to be served, may be allowed to serve their imprisonment term on weekends provided they spend at least 24 hrs in confinement. §189A.030.

<sup>2</sup>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(5)(a) & (9)

<sup>3</sup>See Footnote No. 2 on p. 3-191.

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

<p><b>Important.</b> A person, who has been convicted of a misd, <u>may</u> be able to serve the mand jail sanction via "home incarceration". §532.210</p> <p><b>Aggravating Circumstances.</b> A person, who has been convicted of a drunk driving offense, is subject to enhanced mandatory incarceration if they have committed one or more of the following aggravating circumstances during the offense: (1) They drove &gt;30 MPH over the speed limit; (2) they drove in the wrong direction on a limited access highway; (3) they caused an accident that resulted in either a death or a serious bodily injury; (4) they drove w/a <b>BAC ≥ 0.18</b>; (4) they refused to submit to a chemical test under the implied consent law; or, (5) they were transporting a child &lt;12 yrs old (<b>child endangerment</b>). §189A.010(11)</p>	
<p>Fine:</p> <p>Amount (\$ Range):</p>	<p><u>1st off-\$200 to \$500</u><sup>1</sup>; <u>2nd off (w/n 5 years)-\$350 to \$500</u>; <u>3rd off-\$500 to \$1,000</u>; <u>4th and sub offs-\$1,000 to \$10,000</u> §§189A.010(5) &amp; 534.030</p> <p><u>Persons Under 21 Years Old. ≥0.02 but &lt;0.08-\$100 to \$500</u> §189A.010(6) See Community Service below.</p>
<p>Mandatory Minimum Fine (\$):</p> <p>Other Penalties:</p> <p>Community Service:</p>	<p><b>None</b><sup>1</sup></p> <p><u>1st off-48 hrs to 30 dys</u><sup>1</sup>; <u>2nd off (w/n 5 years)-10 dys to 6 mos</u><sup>2</sup>; <u>3rd offs (w/n 5 years)-10 dys to 12 mos</u><sup>2</sup> §189A.010(5)</p> <p><u>Persons Under 21 Years Old. ≥0.02 but &lt;0.08-20 hrs</u> in lieu of a fine 189A.010(6)</p>
<p>Restitution (eg Victim's Fund)</p>	<p><b>Yes</b> §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. §§532,358 &amp; 533.030(3)</p>
<p>Other:</p>	<p><b>Service Fee.</b> A DWI offender must pay a <b>\$250</b> service fee in addition to any other fine. §189A.050.</p> <p><b>Assessment.</b> In addition to any fine, an offender <u>must</u> pay a special assessment of <b>\$20</b> which is deposited into the Traumatic Brain Injury Trust Fund. §189A.101(12)</p> <p><b>Crimes Victims' Fund.</b> An offender <u>must</u> pay a cost of <b>\$10</b> which is used to finance the Crimes Victims' Compensation Fund. §346.185</p> <p><b>Ignition Interlock.</b> At the conclusion of an offender's license revocation period, the court may required them to only operate motor vehicles (w/the exception of an employer's vehicles) that are equipped with ignition interlock devices. This requirement lasts for the following periods following license revocation: <u>1st off-6 mos</u>; <u>2nd off (w/n 5 yrs)-12 mos</u>; <u>3rd or sub off (w/n 5 yrs)-30 mos</u>. <u>2nd or subsequent offenders</u> must wait at least 1 yr from the start of their license revocation period before they can apply to the court for permission to use an ignition interlock device. <b>Important.</b> This requirement may be used as an alternative to impounding the license plates of a <u>2nd or subsequent</u> drunk driving offender. §189A.340</p>

<sup>1</sup>See Footnote No. 2 on p. 3-190.

<sup>2</sup>**Comment:** For 2nd or 3rd offenses not related to aggravating circumstances, the law seems to provides for discretionary community service as a sentencing option which is in addition to incarceration. However, there appears to be some ambiguity in the law and, therefore, it may be possible to substitute **10 dys** of community service for the mandatory term of incarceration. §189A.010(8)

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

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

See the Special Note below.

**None**

At arraignment, the court shall suspended the driver's license of a person who (1) has refused to submit to a chemical test, (2) has either a prior DWI offense conviction or a prior refusal or (3) was involved in an accident that resulted in death or physical injury to another person. This suspension remains in effect until a judgment of conviction or acquittal is entered or until the court terminates such suspension on its own order. However, no such suspension can last longer than the applicable licensing action for a drunk driving offense/refusal to submit to a chemical test under the implied consent law. §189A.200

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

See the Special Note below.

1st and subsequent offs-Rev §189A.070(1) For persons under 18 years old, see Footnote No. 1.  
Persons Under 21 Years Old. ≥0.02 but <0.08-Susp §189A.010(6)

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

1st off-30 to 120 dys; 2nd off-12 to 18 mos; 3rd off-24 to 36 mos; 4th and sub. off-60 mos §189A.070 See Habitual Traffic Offender Law on p. 3-195.

Persons Under 21 Years Old. ≥0.02 but <0.08-30 dys to 6 mos §189A.010(5)

Mandatory Minimum Term of  
Withdrawal:

1st off-30 dys; 2nd off-12 mos; 3rd off-24 mos<sup>2</sup>; 4th and sub. off-60 mos<sup>2</sup> §189A.070

Persons Under 21 Years Old. ≥0.02 but <0.10-30 dys<sup>3</sup> §189A.010(5)

**Hardship Driving Privileges.** The court may grant hardship driving privileges for the purpose of employment, education, medical care, alcohol/substance abuse education programs or other court ordered counseling programs. This privilege may be conditioned on the offender operating motor vehicles that are equipped with ignition interlock devices. This privilege can ONLY be granted after the expiration of any mandatory license revocation period.<sup>2</sup> **Important.** This privilege is NOT available to a person who is subject to licensing action because they refused to submit to a chemical test under the implied consent law. §189A.410

<sup>1</sup>Under §189A.070(4), a person, who is under 18 years old, who has been convicted of a regular drunk driving offense, has their license revoked until they are 18 or as otherwise provided under §189A.070 whichever sanction will result in the longer revocation period.

<sup>2</sup>**Comment:** It may be possible for this offender to obtain hardship driving privileges after only 1 yr provided they agree to operate motor vehicles that are equipped with ignition interlock devices. §189A.340(2)(b)(4)

<sup>3</sup>**Comment:** This sanction appears to be mandatory but the law is not clear on this point.

**Special Note:** Based upon the same factual situation, a person, who has been convicted of a drunk driving offense may also be subsequently subjected to a license revocation via administrative action by the Transportation Cabinet. The courts have held that such licensing action does not violate the constitutional prohibition against double jeopardy. See, for example, *Transportation Cabinet v. Feige*, 889 S.W.2d 52 (Ky.App. 1994). In addition, based upon the same factual situation, a person, who has been subjected to judicially ordered licensing prior to a DWI trial could also be subsequently prosecuted for a drunk driving offense without violating the constitutional prohibition against double jeopardy. *Hourigan v. Com.*, 962 S.W.2d 860 (Ky. 1998)

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

**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, §189A.070(3)

Other:  
Rehabilitation:  
Alcohol Education:

**Yes** 1st off-Participation in either an alcohol education or treatment program for 90 dys is mandatory. §189A.040(1)

Alcohol Treatment:

For subsequent DWI off convictions, the defendant **must** be sentenced to an alcohol or substance abuse treatment program for 1 yr. §189A.040(2) & (3)

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

**Impoundment.** For either a 2nd or subsequent offense, if the court **does not** order the installation of ignition interlock devices on all the vehicles owned by an offender, it **MUST** impound the license plates of such vehicles for a period of time that does not exceed the period of license action. A hardship exemption is available to other family members that allows only such persons to use the affected vehicles. §189A.085

Terms Upon Which Vehicle  
Will Be Released:

**None**

Other:  
Miscellaneous Sanctions  
Not Included Elsewhere:

**Reimbursement.** If a person is placed on probation or given conditional release from incarceration, the court may require them to make payment to either an education or treatment program for drug or alcohol abuse. The amount of this payment is not to exceed the amount of any fine which could have been imposed for the offense. §533.030(5)

**Incarceration Costs.** An offender may be required to reimburse the State or local government for any incarceration costs. §§532.352 & 532.358

**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  $\geq 0.04$  (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) have refused to submit to a chemical test for either alcohol or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). A person, who operates a CMV with a BAC/BrAC  $\geq 0.04$  but  $\leq 0.08$  is subject to a fine of not less than \$20 and not more than \$50. However, if their BAC/BrAC is  $> 0.08$ , they are subject to the same fines as for a regular drunk driving offense. In addition, a CMV operator who has any measurable (or detectable) amount of alcohol or controlled substance in their system must be placed "out-of-service" for 24 hours. If a CMV operator refuses to submit to a chemical test (for an alcohol concentration or for the presence of other drugs) under the CMV implied consent law provisions, the operators privilege to operate a CMV can be either suspended or revoked. For first refusal, the CMV privilege is suspended for one (1) year (mand) and, for a subsequent refusal, the privilege is suspended for life (mand). However, if the operator fails to appear at the implied consent hearing, which is automatically scheduled in refusal situations, the CMV privilege is revoked; the length of this revocation is not specified. Note: The pre-trial and implied consent provisions of Ch. 189A also apply to CMV operators (§281A.220(2)). §§281A.010(2), (8), (10) & (11), 281A.190, 281A.210, 281A.220 and 281A.2102

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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) The sanctions for this felony are imprisonment from **5 to 10 yrs** and/or a fine of **\$1,000 to \$10,000**. §§532.060(2)(c) & 534.030(1)

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

Note: Even though this state does not have vehicle homicide statute, it, nevertheless provides for mandatory license rev for not less than 5 years for a conviction of manslaughter<sup>1</sup> 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:

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

See the Special Note below.

Sanction:  
Criminal:  
Imprisonment (Term):

I. 1st off (Cl B misd)-Not more than **90 dys**<sup>2</sup>; 2nd off (w/n 5 yrs) (Cl A misd)-Not more than **12 mos**<sup>2</sup>; 3rd and sub offs (w/n 5 yrs) (Cl D felony)-**1 to 5 yrs**<sup>2</sup> §§189A.090(2), 532.060 & 532.090  
II. Also in Violation of the Drunk Driving Laws. 1st off (Cl A misd)-Not more than **12 mos**<sup>2</sup>; 2nd off (w/n 5 yrs) (Cl D felony)-**1 to 5 yrs**<sup>2</sup>; 3rd and sub offs (w/n 5 yrs) (Cl D felony)-**1 to 5 yrs**<sup>2</sup> §§189A.090(2), 532.060 & 532.090

Mandatory Minimum Term  
of Imprisonment:

None

<sup>1</sup>This could include either (1) manslaughter in the second degree (§507.040) or reckless homicide (§507.050). Note "reckless homicide" is a Cl D felony. The sanctions for a Cl D felony are an imprisonment term of 1 to 5 yrs and a fine of \$1,000 to \$10,000. §§532.060(2)(d) & 534.03091)

<sup>2</sup>Under §500.095, a defendant can be assigned community service in lieu of incarceration.

**Special Note:** A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. §281A.090(2) However, neither this section nor any other provision of Chapter 281A provide a sanction for this prohibition. However, except as noted above for driving while suspended or revoked for a drunk driving offense, it is a Cl B misd for a person to operate a motor vehicle while their license is either suspended, revoked or withdrawn; the sanctions for this offense are a jail term of not more than 90 dys and/or a fine of not more than \$250. §§186.620(2), 186.990(3), 532.090(2) & 534.040(2)(b)

Other Criminal Actions Related to DWI: (continued)

<p>Fine (\$ Range):</p> <p>Mandatory Minimum Fine:</p> <p>Administrative Licensing Actions:</p> <p>Type of Licensing Action (Susp/Rev):</p> <p>Length of Term of License</p> <p>Withdrawal Action:</p> <p>Mandatory Minimum Fine:</p> <p>Mandatory Term of License</p> <p>Withdrawal Action:</p> <p><u>Habitual Traffic Offender Law:</u></p> <p>State Has Such a Law (Yes/No):</p> <p>Grounds for Being Declared an Habitual Offender:</p> <p>Term of License Rev While Under Habitual Offender Status:</p> <p>Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status</p> <p>Sanctions Following a Conviction of Driving While on Habitual Offender Status:</p> <p>Imprisonment (Term):</p> <p>Mandatory Minimum Term of Imprisonment:</p> <p>Fine (\$ Range):</p> <p>Mandatory Minimum Fine (\$):</p> <p>Licensing Actions (Specify):</p>	<p>I. <u>1st off</u>-Not more than <b>\$250</b>; <u>2nd off</u> (w/n 5 yrs)-Not more than <b>\$500</b>; <u>3rd and sub offs</u> (w/n 5 yrs)-<b>\$1,000 to \$10,000</b> §§534.030 &amp; 534.040</p> <p>II. <u>Also in Violation of the Drunk Driving Laws.</u> <u>1st off</u>-Not more than <b>\$500</b>; <u>2nd off</u> (w/n 5 yrs)-<b>\$1,000 to \$10,000</b>; <u>3rd and sub offs</u> (w/n 5 yrs)-<b>\$1,000 to \$10,000</b> §§534.030 &amp; 534.040</p> <p><b>None</b></p> <p><u>ALL offs-Rev</u> §189A.090(2)</p> <p>I. <u>1st off-6 mos</u>; <u>2nd off</u> (w/n 5 yrs)-<b>1 yr</b>; <u>3rd and sub offs</u> (w/n 5 yrs)-<b>2 yrs</b> §189A.090(2)</p> <p>II. <u>Also in Violation of the Drunk Driving Laws.</u> <u>1st off-1 yr</u>; <u>2nd off</u> (w/n 5 yrs)-<b>2 yrs</b>; <u>3rd and sub offs</u> (w/n 5 yrs)-<b>5 yrs</b> §189A.090(2)</p> <p><b>None</b></p> <p><b>Yes</b> As indicated above.</p> <p><b>No</b> <b>Historical Note:</b> The Habitual Offender Law, §186.642 et seq., was repealed by §31 of Chapter 467, Session Laws 2000.</p>
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Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No):

**Possible<sup>1</sup>**

<sup>1</sup>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

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### Other State Laws Related To Alcohol Use: (continued)

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<sup>1</sup> §413.241

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

Yes *Pike v. George*, 434 S.W.2d 626 (Ky. 1968), *Grayson v. Frat.  
Order of Eagles*, 736 S.W.2d 328 (Ky. 1987), & *Watts v. K, S & H*, 957  
S.W.2d 233 (Ky. 1997)<sup>2&3</sup>

Dram Shop Actions-Social Hosts:  
Other:

No<sup>4</sup>  
None

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

Type of Criminal Action:

1st off-CI B Misd; 2nd and subsequent off-CI A Misd §§241.010(2),  
244.080(2) & 244.990(1)

Term of Imprisonment:

1st off-Not more than 90 dys; 2nd and subsequent off-Not more than 12  
mos §532.090 See Footnote No. 2 on p. 3-194.

Fine (\$ Range):

1st off-Not more than \$250; 2nd and subsequent off-Not more than \$500  
§534.040

<sup>1</sup>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.

<sup>2</sup>In *Watts*, the court held that a licensee may be held liable for actions of a minor who consumed alcoholic beverages that were purchased by another under age person if it can be shown that it was reasonably foreseeable that such beverages would be consumed by the non purchasing minor who could become intoxicated and injure a third party.

<sup>3</sup>Note: A licensee is not liable for an injury caused by an intoxicated patron if such injury was caused by shooting. The court felt that such an event was not foreseeable. *Isaacs v. Smith*, 5 S.W.3d 500 (Ky. 1999)

<sup>4</sup>See the "caveat" in the *Grayson* case 736 S.W.2d at 335.

Other State Laws Related To Alcohol Use:  
(continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:  
License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term of License Withdrawal:

**Yes Susp or Rev<sup>1</sup>** §§243.480, 243.490 & 243.500  
**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-CI B Misd; 2nd and subsequent off-CI A Misd** §§241.010(2), 244.080(1)<sup>2</sup> & 244.990(1)

Term of Imprisonment:

**1st off-Not more than 90 dys; 2nd and subsequent off-Not more than 12 mos** §532.090 See Footnote No. 2 on p. 3-194.

Fine (\$ Range):

**1st off-Not more than \$250; 2nd and subsequent off-Not more than \$500** §534.040

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes Susp or Rev<sup>1</sup>** §§243.480, 243.490 & 243.500  
**2 yrs** §243.100(5)

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** Driver & passengers except passengers riding in either in vehicles used for compensation (e.g., buses, taxis and limousine), recreational vehicles, motor homes or motor coaches. §189.530(2)

Anti-Consumption Law (Yes/No):

**Yes** Driver & passengers §222.202 The law states that no person "...shall drink an alcoholic beverage in a public place or in or upon any passenger coach, or other vehicle commonly used for the transportation of passengers...."

<sup>1</sup>Note: For a first violation, in lieu of revocation, the State may suspend a license. The licensee, however, as an alternative to this suspension, may at their discretion pay a fine. For retail "by the drink" and package liquor licensees, the fine is \$50 per day the license would have been suspended; for retail beer licensees, such fine is \$25 per day. §243.480(1) For a second violation (w/n 2 yrs), the license must be revoked or suspended. §243.500(4)

<sup>2</sup>This statute, which prohibits the sale of alcoholic beverages by "retail licensees" to persons under the legal drinking age, was also applied to an employee of a licensee who sold alcoholic beverages to such a person. *Com. v. White*, 3 S.W.3d 353 (Ky. 1999)

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20th Edition

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STATE:  
General Reference:

**LOUISIANA**  
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 alcoholic beverages <sup>1</sup> §14:98(A)(1)(a)
Illegal Per Se Law (BAC):	≥ <b>0.10</b> <sup>1&amp;2</sup> (≥0.08 on 9/30/2003) §14:98(A)(1)(b) <u>For Persons Under 21 Years Old.</u> ≥ <b>0.02</b> <sup>2&amp;3</sup> §14:98.1(A) <sup>4</sup>
Presumption (BAC):	≥ <b>0.10</b> <sup>2</sup> (≥0.08 on 9/30/2003) §32:662(A)(1)(c) <u>For Persons Under 21 Years Old.</u> ≥ <b>0.02</b> <sup>2</sup> §32:662(A)(1)(d)
Types of Drugs/Drugs and Alcohol:	Under the influence of <b>Any Drug</b> <sup>1</sup> §§14:98(A) & 40:964
Other:	For Commercial Motor Vehicle Operators, see below. See School Bus Operators on p. 3-204

Chemical Breath Tests for Alcohol Concentration:

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 <sup>5</sup> (Criminal cases only; prohibited in civil cases except administrative, licensing actions) §32:666(A)(3)
Other Information:	Under §32:666(A), if there is probable for <u>any</u> drunk driving offense and a driver has been involved in a traffic fatality or accident resulting in a serious bodily injury, they may not refuse to submit to a chemical test. A law enforcement officer may <u>direct</u> 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. <i>State v.</i> <i>Hebert</i> , 559 So.2d 821 (La.App. 3 Cir. 1990)

<sup>1</sup>All DWI offenses are classified as the crime of operating a vehicle while intoxicated. Note: The drunk driving law does not apply to persons operating bicycles while under the influence of alcoholic beverages. *State v. Carr*, 761 So.2d 1271 (La. 2000)

<sup>2</sup>Standard: Percent by wgt. based on grams of alc. per 100 cubic centimeters of blood. §§14:98(A)(1)(b), 14:98.1(A) and 32:662(A)(2)

<sup>3</sup>This offense is defined as "[t]he crime of operating a motor while intoxicated is operating a motor vehicle ... when the operator's blood alcohol concentration is 0.02 percent or more by weight..." §14:98.1(A) Note: If the person's alcohol concentration is ≥0.10 (≥0.08 on 9/30/2003), they must be charged under the regular illegal per se law. §14:98.1(B)

<sup>4</sup>This law, that makes it a criminal offense for a person under 21 years old to operate a motor vehicle with a BAC of ≥0.02, was held not violate the State's constitutional provision that prohibits arbitrary discrimination based on age (art. I, §3). *State v. Ferris*, 762 So.2d 601 (La. 2000)

<sup>5</sup>Refusal to submit to a field sobriety test can also be admitted into evidence at a drunk driving offense trial. *State v. Washington*, 498 So.2d 136 (La.App. 5 Cir. 1986)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" form (i.e., their CDL is suspended, revoked or cancelled for) operating a CMV for minimum period of 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). It is a criminal offense (1) to operate a CMV with BAC/BrAC/UrAC ≥0.04 or while under the influence of alcohol/controlled substance or (2) to refuse to submit to a chemical test. The sanctions for this offense are a jail term of not more than 6 mos and a fine of \$10 to \$5,000; there is also a civil penalty of not more than \$2,500. In addition, a CMV operator, who has (1) any "measured amount of alcohol concentration" or (2) a "detected presence" of either alcohol or controlled substance their system, must be placed "out-of-service" for 24 hours. §§32:401(4) & (5), 32:414.2 & 32:427(A)(2)

**LOUISIANA**

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

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

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No <sup>1</sup>
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Required for 3rd and sub offs. §14:98(D), (E) & (G) Persons <21 yrs old charged with driving with an alcohol concentration ≥0.02. §14:98.1(E)

Sanctions for Refusal to Submit to a Chemical Test:

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

Refusal to Take Implied Consent Chemical Test

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	

1st refusal-Susp 180 dys (90 dys mand except in situations where the use of an ignition interlock device has been authorized.<sup>2</sup> Otherwise, a hardship license may be issued after the 90 dys mand period.); 2nd or sub refusal (w/n 5 yrs) or a any refusal related to either a fatality or serious bodily injury-**Susp 545 dys** (mand except in situations where the use of an ignition interlock device has been authorized.<sup>3</sup>) §§32:667(B)(2) & (4), 32:668(B)(1), (2), & (3) and 32:378.2(A)(2)(a)(iii) and *Dixon v. Department of Public Safety and Corrections*, 570 So.2d 130 (La.App. 3 Cir. 1990), *Schott v. Dept. of Public Safety*, 556 So.2d 999 (La.App. 3 Cir. 1990), & *Chalker v. Dept. of Public Safety & Corr.*, 593 So.2d 948 (La.App. 4 Cir. 1992)  
Refusal by Persons Under 21 Years Old. Susp for **180 dys** (90 dys mand) §§32:667(B)(2) & 32:668(B)(1)(b) A person may be issued restricted driving privileges for **all** of the suspension period if their motor vehicles are equipped with "ignition interlock" devices. §32:378.2(A)(2)(a)(iii)  
Other: **None**

<sup>1</sup>**Special Note and Comment:** Code of Criminal Procedure Article 892.1(C) & (E) allows a court to dismiss a misdemeanor traffic offense committed under Title 32, the traffic regulation code, provided the defendant has completed a driver improvement program and has not participated in such a program w/n 2 yrs. However, drunk driving offenses are placed in Title 14 which is the criminal law. As a result, it would appear that dismissal of a DWI charge is not authorized under this criminal procedure provision.

<sup>2</sup>This exception **only** applies if the driver has been arrested for either a 1st or 2nd drunk driving offense. §32:378.2(A)(2)(iii)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Notes, DWI Related Injury and Double Jeopardy below. <u>See Persons Under 21 Years Old on p. 3-203.</u>
Imprisonment: Term (Day, Month, Years, Etc.):	See Miscellaneous Sanctions on p. 3-204. <u>1st off-10 dys to 6 mos; 2nd off (w/n 10 yrs)-30 dys to 6 mos; 3rd off-misd/felony (w/n 10 yrs) (See Footnote No. 1 on p. 3-205.)-1 to 5 yrs (with or without hard labor); 4th or sub off-felony (w/n 10 yrs)-10 to 30 yrs (w/hard labor) §14:98</u>
Mandatory Minimum Term:	<u>1st off-(10 dys)<sup>1</sup> BAC ≥ 0.15-48 hrs; 2nd off (w/n 10 yrs)-48 hrs/BAC ≥ 0.15-4 dys<sup>2</sup>; 3rd off-(w/n 10 yrs)-30 dys<sup>3</sup>; 4th or sub off-(w/n 10 yrs)-60 dys (3 yrs)<sup>4a5</sup> §14:98</u>
Fine: Amount (\$ Range):	<u>1st off-\$300 to \$1,000; 2nd off (w/n 10 yrs)-\$750 to \$1,000; 3rd off (w/n 10 yrs)-\$2,000; 4th or sub off (w/n 10 yrs) felony-\$5,000 §14:98 See Footnote No. 6.</u>

<sup>1</sup>If an offender is placed on probation, the following alternatives may be imposed in lieu of the mandatory sentence. (1) Serve a minimum of 2 dys in jail and participate in substance abuse and driver improvement programs or (2) perform at least four eight-hr dys of community service (half of which must be litter abatement or a collection program) and participate in substance abuse and driver improvement programs. Important. If BAC ≥ 0.15, mand 48 hrs of incarceration prior to the above probation alternatives. §14:98(B)

<sup>2</sup>Forty-eight (48 hrs) (96 hrs if BAC ≥ 0.15) is "without benefit of parole, probation, or suspension of sentence." Home incarceration after 48 con hrs of incarceration. The remainder of the sentence is subject to suspension with probation under the following conditions: (1) Serve a minimum of 15 dys in jail and participate in substance abuse and driver improvement programs or (2) perform at least 30 eight-hr dys of community service (half of which must be litter abatement or a collection program) and participate in substance abuse and driver improvement programs. §14:98(C) and Code of Criminal Procedure Art. 894.2(J)

<sup>3</sup>After this mand period, an offender's sentence is suspended and, based on an evaluation, they may be required to participate in inpatient or outpatient treatment. Following inpatient treatment, they must be sentenced to "home incarceration" for not less than the remaining period of the suspended sentence. §14:98(D)

<sup>4</sup>After this mand period, an offender's sentence is suspended and they are required to participate in inpatient treatment. Following inpatient treatment, they must be sentenced to "home incarceration" from 1 to 5 yrs. §14:98(E)

<sup>5</sup>If an offender has received treatment for a 3rd off, they cannot participate in it again and must be sentenced to 3 yrs of imprisonment.

<sup>6</sup>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)

**Special Note No. 1:** For the purpose of sanction enhancement, a prior drunk driving offense includes drunk driving related injury and homicide offenses. §14:98(F)

**Special Note No. 2:** The time periods used to determine whether enhanced sanctions will be imposed on 2nd or subsequent offenders are not the same for criminal sanctions (jail or fine) and for administrative ones (license suspensions). In order to impose enhanced criminal sanctions based on prior DWI offenses, the prior offenses all must have occurred within 10 yrs of the present offense. In order to impose enhanced administrative sanctions based on prior DWI offenses, the prior offenses all must have occurred within 5 yrs of the present offense. Note: Enhanced licensing sanctions for subsequent administrative per se violations are also based whether the prior violations occurred within 5 yrs of the present violation.

**Special Note No. 3:** For a 2nd drunk driving offense where the first was for DWI Vehicle Homicide or DWI Vehicular Negligent Injury, the following sanctions apply: (1) Incarceration-1 to 5 years (w/6 mos mand); and, a fine of \$2,000. §14:98(C)(3)

**DWI Related Injury.** I. A person is guilty of "vehicular negligent injuring" if they injure another, while operating motor vehicle either while under the influence of an alcoholic beverages/drugs or with an alcohol concentration ≥ 0.01. The sanctions for this offense are imprisonment for not more than 6 mos and/or a fine of not more than \$1,000. §14:39.1 II. A person is guilty of "first degree vehicular negligent injuring" if they seriously injury another, while operating motor vehicle either while under the influence of an alcoholic beverages/drugs or with an alcohol concentration > 0.08. The sanctions for this offense are imprisonment (with or without hard labor) for not more than 5 yrs and/or a fine of not more than \$2,000. §14:39.2

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the admin. per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Butler v. Department of Pub. Safety & Corrections*, 609 So.2d 790 (La. 1992), & *State v. Sonnier*, 679 So.2d 1011 (La. App. 3 Cir. 1996)

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

Mandatory Min. Fine (\$):	None
Other Penalties: Community Service: Restitution (e.g. Victim's Fund)	See Footnotes Nos. 1 & 2 on p. 3-201.  An offender must pay restitution to a victim where there is "actual pecuniary loss". <sup>1</sup> Code of Crim. Proc. Art. 883.2 <b>Chemical Test Fee.</b> A DWI offender must pay a fee of \$75 for the purpose of covering the costs of administering a BAC chemical test. They also must pay a fee of \$50 to defray the expenses of administering any conditions of probation or incarceration. Code of Criminal Procedure §887(C) & (D) <b>Child Endangerment.</b> 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: <u>1st off-10 dys jail/\$125 fine; 2nd off-30 dys jail/\$300 fine; 3rd off-30 dys jail; 4th &amp; sub off-2 yrs jail §14:98(J)</u>
Other:	
Administrative Licensing Actions: <u>Pre-DWI Conviction Licensing Action:</u> Administrative Per Se Law:	See Special Note No. 2 and Double Jeopardy on p. 3-201. See the Special Note below. <b>Yes BAC ≥ 0.10/≥ 0.08 on 9/30/2003 (≥ 0.02 For Persons under 21 Years Old) BAC is based upon percent by wgt. of alc. in the blood. <u>1st Off-Susp for 90 dys</u> (30 dys mand<sup>2</sup> followed by 60 dys of restricted driving privileges.<sup>3</sup> If the use of an ignition interlock device has been authorized, a restricted lic may be issued without the mand period.); <u>2nd and sub offs</u> (w/n 5 yrs)-<b>Susp for 365 dys</b> (mand <u>except</u> for 2nd off where the use of an ignition interlock device has been authorized)<sup>4</sup> §§32:667(B)(1) &amp; (3), 32:668(B)(1)(c) &amp; (3) and 32:378.2(2)(a) <b>Important.</b> The <u>exceptions</u> noted above <u>only</u> apply to offenders who have been convicted of either a 1st or 2nd drunk driving offense. §32:378.2(A)(2)(a)(iv) <u>Persons Under 21 Years Old (BAC ≥ 0.02).</u> Susp for <b>180 dys</b> (30 dys mand) §§32:667(B)(1) &amp; (3) and 32:668(B)(1)(b), (1)(c) &amp; (3)</b>

<sup>1</sup>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)

<sup>2</sup>Thirty (30) mandatory except as per the *Noustens* case cited in Footnote No. 3. *Corley v. Dept. of Public Safety & Corr.*, 648 So.2d 936 (La.App. 1 Cir. 1995)

<sup>3</sup>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)

<sup>4</sup>See *Murphy v. State Through DPS*, 640 So.2d 546 (La.App. 3 Cir. 1994).

**Special Note:** The administrative per se law does not violate a person's constitutional right to due process of law. *Butler v. Department of Pub. Safety & Corrections*, 609 So.2d 790 (La. 1992)

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

Other:	Under §32:414(E)(1) & (F)(2), a person's license may be susp, canceled or revoked for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., 2nd off DWI). The law does not specifically state that licensing action can be taken without a preliminary hearing. However, other provisions would seem to indicate that a preliminary hearing is not required. <b>Comment:</b> Such action could occur prior to a conviction.
<u>Post DWI Conviction Licensing Action:</u> Type of Licensing Action (Susp/Rev): Term of License Withdrawal (Days, Months, Years, etc.):	See <b>Ignition Interlock</b> on p. 3-204.  <u>1st &amp; subsequent offs-Susp</u> <sup>1</sup> §§32:401(18), 32:414 & 32:430  <u>1st off</u> <sup>2</sup> - <b>90 dys</b> (hardship driving privileges are available) For Persons under 21 Years Old- <b>180 dys</b> (hardship driving privileges are available); <u>2nd off</u> <sup>2</sup> (w/n 5 yrs)- <b>12 mos</b> ; <u>3rd &amp; or subsequent offs</u> <sup>2</sup> (w/n 5 yrs)- <b>24 mos</b> §§32:414, 32:415 & 32:415.1 See Footnote No. 1.
Mandatory Minimum Term of Withdrawal:	<u>1st off</u> <sup>2</sup> - <b>None</b> <sup>3</sup> (hardship/restricted driving privileges are available); <u>2nd offs</u> <sup>2</sup> (w/n 5 yrs)- <b>12 mos</b> (mand <u>except</u> in situations where the use of an ignition interlock device has been authorized <sup>3</sup> ); <u>3rd and sub offs</u> <sup>2</sup> (w/n 5 yrs)- <b>24 mos</b> (mand <b>12 mos</b> mand in situations where the use of an ignition interlock device has been authorized <sup>4</sup> ) See Special Note No. 2 on p. 3-201.

<sup>1</sup>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 which provides for no 30 dy waiting period.

<sup>2</sup>Includes vehicular negligent injuring under §14:32.1.

<sup>3</sup>For either a 1st or 2nd drunk driving offense conviction, notwithstanding other provisions of law, restricted driving privileges are available at any time if the offender is operating motor vehicles equipped with **ignition interlock devices**. §§15:306(A), 32:378.2 and 32:414(A)(1)(b) & (B)(2)(b)

<sup>4</sup>See §32:414(D)(1)(b).

**Persons Under 21 Years Old.** It is illegal for a person <21 yrs old to operate a motor vehicle with an alcohol concentration  $\geq 0.02$ . The sanctions for this are as follows: 1st offense-A fine of **\$100 to \$200** and participation in a substance abuse and driver improvement program; and 2nd or subsequent offense-Imprisonment for **10 dys to 3 mos** and a fine of **\$150 to \$500**. The sanctions for a 2nd or subsequent offender may be suspended if they (1) serve either 48 hrs in jail or perform community service for ten 8 hr dys and (2) participate in a substance and driver improvement program. §14:98.1(C) & (D) Note: There is no licensing sanction for a violation of this provision. However, licensing action is taken via the admin. per se; see p. 3-202.

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

Other:

Rehabilitation:

Alcohol Education:

**Yes 1st and 2nd offs** §14:98(B)(1)(a) & (C)(1)(a) For a 1st off, a restricted license may be issued to facilitate attendance at driver improvement schools. §32:415.1(A)(2)

Alcohol Treatment:

**Yes 1st and sub offs** §14:98(B), (C), (D) & (E)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

**Forfeiture.** For a 3rd or sub off, the vehicle used by the offender shall be forfeited. §14:98(D)(2) & (E)(2).

Terms Upon Which Vehicle

Will Be Released:

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. §15:1133 & Code of Crim Procedure Art. 894.2(J)

**Incarceration Costs.** An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure art. 890.2

**Civil Liability.** A person, who is operating a motor vehicle in violation of the drunk driving laws at the time of an accident caused by another driver, cannot recover damages for any injuries they sustain if they are more than 25% negligent in causing such accident. §9:2798.4

**School Bus Operators.** A person, who either tests positive for the presence of marijuana, opioids, amphetamines, phencyclidine or other controlled dangerous substance per §40:961(7) or has an alcohol concentration  $\geq 0.08$ , must be prohibited by public education authorities from operating a school bus. §17:491.2(A)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

See Death to Unborn Child on p. 3-205.

**Yes Felony/Misd<sup>1</sup>** Death caused by operating a motor vehicle either (1) while under the influence of alcoholic beverages/drugs or (2) with a BAC  $> 0.08$ . §14:32.1(B)

<sup>1</sup>If the defendant is imprisoned with hard labor, the conviction is considered a felony; otherwise, it is a misdemeanor. §§14:2(4) & (6), 14:32.1(B), Code of Criminal Procedure Art. 933 and *State v. Lobb*, 450 So.2d 59 (La.App. 3 Cir. 1984)

**Ignition Interlock.** I. Probation. For a 1st offense, the court may and, for a 2nd offense, the court shall require an offender, who has been placed on probation, to only operate motor vehicles (except employer's vehicles) that are equipped with ignition interlock devices. §§15:306 & 32:378.2(A)(1) II. Without Probation. For a 2nd off, an offender shall be required to operated motor vehicles (except employer's vehicles) that are equipped with ignition interlock devices for at least 6 mos. For a 3rd or sub off, an offender shall be required to operated motor vehicles (except employer's vehicles) that are equipped with ignition interlock devices (1) until the completion of treatment/home incarceration and (2) for not less than 6 mos following the issuance of a restricted license. §14:98(K)

Other Criminal Actions Related to DWI: (continued)

## Sanctions:

## Criminal Sanction:

Imprisonment (Term): **2 to 20 yrs<sup>1</sup> §14:32.1(B)**  
 Mandatory Minimum Term: **1 yr<sup>1</sup>**  
 Fine (\$ Range): **\$2,000 to \$15,000 §14:32.1(B)**  
 Mandatory Minimum Fine: **None**

## Administrative Licensing Action:

## Licensing Authorized and

## Type of Action:

**Rev §32:414**

## Length of Term of

## Licensing Withdrawal:

**12 mos**

## Mandatory Action--Minimum

## Length of License

## Withdrawal:

**12 mos**

## Other:

I. The offender may be required to participate in a substance abuse and/or driver improvement program. §14:32.1(B)  
 II. **Incarceration Costs.** An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure Art. 890.2

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

See Footnote No. 2 and the Special Note below.

## Sanction:

## Criminal:

## Imprisonment (Term):

**Misd Not more than 6 mos** If such violation was simultaneous with a second or subsequent DWI conviction-**7 dys to 6 mos.** §32:415

<sup>1</sup>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

<sup>2</sup>Code of Criminal Procedure Article 892.1(C) & (E) allows a court to dismiss a misdemeanor traffic offense committed under Title 32, the traffic regulation code, provided the defendant has completed a driver improvement program and has not participated in such a program w/n 2 yrs. **Comment:** Since this is a Title 32 offense, it would appear that dismissal of a charge per this criminal procedure provision is possible.

**Special Note:** I. A person is subject to the following sanctions if they operate a CMV while their CDL privileges have been suspended, revoked or cancelled: Imprisonment for not more than 1 yr, a fine of not more than \$5,000 and/or a civil penalty of not more than \$2,500 §32:415(C)(2) & (D)(2) II. A person who operates a CMV in violation of a CDL out-of-service order is subject to a civil penalty of \$1,000 to \$2,500 and the following CDL disqualification periods. For a 1st violation there is a disqualification from 90 dys to 1 yr (if transporting hazardous materials or operating a vehicle with 15 or more persons, the disqualification period is from 180 dys to 2 yrs). For a 2nd violation (w/n 10 yrs) there is a disqualification from 1 to 5 yrs (if transporting hazardous materials or operating a vehicle with 15 or more persons, the disqualification period is from 3 to 5 yrs). For a 3rd or subsequent violation (w/n 10 yrs) (including transporting hazardous materials or operating a vehicle with 15 or more persons) there is a disqualification from 3 to 5 yrs. §§32:414.2(B)(2) & 32:427(A)(3)

**Death to Unborn Child** (Third Degree Feticide) (Felony/Misd See Footnote No 1 on p. 3-204.) Death caused by operating a motor vehicle either (1) while under the influence of alcoholic beverages/drugs or (2) with a BAC  $\geq$ 0.10 (0.08 on 9/30/2003). Sanctions: Imprisonment with or without hard labor for not more than 5 yrs and a fine not less than \$2,000. §14:32.8(A)(2) & (B)

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Other Criminal Actions Related to DWI: (continued)

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 such violation was simultaneous with a second or subsequent DWI conviction-\$300 to \$500 §32:415 <b>Civil Penalty:</b> An offender is also subject to a civil penalty of not more than \$1,250 §32:415(D)(1)
Mandatory Minimum Fine: Administrative Licensing Actions: Type of Licensing Action (Susp/Rev): Length of Term of License Withdrawal Action: Mandatory Term of License Withdrawal Action:	<b>None</b>  <b>Susp/Rev</b> §32:415(B)  Original susp/rev period extended for 1 yr §32:415(B)  For 2nd and sub. offenses, original susp/rev period extended for 1 yr (mand <u>except</u> in situations where the use of an ignition interlock device has been authorized <sup>1</sup> ) Note: A hardship license is available for first offenders. §32:415.1 <b>Special Note:</b> A 1st or sub offender is eligible for restricted driving for the <b>entire</b> susp/rev period, if the equip their vehicles with "ignition interlock" devices. §32:378.2(A)(2)(ii) <b>Incarceration Costs.</b> An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure art. 890.2
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No): Grounds for Being Declared an Habitual Offender:	<b>Yes</b> §32:1472 et seq.  Convictions for 10 or more traffic law offs w/n a 3 yr period Applies to those offenses that are required to be reported to the Department of Public Safety and Corrections. §32:1472(A)
Term of License Rev While Under Habitual Offender Status:	<b>Prohibition</b> from operating a vehicle for 3 yrs §32:1479 Note: A 1st time habitual offender may apply for a hardship license under §32:1477(B) & (C)(3).
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status Sanctions Following a Conviction of Driving While on Habitual Offender Status: Imprisonment (Term): Mandatory Minimum Term of Imprisonment: Fine (\$ Range): Mandatory Minimum Fine (\$): Licensing Actions (Specify):	

<sup>1</sup>This exception **only** applies if the original licensing action was the result of either 1st or 2nd drunk driving offense conviction. §32:378.2(A)(2)(ii)

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

State Has Such a Law (Yes/No):

Yes §32:398(E) &amp; (F) A report is made by the corner.

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<sup>1&2</sup> §§14:93.11, 14:93.12, 26:90(A) & 26:286(A) (Year Eff: 1987)

Minimum Age (Years) Possession:

21<sup>1&2</sup> §14:93.12

Minimum Age (Years) Consumption:

21<sup>1&2</sup> §14:93.12 Note: The term "public possession" is defined to include consumption. §14:93.10(2)Dram Shop Laws and Related Legal Actions:

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

No Under §9:2800.1(B)<sup>3</sup>, a commercial server cannot be held liable for the actions of an intoxicated patron who is over the legal drinking age. *Bourgeois v. Puglisi*, 615 So.2d 1047 (La.App. 1 Cir. 1993) This statute does not provides immunity to commercial servers with regards to the actions of intoxicated minor patrons. *Godfrey v. Boston Old Colony Ins. Co.*, 718 So.2d 441 (La.App. 4 Cir. 1998)<sup>4</sup>"Dram Shop Law" Concept Has Been  
Adopted Via a Change to the Common  
Law Rule by Action of the Highest  
Court of Record in the State (Case  
Citation):**Liability Limited.** I. The State supreme court has held that there is no "absolute liability" against licensees with regard to the actions of intoxicated patrons. *Thrasher v. Leggett*, 373 So.2d 494 (La. 1979) For a more recent case that follows *Thrasher* and discusses "duty risk" and "affirmative act", see *Berg v. Zummo*, 786 So.2d 708 (La. 2001).

II. In situations involving minor patrons, a licensee is liable to either an injured third party or an injured patron only if the licensee (1) fails to act in a reasonable manner and (2) commits an "affirmative act" towards the intoxication of the patron. The mere serving of alcoholic beverages is not such an "affirmative

<sup>1</sup>The term "public possession" does not include the possession or consumption of alcoholic beverages either (1) for a religious purpose, (2) when the person is accompanied by a parent or legal custodian who is over 21 yrs old, (3) for medical purposes or (4) at a private residence. §14:93.10(2)

<sup>2</sup>The Louisiana Supreme Court has held that the law, making it illegal (1) to sell alcoholic beverages to persons <21 yrs or (2) for these persons to purchase such beverages does not violated the State constitutional provision which prohibits age discrimination, Art. I, §3. *Manuel v. State*, 677 So.2d 116 (La. 1996)

<sup>3</sup>This statute has been held constitutional. *Schulker v. Roberson*, 676 So.2d 684 (La.App. 3 Cir. 1996)

<sup>4</sup>The *Godfrey* decision provides a complete history of dram shop liability actions in the State of Louisiana.

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Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts: act" that increases the danger caused by the intoxication. §9:2800.1, *Godfrey v. Boston Old Colony Ins. Co.*, 718 So.2d 441 (La.App. 4 Cir. 1998), *Edson v. Walker*, 573 So.2d 545 (La.App. 1 Cir. 1991), & *Mills v. Harris*, 615 So.2d 533 (La.App. 3 Cir. 1993)

Other: **Limited Liability.** Sec. 9:2800.1(C) prohibits liability actions against social hosts for injuries sustained by or caused by an intoxicated guest over the legal drinking age. *Hollis v. City of Baton Rouge*, 593 So.2d 388 (La.App. 1 Cir. 1991). For situations involving minors, see *Garcia on behalf of Garcia v. Jennings*, 427 So.2d 1329 (La.App. 2 Cir. 1983)<sup>1</sup>, & *Gresham v. Davenport*, 537 So.2d 1144 (La. 1989)<sup>2</sup>. See Footnote No. 3. Under §9:2800.1(B), a licensee is not liable for the injuries sustained by an intoxicated patron over the legal drinking age.<sup>4</sup>

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

Type of Criminal Action: A. For alcoholic beverages with an alcohol content of 6% or above-Misd §§26:2(1) & 26:90(A)(2) B. For alcoholic beverages with an alcohol content of ½ of 1% to 6%-Misd §§26:241(1) & 26:286(A)(2)

Term of Imprisonment: A. For alcoholic beverages with an alcohol content of 6% or above-30 dys-6 mos §26:171 B. For alcoholic beverages with an alcohol content of ½ of 1% to 6%-30 dys-6 mos §26:521

Fine (\$ Range): A. For alcoholic beverages with an alcohol content of 6% or above-\$100 to \$500 (and/or the following administrative fines: 1st off-\$50 to \$500; 2nd off-(w/n 3 yrs)-\$250 to \$1,000 3rd off-(w/n 3 yrs)-\$500 to \$2,500 §26:96) B. For alcoholic beverages with an alcohol content of ½ of 1% to 6%-\$100 to \$500 §26:521 (and/or the following administrative fines: 1st off-\$50 to \$500; 2nd off (w/n 3 yrs)-\$250 to \$1,000; 3rd off-(w/n 3 yrs)-\$500 to \$2,500 §26:292)

<sup>1</sup>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. However, if no alcoholic beverages are provided by a social host to a minor guest, the host cannot be held liable for injuries caused by the minor guest who has procured and consumed alcoholic beverages obtained from another source. *Spears v. Bradford*, 652 So.2d 628 (La.App. 1 Cir. 1995)

<sup>2</sup>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 riding in. Passengers riding in the rear seats of the vehicle were injured in the accident. These passengers were not able to maintain a common law dram shop action against the minor social host. The court again, as in *Thrasher v. Leggett*, 373 So.2d 494 (La. 1979), rejected "absolute liability" and felt that a "duty risk" analysis should be performed to determine liability. For cases similar to *Gresham*, see *Bell v. Whitten*, 722 So.2d 1057 (La.App. 1 Cir. 1998), and *Guy v. State Farm Mut. Inc. Co.*, 725 So.2d 39 (La.App. 3 Cir. 1998).

<sup>3</sup>A motel was held liable for the injuries sustained by a minor passenger in a traffic accident while riding in a motor vehicle driven by an intoxicated minor driver. Although the motel had not supplied alcoholic beverages to the minor driver, the motel's management had knowledge that such beverages were being consumed by the minor on the premises and ordered the minor to leave after they had become intoxicated. The court reasoned that the motel had a responsibility not to allow such a person to consume alcoholic beverages and then force them to leave in an intoxicated condition where such action could result in harm. *Kramer v. Continental Cas. Co.*, 641 So.2d 557 (La.App. 3 Cir. 1994)

<sup>4</sup>See *Mayo v. Hyatt Corp.*, 898 F.2d 47 (5th Cir. 1990), for a Federal case applying the Dram Shop Law to this type of situation.

Other State Laws Related To Alcohol Use: (continued)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

**Incarceration Costs.** An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure art. 890.2

**Yes Rev or Susp<sup>1</sup>** Not mandatory §§26:90(I) & 26:286(I)<sup>2</sup>  
**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:

Type of Criminal Action:

See Footnote No. 3.

A. For alcoholic beverages with an alcoholic content of 6% or above - **Misd** §§ 26:2(1) & 26:90(A)(1) B. For alcoholic beverages with an alcoholic content of ½ of 1% to 6% - **Misd** §§26:241(1) & 26:286(A)(1)

Term of Imprisonment:

Same as for serving alcoholic beverages to an intoxicated person above.

Fine (\$ Range):

Same as for serving alcoholic beverages to an intoxicated person above.

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

**Yes Rev or Susp<sup>1</sup>** Not mandatory §§26:90(I) & 26:286(I)<sup>2</sup>  
**Not specified**

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.

<sup>1</sup>If a licensee has been certified as a "responsible vendor" of alcoholic beverages, their license is not suspended or revoked for a first offense. §26:905(B)(1)(a)

<sup>2</sup>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.

<sup>3</sup>In addition to the sanctions provided in the alcoholic beverage control law, the following sanctions are available in the criminal law: An imprisonment term of not more than 6 mos and/or a fine of not more than \$100. §§14:93.11 & 14:93.14

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Other State Laws Related To Alcohol Use: (continued)

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

Open Container Law (Yes/No):

Yes Applies only to drivers §32:300

Anti-Consumption Law (Yes/No):

Yes Applies only to drivers §32:300

STATE:

MAINE

General Reference:

Maine Revised Statutes Annotated (MRSA) & Code of Maine Rules (CMR)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicants<sup>1</sup> 29-A MRSA §2411(1)(A)

Illegal Per Se Law (BAC):

≥ 0.08<sup>2</sup> 29-A MRSA §2411(1)(B)

Presumption (BAC):

No<sup>3</sup>

Types of Drugs/Drugs and Alcohol:

Under the influence of **intoxicants**<sup>1</sup> 29-A MRSA §2411(1)

Other:

For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

No Note: A PBT may be conducted by law enforcement officers without legislative authority. *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-A MRSA §2521(1)

Implied Consent Law Applies to Drugs (Yes/No):

Yes 29-A MRSA §2521(1)

Refusal to Submit Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) 29-A MRSA §2521(3)(B) & *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 and there is probable cause to believe that they were operating a vehicle while DWI. 29-A MRSA §2522 & *State v. Roche*, 681 A.2d 472 (Me. 1996)

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

<sup>1</sup>"Under the influence of intoxicants" means being under the influence of alcohol, a drug other than alcohol, a combination of drugs or a combination of alcohol and drugs. The term "drugs" refers to either "scheduled drugs" (i.e., controlled substances) or to "any natural or artificial chemical substance that, when taken into the human body, can impair the ability of the person to safely operate a motor vehicle." 17-A MRSA §1101 and 29-A MRSA §2401(4) & (13)

<sup>2</sup>"Blood alcohol level" (blood alcohol concentration) is stated as percent by wgt. of alcohol in the blood. However, the law further defines this to mean grams of alcohol per 100 milliliters of blood. 29-A MRSA §2401(2)

<sup>3</sup>For purposes of evidence in proceedings other than those arising under 29-A MRSA §2411 (DWI offenses), it shall be presumed that a person was under the influence of intoxicants when they have a blood alcohol level ≥ 0.08. 29-A MRSA §2432(3)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** Via regulations, a person's CDL is suspended if they operate a CMV and (1) they have a BAC ≥ 0.04 (Standard: Percent by weight of alcohol in the blood) or (2) they are under the influence of a controlled substance. If the person has neither a prior DWI offense conviction nor administrative license adjudication (e.g., driving with BAC ≥ 0.04) related to CMV operations, their CDL is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials). If they have had either a prior DWI offense conviction or administrative license adjudication (e.g., driving with BAC ≥ 0.04) related to CMV operations, their CDL is permanently suspended (mand). Under statutory provisions, if a person refuses to submit to a chemical test to determine either alcohol level or drug concentration where there is probable cause to believe that they were operating a CMV with a BAC ≥ 0.04 or while under the influence of drugs, their privilege to operate a CMV is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) for a 1st refusal and permanently for a 2nd or subsequent refusal. 29-A MRSA §§101(17), 1253, 2458(2)(M) & 2523 and CMR 29-250-006 (§§3 & 4)

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

Blood: Yes 29-A MRSA §2521(1)<sup>1</sup>  
Urine: Yes 29-A MRSA §2521(1)<sup>1</sup>  
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):

I. 1st refusal-Susp-275 dys<sup>2</sup>; 2nd refusal-Susp-18 mos (mandatory); 3rd refusal-Susp-4 yrs (mandatory); 4th refusal-Susp-6 yrs (mandatory) 29-A MRSA §2521(6) For failure to submit to a mandatory chemical test-Susp-1 yr (mandatory) 29-A MRSA §2522 See Footnote No. 3.  
**Child Endangerment.** 1st or sub refusal, an additional 275 dy susp if the driver was carrying a passenger under 21 yrs old. This additional suspension appears to be mandatory. 29-A MRSA §2451(5)  
II. Persons Under 21 Years Old. A person under 21 years old, who refuses to submit to a chemical test, where there is probable cause that they were driving with "any amount of alcohol in the blood", is subject to the following licensing action: 1st refusal-Susp-18 mos<sup>2</sup>; subsequent refusal-Susp-30 mos (mand). 29-A MRSA §2472(3-A) & (4)  
**Child Endangerment.** 1st or sub refusal, an additional 180 dy susp if the driver was carrying a passenger under 21 yrs old. This additional suspension appears to be mandatory. 29-A MRSA §2472(4)  
**Important.** These licensing actions may not be mandatory in all situations; see the Special Note on p. 3-216.  
A person can have their vehicle's registration/certificate of title suspended for a refusal. The law provides that the State has this authority if a person is subject to mandatory license suspension or revocation. 29-A MRSA §2458(2)(A)

Other:

<sup>1</sup>A breath test is administered unless it is unreasonable to give such test. 29-A MRSA §2521(2)

<sup>2</sup>See Special License on p. 3-216.

<sup>3</sup>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-A MRSA §2456

Sanctions Following a Conviction for a DWI Offense:

<p>Criminal Sanctions: Imprisonment: Term (Day, Month, Years, Etc.):</p>	<p>See Double Jeopardy &amp; Aggravated Punishment Category below.</p> <p><u>1st off</u>, <u>2nd off</u> (w/n 10 yrs) and <u>3rd off</u> (w/n 10 yrs) Cl D Crime-Less than <b>1 yr</b> 17-A MRSA §1252 &amp; 29-A MRSA §2411 <u>4th or sub. off</u> (w/n 10 yrs) Cl C Crime-Not more than <b>5 yrs</b> 17-A MRSA §1252 &amp; 29-A MRSA §2411(5)(D)</p>
<p>Mandatory Minimum Term:</p>	<p><u>1st off</u>-Not less than <b>48 hrs</b><sup>1&amp;2</sup> or <b>96 hrs</b><sup>2</sup> if the person refused to submit to a chemical test; <u>2nd off</u> (w/n 10 yrs)-<b>7 days</b><sup>2</sup> or <b>12 dys</b><sup>2</sup> if the person refused to submit to a chemical test; <u>3rd off</u> (w/n 10 yrs)-<b>30 dys</b><sup>2</sup> or <b>40 dys</b><sup>2</sup> if the person refused to submit to a chemical test; <u>4th or sub. off</u> (w/n 10 yrs) or <b>6 mos</b><sup>2</sup> or <b>6 mos and 20 dys</b><sup>2</sup> if the person refused to submit to a chemical test 29-A MRSA §2411(5)</p>
<p>Fine: Amount (\$ Range):</p>	<p><u>1st off</u>, <u>2nd off</u> (w/n 10 yrs) and <u>3rd off</u> (w/n 10 yrs) Cl D Crime-Not more than <b>\$2,000</b> 17-A MRSA §1301 <u>4th or sub</u> (w/n 10 yrs) Cl C Crime-Not more than <b>\$5,000</b> 17-A MRSA §1301 &amp; 29-A MRSA §2411(1)</p>
<p>Mandatory Min. Fine (\$):</p>	<p><u>1st off</u>-<b>\$400</b> or <b>\$500</b> if the person refused to submit to a chemical test; <u>2nd off</u> (w/n 10 yrs)-<b>\$600</b> or <b>\$800</b> if the person refused to submit to a chemical test; <u>3rd off</u> (w/n 10 yrs)-<b>\$1,000</b> or <b>\$1,300</b> if the person refused to submit to a chemical test; <u>4th or sub. off</u> (w/n 10 yrs)-<b>\$2,000</b> or <b>\$2,400</b> if the person refused to submit to a chemical test 29-A MRSA §2411(5)</p>
<p>Other Penalties: Community Service: Restitution (eg Victim's Fund)</p>	<p><b>Yes</b> as a condition of probation 17-A MRSA §1204(2-A)(L)</p> <p><b>Yes I.</b> Compensation by the defendant to a victim either as a condition of probation or as part of the incarceration sanction. 17-A MRSA §§1204(2-A)(B), 1252 &amp; 1321 et seq. <b>II.</b> A victims' compensation fund. Claims cannot exceed \$5,000. 5 MRSA §3360 et seq.</p>
<p>Other:</p>	<p><b>Surcharges.</b> <b>I.</b> A <b>\$30</b> (<b>\$125</b> if DWI drugs/alcohol &amp; drugs) surcharge must be imposed and paid into the Highway Fund for to cover the administration and analysis costs of chemical tests. 29-A MRSA §2411(7)</p> <p><b>II.</b> 12% and 2% surcharges must be imposed on any fine for the respective purposes of funding jail/criminal operations and the Community Policing Institute. 4 MRSA §§1057 &amp; 1057-A</p>

<sup>1</sup>This mandatory jail sanction applies only when at least one of the following conditions is satisfied. The defendant either (1) had a BAC ≥0.15, (2) was driving 30 MPH over the speed limit, (3) was eluding a police officer or (4) was operating a vehicle with a passenger under 21 years old (**child endangerment**).

<sup>2</sup>Not consecutive. A county jail term of imprisonment may be served intermittently. 17-A MRSA §1252(3-A)

**Aggravated Punishment Category (Cl C Crime).** Three types: (1) a DWI offense with serious bodily injury; (2) a DWI offense which is a subsequent Cl C Crime DWI offense; or, (3) a DWI offense where there has been a prior DWI related vehicle homicide offense. Sanctions: Jail-Not more than 5 yrs; fine-not more than \$5,000; and, license suspension-6 yrs. The following mand sanctions apply: (1) Jail for 6 mos; (2) a \$2,000 fine; and, (3) 6 yrs license susp. 17-A MRSA §§1252 & 1301 and 29-A MRSA §2411(6)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Savard*, 659 A.2d 1265 (Me. 1995), & *Allen v. Attorney General of State of Maine*, 80 F.3d 569 (1st Cir. 1996)

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

Administrative Licensing Actions:	See Double Jeopardy on p. 3-213.
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	Yes BAC >0.08 <sup>1&amp;2</sup> (See Footnote No. 2 on p. 3-211 and the Special Note on p. 3-215.) The periods of license susp and conditions for reinstatement for 1st and subsequent offs are the same as Post DWI Conviction Licensing Actions (below). However, unlike a 1st DWI offense conviction, there is <b>no</b> mand susp for a 1st admin. <u>per se violation</u> ; a work restricted license is available. <sup>3</sup> 29-A MRSA §§2453 & 2503
Other:	Under 29-A MRSA §2458(2)(A), a person's license (or certificate of registration/title) may be rev/susp if they have "committed" an off that usually requires license/registration susp or rev (e.g., DWI). Such action may be taken <u>without</u> a preliminary hearing. The time period for this rev/susp is not specified. <b>Comment:</b> Such action could occur prior to a conviction. See Footnote No. 4.
Post DWI Conviction Licensing Action:	See Footnote Nos. 1 and 5 below, Aggravated Punishment Category on p. 3-213 and Assault Related Revocations on p. 3-215.
Type of Licensing Action (Susp/Rev):	For all offs-Susp
Term of License Withdrawal (Days, Months, Years, etc.):	<u>1st off-90 dys</u> <sup>6</sup> ; <u>2nd off</u> (w/n 10 yrs)- <u>18 mos</u> <sup>6</sup> ; <u>3rd off</u> (w/n 10 yrs)- <u>4 yrs</u> <sup>6</sup> ; <u>4th or sub. off</u> (w/n 10 yrs)- <u>6 yrs</u> <sup>6</sup> 29-A MRSA §§2411(5) & 2451

**Persons Under 21 Years Old.** Under 29-A MRSA §2472(3), (3-A) & (6), a person, under 21 yrs old (a provisional licensee), who operates a motor vehicle either while in violation of the regular DWI law or with "any amount of alcohol in the blood" (See Footnote No. 2. on p. 3-211.), has their license suspended as follows: 1st offense-1 yr; and, 2nd offense-2 yrs (mand). For 1st offenders, (1) if the suspension is based on operating a motor vehicle with "any amount of alcohol in the blood", (2) there is no other alternative means of transportation and (3) the person does not have a previous DWI offense (w/n 10 yrs), a restricted license may be issued for either employment or educational purposes without a waiting period. 29-A MRSA §2503 First offenders are also eligible for license reinstatement after 6 mos if they complete an alcohol and drug program (See Special License on p. 3-216.). However, subsequent offenders are only eligible for license reinstatement after the completion of the full suspension period and the completion of an alcohol and drug program. For **child endangerment**, there is an additional suspension of **180 dys** (mand) if the driver was carrying a passenger under 21 yrs old. 29-A MRSA §2472(3-A) & (6) **Important.** These licensing actions may not be mandatory in all situations; see the Special Note on p. 3-216.

<sup>2</sup>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 (1) while under the influence of intoxicants, (2) with a BAC  $\geq 0.08$  or fails to comply with the implied consent law (29-A MRSA §2521). For a failure to comply with the implied consent law, this suspension is consecutive to a refusal suspension. Also, any period of suspension served is "deducted" from any revocation period imposed under 29-A MRSA 2454 (See Homicide by Vehicle on p. 3-217.). 19-A MRSA §2456

<sup>3</sup>If there is no alternative means of transportation, a work restricted license may be issued provided that person either has not (1) been convicted of a DWI off (w/n 10) or (2) had a previous admin. per se suspension (w/n 10 yrs). 29-A MRSA §2503

<sup>4</sup>A person may be denied CDL privileges without a preliminary hearing if they were operating a operating CMV with a BAC  $\geq 0.04$  or were in violation of Federal law or regulation concerning CMV operations. 29-A MRSA §§1254(c) & 2458(2)(M)

<sup>5</sup>A person's endorsement to operate a school bus is permanently revoked if they drive such a vehicle while DWI. A person, who has a school bus endorsement and who commits a DWI offense while operating another type of vehicle, has their school bus endorsement suspended for 3 yrs (1 yr mand) for a 1st offense and for 6 yrs (mand) for a 2nd or subsequent offense (w/n 10 yrs). 29-A MRSA §2452

<sup>6</sup>A license suspension period for a drunk driving offense conviction is reduced by any suspension period that was imposed for an admin. per se violation. 29-A MRSA §2453(6)(c)

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

Mandatory Minimum Term of  
Withdrawal:

1st off-60 dys<sup>1,2&3</sup>; 2nd off-18 mos<sup>1&3</sup>; 3rd off-4 yrs<sup>1&3</sup>; 4th or sub. off-6 yrs<sup>1&3</sup> These suspensions may be reduced if the offender participates the "ignition interlock" program; see Ignition Interlock on p. 3-216.

**Child Endangerment.** A person, who violates the drunk driving law while transporting a passenger under 21 year old, must have their license suspended for an additional 275 days.<sup>3</sup> 29-A MRSA §§2411(5)(G) & 2451(5)

**Special Note:** The licensing agency has the authority to suspend a driver's license for a longer period of time than indicated above for either an admin. per se violation or a drunk driving offense conviction. 29-A MRSA §§2451(3) & 2453(6)(D)

**Conditional License.** Under 29-A MRSA §§2504 & 2506, upon issuing a license to a person who has either been convicted of a DWI offense or found to have violated the admin. per se law, the following conditions may be placed on the license: 1st conviction/admin. per se action-for a period of 1 yr from the date of reinstatement, the driver cannot operate a motor vehicle after having consumed any alcohol; and, 2nd and subsequent convictions/admin per se actions (w/n 10 yrs)-for a period of 10 yrs from the date of reinstatement, the driver cannot operate a motor vehicle after having consumed any alcohol.

Under 29-A MRSA §2457, unless longer periods are authorized by law, the following special licensing sanctions apply to persons who operate a motor vehicle in violation of the above conditions: (1) Revocation for a minimum period of 1 yr if they either (a) are convicted a DWI offense or (b) have operated a motor vehicle with any amount of alcohol in the blood. If licensing action is based on operating a motor vehicle with any amount of alcohol in the blood, a restricted license for employment or educational purposes be issued if there is no alternative means of transportation and is contingent upon completion of an alcohol treatment (rehabilitation) program. 29-A MRSA §2503 (2) For refusal to submit to a chemical test where there is probable cause to believe that the driver has any amount of alc in the blood, susp for not less than 2 yrs.

<sup>1</sup>A license suspension period for a drunk driving offense conviction is reduced by any suspension period that was imposed for an admin. per se violation. 29-A MRSA §2453(6)(c)

<sup>2</sup>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. The licensee is restricted to operating motor vehicle only for the purpose of going either to and from employment or to and from an alcohol or drug program for a minimum of 90 dys after the original suspension date. 29-A MRSA §2501(1) & (2)

<sup>3</sup>**Important.** This licensing action is not mandatory in all situations; see the Special Note on p. 3-216.

**Assault Related Revocations.** If a person operates a motor vehicle in a manner which either (1) causes bodily or serious bodily injury to another individual, (2) creates a substantial risk of serious bodily injury to another individual or (3) places another individual in fear of imminent bodily injury and they are convicted of ANY criminal offense related to either assault, reckless conduct or threatening, their license is immediately and indefinitely revoked without a further hearing. The person may be issued a license after the following periods: Either (1) 3 years after discharge from incarceration for either a Class A, B or C Crime; (2) 2 years after discharge from incarceration for a Class D Crime; or, (3) 1 year after discharge from incarceration for a Class E Crime. Title 29-A, §2463

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

Other:  
Rehabilitation:  
Alcohol Education:  
Alcohol Treatment:

See the Special Note below.

I. 1st and subsequent offenders must participate in and complete an alcohol or drug program before their driving privileges can be restored. 29-A MRSA §§2411(5)(E) & 2504

II. 2nd and sub offenders must participate in an alcohol and drug treatment program. 29-A MRSA §2411(5)(F) These offenders may be required to attend a 22 hr Weekend Intervention Program consisting treatment and evaluation. 5 MRSA §20073-A(3)

**Special License.** 1st offenders may be issued a special license following alcohol/drug assessment and the completion of at least 3 treatment sessions. A 1st offender includes a first violator of the implied consent law, drunk driving law, administrative per se law and, for persons under 21 yrs old, operating a motor vehicle with any alcohol in their system. 29-A MRSA §2502

**Special Note:** In addition, a temporary restricted license may be issued to any offender for the purpose of allowing them to attend an alcohol education or treatment program notwithstanding any other provision of law. 29-A MRSA §2505

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

(1) For a sub off w/n 10 yrs, a defendant's vehicle registration (including the right to register a vehicle) and plates must be **suspended** for the same length of time as their license suspension.<sup>1</sup> 29-A MRSA §§2411(5)(B)(4), (5)(C)(4) & (5)(D)(4) and 2416 See Footnote No. 2.  
(2) A person's (sole owner's) vehicle must be **forfeited** if they operate their vehicle in violation of the DWI laws and they are still under suspension/revocation of a previous DWI offense.<sup>3</sup> 29-A MRSA §2421  
(3) Temporary Impoundment. Following an arrest either (1) for a drunk driving offense or (2) for driving while on a suspended or revoked license, based on a drunk driving offense, the vehicle used in the offense may be seized. The vehicle may be released after 8 hrs. 29-A MRSA §2422

Terms Upon Which Vehicle  
Will Be Released:  
Other:

The State has the authority to suspend the registration/certificate of title of a person's vehicle if they are subject to mandatory license suspension or revocation. 29-A MRSA §2458(2)

<sup>1</sup>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.

<sup>2</sup>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)

<sup>3</sup>Under the law, forfeiture only applies if the vehicle is owned by one person namely the defendant. I.e., a jointly owned vehicle is not subject to forfeiture. *State v. One Blue Corvette*, 732 A.2d 856 (Me. 1999)

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

Miscellaneous Sanctions  
Not Included Elsewhere:

**Ignition Interlock.** The mand susp periods may be reduced as follows, if the drunk driving offender installs an ignition interlock device on motor vehicles they operate: 2nd off-1 yr mand susp and ignition interlock use for 6 mos; 3rd off-2 yr mand susp and ignition interlock use for 2 yrs; and, 4th or sub. off-4 yr mand susp and ignition interlock use for 4 yrs. 29-A MRSA §§2401(5-A) & 2507

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes** It is a Cl C Crime to cause a death while operating a vehicle in violation of the drunk driving laws.<sup>1</sup> 29-A MRSA §2411(6) See the Special Note below.

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):  
Mandatory Minimum Term:  
Fine (\$ Range):  
Mandatory Minimum Fine:  
Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:  
Length of Term of  
Licensing Withdrawal:  
Mandatory Action--Minimum  
Length of License Withdrawal:  
Other:

Not more than **5 yrs** 17-A MRSA §1252  
**6 mos** 29-A MRSA §2411(6)  
Not more than **\$5,000** 17-A MRSA §1301  
**\$2,000** 29-A MRSA §2411(6) See II under **Surcharges** on p. 3-213.

**Susp<sup>2</sup>** (court ordered) 29-A MRSA §2411(6)

**6 yrs** 29-A MRSA §2411(6)

**6 yrs** 29-A MRSA §2411(6)

**I. Administrative Suspension:** A person, who negligently causes the death of another, while driving either (1) while under the influence of intoxicants, (2) with a BAC  $\geq 0.08$  or (3) who fails to submit to a chemical test, has their license suspended for 3 yrs (mand) by the licensing agency. If the case of test refusal, the suspension is consecutive to the refusal susp. Otherwise, the this susp is deducted from the regular susp or rev period. 29-A MRSA §2456

**II. Driver Education/Substance Abuse Program:** If alcohol or drugs are involved in a criminal homicide caused by the operation of a motor vehicle, a defendant must complete a driver education program and, if needed, a substance abuse and/or a 2 yr. after care program prior to license restoration. 29-A MRSA §2455(3)

<sup>1</sup>**Manslaughter Statutes.** It is a Cl A Crime to cause a death by criminal negligence or reckless conduct via a motor vehicle. The sanctions for a Cl A Crime are incarceration for not more than **40 yrs** and/or a fine of not more than **\$50,000**. 17-A MRSA §§1252 & 1301 And, an offender's license is revoked for **5 yrs**. 29-A MRSA §2454(1) See Footnote No. 2 and the Special Note below.

<sup>2</sup>**Death Related to Intoxication.** A defendant's license is **permanently revoked** if they were under the influence of an intoxicant at the time of the offense. However, a first offender may have their license reinstated after 10 yrs. 29-A MRSA §2454(2) & (5)

**Special Note:** The Maine Criminal Code (17-A MRSA) does not use the terms "misdemeanor" or "felony " to either describe or define crimes. The law describes the offense of vehicle homicide as a Class A crime without further defining it as either a misdemeanor or a felony. **Comment:** Most States would consider a Class A to be a felony.

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Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

See Footnote No. 1 and II under **Surcharges** on p. 3-213.

1st, 2nd & 3rd offs-Cl E crime-Not more than **6 mos**; sub off-Cl C crime-Not more than **5 yrs** 17-A MRSA §1252 & 29-A MRSA §2412-A  
See Temporary Impoundment under Vehicle Impoundment/ Confiscation for a DWI offense on p. 3-216.

Mandatory Minimum Term  
of Imprisonment:

1st off-**7 con dys**; 2nd off (w/n 10 yrs)-**30 con dys**<sup>2</sup>; 3rd off (w/n 10 yrs)-**60 con dys**<sup>2</sup>; 4th or sub off (w/n 10 yrs)-**6 mos**<sup>2</sup> 29-A MRSA §2412-A(3)

Fine (\$ Range):

1st, 2nd & 3rd offs-Cl E crime-Not more than **\$1,000**; sub off-Cl C crime-Not more than **\$5,000** 17-A MRSA §1301, subs. 1-A

Mandatory Minimum Fine:

1st off-**\$500**; 2nd off (w/n 10 yrs)-**\$1,000**<sup>2</sup>; 3rd off (w/n 10 yrs)-**\$2,000**<sup>2</sup>; 4th or sub off (w/n 10 yrs)-**\$3,000**<sup>2</sup> 29-A MRSA §2412-A(3)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

**Susp** 29-A MRSA §2412-A(3)

Length of Term of License

Withdrawal Action:

**1 to 3 yrs** Added to the original susp or rev.

Mandatory Term of License

Withdrawal Action:

**1 yr** Added to the original susp or rev.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

**Yes** 29-A MRSA §2551 et seq.

Grounds for Being Declared an

Habitual Offender:

Convictions for 3 serious traffic offs. w/n 5 yrs (e.g. veh. homicide, DWI, reckless driving, etc.)<sup>3</sup>

Term of License Rev While

Under Habitual Offender Status:

Rev-**Indefinite** However, relief from such rev may be granted after **1 yr**<sup>4</sup>. 29-A MRSA §§2552 & 2554

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

1st off-Cl D crime; sub. off (w/n 10 yrs)-Cl C crime 29-A MRSA §2557(2)

<sup>1</sup>The CMV law does not provide sanctions for operating CMV during either a CDL disqualification or a CDL out-of-service order. **Special Note:** Under 29-A MRSA §2458(2)(M), the licensing agency is authorized to suspend a CMV operators CDL if they violate Federal law or regulations (e.g., 49 USC §31301 et seq. and 49 CFR §§383.51, 383.53, 383.82, 391.15, 392.5, 392.13 & 49 CFR Part 386, Appendix A) pertaining to CMV operators. Therefore, any Federal law or regulation that makes it an offense to operate a CMV while either disqualified or under an out-of-service order, could result in a State authorized CDL suspension.

<sup>2</sup>For 2nd and sub offs, the mand sanctions are imposed only if mand sanctions were imposed for prior offs. 29-A MRSA §2412-A(3)

<sup>3</sup>Relief from habitual offender status shall not be granted for at least 3 yrs from the date the offender would have been eligible. 29-A MRSA §2557

<sup>4</sup>A work-restricted license is available after **8 mos**. 29-A MRSA §2556 However, a person is not eligible for this type of license, if either (1) one of the offenses used to determine habitual offender status was homicide related to motor vehicle operations, (2) they are convicted of operating a motor vehicle while on habitual offender status or (3), after having thier license restored, they are convicted w/n 5 yrs of an offense cited in the habitual offender law. In addition, a person is not eligible for this type of license, if one of the offenses used to determine habitual offender status was a DWI offense, until they complete (1) the required license suspension periods and (2) any alcohol or drug program. 29-A MRSA §2556(5)

Other Criminal Actions Related to DWI: (continued)

Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:

Imprisonment (Term): 1st off-Less than **1 yr**; sub. off (w/n 10 yrs)-Not more than **5 yrs** 17-A  
MRSA §1252

Mandatory Minimum Term of  
Imprisonment:

**None**

Fine (\$ Range):

1st off-Not more than **\$2,000**; sub. off (w/n 10 yrs)-Not more than  
**\$5,000** 17-A MRSA §1301 See II under **Surcharges** on p. 3-213.

Mandatory Minimum Fine (\$):

**None**

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

**No**

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

**21** (Year Eff: 1985) 28-A MRSA §§2(20) & 2051(1)(A) and citations  
listed under criminal actions for selling alcohol to minors below.

Minimum Age (Years) Possession:

**21** Home and employment exemption 28-A MRSA §§2(20) &  
2501(1)(E)

Minimum Age (Years) Consumption:

**21** Except at home in the presence of either parents or legal guardians  
28-A MRSA §§2(20) & 2051(1)(B)

Dram Shop Laws and Related Legal Actions:

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

**Yes** 28-A MRSA §2501 et seq. Note: Except for medical expenses,  
recovery under the dram shop act is limited to \$250,000 per single  
accident or occurrence. 28-A MRSA §2509<sup>1</sup>

"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<sup>2</sup>**

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:

A licensee may be liable for the injuries sustained by an intoxicated  
patron. If the patron is less than 18 yrs old, liability may be based on  
negligent or reckless service of alc. bev. If the patron is at least 18 yrs  
old, liability is based on reckless service of alc. bev. 28-A MRSA  
§§2504 & 2507 and *Jackson v. Tedd-Lait Post No. 75, 723 A.2d 1220*  
(Me. 1999)

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

<sup>2</sup>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 the exclusive remedy for such actions. *Peters v. Saft*, 597 A.2d 50 (Me. 1991), & *Jackson v. Tedd-Lait Post No. 5, 723 A.2d 1220* (Me. 1999)

MAINE

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

See II under **Surcharges** on p. 3-213.  
Class E Crime 28-A MRSA §§1, 62(8), 354, 705(2)(A) & 705(3)(A)  
Not more than **6 mos** 17-A MRSA §1252(2)(E)  
For a person, not more than **\$1,000**; for an organization, not more than **\$10,000** 17-A MRSA §1301(1)(C) & (3)(E)

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term of License Withdrawal:

**Yes** Susp or rev 28-A MRSA §§801 & 803(5)  
For susp-not specified in the statute; for rev-**1 to 5 yrs**<sup>1</sup>

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

Type of Criminal Action:  
  
Term of Imprisonment:  
Fine (\$ Range):

See II under **Surcharges** on p. 3-213.  
Class E Crime 28-A MRSA §§1, 2(20), 62(8), 354, 705(2)(E), 705(3)(E), 1901 & 1902  
Not more than **6 mos.** 17-A MRSA §1252(2)(E)  
For a person, not more than **\$1,000**; for an organization, not more than **\$10,000** 17-A MRSA §1301(1)(C) & (3)(E)

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes** Susp or Rev 28-A MRSA §§801 & 803(5)  
For susp-not specified in the statute; for rev-**1 to 5 yrs**<sup>1&2</sup>

Anti-Happy Hour Laws/Regulations:

**Yes** 28-A MRSA §709

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

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**Yes** Applies drivers and passengers 29-A MRSA §2112-A  
**Yes** Applies drivers and passengers 29-A MRSA §2112-A

<sup>1</sup>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)

<sup>2</sup>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

\*Other provisions of the law provide for the following sanctions against individuals who sell or serve alcoholic beverages to intoxicated persons or minors. **Intoxicated Persons.** Class E Crime-Only a forfeiture of \$500. **Minors.** Class D Crime-Jail-not more than 1 yr/fine-not more than \$2,000. An offender must pay a mandatory fine of \$500 if they are either (1) a first offender, who has purchased alcoholic beverages for a person under 14 years old or (2) a second offender (w/n 6 yrs). A third or subsequent offender (w/n 6 yrs) must pay a mandatory fine of \$1,000. If the violation caused the death of the minor or another person, Class C Crime-Jail-not more than 5 yrs/fine-not more than \$5,000. 17-A MRSA §§1252(2)(C) & (D), 1301(1)(C) & (D) and 28-A MRSA §2081

STATE:  
General References:

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

Basis for a DWI Charge:

Standard DWI Offense:	I. While under the influence of alcohol Tran. §21-902(a)(1) II. While impaired by alcohol Tran. §21-902(b) ≥ <b>0.08</b> <sup>1&amp;2</sup> Tran. §§11-127.1 & 21-902(a)(2)
Illegal Per Se Law (BAC/BrAC):	<b>None</b>
Presumption (BAC):	While impaired by (1) <b>Any Drug</b> , (2) Any Combination of Drugs, (3) a Combination of One or More Drugs and Alcohol and (4) Any Controlled Dangerous Substance Tran. §21-902(c)(1) & (d)
Types of Drugs/Drugs and Alcohol:	I. An alcohol concentration ≥ <b>0.07</b> but < <b>0.08</b> <sup>2</sup> is <i>prima facie</i> evidence of driving while impaired by alcohol. C&JP §10-307(d) II. An alcohol concentration ≥ <b>0.08</b> shall be considered under the influence of alcohol per se. C&JP §10-307(e) For Commercial Motor Vehicle Operators, see below. For <b>Persons Under 21 Years Old</b> , see Footnote No. 3.
Other:	

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	<b>Yes</b> Tran. §16-205.2
Implied Consent Law:	<b>Yes</b> The law uses the term "detained" instead of "arrest". Tran. §16-205.1
Arrest Required (Yes/No):	
Implied Consent Law Applies to Drugs (Yes/No):	<b>Yes</b> Tran. §16-205.1 See also C&JP §10-302 et seq.
Refusal to Submit to Chemical Test Admitted into Evidence:	<b>Yes</b> (Criminal Cases) C&JP §10-309(a)(2) Evidence of a refusal can only be admitted if it is "material and relevant" to collateral issues related to such offense. <i>Krauss v. State</i> , 587 A.2d 1102 (Md. 1991)

<sup>1</sup>The offense is defined as operating motor vehicle while "under the influence of alcohol per se". Tran. §21-902(a)(2) "Under the influence of alcohol per se" is defined as having a BAC/BrAC ≥0.08 at the time of testing. Tran. §11-127.1

<sup>2</sup>Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. C&JP §10-307(a)(2)(i) & (ii), Tran. §§11-103.2 & 11-127.1 and Art. 27, §§388A(a)(2)(I) & 388B(a)(2)(I)

<sup>3</sup>**Persons Under 21 Years Old.** A person <21 yrs old must have a restriction placed on their license that prohibits them from operating a motor vehicle with alcohol in their blood. A BAC/BrAC ≥0.02 (For standards, see Footnote No. 3 above.) is *prima facie* evidence of a violation of driving with alcohol in the blood. C&JP §10-307(e) & (f) and Tran. §16-113(b)(1)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (See Footnote No. 3 above.), (2) have violated Tran. §21-902 or a similar Federal law or (3) refuse to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life. Note: The lifetime disqualification is mand unless a reduced period is provided by Federal regulations. A CMV operator is also subject to DWI criminal sanctions and administrative actions against their regular driving privileges. In addition, a CMV operator, who has any "detectable" amount of alcohol in their system, must be placed "out-of-service" for 24 hours. C&JP §10-307(a) and Tran. §§11-103.1, 11-103.2, 11-109, 11-109.1, 11-111.1, 16-205.1(b)(1)(iii), 16-208.1, 16-812 & 16-813

**MARYLAND**

Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information:

**Special Note:** If a driver is involved in either a driving while under the influence of alc or driving while impaired (alcohol or drugs) which is related to an accident that resulted either in the death of or life threatening injury to another person, the driver shall be required to submit to a chemical test of their blood or breath. Tran. §16-205.1(c)(1) Except as noted above, a person cannot be compelled to submit to a chemical test. C&JP §10-309(a)(1)

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

Blood:  
Urine:  
Other:

**Yes<sup>1</sup>** Tran. §16-205.1 See also C&JP §10-302 et seq.  
**No**  
**None**

Adjudication of DWI Charges:

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

**No** See Footnote No. 1 on p. 3-223.  
**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):  
Administrative Licensing Action  
(Susp/Rev):  
Other:

**None**  
**None**  
**None**

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

**None**

1st refusal-Susp for 120 dys<sup>1</sup>; 2nd and sub refusals-Susp for 1 yr<sup>1</sup>  
A suspension may be modified or a restricted license may be issued if an offender participates in the "ignition interlock" program for at least 1 yr. Tran. §16-205.1  
**None**

Other:

<sup>1</sup>Under C&JP §10-305(a), a test for alcoholic content via a blood cannot be administered unless (1) the driver is unconscious and incapable of refusing a test, (2) the driver, because of injuries, has been taken to a medical facility or (3) breath test equipment is not available. The Court of Appeals of Maryland has held that, under this statute, if a driver agrees to submit to a breath test and the equipment is available but not a qualified operator, the driver may refuse to submit to blood test with out incurring licensing action. Under these circumstances, a refusal to submit to a blood test is not considered to be a refusal to submit to a chemical test under the implied consent law. *Hyle v. MVA*, 702 A.2d 760 (Md. 1997)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Footnote No. 1 and Double Jeopardy below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1) <u>Driving while impaired</u> <sup>2</sup> (Misd): <u>1st off</u> -Not more than <b>2 mos</b> ; Subsequent <u>off</u> <sup>3</sup> -Not more than <b>1 yr</b> 2) <u>Driving while under the influence of alc/≥0.08</u> (Misd): <u>1st off</u> -Not more than <b>1 yr</b> ; <u>2nd off</u> <sup>3</sup> -Not more than <b>2 yrs</b> ; <u>3rd &amp; sub. off</u> <sup>3</sup> -not more than <b>3 yrs</b> Trans. §§21-902 and 27-101(c), (f) & (k) 3) <u>A person &lt;21 years old operating a vehicle in violation of the 0.02 BAC/BrAC license restriction</u> (Misd)- <b>None</b> Tran. §§27-101(b) & 27-102
Mandatory Minimum Term:	For a subsequent under the influence of alc/≥0.08 Off. conviction (w/n 3 yrs)- <b>48 con hrs</b> <sup>4</sup> Tran. §27-101(j)
Fine:	
Amount (\$ Range):	1) <u>Driving while impaired</u> <sup>2</sup> : <u>1st off</u> -Not more than <b>\$500</b> ; <u>Subsequent off</u> <sup>3</sup> -Not more than <b>\$500</b> 2) <u>Driving while under the influence of alc/≥0.08</u> , <u>1st off</u> -Not more than <b>\$1,000</b> , <u>2nd off</u> -Not more than <b>\$2,000</b> ; 3rd & sub. off-not more than <b>\$3,000</b> 3) <u>A person &lt;21 years old operating a vehicle in violation of the 0.02 BAC/BrAC license restriction</u> (Misd)-Not more than <b>\$500</b> Tran. §§27-101(b) & 27-102
Mandatory Min. Fine (\$):	<b>None</b>
Other Penalties:	
Community Service:	For a subsequent under the influence of alc/≥0.08 offense, conviction (w/n 3 yrs.) in lieu of the mandatory jail sentence-80 hrs. of community service. Tran. §27-101(j)
Restitution (eg Victim's Fund)	(1) The court may order a defendant to pay restitution. Art. 27, §640 (2) Also, a victim may receive payments (≤\$45,000) under the Criminal Injuries Compensation Act. Art. 26A
Other:	<b>Ignition Interlock.</b> As a condition of probation, the court may order a defendant for <b>3 yrs</b> to only operate vehicles equipped with "ignition interlock" devices. Art 27, §641(a)(1)(ii)(2) and Tran. §§27-107 & 27-108 On p. 3-225, see Ignition Interlock and Alcohol Education.

<sup>1</sup>Probation before judgment cannot be granted by a court for a sub. alc. driving offense (w/n 5 yrs). A prior offense includes offenses for which a person has received probation before judgment. Art. 27, §641(a)(2) & *State v. Shilling*, 540 A.2d 1184 (Md. App. 1988) Note: The record of a person, who has been placed on probation before judgment for an alcohol driving offense, cannot be expunged. Art. 27, §737(a)(3)

<sup>2</sup>Includes driving while impaired by drugs/alcohol and drugs/controlled substances. Tran. §§21-902(c) & (d) and 27-101(c) & (f)(1)

<sup>3</sup>A previous offense includes **ANY** prior alcohol driving offense. Tran. §27-101(f)(2), (3) & (4)

<sup>4</sup>Imprisonment includes confinement in an inpatient rehabilitation or treatment center. Tran. §27-101(j)

<sup>5</sup>Note: The law does not place a time for determining a 2nd or subsequent under the influence of alc/0.08 offense where the first offense was also an under the influence of alc/0.08 offense. However, for sentence enhancement purposes, a previous offense does include **ANY** prior driving while impaired offense committed w/n 5 yrs of an under the influence of alc/0.08 offense. Tran. §27-101(k)(2)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Jones*, 666 A.2d 128 (Md. 1995)(cert. den., 516 U.S. 1173, 116 S.Ct. 1265, 134 L.Ed.2d 213 (1996)), & *Johnson v. State*, 622 A.2d 199 (Md. App. 1993)

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

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

See Double Jeopardy on p. 3-223.

**Yes**  $\geq 0.08$  (BAC/BrAC See Footnote No. 2 on p. 3-221.) 1st violation-Susp 45 dys; 2nd or sub. violation-susp 90 dys. These susps are **not** mandatory under the following conditions. I. A restricted hardship license can be issued,<sup>1</sup> if the licensee has (1) not had a previous admin. per se violation (w/n 5 yrs), (2) not had a prior alcohol offense<sup>2</sup> conviction (w/n 5 yrs) or (3) not refused to submit to a test under the implied consent law. II. A susp may be modified or a restricted license may be issued if an offender participates in the "ignition interlock" program for at least 1 yr. C&JP §10-307(a)(2) & Tran. §16-205.1

Other:

**None**

Post DWI Conviction Licensing Action:

See Point System and Ignition Interlock on p. 3-225 and License Restrictions below.

Type of Licensing Action  
(Susp/Rev):

I. Driving while impaired (of alcohol or alcohol and drugs), 1st off-Susp; 2nd off (w/n 3 yrs)<sup>3</sup>-**Susp**; 3rd & sub. off (w/n 3 yrs)<sup>3</sup>-**Rev**

II. Driving while under the influence of alc/ $\geq 0.08$  (or impaired by a controlled dangerous substance)-**Rev**

III. A person <21 years old operating a vehicle in violation of the 0.02 BAC/BrAC license restriction-Susp or Rev Tran. §§16-205, 16-208 & 16-113(f)

IV. Persons <18 Years Old: (1) Driving while under the influence of alc/ $\geq 0.08$  or while impaired by a "controlled dangerous substance"-**Rev** (2) Driving while impaired by alcohol or any other drug-Susp C&JP §3-824(4)(i)

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

I. For Driving while impaired, 1st off-Not more than 60 dys; 2nd off (w/n 3 yrs)-Not more than **120 dys**

<sup>1</sup>The licensee may be required to participate in the "ignition interlock" program as a condition of restricted driving privileges. Tran. §16-205.1(n)(2) A person in this program may have their susp modified and be issued a restricted license. Tran. §16-205(e)

<sup>2</sup>A conviction (w/n 5 yrs) for either Driving While Under the Influence of alc/ $\geq 0.08$  or Driving While Impaired.

<sup>3</sup>A previous offense includes a Driving While Under the Influence of Alc/ $\geq 0.08$ . Tran. §16-205(a)(2) & (d)

**License Restrictions.** I. If a person has been convicted of any combination of two or more drunk driving offenses (w/n 5 yrs) (See Footnote No. 1 above.), the licensing agency **must** place a restriction on the person's license that prohibits them from operating a motor vehicle with any amount of alcohol in their blood for 3 yrs. Tran. §16-113(g)(1) II. The licensing agency shall, when directed to do so by a court, place a restriction on a person's license which prohibits them from operating a motor vehicle with any amount of alcohol in their blood. This restriction could apply to persons who have been convicted of any type of drunk driving offense (See Footnote No. 1 above.) for the first time. Tran. §16-113(g)(2) III. In addition, the licensing agency may, when issuing a license, place a restriction on a person's license which prohibits them from operating a motor vehicle with any amount of alcohol in their blood or prohibits them from driving a motor vehicle. This restriction may contain a requirement that the person participate in the "ignition interlock" program. Tran. §16-113(a)(1)(II) & (2) A BAC/BrAC  $\geq 0.02$  is *prima facie* evidence that the person was operating a motor vehicle with alcohol in their body. C&JP §10-307(f) The sanctions for violating a restriction on a driver's license are as follows: Jail-(1) violation of a licensing agency ordered restriction-**None** (2)-violation of a court ordered restriction-not more than **2 yrs**; fine-Not more than **\$500**; licensing action-**Susp or Rev**-If suspension, not more than **1 yr**; if revocation, the period is based on the **number of previous revocations** a person has regardless of the basis; the periods are as follows: **6 mos** for a 1st rev; **1 yr** for a 2nd rev; and, **18 mos** for 3rd and subsequent revocations. Tran. §§16-113(f), 16-208, 27-101(b) & 27-102

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

II. For Driving while impaired 3rd & sub. off (w/n 3 yrs) and for all Driving while under the influence of alc/≥0.08 offs (or impaired by a controlled dangerous substance), the period of rev is based on the **number of previous revs** a person has regardless of the basis<sup>1</sup>; the periods are as follows: 1st rev- **6 mos**; 2nd rev- **1 yr**; 3rd rev-**18 mos**<sup>2</sup>; 4th ans sub rev **2 yrs**<sup>2</sup>

III. A person <21 yrs old operating a vehicle in violation of the 0.02 BAC/BrAC license restriction-Susp-Not more than **1 yr** or **Rev**-Based on the number of previous revocations; see II above.

IV. Persons <18 Years Old: (1) Driving while under the influence of alc/≥0.08 or under while impaired by a "controlled dangerous substance"-Rev in the same manner as an adult (2) Driving while impaired by alcohol or any other drug-1st off-6 mon; 2nd or sub off-**1 yr**

<sup>1</sup>I.e., the previous revocations do not have to be alcohol driving offense related.

<sup>2</sup>License reinstatement only after the licensing agency is satisfied that it is safe to take such action. Tran. §16-208(b)

**Point System.** A person who has been convicted of an alcohol driving offense can have their license either suspended or revoked either under Tran. §16-205 or under Tran. §16-401 et. seq. (the point system). Under the point system, a driver is assessed the following points for alcohol driving off convictions: Driving While Impaired (by alcohol, drugs or a combination of alcohol and drugs)-8 points and Driving While Under the Influence of Alcohol/≥0.08 (or while impaired by a controlled dangerous substance)-12 points. (1) Points assessed for any traffic law violation remain on a driver's record for two (2) yrs. A person who accumulates 8 points is subject to a license suspension and an accumulation of 12 points results in license revocation. Note: The higher point accumulations, 16 for susp and 19 for rev, allowed for persons who drive in the course of employment do not apply to drunk driving offense violations. Tran. §16-405(b) & (c) The following suspensions apply for point accumulations related to Driving While Impaired (by alcohol, drugs or a combination of alcohol and drugs): 1st off-susp not more than 6 mos; 2nd off (at least 5 yrs after 1st)-susp for not more than 9 mos; 2nd off (w/n 5 yrs) or 3rd off-susp for not more than 12 mos.; and 4th or sub off-susp for not more than 24 mos. Tran. §16-404(c)(2) A person, who has accumulated the requisite number of points is subject to the following revocation periods. These periods are based on the **number of previous revocations** a person has been subjected to regardless of their basis: **6 mos** for a 1st revocation; **1 yr** for a 2nd revocation; **18 mos** for a 3rd revocation; and, **2 yrs** for a 4th or subsequent revocation. Tran. §16-208(b) Important. See Ignition Interlock below. **Special Note:** A person, who has been convicted of two Driving While Impaired (by alcohol or drugs and alcohol) offenses w/n 2 yrs, would accumulate 16 points on their driving record and be subject to license revocation instead of suspension. Persons <18 years Old. **Susp** for **6 mos** if they accumulate 6 points; **susp** for **1 yr** if they accumulate 2 additional points. Tran. §16-206(b) Important. These suspensions may be modified (i.e., they are not mandatory). Tran. §16-206(c)(5)

**Ignition Interlock.** Under Tran. §16-404.1, the licensing agency may establish an ignition interlock program for persons who have been convicted of alcohol related driving offenses. Note: This program does not apply to persons who have been convicted of driving while under the influence of a controlled substance. A person, who is subject to license suspension via the point system for a conviction of Driving While Impaired (by alcohol, drugs or a combination of alcohol and drugs), may be issued a restricted license if they participate in the Ignition Interlock Program. Tran. §§16-404(c)(3) & 16-404.1(4)(i) A person, who is subject to license revocation following a conviction for either Driving While Impaired (by alcohol, drugs or a combination of alcohol and drugs) or for Driving While Under the Influence of Alcohol/Alcohol Per Se (≥0.08), may have their license suspended in lieu of revocation if they participate in the ignition interlock program. The suspension periods (or restricted license) imposed are the same as for Driving While Impaired. Tran. §16-404.1(b)(4)(iii) A 4th or subsequent offender is considered an "habitual offender" and they cannot have their driving privileges restored until they have participated in this program for at least 24 mons. Tran. §16-404.1(d) Note: A court order requiring the use of an ignition interlock device is not affected by these provisions. Tran. §16-404.1(f) Persons Under 21 Years Old. A person under 21 years old, who is applying for a license following a conviction for any alcohol driving offense, may be required to participate in the "ignition interlock" program for not more than 3 yrs. Tran. §16-113(a)(4) Persons Who Have Violated the Admin. Per Se or Implied Consent Laws. These persons may obtain restricted driving privileges if they participate in the "ignition interlock" program for 1 yr. Tran. §16-205.1(n)(2), (3) & (4) Under separate provisions of law, a person, who participates in the "ignition interlock" program, may have their susp modified and be issued a restricted license. Tran. §16-205(e)

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

Mandatory Minimum Term of Withdrawal:	None Tran. §§16-205, 16-206(5), 16-208, 16-404.1 & 16-405
Other:	
Rehabilitation:	
Alcohol Education:	Yes Alcohol education/treatment required as a condition of probation. Any offender may be required to attend a driver improvement or an alcohol education program as a condition or reinstatement of their driving privilege. Health-General §8-404, Tran. §16-212 and Art. 27, §§639(b) & 641(a)(1)(ii)(1)
Alcohol Treatment:	Yes See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	Important. See Footnote No. 1 on p. 3-228.
Miscellaneous Sanctions	
Not Included Elsewhere:	<b>Child Endangerment.</b> I. Driving while under the influence of alc/alc per se <sup>1</sup> while transporting a "minor" <sup>2</sup> : 1st off-Jail not more than 2 yrs/fine-not more than \$2,000; 2nd off <sup>3</sup> -Jail not more than 3 yrs/fine-not more than \$3,000; 3rd and sub off <sup>3</sup> -Jail not more than 4 yrs/fine-not more than \$4,000. II. Driving while impaired by alcohol, drugs or a controlled dangerous substance while transporting a "minor" <sup>2</sup> : 1st off-Jail not more than 6 mos/fine-not more than \$1,000; 2nd and sub off <sup>3</sup> -Jail not more than 1 yr/fine-not more than \$2,000. Tran. §27-101(q) <b>Negligent Related Drunk Driving Which Causes a Life Threatening Injury.</b> <sup>4</sup> While under the influence of alc/alc per se <sup>1</sup> -Misd-Jail not more than 3 yrs/fine-not more than \$5,000 II. While impaired by alcohol-Misd-Jail not more than 2 yrs/fine-not more than \$3,000 III. While impaired by drugs-Misd-Jail not more than 2 yrs/fine-not more than \$3,000 IV. While impaired by a controlled dangerous substance-Misd-Jail not more than 2 yrs/fine-not more than \$3,000 Art. 27, §388B <b>Provisional Licensee.</b> A provisional licensee is subject to the following additional sanctions, 1st alcohol driving off- "driver improvement program" (mand); 2nd alcohol driving off-Susp-not more than 30 dys; 3rd or sub alcohol driving off-Susp/Rev-not more than 180 dys This action is not mand. Tran. §16-213 <b>Alcohol Restricted License.</b> A person's driving privileges may be restricted to operating motor vehicles without any alcohol in their blood. Tran. §16-113(a)(1)(ii) <b>Custodial Confinement.</b> As a condition of probation, the court may order a person to a term of "custodial confinement" which can include (1) home detention or (2) inpatient treatment (e.g., alcohol or drug inpatient treatment). Art. 27, §§639, 641 & 641A and Crim. Proc. Art. §§6-219, 6-220 & 6-225

<sup>1</sup>"Under the influence of alcohol per se" is defined as a BAC/BrAC >0.08 at the time of testing. Art. 27, §388B & Tran. §11-127.1 The offense involves operating motor vehicle while under the influence per se. For standards, see Footnote No. 2 on p. 3-221.

<sup>2</sup>A "minor" is generally a person <18 yrs old. Art. 1, §24(b)(2)

<sup>3</sup>A prior offense includes any type prior drunk driving offense whether or not related to child endangerment.

<sup>4</sup>For these offenses, 12 points are assessed and this results either in a 6 mo rev, if this is a 1st rev, 1 yr rev if this is a 2nd rev or 18 mo if this is a 3rd rev. These revocations are not mand. Tran. §§16-208(b), 16-402(a)(29), 16-404(a)(3)(ii) and 16-405(a) & (b)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

See Custodial Confinement on p. 3-226.  
**Yes** I. Death caused by driving a vehicle in a grossly negligent manner (felony) Art. 27, §388  
 II. Death caused by driving in a vehicle in a negligent manner either while under the influence of alcohol or under the influence of alcohol per se<sup>1</sup> (felony) Art. 27, §388A(b)  
 III. Death caused by driving in a vehicle in a negligent manner while impaired by alcohol (felony) Art. 27, §388A(c)  
 IV. Death caused by driving in a vehicle in a negligent manner while impaired by drugs (felony) Art. 27, §388A(d)  
 V. Death caused by driving in a vehicle in a negligent manner while impaired by a controlled dangerous substance (felony) Art. 27, §388A(e)

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

I. Death caused by driving a vehicle in a grossly negligent manner-Not more than **10 yrs**,  
 II. Death caused by driving in a vehicle in a negligent manner either while under the influence of alcohol or under the influence of alcohol per se<sup>1</sup> (felony)-Not more than **5 yrs**  
 III. Death caused by driving in a vehicle in a negligent manner while impaired by alcohol (felony)-Not more than **3 yrs**  
 IV. Death caused by driving in a vehicle in a negligent manner while impaired by drugs (felony)-Not more than **3 yrs**  
 V. Death caused by driving in a vehicle in a negligent manner while impaired by a controlled dangerous substance (felony)-Not more than **3 yrs**

Mandatory Minimum Term:  
Fine (\$ Range):

**None**  
 I. Death caused by driving a vehicle in a grossly negligent manner-Not more than **\$5,000**  
 II. Death caused by driving in a vehicle in a negligent manner either while under the influence of alcohol or under the influence of alcohol per se<sup>1</sup> (felony)-Not more than **\$5,000**  
 III. Death caused by driving in a vehicle in a negligent manner while impaired by alcohol (felony)-Not more than **\$5,000**  
 IV. Death caused by driving in a vehicle in a negligent manner while impaired by drugs (felony)-Not more than **\$5,000**  
 V. Death caused by driving in a vehicle in a negligent manner while impaired by a controlled dangerous substance (felony)-Not more than **\$5,000**

Mandatory Minimum Fine:  
Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

**None**  
 I. Drunk Driving Related Offenses-Rev Tran. §16-205(b)  
 II. Other Offenses-Rev via the point system Twelve (12) points are assessed for these offenses.<sup>2</sup> Tran. §§16-402(a)(29), 16-404(a)(3)(ii) & 16-405(b)

<sup>1</sup>Under the influence of alcohol per se" is defined as a BAC/BrAC ≥0.08 at the time of testing. Art. 27, §388A & Tran. §11-127.1 The offense involves operating motor vehicle while under the influence per se. For standards, see Footnote No. 2 on p. 3-221.

<sup>2</sup>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.

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Other Criminal Actions Related to DWI: (continued)

Length of Term of Licensing Withdrawal:	<b>6 mos</b> rev, if this is a <u>1st rev</u> ; <b>1 yr</b> rev, if this is a <u>2nd rev</u> ; <b>18 mos</b> rev, if this is a <u>3rd rev</u> ; and, <b>2 yrs</b> rev, if this is a <u>4th or sub rev</u> . Tran. §16-208(b)
Mandatory Action--Minimum Length of License Withdrawal:	<b>None</b> Note: A revocation may be denied, canceled or modified if a defendant needs to operate a motor vehicle for employment purposes. Tran. §16-405(a)
Other:	<b>None</b>
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*</u> : Sanction: Criminal: Imprisonment (Term):	See Footnote No. 1 and the Special Note below. See Custodial Confinement on p. 3-226. Misd <u>1st off</u> - Not more than <b>1 yr</b> ; <u>2nd and subsequent offs</u> -Not more than <b>2 yrs</b> Tran. §§16-303(c) & (d) & 27-101(h)
Mandatory Minimum Term of Imprisonment: Fine (\$ Range):	<b>None</b> <u>1st off</u> -Not more than <b>\$1,000</b> ; <u>2nd and subsequent offs</u> -Not more than <b>\$1,000</b> Tran. §27-101(h)
Mandatory Minimum Fine: Administrative Licensing Actions: Type of Licensing Action (Susp/Rev):	<b>None</b> See Footnote No. 2 below. <b>Rev</b> via the point system (12 points are assessed) Tran. §6-402(a)(29)
Length of Term of License Withdrawal Action:	<b>6 mos</b> if a <u>1st rev</u> ; <b>1 yr</b> if a <u>2nd rev</u> ; <b>18 mos</b> if this is a <u>3rd rev</u> ; and, <b>2 yrs</b> rev, if this is a <u>4th or sub rev</u> . Tran. §16-208(b)

<sup>1</sup>I. If a person drives a motor vehicle while their license is suspended or revoked for an alcohol off, the registration of the motor vehicle they were driving may be suspended for not more than 120 dys. Tran. §§13-705.1, 16-303 & 27-101

II. In addition, if a person drives a motor vehicle while their license is suspended or revoked for an alcohol off, the vehicle used in the offense may be either **impounded or immobilized** for not more than **180 dys**. Tran. §27-111(c)

III. A person, convicted of a moving violation while their license is still revoked, is subject to having the revocation extended for 1 yr for a 1st violation, 18 mos for a 2nd violation and 2 yrs for a 3rd or sub violation. This action is discretionary. Tran. §16-402(c)

<sup>2</sup>If a person's license is revoked and they are convicted of **any moving** violation, their revocation may be extended as follows: 1st violation-1 yr; 2nd violation-18 mos; and, 3rd or sub violation-2 yrs. Tran. §16-402(c)

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

**Special Note:** I. It is a misd to operate a CMV during a CDL disqualification. The sanctions for this offense are as follows: 1st off-imprisonment for not more than 6 mos and/or fine for not more than \$1,000; 2nd off-imprisonment for not more than 1 yr and/or a fine of not more than \$2,000; and, 3rd or subsequent off-imprisonment for not more than 2 yrs and/or a fine of not more than \$3,000. Tran. §§16-808(9) & 27-101(a) & (s) II. The following sanctions apply to persons who violate a CDL out-of-service order. Under Tran. §16-812, a violator is subject to a CMV disqualification for the periods specified under Federal Regulations (49 CFR 383.51(d)). These periods are as follows: 1st violation-not less than 90 dys; 2nd violation (w/n 10 yrs)-not less than 1 yr; and, 3rd or subsequent violation (w/n 10 yrs)-not less than 3 nor more than 5 yrs. If the transportation of either hazardous materials or passengers was involved in the violation, the disqualification is as follows: 1st violation-not less than 180 dys; and, a subsequent violation (w/n 10 yrs)-not less than 3 nor more than 5 yrs. In addition, under Tran. §27-101.1, a violator is subject to a civil penalty of not less than \$1,000 nor more than \$2,500 as specified under Federal Regulations (49 CFR 383.53(b)(1)).

Other Criminal Actions Related to DWI: (continued)

Mandatory Term of License Withdrawal Action:	A rev may be canceled or modified if employment or opportunity for such would be adversely affected. Tran. §16-405(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:

<u>Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:</u>	
State Has Such a Law (Yes/No):	No
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	
<u>Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:</u>	
Minimum Age (Years) Sale/Purchase:	21 <sup>1</sup> Art. 2B, §12-108(a) and Art. 27, §§400, 401A & 403 (Year Eff: 1982)
Minimum Age (Years) Possession:	21 Art. 2B, §12-108(d) <sup>2</sup> & Art. 27, §400A There is an employment exception. However, a person under 18 yrs old "may not be engaged in the sale of alcoholic beverages." Art. 2B, §12-302(a)(1)
Minimum Age (Years) Consumption:	None <sup>2&amp;3</sup>

<sup>1</sup>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

<sup>2</sup>Article 2B, §12-108(d) provides that no licensee shall allow a person under 21 years old to either possess or consume alcoholic beverages on the licensd premises.

<sup>3</sup>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.

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Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

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

No

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

No Note: For cases denying liability in this area, see *Felder v. Butler*, 438 A.2d 494 (1981), *Fisher v. O'Connor's, Inc.*, 452 A.2d 1313 (Md.App. 1982) (cert. den. by the Maryland Court of Appeals, 452 A.2d 1313), *Moran v. Foodmaker*, 594 A.2d 587 (Md.App. 1991), & *Wright v. Sue & Charles*, 749 A.2d 241 (Md.App. 2000).

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), *Hebb v. Walker*, 536 A.2d 113 (Md.App. 1988), & *Wright v. Sue & Charles*, 749 A.2d 241 (Md.App. 2000)

Other:

None

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

Type of Criminal Action:

Misd Art. 2B, §§10-401, 10-402, 12-108 & 16-503 See Footnote No. 1 below.

Term of Imprisonment:

Not more than 2 yrs<sup>2</sup>

Fine (\$ Range):

Not more than \$1,000

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes **Susp or rev** Art. 2B, §10-401 Note: For licenses issued by the Comptroller a monetary compromise of not more than \$2,000 may be paid in lieu of a suspension. Art. 2B, §10-402

Length of Term of License Withdrawal:

The law does not specify at term of susp. for licenses issued by the Comptroller. However, if a license is revoked by the Comptroller, it is for **6 mos.** Note: The periods of license susp/rev may be longer for certain counties. Art. 2B, §10-404

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

Type of Criminal Action:

Misd Art. 2B §§10-401, 10-402, 12-108 & 16-503 See Footnote No. 1.

Term of Imprisonment:

Not more than 2 yrs<sup>2</sup>

Fine (\$ Range):

Not more than \$1,000

<sup>1</sup>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, §16-507 for details.

<sup>2</sup>See Custodial Confinement on p. 3-226.

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** Art. 2B, §10-401 Note: For licenses issued by the Comptroller, a monetary compromise of not more than \$2,000 may be paid in lieu of a suspension. Art. 2B, §10-402  
The law does not specify at term of susp. for licenses issued by the Comptroller. However, if a license is revoked by the Comptroller, it is for **6 mos.** Note: The periods of license susp/rev may be longer for certain counties. Art. 2B, §10-404

Length of Term License Withdrawal:

Anti-Happy Hour Laws/Regulations:

**No**

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

Open Container Law (Yes/No):

**Yes<sup>1</sup>** However, this law is limited to certain public parking areas. Art. 2B, §19-301 et seq.

Anti-Consumption Law (Yes/No):

**Yes<sup>1</sup>** Applies only to drivers Tran. §21-903

<sup>1</sup>The Maryland Legislature has granted municipal corporations the authority to adopt either ordinances or resolutions "to regulate the possession or consumption of alcoholic beverages in public places located within the boundaries of the municipal corporation." Art. 2B, §19-104

MARYLAND

STATE:

MASSACHUSETTS

General Reference:

Massachusetts General Laws Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor<sup>1</sup> Ch. 90 §24(1)(a)(1)

Illegal Per Se Law (BAC):

None

Presumption (BAC):

≥ 0.08<sup>2</sup> The law's term is "permissible inference". 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<sup>3</sup> or (2) Vapors of Glue Ch. 90 §24(1)(a)(1)

Other:

For Commercial Motor Vehicle Operators, see p. 3-236.

Chemical Breath Tests for Alcohol Concentration:

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 Prohibited by statute in both criminal and civil cases. Ch. 90 §24(1)(e) Such evidence is also prohibited by the State's constitution. *Opinion of the Justices to the Senate*, 591 N.E.2d 1073 (Mass. 1992)

Other Information:

A driver may not refuse to submit to field sobriety tests but such refusal cannot constitutionally be admitted into evidence *Com. v. Blais*, 701 N.E.2d 314 (Mass. 1998), *Com. v. McGrail*, 647 N.E.2d 712 (Mass. 1995), & *Com. v. Grenier*, 695 N.E.2d 1075 (Mass.App.Ct. 1998)

Chemical Tests of Other Substances for Alcohol Concentration 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

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 Alc. Screening is required for a 1st off. Ch. 90 §24(1)(a)(4)

<sup>1</sup>The term "intoxicating liquor" includes beer and other alcoholic beverages. *Commonwealth v. Bridges*, 189 N.E. 616 (Mass. 1934) cited in *Commonwealth v. Cass*, 467 N.E.2d 1324 (Mass. 1984)

<sup>2</sup>Standard: Percent by weight of alcohol in the blood. Ch. 90 §24(1)(e) "Percent by weight" has been judicially defined as the number of grams of alcohol per 100 milliliters (cubic centimeters) of blood. *Commonwealth v. Brooks*, 319 N.E.2d 901 (Mass. 1974), & *Commonwealth v. Bernier*, 322 N.E.2d 414 (Mass. 1975)

<sup>3</sup>Under Ch. 94C, §1, a "narcotic drug" means either opium, opiate, opium poppy, opium poppy straw, coca leaves (not containing cocaine or ecgonine) or any chemical compound derivative therefrom. In situations involving driving under the influence of either cocaine or heroin, the State must prove that these substances are derivatives of the ones listed above. *Com. v. Green*, 556 N.E.2d 387 (Mass. 1990), & *Com. v. Finegan*, 699 N.E.2d 1228 (Mass.App. 1998)

MASSACHUSETTS

Sanctions for Refusal to Submit to a Chemical Test:

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

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): None  
Administrative Licensing Action See Persons Under 21 Years Old below.  
(Susp/Rev): I. **Susp-120 dys** (mand) II. If the person has had a previous drunk driving off conviction w/n 10 yrs-**Susp-180 dys** (mand) III. If the person has had 2 or more drunk driving off convictions w/n 10 yrs-**Susp-1 yr** (mand) Ch. 90 §§24(1)(f) & 24N  
Other: A person's driving privileges are restored either if the drunk driving charges are dismissed or if the person is found not guilty of such charges. Ch. 90 §§24(1)(f) & 24N

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: See Footnote No. 1 and Double Jeopardy below.  
Imprisonment:  
Term (Day, Month, Years, Etc.):  
1st off-Not more than 2½ yrs<sup>2</sup>; 2nd off (w/n 10 yrs)-60 dys to 2½ yrs; 3rd off (w/n 10 yrs)-180 dys to 2½ yrs (or 2½ to 5 yrs in State prison) (felony); 4th off (w/n 10 yrs)-2 to 2½ yrs (or 2½ to 5 yrs in State prison) (felony); 5th and sub offs (w/n 10 yrs)-2½ yrs (or 2½ to 5 yrs in State prison) (felony) Ch. 90 §24(1)(a)(1) & Ch. 274 §1  
Mandatory Minimum Term: 1st off-No; 2nd off-30 dys<sup>3</sup>; 3rd-150 dys<sup>3</sup>; 4th off-12 mos<sup>3</sup>; 5th and sub off-24 mos<sup>3</sup>

<sup>1</sup>DWI serious bodily injury offs Ch. 90 §24L: Imprisonment-not more than 2½ yrs; fine-not less than \$3,000. Ch. 90 §24L(2) If either recklessness or negligence is involved in the off (felony): Imprisonment-2½ to 10 yrs or 6 mos to 2½ yrs in a house of correction; fine-not more than \$5,000. A 6 mo imprisonment term appears to be mandatory but work release is available. Ch. 90 §24L(1) & Ch. 274 §1

<sup>2</sup>1st offenders may serve an imprisonment sentence on designated weekend, evenings or holidays. Ch. 90 §24(1)(a)(3)

<sup>3</sup>Work release is available for this period. See Rehabilitation on p. 3-236. Ch. 90 §24(1)(a)(1)

**Persons Under 21 Years Old.** I. For persons <21 but ≥18 yrs old-**Susp-180 dys** If a person does not have a previous drunk driving offense charge, the suspension may be waived if they participate in an alcohol education or treatment program. II. For persons <18 yrs old-**Susp-1 yr** (mand). However, for a 1st refusal, there is only a 180 mand susp if the person participates in an alcohol education or treatment program. Ch 90 §24P(a)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Leduc v. Com.*, 657 N.E.2d 755 (Mass. 1995)

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

<p>Fine: Amount (\$ Range):</p>	<p><u>1st off-\$500 to \$5,000; 2nd off-\$600 to \$10,000; 3rd off-\$1,000 to \$15,000; 4th off-\$15,000 to \$25,000; 5th and sub offs-\$2,000 to \$50,000</u> Ch. 90 §24(1)(a)(1)</p>
<p>Mandatory Min. Fine (\$):</p>	<p>None</p>
<p>Other Penalties: Community Service:</p>	<p>For any off-30 hrs (minimum) via court order as a condition of probation Ch. 90 §24D</p>
<p>Restitution (eg Victim's Fund)</p>	<p>Yes (1) By a compensation fund Ch. 258A §1 et seq. or (2) by a defendant via probation Ch. 276 §92</p>
<p>Other:</p>	<p>None</p>
<p>Administrative Licensing Actions: <u>Pre-DWI Conviction Licensing Action:</u> Administrative Per Se Law:</p>	<p>See Double Jeopardy on p. 3-234. <b>Yes BAC &gt; 0.08<sup>1</sup> (Persons under 21 years old-BAC &gt; 0.02<sup>1</sup>)-Susp</b> until the drunk driving charges are disposed of but not more than <b>90 dys</b> (mand) Ch.90 §24(1)(f)(2) <u>Persons Under 21 Years Old.</u> The following susps apply notwithstanding the finding concerning any offense (e.g. drunk driving). I. <u>A person &lt;21 but &gt;18 yrs old</u>, who has a <b>BAC &gt; 0.02<sup>1</sup></b>, has their license <b>suspd for 180 dys</b>. If the person does not have a previous drunk driving offense charge, the suspension may be waived if they participate in an alcohol education or treatment program. II. <u>A person &lt;18 yrs old</u>, who has a <b>BAC &gt; 0.02<sup>1</sup></b>, has their license <b>susp for 1 yr</b> (mand). However, for a 1st violation, there is only a 180 dy mand susp if the person participates in an alcohol education or treatment program. Ch. 90 §24P(a)</p>
<p>Other:</p>	<p>I. If the law enforcement officer does not take action under the admim. per se law at the time of arrest, the court, at the time of arraignment shall suspend a defendant's license until the case is disposed of (but not more than 90 dys), provided the State establishes a <i>prima facie</i> showing that the defendant was operating a motor vehicle with a BAC &gt; 0.08 (persons under 21 yrs old BAC &gt; 0.02<sup>1</sup>). Ch. 90 §24N<sup>2</sup> 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)<sup>3</sup></p>

<sup>1</sup>Standard: Percent by wgt. of alcohol in the blood. See the *Brooks* and *Bernier* cases in Footnote No. 2 on p. 3-233.

<sup>2</sup>**Historical Note:** This section was amended by §10 of Chapter 25, Laws of 1994. A previous version of this provision was held to be constitutional on due process of law grounds. *Com. v. Crowell*, 529 N.E.2d 1339 (Mass. 1988)

<sup>3</sup>A person, who has been indicted for various traffic offenses, may be subject to licensing action under this statute. These actions do not violate the constitutional prohibition against double jeopardy. *Powers v. Com.*, 694 N.E.2d 324 (Mass. 1998)

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

<u>Post DWI Conviction</u> Licensing Action:	See Persons Under 18 years old below.
Type of Licensing Action (Susp/Rev):	<b>Rev</b> for all offs Ch. 90 §24(1)(b) & (1)(c)
Term of License Withdrawal (Days, Months, Years, etc.):	<u>1st off-1 yr</u> ; <u>2nd off</u> (w/n 10 yrs)- <b>2 yrs</b> ; <u>3rd off</u> (w/n 10 yrs)- <b>8 yrs</b> ; <u>4th off</u> (w/n 10 yrs)- <b>10 yrs</b> ; <u>5th and sub offs</u> (w/n 10 yrs)- <b>Life</b>
Mandatory Minimum Term of Withdrawal:	<u>1st off-3 mos</u> <sup>1</sup> ( <b>45 dys susp</b> ) <sup>2</sup> If the defendant is placed on probation and agrees to participate either in an alcohol education or, if necessary, in a treatment program. Ch. 90 §24D); <u>2nd Off-6 mos</u> <sup>1&amp;3</sup> ; <u>3rd off-2 yrs rev</u> <sup>1</sup> ; <u>4th off-5 yrs rev</u> <sup>1</sup> ; <u>5th and sub offs</u> - <b>Life</b>
Other:	
Rehabilitation:	
Alcohol Education:	<b>Yes</b> <u>1st off</u> -If the defendant consents, they may be placed on probation for not more than 2 yrs on the condition that they attend a residential alcohol treatment program for not less than 14 dys and participate in an out patient counseling program. Ch. 90 §§24(1)(a)(4) & 24D & <u>2nd and sub offs</u> -In lieu of imprisonment, defendant may serve all or part of the mand imprisonment term in a residential alcohol treatment program. Ch. 90 §24
Alcohol Treatment:	<b>Yes</b> See Alcohol Education above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	<b>No</b>
Terms Upon Which Vehicle Will Be Released:	
Other:	<b>None</b>
Miscellaneous Sanctions Not Included Elsewhere:	<b>I. Special Surcharge.</b> A defendant must pay a surcharge of <b>\$125</b> for the purpose of funding head injury treatment services. Ch. 90 §24(1)(a)(1)

<sup>1</sup>Hardship driving privileges may be granted after this mandatory revocation period.

<sup>2</sup>If the person is under 21 years old, the mandatory license suspension period is 210 dys.

<sup>3</sup>The person must complete a residential treatment program before hardship driving privileges can be granted.

**Persons Under 18 Years Old.** Persons < 18 yrs old, who have been convicted of any DWI offense or vehicle homicide and who have not had their license suspended for a 0.02 admin per se violation, are subject to a 180 dy mand license susp for a 1st offense and a 1 yr mand license susp for a 2nd or subsequent offense. Ch. 90 §24P(b)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** Under Ch. 90F §9, a person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC  $\geq 0.04$  (Note: Ch. 90F §9 does not appear to apply to alcohol concentrations in urine. See the standards below.) or (2) are under the influence of alcohol or a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). Under Ch. 90F §11, a person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) refuse to submit to a test to determine either alcohol concentration or the presence of other drugs or (2) submit to such a test which discloses a BAC/BrAC/UrAC  $\geq 0.04$  (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.). For a two or more test refuses or "failures" or for a combination of two or more such violations, the "disqualified" is for life (mand). In addition, a CMV operator who has any alcohol in their system must be placed "out-of-service" for 24 hours. Ch. 90F §§1, 9, 10 & 11

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

Miscellaneous Sanctions  
Not Included Elsewhere: (continued)

**II. Alcoholic Beverage Licensee Reporting.** The court shall inquire of a drunk driving offender, prior to sentencing, as to whether they were served alcoholic beverages at a licensed establishment. Any information obtained is to be transmitted to law enforcement authorities. Ch. 90 §24J

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes Misd** A motor vehicle related death where there the offender was either under the influence of intoxicating substances or acted with either recklessness or negligence. See Footnote No.1. Ch. 90 §24G(b) & Ch. 274 §1

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):  
Mandatory Minimum Term:  
Fine (\$ Range):  
Mandatory Minimum Fine:  
Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:  
Length of Term of  
Licensing Withdrawal:  
Mandatory Action--Minimum  
Length of License  
Withdrawal:  
Other:

**30 dys to 2½ yrs** Ch. 90 §24G(b)  
**None**  
**\$300 to \$3,000** Ch. 90 §24G(b)  
**None**  
**Rev** Ch. 90 §24G(c) See Persons Under 18 Years Old on p. 3-236.  
1st off-10 yrs; subsequent off-life  
1st off-10 yrs; subsequent off-life  
**None**

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

See the Special Note below.

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

**Misd 60 dys to 2½ yrs** Ch. 90 §23 & Ch. 274 §1  
**60 dys** However, a work release program is available.  
**\$1,000 to \$10,000** Ch. 90 §23  
**None**

<sup>1</sup>Homicide by motor vehicle while under the influence of an intoxicating substance and where there is either recklessness or negligence (felony): Imprisonment-**2½ to 15 yrs** (mandatory imprisonment of **1 yr** However, work release is available); fine-**not more than \$5,000**. Ch. 90 §24G(a) & Ch. 274 §1

**Special Note:** A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. Ch. 90F, §5(8) However, Ch. 90F does not provide sanctions for such a prohibition. Note: Although the law is unclear, the general sanctions for driving while license is either suspended or revoked may apply to this prohibition. These sanctions are as follows: 1st offense, imprisonment for not more than 10 dys and/or a fine of \$500 but not more than \$1,000; and, subsequent offense, imprisonment for 60 dys but not more than 1 yr (There appears to be no fine sanction.). For either a 1st or subsequent offense, an additional period of license suspension or revocation of 60 dys. Ch. 90, §23

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp/Rev <sup>1</sup> Ch. 90 §23
Length of Term of License	
Withdrawal Action:	Susp/rev is extended for an additional period of <b>1 yr.</b> Ch. 90 §23
Mandatory Term of License	
Withdrawal Action:	Same as above.
<u>Habitual Traffic Offender Law:</u>	
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 a 30 dy license susp/rev.
Term of License Rev While Under Habitual Offender Status:	<b>4 yrs</b> Note: If the defendant has a proven hardship, a license may be issued after <b>1 yr.</b> Ch. 90 §22F
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	<b>Felony</b> Ch. 274 §1
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than <b>2 yrs</b> Ch. 90 §23
Mandatory Minimum Term of Imprisonment:	<b>None</b>
Fine (\$ Range):	<b>\$500 to \$5,000</b> Ch. 90 §23
Mandatory Minimum Fine (\$):	<b>None</b>
Licensing Actions (Specify):	<b>Rev<sup>1</sup></b> 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 <b>Limited<sup>2</sup></b> Ch. 38 §4A
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes <sup>3</sup>
Vehicle Passengers:	No
Pedestrian:	No <sup>2</sup>

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	<b>21</b> Ch. 138 §§34 & 34A (Year Eff: 1985)
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<sup>1</sup>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

<sup>2</sup>**Historical Note:** Ch. 38 §6A, which covered all deceased drivers and pedestrians in any type of traffic accident, was repealed.

<sup>3</sup>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.

Other State Laws Related To Alcohol Use: (continued)

Minimum Age (Years) Possession:	<b>21</b> 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:	<b>None</b>
<u>Dram Shop Laws and Related Legal Actions:</u>	
State Has a Dram Shop Law (Yes/No):	<b>No</b>
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court the State (Case Citation):	<b>Yes</b> <i>Adamain v. Three Sons</i> , 233 N.E.2d 18 (Mass. 1967), <i>Cimino v. The Milford Keg, Inc.</i> , 431 N.E.2d 920 (Mass.1982), <i>Michnik-Zilberman v. Gordon's Liquor, Inc.</i> , 453 N.E.2d 430 (Mass. 1983), & <i>Douillard v. I.M.R., Inc.</i> , 740 N.E.2d 618 (Mass. 2001)
Dram Shop Actions-Social Hosts:	<b>Yes</b> <i>McGuiggan v. New England Telephone Co.</i> , 496 N.E.2d 141 (Mass. 1986), & <i>Langemann v. Davis</i> , 495 N.E.2d 847 (Mass. 1986) See Footnote Nos. 1 & 2. An employer is not liable as a social host for the injuries caused by an intoxicated employee, who storied and consumed alcoholic beverages at work with the employer's permission, so long as such beverages were not supplied by the employer. <i>Kelly v. Avon Tape, Inc.</i> , 631 N.E.2d 1013 (Mass. 1994)
Other:	A patron, who sustains injuries as a result of becoming intoxicated at a licensed establishment, may bring a negligence cause action for such injuries against the licensee. <i>O'Hanley v. Ninety-Nine, Inc.</i> , 421 N.E.2d 920 (1981) (modified by Ch. 231 §85T) <sup>3&amp;4</sup> Likewise, the estate of a patron who died in an automobile accident after becoming intoxicated at a licensed establishment may maintain a wrongful death cause of action against such licensee. The comparative negligence statute does not apply in these types of cases. <i>Zeroulis v. Hamilton American Legion</i> , 705 N.E.2d 1164 (Mass.App.Ct. 1999) However, a social host will not be liable for the injuries sustained by an intoxicated (adult) guest. <sup>5</sup> <i>Manning v. Nobile</i> , 582 N.E.2d 942 (Mass. 1991), and Ch. 231 §85T. An adult is a person ≥19 years old. <i>Hamilton v. Ganius</i> , 632 N.E.2d 407 (Mass. 1994)

<sup>1</sup>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. *Alioto v. Marnell*, 520 N.E.2d 1284 (Mass. 1988), *Ulwick v. DeChristopher*, 582 N.E.2d 954 (Mass. 1991), *Wallace v. Wilson*, 575 N.E.2d 1134 (Mass. 1991), & *O'Flynn v. Powers*, 646 N.E.2d 1091 (Mass.App.Ct. 1995) This same holding also applies to business social hosts. *Mosko v. Raytheon Co.*, 622 N.E.2d 1066 (Mass. 1993)

<sup>2</sup>A social host, who serves alcoholic beverages to a guest while in a licensed establishment, may be held liable for injuries caused by the guest as the result of their intoxication caused by such service. Note: In the case decided by the court, the employees of the licensed establishment were unaware of the guest's (patron's) intoxication. As a result, the establishment was not liable for the injuries caused by the intoxicated individual. *Makynen v. Mustakangas*, 655 N.E.2d 1284 (Mass.App.Ct. 1995)

<sup>3</sup>This may included situations where the licensee does not actually serve alcoholic beverages to a patron. E.g., at a private party hosted on the licensee's premises where a minor became intoxicated and was subsequently struck and killed by a vehicle. *Tobin v. Norwood Country Club, Inc.*, 661 N.E.2d 627 (Mass. 1996)

<sup>4</sup>An intoxicated female bar patron was raped by two men after leaving a bar and accepting a ride home from the assailants. The court held that, since the attack was not foreseeable, the licensee was not liable for the injuries sustained. *Westback v. Harold F. Leclair Co., Inc.*, 735 N.E.2d 1256 (Mass.App.Ct. 2000)

<sup>5</sup>Social companions, who may have contributed to the voluntary intoxication of an adult but underage person, are not liable for the death (injuries) sustained by such person. *Panagakos v. Walsh*, 749 N.E.2d 670 (Mass. 2001)

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Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:  
Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

See Footnote No. 1.  
**Misd** Ch. 138 §§62 & 69  
Not less than **1 mo** and not more than **1 yr**  
Not less than **\$50** and not more than **\$500**

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:  
License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term of License Withdrawal:

**Yes** Susp, rev or cancellation Ch. 138 §64  
If **rev** is imposed, a licensee is disqualified from receiving a license for **1 yr** after the expiration of the term of the revoked license. Note: There is no established period for either a suspension or a cancellation.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:  
Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

**Misd** Ch. 138 §34  
Not more than **1 yr**  
Not more than **\$2,000**

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:  
License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes** Susp, rev or cancellation Ch. 138 §64  
If **rev** is imposed, a licensee is disqualified from receiving a license for **1 yr** after the expiration of the term of the revoked license. Note: There is no established period for either a suspension or a cancellation.  
Note: A licensee, who is convicted of a violation w/n 24 mos of a previous offense, may be required to obtain liquor liability insurance to a limit of not less than \$100,000 to any one person and \$200,000 to all persons. Ch. 136, §64A & Ch. 138, §67 (¶6)

Anti-Happy Hour Laws/Regulations:

**Yes** 204 CMR 4.00 (Regulation)

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:  
Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**Yes**<sup>2</sup> This law applies to both drivers and passengers. Ch. 90 §24I  
**No**<sup>2</sup>

<sup>1</sup>See II under Miscellaneous Sanctions for drunk driving offenses on p. 3-236.

<sup>2</sup>**Historical Note:** In 2000, the anti-consumption law was replaced by an open container statute with the same citation. Chapter 294, Session Laws of 2000

STATE:  
General Reference:

**MICHIGAN**  
Michigan Compiled Laws Annotated

Basis for a DWI Charge:

Standard DWI Offense:	1) Visibly impaired by intoxicating liquor §257.625(3) 2) Under the influence of intoxicating liquor §257.625(1)(a)
Illegal Per Se Law (BAC/BrAC):	≥ <b>0.10</b> <sup>1&amp;2</sup> §257.625(1)(b) <u>Persons Under 21 Years Old. Any Bodily Alcohol Content</u> <sup>3</sup> §257.625(6)
Presumption (BAC/BrAC):	A BAC/BrAC/UrAC > <b>0.07</b> but < <b>0.10</b> <sup>1&amp;2</sup> is a presumption of impairment. A BAC/BrAC/UrAC ≥ <b>0.10</b> <sup>1&amp;2</sup> is a presumption of driving while under the influence. §257.625a(9)(b) & (c)
Types of Drugs/Drugs and Alcohol:	Under the <u>influence</u> of or <u>visibly impaired</u> by (1) <b>A Controlled Substance</b> or (2) a Combination of Liquor and a Controlled Substance. §§257.625(1)(a) & (3)
Other:	For Commercial Motor Vehicle Operators, see p. 3-245.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	<b>Yes</b> §257.625a(2) For CMV operators, see §§257.319d & 257.625a(4).
Implied Consent Law:	
Arrest Required (Yes/No):	<b>Yes</b> §257.625c(1)(a)
Implied Consent Law Applies to Drugs (Yes/No):	<b>Yes</b> §257.625c(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	<b>Yes Limited</b> (Criminal cases) In driving while under the influence/illegal per se cases, evidence of a refusal to submit to a chemical test may be admitted but <u>only</u> "for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant." §257.625a(10) <b>Special Note:</b> Following a refusal to submit to a chemical test under the implied consent law, a test (for alcohol concentration or controlled drugs) can be required via a court order. §§257.625a(6)(b)(iv) & <i>People v. Wurm</i> , 404 N.W.2d 235 (Mich.App. 1987)
Other Information:	

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

Blood:	<b>Yes</b> §257.625c(1)
Urine:	<b>Yes</b> §257.625c(1)
Other:	<b>None</b>

<sup>1</sup>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 or more.

<sup>2</sup>Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §§257.625(1)(b) & (6)(a), 257.625a(9)(b) & (c) and 257.625g(4)

<sup>3</sup>The term "any bodily alcohol content" means either (1) a BAC/BrAC/UrAC of ≥**0.02** but ≤**0.07** (For Standards, see Footnote No. 2 above.) or (2) "[a]ny presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony." §257.625(6)(a) & (b)

**MICHIGAN**

Adjudication of DWI Charges:

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

No

**Limited** A person under 21 years old, who is charged with either with driving while under the influence, driving while visibly impaired or illegal per se offenses under §257.625(1) & (3), cannot enter a plea of either guilty or *nolo contendere* to driving with "any bodily alcohol content" under §257.625(6). §257.625(15)

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

**Yes**<sup>1</sup> Alcohol & Drug (Screening & Assessment Required) §257.625b(5)

Sanctions for Refusal to Submit to a Chemical Test:

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

None

**None** However, if a person <21 yrs old refuses to submit to a PBT, 2 points are assigned to their driving record. §257.320a(1)(o) (After 10/1/2000, see §257.320a(I)(o).)

Other:

Civil infraction-Fine not more than **\$100** §257.625a(2)(d), 257.741 et seq. & 257.907 Note: It is a misdemeanor for a CMV operator to refuse to submit to a PBT. See DWI Offenses and Commercial Motor Vehicles on p. 3-245. §§257.319d & 257.625a(4)

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

None

1st refusal-6 mo susp Note: A restricted/hardship license may be issued. 2nd and subsequent refusals (w/n 7 yrs)-**1 yr susp** (mand) §257.323c and 257.625f(1) & (4)

Other:

See "Other" under Pre-DWI Conviction Licensing Action on p. 3-244.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment:  
Term (Day, Month, Years,  
Etc.):

See the Special Note below and Child Endangerment/Embryo/Miscarriages on p. 3-244.

1) Driving while visibly impaired: (1) 1st off (Misd)-Not more than **93 dys**; 2nd off (w/n 7 yrs) (Misd)-**5 dys to 1 yr**; 3rd or sub off (w/n 10 yrs) (felony)-**1 to 5 yrs**<sup>2</sup> §257.625(10)

2) Driving while under the influence/Illegal per se: 1st off (Misd)-Not more than **93 dys**; 2nd off (w/n 7 yrs) (Misd)-**5 dys to 1 yr**; 3rd and sub off (w/n 10 yrs) (felony)-**1 to 5 yrs**<sup>2</sup> §257.625(8)

<sup>1</sup>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

<sup>2</sup>A person, who commits a 2nd felony offense, is subject to the provisions of the general criminal habitual offender law. Under this law, such an offender's imprisonment sanction may be enhanced by not more than 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)

**Special Note:** For the purpose of sanction enhancement, a "prior offense" includes a prior conviction for any drunk driving offense and for a previous conviction for either negligent homicide, manslaughter or murder related to any drunk driving offense. §257.625(23)

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

Mandatory Minimum Term:	<p>3) <u>Any DWI offense</u> where there is a "serious impairment of a body function"<sup>1</sup>-Felony-not more than <b>5 yrs</b><sup>2</sup> §257.625(5)</p> <p>4) <u>Persons Under 21 Years Old. Any Bodily Alcohol Content-2nd or sub off</u> (w/n 7 yrs) (Misd)-<b>93 dys</b> §257.625(11)</p> <p>1) <u>Driving while visibly impaired: 1st off-None; 2nd off</u> (w/n 7 yrs)-<b>5 dys (w/48 con hrs)</b><sup>3</sup>; <u>3rd or sub off</u> (w/n 10 yrs)-<b>if probation is granted, 30 dys to 1 yr w/48 con hrs</b><sup>4</sup> §257.625(10)</p> <p>2) <u>Driving while under the influence/Illegal per se: 1st off-None; 2nd off</u> (w/n 7 yrs)-<b>5 dys (w/48 con hrs)</b><sup>3</sup>; <u>3rd or sub off</u> (w/n 10 yrs)-<b>if probation is granted, 30 dys to 1 yr w/48 con hrs</b><sup>4</sup> §257.625(8)</p> <p>3) <u>Any DWI offense</u> where there is a "serious impairment of a body function"-<b>None</b></p> <p>4) <u>Persons Under 21 Years Old. Any Bodily Alcohol Content-None</u></p>
Fine: Amount (\$ Range):	<p>1) <u>Driving while visibly impaired-1st off-Not more than \$300; 2nd off</u> (w/n 7 yrs)-<b>\$200 to \$1,000</b>; <u>3rd or sub off</u> (w/n 10 yrs)-<b>\$500 to \$5,000</b> §257.625(10)</p> <p>2) <u>Driving while under the influence/illegal per se: 1st off-\$100 to \$500; 2nd off</u> (w/n 7 yrs)-<b>\$200 to \$1,000</b>; <u>3rd or sub off</u> (w/n a 10-yr)-<b>\$500 to \$5,000</b> §257.625(8)</p> <p>3) <u>Any DWI offense</u> where there is a "serious impairment of a body function"-<b>\$1,000 to \$5,000</b> §257.625(5)</p> <p>4) <u>Persons Under 21 Years Old. Any Bodily Alcohol Content-1st off-Not more than \$250; 2nd and sub off</u> (w/n 7 yrs)<sup>1</sup>-Not more than <b>\$500</b> §257.625(11)</p>
Mandatory Min. Fine (\$):	<p>1) <u>Driving while visibly impaired-1st off-None; 2nd off</u> (w/n 7 yrs)-<b>\$200</b> (possible); <u>3rd or sub off</u> (w/n 10 yrs)-<b>\$500</b><sup>5</sup> (possible)</p> <p>2) <u>Driving while under the influence/illegal per se: 1st off-\$100</u> (possible)<sup>5</sup>; <u>2nd off-\$200</u> (possible)<sup>5</sup>; <u>3rd off-\$500</u> (possible)<sup>5</sup></p> <p>3) <u>Any DWI offense</u> where there is a "serious impairment of a body function"-<b>None</b></p> <p>4) <u>Persons Under 21 Years Old. Any Bodily Alcohol Content-None</u></p>
Other Penalties: Community Service:	<p>1) <u>Driving while visibly impaired-1st off</u> (Misd)-Not more than <b>45 dys</b>; <u>2nd off</u> (w/n 7 yrs) (Misd)-<b>30 dys (mand) to 90 dys</b> in lieu of imprisonment; <u>3rd or sub off</u> (w/n 10 yrs) (felony)-<b>60 dys (mand) to 180 dys</b> (Provided probation is granted. This sanction is in addition to the mand 30 dy jail sentence.)<sup>6</sup> §257.625(10)</p>

<sup>1</sup>A "serious impairment of a body function" includes, but is not limited to, (1) the loss or use of a limb, eye, or ear, (2) loss or substantial impairment of a bodily function, (3) serious disfigurement, (4) a comatose state for more than 3 dys, (5) brain damage, (6) skull or other serious bone fracture or (7) subdural hemorrhage or hematoma. §257.625(5)

<sup>2</sup>A person, who commits a 2nd felony offense, is subject to the provisions of the general criminal habitual offender law. Under this law, such an offender's imprisonment sanction may be enhanced by not more than 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)

<sup>3</sup>The law appears to authorize a sentence of community service in addition to or in lieu of imprisonment. §257.625(8)(b) & (10)(b)

<sup>4</sup>This sanction appears mandatory. The law provides that a term of imprisonment for this offense cannot be suspended. I.e., an offender cannot be sentenced to community service in lieu of imprisonment. §257.625(8)(d) & (10)(d)

<sup>5</sup>See *Wayne City Prosecutor v. Wayne Circuit Judge*, 397 N.W.2d 274 (Mich.App. 1986).

<sup>6</sup>**Comment:** In cases where probation is granted for a 3rd or subsequent offense, the law does not appear to allow for the substitution of community service for the minimum mandatory term of imprisonment.

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

2) Driving while under the influence/illegal per se 1st off-Not more than **45 dys**; 2nd off-**30 (mand) to 90 dys** in lieu of imprisonment; 3rd or sub off-**60 dys (mand) to 180 dys** in addition to mand imprisonment (Provided probation is granted. This sanction is in addition to the mand 30 dy jail sentence.) See Footnote No. 6 on p. 3-243. §257.625(8)

3) Any DWI offense where there is a "serious impairment of a body function"-None

4) Persons Under 21 Years Old. Any Bodily Alcohol Content-1st off-Not more than **45 dys**; 2nd and sub off (w/n 7 yrs)-Not more than **60 dys** §257.625(11) See the Special Note on p. 3-242.

Restitution  
(eg Victim's Fund)  
Other:

**Yes<sup>1</sup>**

**Assessments.** A person convicted of a crime must pay the following assessments. For a felony, the assessment is **\$60** and for a misdemeanor it is **\$50**. §780.905

**Costs of Prosecution.** For any drunk driving offense listed above, an offender may be required to pay the costs of prosecution. §§257.625(12) & 769.1f(1)

**EMS Costs.** For any drunk driving offense listed above, an offender may be required to pay the emergency response costs incurred by State or a local government as a result of such offense. §179.1f(1)

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

**None**

**Special Note:** Under §257.625g, if a driver either refuses to submit to a chemical test or if they submit to such test which indicates an "unlawful alcohol content"<sup>2</sup>, their license is confiscated and destroyed by the police. A temporary license is issued and is valid until the conclusion of the DWI criminal proceedings.

<sup>1</sup>The State has a victims' compensation fund and, in addition, provides for direct compensation to victims by the defendant via court ordered restitution. §§18.351 et seq., 771.3(2)(d) and Act 341, Public Acts of 1993

<sup>2</sup>An "unlawful alcohol content" means either (1) a person under 21 yrs old was operating motor vehicle with a BAC/BrAC/UrAC >0.02, (2) a person with a CDL was operating a CMV with a BAC/BrAC/UrAC ≥0.04 or (3) a person was operating any motor vehicle with a BAC/BrAC/UrAC ≥0.10. For standards, see Footnote No. 2 on p. 3-241. §257.625g(4)

**Child Endangerment/Embryo/Miscarriages.** I. For any regular drunk driving off while carrying a passenger < 16 yrs old. 1st off (misd)-Jail-5 yrs (with either 48 con hrs (mand) in jail or 30 (mand) to 90 dys community service) to 1 yr; fine-\$200 to \$1,000; and, lic susp-180 dys (90 dys mand); sub off (w/n 7 yrs)(felony)-Imprisonment-1 to 5 yrs or, w/probation, 30 dys (48 con hrs mand) to 1 yr in jail and community service for 60 to 180 dys; fine-\$500 to \$5,000 §257.625(7)(a) II. For a violation of the 0.02 law by a person < 21 yrs while carrying a passenger < 16 yrs old: 1st off-Jail-Not more than 93 dys; community service-not more than 60 dys; fine-not more than \$500; and, lic susp-180 dys (90 dys mand); sub off (w/n 7 yrs of a prior off or w/n 10 yrs of 2 prior offs)-Jail 5 dys (48 con hrs mand) to 1 yr; community service for 30 to 90 dys; fine-\$200 to \$1,000 §257.625(7)(b) III. For violations under I or II, either vehicle **forfeiture** or **immobilization** as if the offense was a drunk driving offense. See Vehicle Impoundment/Confiscation on p. 3-246 for further details. §§257.319(8)(e) & 257.625(7) IV. A person commits a felony if they cause great bodily harm or serious or aggravated injury to an **embryo or fetus** while driving under the influence of alcohol/drugs or illegal per se. The sanctions for this offense are an imprisonment term of not more than 5 yrs and/or a fine of \$1,000 to \$5,000. §750.90d(b) V. A person commits a felony if they cause a **miscarriage or stillbirth** while driving under the influence of alcohol/drugs or illegal per se. The sanctions for this offense are an imprisonment term of not more than 15 yrs and/or a fine of \$2,500 to \$10,000. §750.90d(a) VI. For IV and V, there may be a minimum jail sentence via the State's Sentencing Guidelines under Chapter 777.

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

<p><u>Post DWI Conviction Licensing Action:</u> Type of Licensing Action (Susp/Rev):</p>	<p>See Footnote No. 1 below and Child Endangerment/Embryo or Fetus p. 3-244. 1) <u>Driving while visibly impaired</u>: <u>1st off-Susp</u>; <u>2nd off</u> (w/n 7 yrs)-<u>Rev</u>; <u>3rd off</u> (w/n 10 yrs)-<u>Rev</u> 2) <u>Driving while under the influence/illegal per se</u>: <u>1st off-Susp</u>; <u>2nd off</u> (w/n 7 yrs)-<u>Rev</u>; <u>3rd off</u> (w/n 10 yrs)-<u>Rev</u> 3) <u>Any DWI offense</u> where there is a "serious impairment of a body function"-<u>Rev</u> 4) <u>Persons Under 21 Years Old. Any Bodily Alcohol Content</u>-<u>1st off-Susp</u>; a violation of this prohibition where there has been 2 violations of any other drunk driving law provision-<u>Rev</u>; in addition, for any offense where there has been a prior rev w/n 7 yrs-<u>Rev</u> <u>Citations</u> for the above actions: §§257.303(2) &amp; (4) and 257.319(8)</p>
<p><u>Term of License Withdrawal</u> (Days, Months, Years, etc.):</p>	<p>1) <u>Driving while visibly impaired</u>: <u>1st off-90 dys</u> (If the offense involved driving while impaired by a controlled substance or a controlled substance and alcohol-<u>180 dys</u>); <u>2nd off</u>- not less than <u>1 yr</u>; <u>any subsequent offense where there has been a prior rev w/n 7 yrs</u>-not less than <u>5 yrs</u> §§257.303(2) &amp; (4) and 257.319(8) 2) <u>Driving while under the influence/illegal per se</u>: <u>1st off-180 dys</u>; <u>2nd off</u>-not less than <u>1 yr</u>; <u>sub off</u> where there has been a prior rev w/n 7 yrs-<u>not less than 5 yrs</u> §§257.303(2) &amp; (4) and 257.319(8) 3) <u>Any DWI offense</u> where there is a "serious impairment of a body function"-<u>1st off</u>-not less than <u>1 yr</u>; <u>any subsequent offense where there has been a prior rev w/n 7 yrs</u>-not less than <u>5 yrs</u> §§ 257.303(2) &amp; (4) 4) <u>Persons Under 21 Years Old. Any Bodily Alcohol Content</u>-<u>1st off-30</u>; <u>sub off</u> (w/n 7 yrs)-<u>90 dys</u>; a violation of this prohibition where there has been 2 violations of any other drunk driving law provision-not less than <u>1 yr</u>; for any offense where there has been a <u>prior rev</u> w/n 7 yrs-not less than <u>5 yrs</u> §§257.303(2) &amp; (4) and 257.319(8)</p>

<sup>1</sup>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)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person's privilege to operate a CMV is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have violated the law that prohibits CMV operation with a BAC/BrAC/UrAC  $\geq 0.04$ , (2) have violated the provisions of the drunk driving law (§257.625(1), (3), (4), (5), (6) or (7)) or (3) have refused to submit to a chemical test for alcohol concentration or the presence of controlled substances. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, a revocation for not less than 10 yrs (10 yrs mand). Under §257.625m, a person, who operates a CMV with a BAC/BrAC/UrAC  $\geq 0.04$  but  $< 0.07$ , commits a criminal offense: 1st off (Misd)-Jail-Not more than 93 days and/or fine of not more than \$300 and license susp for 90 dys (a restricted license is available for all of this period); 2nd off (w/n 7 yrs) (Misd)-Imprisonment for not more than 1 yr and/or a fine of not more than \$1,000 and license rev for 1 yr (mand); and, 3rd off (w/n 10 yrs) (felony)-Imprisonment to 5 yrs or probation w/county jail from 30 dys to 1 yr (w/48 con hrs) with 60 to 180 dys of community (the minimum imprisonment and/or community service are mand) and/or a fine of \$500 to \$5,000 and license rev for 5 yrs (mand). In addition, a CMV operator who has a BAC/BrAC/UrAC  $\geq 0.015$  must be placed "out-of-service" for 24 hours. Finally, it is a misdemeanor for a person to refuse to submit to a preliminary breath test (PBT) while operating a CMV; the sanctions for this offense are imprisonment for not more than 93 dys and/or a fine of not more than \$100. Note: The standards for BAC, BrAC and UrAC are respectively as follows: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §§257.1c, 257.4b, 257.7a, 257.303(2) & (4), 257.312e, 257.319(8)(f), 257.319b, 257.319d, 257.625a(5) and 257.625m See II under **Special Vehicle Sanctions** on p. 3-246.

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

Mandatory Minimum Term of  
Withdrawal:

1) Driving while visibly impaired: 1st off-None (A restricted/hardship license may be issued.); 2nd off-1 yr; any subsequent offense where there has been a prior rev w/n 7 yrs-5 yrs §§257.303(2) & (4) and 257.319(8) -

2) Driving while under the influence/illegal per se: 1st off-30 dys (A restricted hardship license may be issued after this period of time.); 2nd off-1 yr; any subsequent offense where there has been a prior rev w/n 7 yrs-5 yrs

3) Any DWI offense where there is a "serious impairment of a body function"-1st off-1 yr; any subsequent offense where there has been a prior rev w/n 7 yrs-5 yrs §§ 257.303(2) & (4)

4) Persons Under 21 Years Old. Any Bodily Alcohol Content-1st off-None (A person is eligible for restricted driving privileges.); a violation of this prohibition where there has been 2 violations of any other drunk driving law provision-1 yr; for any offense where there has been a prior rev w/n 7 yrs-5 yrs §§257.303(2) & (4) and 257.319(8)

**Ignition Interlock.** A person, who has had their license revoked for any drunk driving offense, may, after the mand rev period, be issued a restricted license instead of full driving privileges. If a restricted license is issued, the driver is limited to operating motor vehicles that are equipped with an "ignition interlock" device. The initial period for the use of such device is 1 yr. §257.322(6), (7), (8) & (9)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Yes §257.625b(5)

Yes §257.625b(5)

Important. See **Special Vehicle Sanctions** below.

Driving While Impaired, Driving While Under the Influence or illegal Per Se: 2nd or sub off-Forfeiture (discretionary) §257.625(8) & (10) and 257.625n

Terms Upon Which Vehicle

Will Be Released:

Other:

**Special Vehicle Sanctions.** Driving While Impaired, Driving While Under the Influence, Illegal Per Se, Death or Injury Drunk Driving Offense or Under Age 21 Drunk Driving Off (driving w/ any alcoholic bodily content): 1st off-Immobilization-Not more than **180 dys** (discretionary/mand if death or serious injury offenses); 2nd off (w/n 7 yrs)-Immobilization (Note: If the veh is not forfeited for the above offs, this sanction applies.)-**90 (mand) to 180 dys**; 3rd or sub off (w/n 10 yrs)-Immobilization (Note: If the veh is not forfeited for above offs, this sanction applies.)-**1 yr (mand) to 3 yrs** §§257.625(8) & (10) and 257.904d **Special Note:** This sanction does not apply to rental vehicles or to vehicles that are registered in another State. §257.904d(7)(c) II. Driving While Impaired, Driving While Under the Influence, Illegal Per Se, Under Age 21 Offense Drunk Driving Off (driving w/ any alcoholic bodily content) or A Violation of §257.625m by a CMV Operator: 3rd or sub off-Where the offender's license is still suspended or revoked for these offenses-They shall be denied the right to either **register** a vehicle or to **purchase**, lease or otherwise acquire a motor vehicle. §257.219(1)(d) & 257.233(6) III. A defendant, who is subject to vehicle immobilization, cannot purchase, lease or otherwise obtain a motor vehicle during the period of immobilization. §257.904c IV. When a law enforcement officer has detained a person for an offense which requires vehicle **immobilization**, the officer must (1) confiscate the vehicle's license plate and destroy it and (2) issue a temporary plate. The temporary plate is valid until either the charges are dismissed, there is a guilty or *nolo contendere* plea or there is a finding of guilt. §257.904c

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

Miscellaneous Sanctions  
Not Included Elsewhere:

See **Sentencing Guidelines** below.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

See **Special Vehicle Sanctions** on p. 3-246 for DWI related death..

**Yes Felony** Any DWI offense related death §257.625(4)<sup>1</sup>

**Misd Negligent Homicide**-Driving at an immoderate rate of speed, in a careless, reckless or negligent manner but not wilfully or wantonly. §750.324

See Assessments on p. 3-244.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

**Felony**-Not more than **15 yrs**<sup>2</sup> §257.625(4) **Misd**-Not more than **2 yrs** §750.324

See **Sentencing Guidelines** below.

Mandatory Minimum Term:

Fine (\$ Range):

**Felony**-\$**2,500 to \$10,000** §257.625(4) **Misd**-Not more than **\$2,000** §750.324

**None**

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Length of Term of

Licensing Withdrawal:

**Rev** §257.303(2)(b), (f) & (e)

1st off-Not less than **1 yr**; 2nd or sub. off (w/n 7 yrs)-Not less than **5 yrs** §§257.303(4)(a)(i) & (ii)

Mandatory Action--Minimum

Length of License

Withdrawal:

1st off-**1 yr**; 2nd or sub. off (w/n 7 yrs)-**5 yrs** §§257.303(4)(a)(i) & (ii)

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

See Footnote No. 3 below and Footnote No. 1 on p. 3-243.

Sanction:

Criminal:

Imprisonment (Term):

I. 1st off (Misd)-Not more than **93 dys**; 2nd and sub offs (Misd)-Not more than **1 yr** §257.904(1) & (3)

<sup>1</sup>The Michigan Supreme Court has held that §257.625(4) is constitutional. *People v. Lardie*, 551 N.W.2d 656 (Mich. 1996)

<sup>2</sup>The imprisonment term is for not more than 20 yrs if the homicide resulted in the death of either a law enforcement officer, firefighter or EMS personnel. §257.625(4)

<sup>3</sup>A person, who operates a CMV while their CDL privilege is suspended, is subject to the sanctions given above for the offense of driving while suspended or revoked. §257.904 A person, who operates a CMV while under a CDL out-of-service order, commits a misd offense and is subject to an imprisonment term of not more than 90 dys and/or a fine of not more than \$100. §257.319d

\*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.

**Sentencing Guidelines.** The State's sentencing guidelines, Chapter 777, also provide minimum incarceration sanctions for the following driving offenses: (1) Driving while under the influence/illegal per se either (a) causing death/serious injury, (b) with a minor or (c) for a 3rd offense; (2) impaired driving for a 3rd offense; (3) driving without a license causing death/serious injury; (4) driving while under the influence/illegal per se causing either a miscarriage/stillbirth or aggravated injury to embryo/fetus; and, (5) negligent vehicle homicide. These minimum sanctions are based on (1) the seriousness of the offense, (2) the blood alcohol level at the time of the offense and/or (3) the number of prior criminal offenses (felonies/misdemeanors). However, these sanctions do not replace the mandatory ones found in other provisions of the law.

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	II. If the offense resulted in <b>death</b> of another person (felony)-Not more than <b>15 yrs</b> §257.904(4)
Fine (\$ Range):	III. If the offense resulted in <b>serious impairment of a body function</b> (felony)-Not more than <b>5 yrs</b> §257.904(5)
Mandatory Minimum Fine:	See <b>Sentencing Guidelines</b> on p. 3-247.
Administrative Licensing Actions:	I. <u>1st off</u> -Not more than <b>\$500</b> ; <u>2nd and sub offs</u> -Not more than <b>\$1,000</b> §257.904(1) & (3) II. If the offense resulted in <b>death</b> of another person (felony)- <b>\$2,500 to \$10,000</b> §257.904(4) III. If the offense resulted in <b>serious impairment of a body function</b> - <b>\$1,000 to \$5,000</b> §257.904(5)
Type of Licensing Action (Susp/Rev):	See Assessments on p. 3-244.
Length of Term of License Withdrawal Action:	I. <b>None</b> II. If the offense resulted in <b>death</b> of another person (felony)- <b>\$2,500</b> (appears to be mand) §257.904(4) III. If the offense resulted in <b>serious impairment of a body function</b> - <b>\$1,000</b> (appears to be mand) §257.904(5)
Mandatory Term of License Withdrawal Action:	For <u>all</u> of the above offenses-Susp or rev <sup>1</sup> §257.904(10)
Other:	The original license susp or rev is extended for a like period.
<u>Habitual Traffic Offender Law:</u>	The original license susp or rev is extended a like period.
State Has Such a Law (Yes/No):	See <b>Other Sanctions</b> below.
Grounds for Being Declared an Habitual Offender:	<b>No</b>
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):	

<sup>1</sup>For a 1st or subsequent offense, the registration plates of the vehicle involved in the offense shall also be "cancelled". §257.904(3)(a) & (b) Also, vehicle impoundment for not more than 120 dys. §257.904b

**Other Sanctions.** I. For a prior off (w/n 7 yrs), vehicle **immobilization** for not more than 180 dys. For 2 or 3 prior offs (w/n 7 yrs), vehicle **immobilization** from 90 to 180 dys (90 dys mand). For 4 or more prior offs (w/n 7 yrs), vehicle **immobilization** from 1 to 3 yrs (1 yr mand). In addition, for any offenses related to either **death** or **serious impairment of a body function**, either vehicle **forfeiture** or **immobilization** for 180 dys (mand). §§257.904(6) & 257.904d(2)

II. 4th or sub off-While license is in sup/rev status, no right to register a motor vehicle. §259.219.(1)(d)

III. 4th or sub off-While license is in sup/rev status, no right to purchase, lease or otherwise acquire a motor vehicle. §259.233(d)

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

State Has Such a Law (Yes/No):	Yes §257.625a(6)(f)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes §257.625a(6)(f)
Vehicle Passengers:	No
Pedestrian:	No

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1978) §§436.1701(1), 436.1703(1) & 436.1801(2)
Minimum Age (Years) Possession:	21 Employment exemption §436.1703(9)
Minimum Age (Years) Consumption:	21 <sup>1</sup> There is an exemption for religious services. §436.1703(10)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	Yes §436.1801(3) & (10) <sup>2</sup>
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	The Dram Shop Law is the exclusive remedy against licensees. §436.1801(10)  Case Law abrogated by the Dram Shop Law <sup>2</sup>
Dram Shop Actions-Social Hosts:	<b>Yes Limited to minors' actions</b> <i>Longstreth v. Gensel</i> , 377 N.W.2d 804 (Mich. 1985), <i>Traylor v. Kopsky</i> , 384 N.W.2d 819 (Mich. App. 1986), & <i>Gardner v. Wood</i> , 414 N.W.2d 706 (Mich. 1987) <sup>3,4,5&amp;6</sup>
Other:	A patron, including a minor patron, (or a relation) cannot maintain an action for damages against a licensee as a consequence of such patron's intoxication. §436.1801(9) and <i>Madejski v. Lotmar Limited</i> , 633 N.W.2d 429 (Mich.App. 2001)

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

Type of Criminal Action:	Misd §§436.1707, 436.1801(2), 436.1901 & 436.1909
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<sup>1</sup>A person <21 yrs old may consume an alcoholic beverages as part of a course at a post secondary educational institution. Also, such a person may purchase, possess or consume alcoholic beverages when participating in law enforcement operations designed to enforce the alcoholic beverage control law's provisions related to minors. §436.1703(9) & (11)

<sup>2</sup>The law applies (1) to damages/injuries caused by visibly intoxicated persons or those under 21 years old and (2) only to retail licensees not wholesalers. *Tennille v. Action Distributing*, 570 N.W.2d 130 (Mich.App. 1997) For abrogated common law cases, see *Jones v. Bourrie*, 120 N.W.2d 236 (Mich. 1963), & *Longstreth v. Fitzgibbon*, 335 N.W.2d 677 (Mich. App. 1983).

<sup>3</sup>Nevertheless, a social host is not liable for the injures caused intoxicated minor guests who commit criminal acts. The court felt that there so no "foreseeability" that such minors would commit a crime and distinguished the *Longstreth* case which involved injures related to the use of motor vehicles by intoxicated minor guests. *Rogalski v. Tavernier*, 527 N.W.2d 73 (Mich.App. 1995)

<sup>4</sup>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)

<sup>5</sup>A law enforcement officer, who was injured by an intoxicated person while on duty, cannot maintain a dram shop action against the licensee who served alcoholic beverages to the person. *McCaw v. T&L Operations, Inc.*, 550 N.W.2d 852 (Mich.App. 1996)

<sup>6</sup>The "impairment defense" cannot be used in a social host dram shop case. *Piccalo v. Nix*, 630 N.W.2d 900 (Mich.App. 2001)

**MICHIGAN**

Other State Laws Related To Alcohol Use: (continued)

Term of Imprisonment:  
Fine (\$ Range):

Not more than **6 mos**<sup>1</sup>  
Not more than **\$500**<sup>1</sup> See Assessments on p. 3-244.

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term of License Withdrawal:

**Yes Susp or Rev** §§436.1903(1) & 436.1907(3)  
Period of license susp is not specified in the statute; period of license revocation is 2 yrs Note: A civil fine of not more than \$300 may be assessed in addition to or in lieu of a susp or rev.

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

Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

**Misd**<sup>2</sup> §§436.1701, 436.1801(2), 436.1901 & 436.1909(2)  
Not more than **6 mos**  
Not more than **\$500** See Assessments on p. 3-244.

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes Susp or Rev**<sup>3</sup> §§436.1903(1) & 436.1907(3)  
Susp period is not specified; revocation is 2 yrs A civil fine of not more than \$1,000 may be assessed in addition to or in lieu of susp/rev.

Anti-Happy Hour Laws/Regulations:

**Yes** R 436.1438 (regulation)

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

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**Yes** §257.624a Does not apply to a State chartered vehicle  
**Yes** Driver and passengers §436.1915(1) The law states that "[a]lcoholic liquor shall not be consumed on the public highways."

<sup>1</sup>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. §§436.1909 & 750.504

<sup>2</sup>The State/local police cannot charge a licensee with violating the law prohibiting the sale of alcoholic beverages to persons under 21 years old, unless these law enforcement agencies also charge the minors involved in the offense (except minors being used as undercover agents) with violating the law prohibiting such persons from purchasing or attempting to purchase such beverages. §436.1701(4)

<sup>3</sup>The Liquor Control Commission cannot suspended or revoke a license or take other action against a licensee in situations where the State/local police, when enforcing the law prohibiting a licensee from selling alcoholic beverages to persons under 21 years old, have not charged the minors involved in the offense (except minors being used as undercover agents) with violating the law prohibiting these persons

STATE:  
General Reference:

MINNESOTA  
Minnesota Statutes Annotated

Basis for a DWI Charge:

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

Under the influence of alcohol §169A.20, subd. 1(1)  
≥ **0.10**<sup>1&2</sup> §169A.20, subd. 1(5)  
**Any Amount of a Controlled Substance in the Body**<sup>3</sup>  
§169A.20, subd. 1(7)

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

**None**  
Under the influence of (1) **A Controlled Substance**, (2) A Listed Hazardous Substance or (3) a Combination of Alcohol, a Controlled Substance or a Listed Hazardous Substance §169A.20, subd. 1(2), (3) & (4)

Other:

An alcohol concentration ≥ **0.04**<sup>2</sup> is relevant evidence that a person was under the influence of alcohol. §169A.45, subd. 2  
For Persons Under 21 Years Old, see p. 3-254.  
For Comm. Motor Vehicle and School Bus Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

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

**Yes** Note: Also applies to CMV operators. §169A.41  
**No**<sup>4</sup>  
**Yes** controlled<sup>3</sup> or hazardous substances §169A.51, subd. 1  
**Yes** §169A.45, subd 3, & *McConnell v. Com'r of Public Safety*,  
473 N.W.2d 848 (Minn. 1988)

<sup>1</sup>This State's illegal per se provisions also make it an offense to operate a motor vehicle with either a breath or a urine alcohol concentrations at or above this level.

<sup>2</sup>Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. §169A.20, subd. 2

<sup>3</sup>Applies to controlled substances listed in Schedules I & II except marijuana or tetrahydrocannabinols. §169A.20, subd 1(7) It is an affirmative defense to a violation of this provision if the defendant can show that the controlled substance was being used according to the terms of a valid prescription. §§169A.46, subd. 2, 169.123, subds 2(b) & 4 and 609.21

<sup>4</sup>**Special Note:** A test can be requested if one of the following exists: (1) A person has been lawfully placed under arrest under §169A.20; (2) a person has refused to take PBT; (3) a person submit to a PBT and the result indicated a BrAC ≥0.10; or, (4) a person is involved in an accident resulting in property damage, personal injury, or death. §169A.51, subd. 1(b)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (See Footnote No. 2 above.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for the presence of alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for not less than 10 yrs (10 yrs mand). A CMV operator is placed "out-of-service" for 24 hrs if they have any alcohol in their system. A person commits a drunk driving offense if they operate a CMV with a BAC/BrAC/UrAC ≥0.04; the sanctions for this offense are the same as for any drunk driving offense. §§169.01, subds. 50, 61 & 75; 169A.003, subd. 4; 169A.54, subd. 7(c); 169A.20, sub. (1)(6); 169A.51, subds. 1(c); 169A.52, subds. 3(b) & 4; 169A.54, subd 171.01, subd. 22; 171.165, subds. 1, 2, 3(1) & 3(2); and, 609.03

**School or Head Start Bus Operators.** It is misd to operate a school or head start bus with any alcohol in the body-Jail for not more than 90 days and/or a fine of not more than \$700 The offense is a gross misdemeanor if it occurred w/n 5 yrs of a prior drunk driving offense or the offense occurred while the driver was transporting a child < 16 yrs old who was 36 mos younger than the driver; the sanctions for this offense are jail for not more than 1 yr and/or a fine of not more than \$3,000. §§169A.31 & 609.03 Note: A PBT result may admitted into evidence to prove this offense. §169A.41, subd. 1

MINNESOTA

Chemical Breath Tests for Alcohol Concentration:  
(continued)

Other Information:

I. A driver may be required to submit to a chemical test if there is probable cause to believe that they have violated criminal vehicular homicide or injury laws. §§169A.51, sub. 2(3) & 169A.52, subd 1

II. In addition to the above statutory provision, a person may be administered a blood test without their consent if there is "probable cause" that they committed an offense where blood test results could be used as evidence of a crime. *State v. Lee*, 585 N.W.2d 378 (Minn. 1998)

III. See **Conditional Release** below.

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

Blood:

Yes §169A.51, subd. 1<sup>1</sup>

Urine:

Yes §169A.51, subd. 1<sup>1</sup> May be requested for the presence of either a controlled or hazardous substance. §169A.51, subd. 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):

Yes<sup>2</sup> §§169A.70, subd. 2 & 169A.70, subd. 3 Alcohol assessment required

<sup>1</sup>A blood or urine test may be requested after a breath test if there is probable cause to believe that there is impairment by a controlled or hazardous substance. "Action may be taken against a person who refuses to take a blood test ... only if a urine test was offered and action may be taken against a person who refuses to take a urine test only if a blood test was offered." §169A.51, subs. 3 & 4

<sup>2</sup>If a person has had two or more implied consent tests showing an alcohol concentration  $\geq 0.07$  w/n 2 yrs, the licensing agency may require such person to submit to an alcohol/drug assessment with appropriate treatment. If the person refuses to undergo assessment/treatment, their license may be denied for not more than 90 dys. §169A.54, subd. 11

**Conditional Release.** I. Unless maximum bail is imposed, a person charged with a drunk driving or implied consent offense, where the offender either (1) has had 2 or more such convictions w/n 10 yrs, (2) was < 19 yrs old and this is their 2nd or subsequent charge for either a drunk driving offense or implied consent law violation or (3) has been charge with driving with an alcohol concentration  $\geq 0.20$  can be released from detention only if they agree to abstain form alcohol use and to submit to daily monitoring of their alcohol level. §169A.44(a) & (b) II. Unless maximum bail is imposed, a person charged with a drunk driving or implied consent offense, where the offender had 3 or more prior offense convictions w/n 10 yrs, can only be released under the following conditions: (1) The impoundment of the registration plates of the vehicle used in offense; (2) the person must report weekly to a probation officer; and, (3) the person must abstain from the use of alc. or controlled substances and submit to weekly random testing for alcohol/drugs. §169A.44(c)

Sanctions for Refusal to Submit to a Chemical Test:

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

See Footnote No. 1.

See Footnote No. 1.

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

It is a crime to refuse to submit to a chemical test under the implied consent law. §169A.20, subd. 2

Note: The law considers a refusal to submit to a chemical test to be a drunk driving offense. See the sanctions, **both** criminal and administrative (licensing), for this offense below.

Administrative Licensing Action  
 (Susp/Rev):

**Admin. Revocations.** Rev 1 yr §169A.52, subd. 3(a)  
 However, for a 1st refusal criminal offense conviction, the licensing revocation of 90 dys applies instead of this action. §169A.54, subds. 1(2) & 6

1st offense-15 dys mand For persons <18 yrs old-90 dys mand  
Sub. Refusal (w/n 10 yrs) or a refusal where the person has had a prior drunk driving or admin. per se violation (w/n 10 yrs)-**180 dys mand** For persons <18 yrs old-360 dys mand §171.30, subds. 2a & 2b

After these mandatory periods, a person is eligible for limited driving privileges. §171.30

Other:

This licensing action is imposed even if a test is obtained without consent following a refusal. §169A.52, subd. 3(a)

<sup>1</sup>A refusal to submit to a PBT will subject a person to the provisions of the implied consent law (§169A.51). §169A.41, subd. 4  
**Historical Note:** Under a previous PBT law, which used similar language, the State supreme court held that a refusal to submit to a PBT would not result in licensing action. Only a refusal to submit to the implied consent would be grounds for such action. *State, Department of Public Safety v. Grovum*, 209 N.W.2d 788 (Minn. 1973) **Comment:** It appears reasonable to assume that this holding would also preclude the imposition of criminal sanctions for refusing to submit to PBT testing.

## MINNESOTA

### Sanctions Following a Conviction for a DWI Offense:

#### Criminal Sanctions:

See Double Jeopardy on p. 3-256 and the Special Note below.  
Third Degree Drunk Driving Offense-No Aggravating Factors-Misdemeanor  
Second Degree Drunk Driving Offense-A drunk driving offense with one Aggravating Factor-Gross Misdemeanor  
First Degree Drunk Driving Offense-A drunk driving offense with two or more Aggravating Factors-Gross Misdemeanor

**Aggravating Factors.** The following are considered Aggravating Factors: (1) any prior drunk driving offense (A prior offense includes prior refusal convictions and admin. per se violations & vehicle homicide or injury offenses.); (2) driving with an alcohol concentration  $\geq 0.20$ ; or, (3) driving with a passenger < 16 yrs old if the passenger is more than 36 mos younger than the driver.  
§§169A.03, subds 3, 20, 21 & 22, 169A.095, 169A.25, 169A.26 and 169A.27

**Persons Under 21 Years Old.** It is a misdemeanor for these persons to operate a motor vehicle while consuming alcoholic beverages, or after having consumed alcoholic beverages while there is physical evidence of the consumption present in the person's body. The sanctions for this offense are jail for not more than 90 dys, a fine of not more than \$700 (mand fine of \$210 or \$50 if there is undue hardship. See the Special Note on p. 3-255.) and license suspension. For a 1st off, lic. susp. for 30 dys and, for a sub. off, lic. susp. for 180 dys. These suspensions appear to be mandatory. §§169A.33 & 609.03 Note: A PBT result may admitted into evidence to prove this offense. §169A.41, subd. 1

**Special Note:** I. In situations where a person has caused a "bodily harm" while operating a motor vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration  $\geq 0.10$ , (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.), the following sanctions apply: Jail-not more than 1 yr; fine-not more than \$3,000 (mand fine of \$900 or \$50 if there is undue hardship See the Special Note on p. 3-255.); and, 1 yr mand lic revocation. For persons < 18 yrs old, a mandatory lic rev for 2 yrs. See Footnote No. 2 on p. 3-259. §§609.21, subd. 2b, 609.101, subds. 4 & 5 and 171.30, subds. 2a(4) & 2b

II. In situations where a person has caused a "great bodily injury" while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration  $\geq 0.10$ , (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.), the following sanctions apply: Jail-not more than 5 yrs; fine-not more than \$10,000 (mand fine of \$3,000 or \$50 if there is undue hardship See the Special Note on p. 3-255.); and, 1 yr mand lic revocation. For persons < 18 yrs old, a mandatory lic rev for 2 yrs. See Footnote No. 2 on p. 3-259. §§609.21, subd. 2, 609.101, subds. 4 & 5 and 171.30, subds. 2a(4) & 2b

III. In situations where the driver has caused a "substantial bodily injury" while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration  $\geq 0.10$ , (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.), the following sanctions apply: Jail-not more than 3 yrs; fine-not more than \$10,000 (mand fine of \$3,000 or \$50 if there is undue hardship See the Special Note on p. 3-255.); and, 1 yr mand lic rev. For persons < 18 yrs old, a mand lic rev for 2 yrs. See Footnote No. 2 on p. 3-259. §§609.21, subd. 2a, 609.101, subds. 4 & 5 and 171.30, subds. 2a(4) & 2b

IV. In situations where the driver has caused an "injury to an unborn child" while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration  $\geq 0.10$ , (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.), the following sanctions apply: Jail-not more than 5 yrs; fine-not more than \$10,000 (mand fine of \$3,000 or \$50 if there is undue hardship See the Special Note on p. 3-255.); and, 1 yr mand lic revocation. For persons < 18 yrs old, a mandatory lic rev for 2 yrs. See Footnote No. 2 on p. 3-259. §§609.21, subd. 4, 609.101, subds. 4 & 5 and 171.30, subds. 2a(4) & 2b

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

Imprisonment: Term (Day, Month, Years, Etc.):	See Mandatory Consecutive Sentences below.  <u>Misdemeanor</u> -Up to <b>90 dys</b> <u>Gross Misdemeanor</u> -Not more than <b>1 yr</b> §609.03 <u>1st offense</u> -None <u>2nd offense</u> (w/n 10 yrs)- <b>30 dys</b> w/48 con hrs <sup>1</sup> See Community Service below. <u>3rd offense</u> (w/n 10 yrs)- (1) <b>90 dys</b> w/30 con dys (not more than 60 dys may be served on home detention or intensive probation <sup>2</sup> ) <u>or</u> (2) <b>6 dys</b> of incarceration followed by intensive probation <sup>2</sup> . <u>4th offense</u> (w/n 10 yrs)-(1) <b>180 dys</b> w/30 con dys (not more than 150 dys may be served on home detention or intensive probation <sup>2</sup> ) <u>or</u> (2) <b>6 dys</b> of incarceration followed by intensive probation <sup>2</sup> . <u>5th or subsequent offense</u> (w/n 10 yrs)- <b>1 yr</b> w/60 con dys (the remainder of the minimum sentence may be served via on intensive probation <sup>2</sup> w/electronic monitoring or home detention) <u>or</u> (2) <b>6 dys</b> of incarceration followed by intensive probation <sup>2</sup> . §§169A.275
Fine: Amount (\$ Range):  Mandatory Min. Fine (\$):	<u>Misdemeanor</u> -Not more than <b>\$700</b> § 609.03 <u>Gross Misdemeanor</u> -Not more than <b>\$3,000</b> §609.03 <u>Misd Offs</u> - <b>\$210</b> ; <u>Gross Misd Offs</u> - <b>\$900</b> The law provides, that these mandatory fines may be reduced to \$50 based on undue hardship. §609.101, subds. 4 & 5 See the Special Note below.
Other Penalties: Community Service:	<u>1st offense</u> -8 hrs of community service for each day less than 30 of incarceration as an alternative to mandatory jail <sup>1</sup> §169A.275, subd. 1(a)(2)

<sup>1</sup>Based on mitigating circumstances, the court may sentence a person without regard to the mandatory sanctions. However, any sanction that is imposed must include either 48 hrs of consecutive incarceration or 80 hrs of community service. §169A.275, subd. 1(d)

<sup>2</sup>**Intensive Probation (Supervision) Program** (Pilot Program). Counties may receive State grants to start "intensive probation" programs for repeat drunk driving law offenders. This program provides, for (1) chemical dependency assessment, (2) a period of incarceration (or detention), (3) home detention, (4) abstinence from the use of alcohol/drugs, (5) decreased levels of program contact over the period of probation, (6) a provision that offenders continue or seek employment and (7) the costs of the program to be paid in whole or in part by the defendant. §169A.74

**Mandatory Consecutive Sentences.** A person is subject to mandatory consecutive incarceration sanctions under the following circumstances: (1) For violations of the drunk driving law, §169A.20, arising out of separate offenses; (2) for a violation of the drunk driving law where the person is also on probation for a prior offense; or, (3) for a violation of the drunk driving law where there are five prior drunk driving or administrative per se law violations w/n 10 yrs and one of the following offenses: (a) Violating vehicle insurance requirements; (2) driving while suspended or revoked; (3) driving without a valid license; or (4) driving in violation of a license restriction. §169A.28, subd 1

**Special Note:** I. For felony offenses, mandatory fines are based on 30% of the maximum statutory fine. For either gross misdemeanor or misdemeanor offenses, mandatory fines are based either on 30% of the maximum statutory fine or on 30% the maximum fine for such offenses in the uniform fine schedule where the maximum fine in this schedule is lower than the statutory maximum. This schedule is established by the conference of chief judges by January 1 of each year. This schedule is not reported in this publication. §609.101, subd. 4(1) & (2) II. A person, who has been convicted of any criminal offense, **must** pay a surcharge of **\$25**. §357.021, subd 6(a)

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

Restitution (eg Victim's Fund)	Yes Victim's Fund (§§611A.01 et seq.) <sup>1</sup> and also direct payment by the defendant to a victim (§§609.10 & 609.125(4))
Other:	See Footnote Nos. 2 & 3.
Administrative Licensing Actions: Pre-DWI Conviction Licensing Action: Administrative Per Se Law:	See Double Jeopardy and the Special Note below. Yes $\geq 0.10$ (BAC/BrAC/UrAC See Footnote No. 2 on p. 3-251) or <b>Any Amount of a Controlled Substance in the Body</b> (See Footnote No. 3 on p. 3-251.) <u>1st Violation-Rev-90 dys</u> <sup>4,5&amp;6</sup> (15 dys mand <sup>6</sup> For persons <18 yrs old-90 dys mand <sup>6</sup> ); <u>2nd or Sub. Violation</u> (w/n 5 yrs)- <u>Rev-180 dys</u> <sup>4&amp;6</sup> (90 dys mand <sup>6</sup> For persons <18 yrs old-180 dys mand <sup>6</sup> ) A limited license is available after the min. mandatory rev (or "waiting") period. §§169A.52, subd. 4, and 171.30, subd. 2a & 2b
Other:	Under §171.18, a person's license may be susp for not more than 1 yr if they have "committed" an off that requires mandatory license rev (e.g., DWI). Such action may be taken <u>without</u> a preliminary hearing. <b>Comment:</b> Such action could occur prior to a conviction.
Post DWI Conviction Licensing Action: Type of Licensing Action (Susp/Rev):	See Persons Under 21 Years Old on p. 3-254. <u>All offs-Rev</u> §§169A.54, subd. 1, and 171.17

<sup>1</sup>Payments to all claimants shall not exceed \$50,000 per victim. §611A.54

<sup>2</sup>**Assessments & Surcharges.** I. For alcohol screening, there is a surcharge of \$125 (\$130 if there has been a prior offense w/n 5 yrs). §169A.284, subd. 1

II. In addition to any other fine or assessment, a person, who has been convicted of driving with an alcohol concentration  $\geq 0.20$  under §169A.20, may be required to pay an assessment of up to **\$1,000**. §169A.285, subd. 1

<sup>3</sup>**Assessments for Police Officer Training.** An assessment of 15% of the fine is imposed for the purpose of funding the Police Officers Training Account. However, if the court does not impose a fine sanction, it must, nevertheless, impose an assessment  $\geq \$5$  but  $\leq \$10$  for a petty misdemeanor or  $\geq \$25$  but  $\leq \$50$  for either a misdemeanor, gross misdemeanor or felony. §626.861, subd. 1

<sup>4</sup>For persons less than 21 years old, the rev period is six (6) mos (12 mos if alcohol concentration  $\geq 0.20$ ). §169A.52, subd. 4

<sup>5</sup>The admin. per se revocations do not apply if a person has been convicted of a 1st DWI off related to the same incident. §169A.54, subd. 6

<sup>6</sup>**Special Note:** If the persons's alcohol concentration was  $\geq 0.20$ , the license revocation periods are **double** the ones given. §§169A.52, subd. 4(4) & 171.30, subd. 2c

**Double Jeopardy.** Based upon the same factual situation, a person, who had been subjected to licensing action under a prior administrative per se law, could also be subsequently prosecuted for a drunk driving offense (also prior law). Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Hanson*, 543 N.W.2d 84 (Minn. 1996)

**Special Note:** Under a prior administrative per se law, the court held that such law did not violate a person's constitutional right to due process of law. *Heddan v. Dirkswager*, 336 N.W.2d 54 (Minn. 1983)

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

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

1st off-Not less than **30 dys**<sup>1</sup> (90 dys for refusal to submit to a chemical test); 2nd off (w/n 10 yrs)-Not less than **180 dys**<sup>1</sup> (1 yr for refusal to submit to a chemical test) and until a treatment/rehabilitation has been completed; 3rd off (w/n 10 yrs)-Not less than **1 yr**<sup>1</sup> and until rehabilitation has been established; 4th and subsequent offs-Not less than **2 yrs**<sup>1</sup> and until rehabilitation has been established. See Footnote No. 2. For persons under 21 yrs old, see Footnote No. 3.

Mandatory Minimum Term of  
Withdrawal:

I. 1st off-**15 dys**<sup>1&4</sup>; 2nd or sub off (where a person submits to a chemical test)-**90 dys**<sup>1&4</sup>; 2nd or sub off (where a person refuses to submit to a chemical test)-**180 dys**<sup>1&4</sup> §171.30, subd. 2a  
II. For persons < 18 yrs old-1st off-**90 dys**<sup>1&4</sup>; 2nd or sub off (where a person submits to a chemical test)-**180 dys**<sup>1&4</sup>; 2nd or sub off (where a person refuses to submit to a chemical test)-**360 dys**<sup>1&4</sup> §171.30, subd. 2b

Other:  
Rehabilitation:  
Alcohol Education:  
Alcohol Treatment:

**Yes** §169A.275, subd 5  
**Yes** §169A.275, subd 5

**Special Note:** Except for mandatory criminal sanctions, the court may stay imposition of fine or jail sentence but not licensing action if defendant submits to treatment as recommend via the assessment report under §169A.70 or as otherwise determined by the court. §169A.283

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

**License Plate Impoundment.** Vehicle registration plates **must** be impounded<sup>4,5,6&7</sup> (1) if the vehicle operator w/n 10 yrs has been

<sup>1</sup>**Special Note:** A person, who has been convicted of driving with an alcohol concentration  $\geq 0.20$  under §169A.20, **must** have their driving privileges **revoked for double** these periods. §§169A.54, subd. 5 & 171.30, subd. 2c Note: Under previous law, which was similar to the present provision, these longer waiting periods in cases where the driver's BAC was  $\geq 0.20$  were held not to violate such person's procedural due process of law rights. *Hamilton v. Commissioner of Public Safety*, 600 S.W.2d 720 (Minn. 1999)

<sup>2</sup>Note: Ninety (90) additional dys are added to the above rev base periods if the drunk driving offense involved either a death or an injury. §169A.54, subd. 4

<sup>3</sup>If the drunk driving law offender is under 21 yrs old, their license is revoked for 6 mos or for the normal period of time for drunk driving law violators whichever is the greater period. §169A.54, subd. 2

<sup>4</sup>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.

<sup>5</sup>License plate impoundment does not apply either to rental vehicles or to vehicles registered in other States. §169A.60, subd. 2(b)

<sup>6</sup>If the registered owner of a vehicle was not a passenger at the time of the offense, they may have the vehicle registration plates reissued. §169A.60, subd. 8

<sup>7</sup>**Special Plates.** Special plates may be issued so that the vehicle may be operated by either a family member, who has a valid driver's license, or by the offender if they have a limited (restricted) license. §169A.60, subd 13 A law enforcement officer is authorized to stop a vehicle bearing these plates in order to determine if the driver is lawfully authorized to operate a motor vehicle. §168.0422 However, a recent court decision held that a vehicle cannot be stopped simply because it bears these "special plates". Such suspicionless stops are unconstitutional. *State v. Grayeagle*, 541 N.W.2d 326 (Minn.App. 1995)

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

**License Plate Impoundment.** (continued) convicted of or had a license revocation either for driving while under the influence of alcohol or a controlled substance or with an alcohol concentration  $\geq 0.10$ , (2) if the vehicle operator was driving with an alcohol concentration  $> 0.20$  or (3) if the vehicle operator has been convicted of any drunk driving or implied consent offense while transporting a child under 16 yrs old where the child was at least 36 months younger than the driver. New registration plates are issued when the driver's license revocation order is "rescinded". §169A.60

**Forfeiture (Administrative or Juridical).**<sup>1</sup> Under §169A.63, any motor vehicle used in the following offenses or violations is subject to forfeiture.

I. A 3rd or subsequent implied consent refusal or admin. per se revocation w/n 10 yrs (a prior violation includes any drunk driving offense).

II. A person who has been convicted of a First Degree drunk driving offense.

Terms Upon Which Vehicle  
Will Be Released:  
Other:

See Impoundment above.

**Special Note:** A vehicle may be impounded following a DWI arrest. The vehicle may be released to the vehicle owner (or lien holder) upon proof of a valid driver's license and insurance. §169A.42

Miscellaneous Sanctions  
Not Included Elsewhere:

See the Historical Note Concerning the Ignition Interlock Program below.

<sup>1</sup>**Court Decisions Under Prior Law (§169.1217) Similar to Present Provisions.** I. Based upon the same factual situation, a person, who has been convicted of certain drunk driving or license revocation offenses, was also subject to having their vehicle forfeited via a civil proceeding. Such subsequent civil proceeding does not violate the constitutional prohibition against double jeopardy. *Lukkason v. 1993 Chevrolet Extended Cab Pickup*, 590 N.W.2d 803 (Minn.App. 1996) (review denied by the State supreme court, 1999 Minn. LEXIS 304), & *City of New Brighton v. 2000 Ford Excursion*, 622 N.W.2d 364 (Minn.App. 2001) (review denied by the State supreme court, 2001 Minn LEXIS 225)

II. Forfeiture was held to be mandatory. *Adkins v. 1979 Midas R.V.*, 546 N.W.2d 768 (Minn.App. 1996)

III. The forfeiture of a vehicle, that had a value in excess of the maximum fine, did not violate constitutional provisions prohibiting excessive fines. *City of New Brighton v. 2000 Ford Excursion*, 622 N.W.2d 364 (Minn.App. 2001) (review denied by the State supreme court, 2001 Minn LEXIS 225)

**Historical Note Concerning the Ignition Interlock Program:** Under a statutory provision that terminated on December 31, 2001, a drunk driving offender, who had been denied driving privileges based on good cause that they are a threat to public safety under §171.04, subd. 1(10), could apply for limited driving privileges if (1) at least half of the person's required alcohol abstinence period has been completed, (2) they had completed a treatment program, (3) they were currently participating in a group support abstinence program and (4) they operated motor vehicles that are equipped with **ignition interlock** devices. §171.305

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

Miscellaneous Sanctions  
Not Included Elsewhere: (continued)

**Punitive Damages.** In a civil action involving a motor vehicle accident, punitive damages may be awarded if the defendant (1) had an alcohol concentration  $\geq 0.10$ , (2) was under the influence of either a controlled or hazardous substance or (3) was under the influence of alcohol and refused to submit to a chemical test under the implied consent law. §169A.76

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes** Felony I. Death as a result of operating a motor vehicle either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration  $\geq 0.10$ , (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.) §609.21, subd. 1 II. "Death to an unborn child" while operating a vehicle in either (1) in a grossly negligent manner or (2) in a negligent manner (i) while under the influence of alcohol/a controlled substance, (ii) with an alcohol concentration  $\geq 0.10$ , (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body (See Footnote No. 3 on p. 3-251.) §609.21, subd. 3

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):  
Mandatory Minimum Term:  
Fine (\$ Range):  
Mandatory Minimum Fine:

Not more than **10 yrs** §609.21, subds. 1 & 3  
**None**  
Not more than **\$20,000** §609.21, subds. 1 & 3  
**\$6,000** (\$50 if there is undue hardship) §609.101, subds. 4 & 5  
See Footnote No. 3 on p. 3-256. See the Special Note on p. 3-255.

Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:  
Length of Term of  
Licensing Withdrawal:  
Mandatory Action--Minimum  
Length of License  
Withdrawal:

**Rev** §§169.11<sup>1</sup> & 171.17

See Footnote No. 2.

Other:

**1 yr** (For persons <18 yrs old, 2 yrs) §171.30 Note: A limited license may be issued after the 1 (or 2) yr minimum license rev period. §171.30, subd. 2a & 2b  
**None**

<sup>1</sup>A defendant may also be required to surrender their vehicle's registration plates during the period of license revocation. §168.041, subds. 3 & 4

<sup>2</sup>**Injury or Death Related DWI Offenses.** The maximum rev. length for these offenses is not specified by statute. However, the following provisions are applicable. (1) An offender cannot have their driving privileges restored until they have completed an examination by the licensing agency. §171.29, subd. 1 And, (2) if a court has denied an offender's petition for reinstatement of their license, the offender must wait 1 yr before they can petition the court again for such reinstatement. §171.19

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Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term

of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Misd Not more than 90 dys §§171.24<sup>1</sup> & 609.03(3)

None

Not more than \$700 609.03(3)

\$210 (\$50 if there is undue hardship) §609.101, subs. 4 & 5  
See Footnote No. 3 on p. 3-256. See the Special Note on p. 3-255.

See the Special Note and Vehicle Forfeiture below.

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Susp Applies only to 2nd or sub. offs. §168.041, subd. 2

2nd or sub. off.-Not more than 1 yr §168.041, subd. 2

None

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

No

<sup>1</sup> Motor vehicle registration plates impounded under §168.041, subs. 1, 2 & 4 for a violation of this provision.

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

**Special Note:** I. A person commits a misd if they operate a CMV during a CDL disqualification. The sanctions for this offense are imprisonment for not more than 90 dys and/or a fine of not more than \$700 (mand fine of \$210 or \$50 if there is undue hardship See the Special Note on p. 3-255.). §§171.24, subd. 4 & 609.03 II. A person is subject to the following CDL disqualifications, if they operate a CMV during an out-of-service order: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. §171.165, subd. 4A III. A person is subject to an administrative "penalty" of not more than \$1,000, if they operate a CMV during an out-of-service order. §171.165, subd. 3(d)

**Vehicle Forfeiture.** A person's vehicle is subject to mandatory forfeiture, if they commit either a drunk driving or aggravated drunk driving offense after their driving privileges have been canceled the licensing agency on the grounds that their "operation of a motor vehicle on the highways ... would be inimical to public safety or welfare." §§169A.63, subd. 1(b)(2)(I); 171.04, subd. 1(9); and, *Adkins v. 1979 Midas R. V.*, 546 N.W.2d 768 (Minn.App. 1996)

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

## Accidents:

State Has Such a Law (Yes/No):

Yes §169.09, subd. 11

BAC Chemical Test Is Given to 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<sup>1</sup> (Year Eff: 1986) §340A.503, subd. 2(1) & (2)

Minimum Age (Years) Possession:

21 Exemption for home possession §340A.503, subd. 3

Minimum Age (Years) Consumption:

21 Exemption for home consumption with parental consent §340A.503, subd. 1(2)

Dram Shop Laws and Related Legal Actions:

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

Yes<sup>2&3</sup> §340A.801

"Dram Shop Law" Concept Has Been

Adopted Via a Change to the Common

Law Rule by Action of the Highest

Court of Record in the State (Case Citation):

Dram Shop Actions-Social Hosts:

**Yes-Limited** Social hosts ≥21 yrs of age, who serve or provide alcoholic beverages that result in the intoxication of persons <21 yrs old, are liable for the injuries caused by such minors. However, the law appears to exclude such intoxicated minors from recovering for any the injuries they may sustain. §340A.90

Other:

A licensee is not liable for the injuries sustained an intoxicated patron. *Line Const. Ben. Fund (Lineco) v. Skeates*, 563 N.W.2d 757 (Minn.App. 1997), & *Empire Fire & Marine Insurance Co. v. Williams*, 121 N.W.2d 580 (Minn. 1963)

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) &amp; 609.03

Term of Imprisonment:

Up to 1 yr

<sup>1</sup>A person under 21 yrs old may purchase alcoholic beverages if they are under the supervision of a person over 21 yrs old and the purpose of the purchase is for training, education or research purposes. The law further provides that "[p]rior notification of the licensing authority is required unless the supervised alcohol purchase attempt is for professional research conducted by post-secondary educational institutions or state, county, or local health departments." §340A.503, subd. 2

<sup>2</sup>I. A licensee who has a license to sell alcoholic beverages only on the premises may still be liable for the actions of patrons who procure such beverages from the license but consume them off the premises. *Englund, v. MN CA Partners*, 555 N.W.2d 328 (Minn.App. 1996) II. A licensee may be liable under the Dram Shop Act for damages caused by a driver, who consumed alcoholic beverages at the licensee's establishment, to vehicle passengers, who were injured in an automobile accident while riding with the intoxicated patron. *Lefto v. Hoggsbreath Enterprises, Inc.*, 581 N.W.2d 855 (Minn. 1998) Also, a bartender may be able to recover damages from their employer for injuries they receive from intoxicated patrons. *K.R. v. Sanford*, 605 N.W.2d 387 (Minn. 2000) III. A former spouse is considered an "other person" under the Dram Shop Law and can recover damages for the death of her former husband who became intoxicated at a licensed establishment and, while operating a motor vehicle, was killed in a single vehicle accident. *Skelly v. Mount*, 620 N.W.2d 566 (Minn.App. 2000)

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Other State Laws Related To Alcohol Use: (continued)

Fine (\$ Range): Not more than **\$3,000** (a mandatory fine of \$900 or \$50 if there is undue hardship §609.101, subds. 4 & 5) (An admin. fine of up to **\$2,000** may also be imposed. §340A.415) See Footnote Nos. 2 & 3 on p. 3-256. See the Special Note on p. 3-255.

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

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:

See the Special Note below.

Term of Imprisonment:

**Gross Misd** §§340A.503, subd. 2(1), & 340A.702(8) & 609.03 Up to **1 yr**<sup>1</sup>

Fine (\$ Range):

Not more than **\$3,000** (a mandatory fine of \$900 or \$50 if there is undue hardship §609.101, subds. 4 & 5) (An admin. fine of up to **\$2,000** may also be imposed. §340A.415)<sup>1</sup> See Footnote Nos. 2 & 3 on p. 3-256. See the Special Note on p. 3-255.

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

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 §169A.35, subds. 3 & 4

Anti-Consumption Law (Yes/No):

Yes Driver and passengers §169A.35, subd. 2

<sup>1</sup>In *State v. Guminga*, 395 N.W.2d 344 (Minn. 1986), the Minnesota Supreme Court held that criminal sanctions cannot be imposed on employers for the illegal actions of their employees who sell/serve alcoholic beverages to persons under the legal drinking age. Note: See §340A.501 which also eliminates the possibility of such vicarious criminal liability.

**Special Note:** It is a felony for a person, who is not licensed to dispense alcoholic beverages, to either sell, barter, furnish or give such beverages to a person <21 yrs old "if that person becomes intoxicated and causes or suffers death or great bodily injury as a result of the intoxication." The sanctions for this felony are a prison term of not more than 5 yrs and/or a fine of not more than \$10,000. However, unless an offender's criminal history would indicated a greater sanction via the sentencing guidelines, the presumptive sentence is a stay of execution with 90 dys incarceration and probation. §§340A.701, subds. 1(4) & 2 and 609.03(1)

STATE:  
General Reference:

MISSISSIPPI  
Mississippi Code Annotated

Basis for a DWI Charge:

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

Under the influence of intoxicating liquor §63-11-30(1)  
≥ **0.10**<sup>1&2</sup> §63-11-30(1)  
Persons Under 21 Years Old ≥ **0.02**<sup>1&2</sup> §63-11-30(1)

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

**None**  
Under the influence of (1) **Any Substance** or (2) Any Drug or Controlled Substance the possession of which is illegal §63-11-30(1)

Other:

For Commercial Motor Vehicle Operators, see p. 3-264.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:  
Implied Consent Law:  
Arrest Required (Yes/No):

**Yes** §63-11-5

**No** However, a request to submit to a test is based on reasonable grounds and probable cause of DWI. §63-11-5(1)

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

**No** §63-11-5

**Yes** (Criminal Cases)<sup>3</sup> §63-11-41  
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.<sup>4</sup> *Gregg v. State*, 374 So.2d 1301 (Miss. 1979)

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

Blood:  
Urine:  
Other:

**Yes** §63-11-5  
**Yes** §63-11-5  
**None**

Adjudication of DWI Charges:

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

**No**<sup>5</sup>  
**Yes** A DWI charge cannot be reduced §63-11-39 For subsequent offenses, mandatory sanctions cannot be suspended or reduced via a plea agreement. §63-11-30(2)(b) & (c)

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

**Yes** Mandatory for subsequent offenses §63-11-30(2)(d) & (e)

<sup>1</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath or alcohol concentration of 0.10 (0.02 for persons < 21 yrs old) or more.

<sup>2</sup>Standard: Alcohol concentration is expressed as "percent" which is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§63-11-3(e), 63-11-23(2) & 63-11-30(1)

<sup>3</sup>Refusal to submit a chemical test cannot be admitted into evidence in a civil action. §63-1-43

<sup>4</sup>A statute, §63-11-8, that mandated blood tests for alcohol/drug content, if the driver was involved in an accident resulting in a death, was held unconstitutional in that it provided for a search without probable cause of a crime. *McDuff v. State*, 763 So.2d 850 (Miss. 2000)

<sup>5</sup>However, a drunk driving offense cannot be dismissed upon the completion of court imposed conditions. §99-15-26(1) & A.G.Op. #93-0889, January 12, 1994, 1994 Miss. AG LEXIS 56

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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:

**Important.** See Double Jeopardy and the Special Note below.

Imprisonment:

Term (Day, Month, Years, Etc.):

DWI off-Misd (3rd and sub. off-Felony) 1st Off-Not more than **48 hrs<sup>1</sup>** (See Victim Impact Panel on p. 3-265.); 2nd Off (w/n 5 yrs)-**5 dys<sup>2</sup>-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)-**5 to 25 yrs** §63-11-30(2)(a), (b) & (c) and (5)

Mandatory Minimum Term:

1st off-None<sup>1</sup>; 2nd off-5 dys<sup>2</sup>; Sub off-1 yr §63-11-30(2)(b) & (c)

<sup>1</sup>An offender may attend a victim impact panel in lieu of 48 hrs of incarceration. §63-11-30(2)(a)

<sup>2</sup>See Community Service on p. 3-265.

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Keyes v. State*, 708 So.2d 540 (Miss. 1998)

**Special Note:** For persons <21 yrs old, the sanctions for a normal drunk driving offenses apply if their BAC/BrAC ≥0.08. However, different sanctions apply if their BAC/BrAC is ≥0.02 but <0.08; see **Persons Under 21 Years Old** on p. 3-265. §63-11-30(3)(a)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person's privilege to operate a CMV is "suspended" for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical (breath) test for alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "suspension" is for life (or a lesser period as established by Federal law). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. A person commits a drunk driving offense if they operate a CMV with a BAC/BrAC ≥0.04. §§63-1-75(b), 63-1-82(3), 63-1-83, 63-1-84 & 63-11-30(1)

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

<p>Fine: Amount (\$ Range):</p>	<p><u>1st Off-\$250 to \$1,000; 2nd Off (w/n 5 yrs)-\$600 to \$1,500; 3rd &amp; Sub. Off (w/n 5 yrs)-\$2,000 to \$5,000</u> Conviction for a DWI off where there has been negligence resulting in disfigurement, disability, etc. (felony) - Not more than <b>\$10,000</b> §§47-5-3, §63-11-30(2)(a), (b) &amp; (c) &amp; (5) and 99-19-32</p>
<p>Mandatory Min. Fine (\$):</p>	<p><u>1st off-\$250; 2nd off (w/n 5 yrs)-\$600; 3rd &amp; sub. off (w/n 5 yrs)-\$2,000</u> §§63-11-30(2)(b) &amp; (c) and 99-19-25 (¶2)</p>
<p>Other Penalties: Community Service:</p>	<p><u>Yes 2nd off</u>-Community service from 10 dys (mand) to 1 yr in <u>addition</u> to imprisonment. §63-11-30(2)(b)</p>
<p>Restitution (eg Victim's Fund)</p>	<p><u>Yes<sup>1</sup></u> I. A defendant may be ordered by the court to make direct restitution to a victim. §99-39-1 et seq. II. A victim may also obtain limited compensation from the State Crimes Victims' Compensation Fund. §99-41-5 et seq.</p>
<p>Other:</p>	
<p>Administrative Licensing Actions: <u>Pre-DWI Conviction</u> Licensing Action: Administrative Per Se Law:</p>	<p>See Double Jeopardy on p. 3-264. <u>Yes</u> This law encourages DWI offenders, who have a BAC/BrAC <math>\geq 0.10</math> (for persons <math>&lt; 21</math> yrs old <math>\geq 0.02</math>) (See Footnote No. 2 on p. 3-263.), to request a trial w/n 30 dys after arrest. If the chemical test indicates one of the above BAC/BrAC levels, the driver's license is seized by the police and sent the licensing agency. The driver is issued a receipt for such license. This receipt may be used as a temporary permit for 30 dys. However, driving privileges are extended if a trial is requested by the driver but not commenced w/n 30 dys. §63-11-23(2) <b>Important:</b> If temporary driving privileges expire without a trial having been requested by the offender, the license susp periods for implied consent violations apply. §63-11-23(2)</p>
<p>Other:</p>	<p>A person's license may be susp if they have "committed" an off that usually requires license rev (e.g., vehicle homicide)<sup>3</sup>. Such action may be taken <u>without</u> a preliminary hearing. The time period for this susp is not specified. §63-1-53(1)(a) <b>Comment:</b> Such action could occur prior to a conviction.</p>

<sup>1</sup>Some victims of criminal activity may receive compensation from a special crime victims' escrow account. Funds for this account are provided via monies received by accused or convicted persons from the news, publicity or entertainment media for the purpose of reenacting the criminal event. A victim, however, must first have a money judgment against a defendant for the injury caused by a criminal action before they can receive funds from the escrow account. §99-38-1 et seq.

<sup>3</sup>Note: A DWI offense results in license suspension not revocation.

**Persons Under 21 Years Old.** The following sanctions apply to persons, who are  $< 21$  yrs old and who drive with a BAC/BrAC  $\geq 0.02$  but  $< 0.08$ . 1st offense-A fine of **\$250**, license susp-**90 dys** (30 dys mand A hardship lic may be issued after the 30 dy period for purposes of either employment, education or medical needs.), and complete an alcohol education program; 2nd offense (w/n 5 yrs)-A fine of not more than **\$500** and license susp-**1 yr** (6 mos mand); and, 3rd or sub offense (w/n 5 yrs)-A fine of not more than **\$1,000** and license susp until they reach 21 or for **2 yrs** whichever is the longer susp period (6 mos mand). For either a 2nd or sub offense, driving privileges may be reinstated after 6 mos if the person receives a "diagnostic assessment" and completes any needed alcohol treatment program. §63-11-30(3)

## MISSISSIPPI

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

Post DWI Conviction Licensing Action:	<b>Important.</b> See the Special Note on p. 3-264 and Persons Under 21 Years Old on p. 3-265.
Type of Licensing Action (Susp/Rev):	<b>Susp All offs</b> §63-11-30
Term of License Withdrawal (Days, Months, Years, etc.):	<u>1st off-90 dys to 1 yr</u> <sup>1&amp;2</sup> ; <u>2nd off (w/n 5 yrs)-2 yrs</u> <sup>1</sup> ; <u>3rd or sub. off (w/n 5 yrs)-5 yrs</u> <sup>1</sup>
Mandatory Minimum Term of Withdrawal:	<u>1st off-30 dys</u> <sup>3</sup> ; <u>2nd off (w/n 5 yrs)-1 yr</u> <sup>4</sup> ; <u>3rd &amp; sub. off (w/n 5 yrs)-3 yrs</u> <sup>5</sup> See Footnote No. 6. <b>Special Note:</b> I. Notwithstanding §63-11-30, a person, who has been convicted of operating a motor vehicle while under the influence of a controlled substance, must have their driving privileges forfeited for not less than 6 mos. §63-1-71(1) II. If a person is convicted of a DWI offense where there has been a chemical test refusal, the licensing sanctions for the DWI conviction are in <u>addition</u> (i.e., consecutive) to those imposed under the implied consent law. §63-11-30(4)
Other:	
Rehabilitation:	
Alcohol Education:	<b>Yes</b> <u>1st off</u> - Required before license can be reinstated. §§63-11-30(2)(a) & 63-11-32
Alcohol Treatment: Alcohol Education/ Vehicle Impoundment/Confiscation:	<b>Yes</b> <u>2nd and 3rd offs</u> §63-11-30(2)(e) & (f)
Authorized by Specific Statutory Authority:	<b>Forfeiture.</b> For a <u>3rd or sub. offense</u> (w/n 5 yrs), the vehicle used in the offense <b>may</b> be forfeited. However, the vehicle owner's spouse may obtain possession of the vehicle if they can demonstrate that the vehicle is their only means of transportation. §§63-11-30(2)(c) & 63-11-49 <b>Impoundment/Immobilization.</b> For <u>2nd or sub offenses</u> , all vehicles owned by the offender must be impounded/immobilized for the length of their license suspension. §§63-11-30(2)(b) (¶12) & 63-11-31(1)(a) <u>See Ignition Interlock on p. 3-267.</u>
Terms Upon Which Vehicle Will Be Released:	

<sup>1</sup>Judicial review is not allowed for these susp actions by the licensing agency. §63-11-26

<sup>2</sup>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.

<sup>3</sup>The county circuit court may reduce the suspension period to 30 days provided the defendant demonstrates that they need their license (1) to continue employment or education, (2) to obtain medical care (3) to attend driver improvement, alcohol or drug education programs or (4) to attend court ordered counseling. §63-11-30(2)(a)

<sup>4</sup>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)

<sup>5</sup>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)

<sup>6</sup>A person, who commits a drunk driving offense and who is under the legal age to operate a motor vehicle, is not eligible to obtain driving privileges until they are 18 yrs old. §63-11-30(9)

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

Miscellaneous Sanctions  
Not Included Elsewhere:

- I. **Mand. State Assessment: \$150** §99-19-73(2) & (7)
- II. **Victim Impact Panel.** 1st off-Attendance at a victim impact panel in lieu of 48 hrs in jail. §63-11-30(2)(a)
- III. **Bus Drivers & Operators of Vehicles for Hire.** The privilege to operate a bus/veh. for hire may be susp/rev if a person drives such a vehicle while intoxicated or noticeable under the influence of intoxicating liquor. §§21-27-137 & 21-27-155
- IV. **Community Work Center.** Unless the drunk driving offense involved either death or injury, an offender may be assigned to a community work center. §47-5-110(1)
- V. **Ignition Interlock.** (1) Where other persons must use a vehicle, the use of an ignition interlock may be required in lieu of impoundment/immobilization. (2) For a 1st or sub. offense, the court may order the use of an ignition interlock for **6 mos** on all vehicles owned by the offender following license reinstatement. §§63-11-30(1) & 63-11-31(1)(a)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	<b>Yes Felony</b> Death via DWI & negligence <sup>1</sup> §63-11-30(5)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	<b>5 to 25 yrs</b> §63-11-30(5)
Mandatory Minimum Term:	<b>None</b>
Fine (\$ Range):	Not more than <b>\$10,000</b> §§47-5-3 & 99-19-32(1)
Mandatory Minimum Fine:	<b>None</b> However, there is a mand. State assessment of \$150. §99-19-73(2) & (7)
Administrative Licensing Action:	
Licensing Authorized and	
Type of Action:	<b>Rev</b> §63-1-51(1)(a)
Length of Term of	
Licensing Withdrawal:	<b>1 yr</b> §63-1-51(1)(a)
Mandatory Action--Minimum	
Length of License	
Withdrawal:	<b>1 yr</b> §63-1-51(1)
<u>Driving While License Suspended or Revoked</u>	
<u>Where the Basis Was a DWI Offense:</u>	See Footnote No. 2.
Sanction:	
Criminal:	
Imprisonment (Term):	<b>Misd 48 hrs-6 mos</b> §63-11-40

<sup>1</sup>The DWI law provides that, for the purposes vehicle homicide, a death related DWI offense also includes a death caused by a person <21 yrs old who is operating a motor vehicle with a BAC ≥0.02. §63-11-30(1) & (5) The State supreme court has held that the law does not violate constitutional provisions requiring equal protection of the laws. *Mason v. State*, 781 So.2d 99 (Miss. 2000)

<sup>2</sup>It is a misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are imprisonment from 1 to 6 yrs, a fine of \$5 to \$250 and an assessment of \$17. §§63-1-69, 63-1-77(2) & (3) and 99-19-73(1)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	None §99-19-25
Fine (\$ Range):	\$200 to \$500 <sup>1</sup> §63-11-40
Mandatory Minimum Fine:	\$200 <sup>1</sup> §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
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Ycs/No):	No
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine (\$ Range):	
Mandatory Minimum Fine (\$):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:	
State Has Such a Law (Yes/No):	Yes §63-11-7
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes
Vehicle Passengers:	No
Pedestrian:	No

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1986) §§67-1-81, 67-3-53(b) & 67-3-70(1)
Minimum Age (Years) Possession:	21 There is an employment exemption. §§67-1-81 & 67-3-54
Minimum Age (Years) Consumption:	None <sup>2</sup>

<sup>1</sup>There is a mand. State assessment of \$150. §99-19-73(2) & (7)

<sup>2</sup>Note: Persons under 21 years old may consume light wine and beer in the presence of a parent or legal guardian. §67-3-54(1)

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

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

**Yes**<sup>1</sup> §67-3-73(2) & (4) Licensees cannot be held liable if they serve or sell alcoholic beverages to a person who "may lawfully purchase" such beverages.

"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**<sup>1</sup> *Munford, Inc. v. Peterson*, 368 So. 2d 213 (Miss. 1979), *Bryant v. Alpha Entertainment Corp.*, 508 So.2d 1094 (Miss. 1987), & *Delahoussaye v. Mary Mahoney's Inc.*, 783 So.2d 666 (Miss. 2001)<sup>2</sup>

Dram Shop Actions-Social Hosts:

**Yes Limited** A social host cannot be held liable if they provide alcoholic beverages to a person who may lawfully consume such beverages. §67-3-73 & *Boutwell v. Sullivan*, 469 So.2d 526 (Miss. 1985)

Other:

**None**Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

See the Special Note on p. 3-270.

Term of Imprisonment:

**Misd** §§67-1-83, 67-3-53(b) & 67-3-69(1)

Fine (\$ Range):

Not more than **6 mos**Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Not more than **\$500**<sup>3</sup>

Length of Term of License Withdrawal:

**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

(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:

See the Special Note on p. 3-270.

(1) Selling alcoholic beverages (4% or more alc. by wgt.) to

<sup>1</sup>The Dram Shop Law, §67-3-73, appears to limit but not to abrogate common law.

<sup>2</sup>In *Delahoussaye*, the court held that a licensee could be held liable for the negligent actions of an intoxicated minor driver even though they did not sell alcoholic beverages to such person. It was sufficient that other minors had purchased such beverages for the injury causing person to consume. The court stated that "[t]here was no requirement that the intoxicated and negligent driver actually have purchase the alcohol." 783 So.2d at 670

<sup>3</sup>There is also a mand. State assessment of \$47. §99-19-73(5) & (7)

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Other State Laws Related To Alcohol Use: (continued)

Type of Criminal Action: (continued)	those under 21 yrs old: <u>1st off-Misd</u> ; <u>2nd and subsequent offs-Misd</u> (2) Selling to a person under 21 yrs old beer and wine not more than 4% alcohol by weight- <u>Misd</u> §§67-1-81 & 67-3-53
Term of Imprisonment:	(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: <u>1st off-None</u> ; <u>2nd and subsequent offs-Not more than 1 yr</u> (2) Selling to a person under 21 yrs old beer and wine not more than 4% alcohol by weight- <u>Not more than 6 mos</u> §§67-1-81, 67-3-53 & 67-3-69
Fine (\$ Range):	(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: <u>1st off-\$500-1,000<sup>1&amp;2</sup></u> ; <u>2nd and subsequent offs-\$1,000-2,000<sup>1&amp;2</sup></u> (2) Selling to a person under 21 yrs old beer and wine not more than 4% alcohol by weight- <u>Not more than \$500<sup>1&amp;2</sup></u> §§67-1-81, 67-3-53 & 67-3-69
<u>Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: <u>1st Off-Rev<sup>3</sup></u> §67-1-71; <u>2nd and subsequent Off-Automatic Rev</u> §67-1-81 (2) Selling to a person under 21 yrs old beer and wine (not more than 4% alcohol by weight)- <u>Rev/Susp<sup>2&amp;3</sup></u>
Length of Term License Withdrawal:	(1) Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21 yrs old: <u>1st off-Rev. length not specified</u> §67-1-71; <u>2nd and subsequent offs-Permanently rev.</u> §67-1-81 (2) Selling to a person under 21 yrs old beer and wine (not more than 4% alcohol by weight)- <u>Rev. length not specified.</u> 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) <sup>2</sup>
<u>Anti-Happy Hour Laws/Regulations:</u>	No
<u>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:</u>	
Open Container Law (Yes/No):	No
Anti-Consumption Law (Yes/No):	No

<sup>1</sup>There is also a mand. State assessment of \$47. §99-19-73(5) & (7)

<sup>2</sup>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 yrs old: 1st Off-A fine of not more than \$500 and lic. susp. for 3 months; 2nd Off-(w/n 12 mos)-A fine of not more than \$1,000 and lic. susp. for 6 mos; and, 3rd & Subsequent Off-(w/n 12 mos)-A fine of not more than \$500 and a lic. susp. for 1 yr. §67-3-69(3)

<sup>3</sup>A limited susp may be imposed in lieu of rev.

**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)

STATE:  
General Reference:

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Vernon's Annotated Missouri Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Driving while intoxicated (while in an intoxicated or drugged condition) <sup>1</sup> §§577.001.2, & 577.010
Illegal Per Se Law (BAC/BrAC):	≥0.08 <sup>2</sup> §577.012
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	<b>Drugged Condition<sup>1</sup></b> §577.010
Other:	A BAC/BrAC ≥ 0.08 is <i>prima facie</i> evidence of intoxication. <sup>3</sup> §577.037 For Commercial Motor Vehicle Operators, see p. 3-275.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	Yes §577.021 & <i>Justice v. Director of Revenue</i> , 890 S.W.2d 728 (Mo.App. 1995)
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §577.020.1
Implied Consent Law Applies to Drugs (Yes/No):	Yes §577.020.1
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes §577.041.1 (Criminal & Possibly Civil Cases), <i>State v. Berry</i> , 803 S.W.2d 37 (Mo.App. 1990), <i>State v. McCarty</i> , 875 S.W.2d 622 (Mo.App. S.D. 1994), & <i>State v. Myers</i> , 940 S.W.2d 64 (Mo.App. S.D. 1997)
Other Information:	Under "exigent circumstances", a blood sample may be withdrawn from a driver without their consent but prior to a DWI arrest if there is "probable cause" of such offense. <i>State v. Lurette</i> , 858 S.W.2d 816 (Mo.App. W.D. 1993)

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

Blood:	Yes §577.020.1
Urine:	Yes §577.020.1
Other:	Saliva §577.020.1

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes For all offenses as part of the alcohol and drug education and rehabilitation programs. §§577.001.4 & 577.049.1

<sup>1</sup>The term "intoxicated condition" means "under the influence of alcohol, a controlled substance, or drug, or any combination thereof." §577.001.2

<sup>2</sup>The illegal per se law provides that no one shall operate a motor vehicle with a 0.08 or more percent by weight of alcohol in the blood. Percent by weight of alcohol is defined as grams of alcohol per either 100 milliliters of blood or 210 liters of breath. §577.012.1 & .2 See §577.037 which concerns the admissibility of chemical test evidence to prove either an intoxicated or illegal per se offense and also defines "percent by weight of alcohol in the blood" to mean grams of alcohol per either 100 milliliters of blood or 210 liters of breath.

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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): N/A  
Administrative Licensing Action (Susp/Rev): N/A  
Other: N/A

Refusal to Take Implied Consent

Chemical Test:  
Criminal Sanction (Fine/Jail): None

Administrative Licensing Action (Susp/Rev):  
1st Refusal-Rev-1 yr (90 dys mand) (A limited hardship license may be issued by the court after the 90 dy period.); 2nd or sub refusal (w/n 5 yrs)-Rev-1 yr (Mand) §§302.309.3(5)(e) & (f), and 577.041

Other: A person must complete a substance abuse program before their license can be reinstated. For cause, the court may modify or waive this requirement unless the offender's BAC/BrAC was ≥0.15. §577.041.7

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: See Double Jeopardy below.

Imprisonment:

Term (Day, Month, Years, Etc.):

Intoxicated/illegal per se of, 1st off Cl B Misd-not more than **6 mos**; Intoxicated/illegal per se offs; "prior offender"<sup>1</sup>-Cl A Misd-not more than **1 yr**; "persistent offender"<sup>2</sup>-Cl D Felony-Not more than **5 yrs** §§577.010, 577.012, 577.023, 558.011, 560.011 & 560.016

Mandatory Minimum Term:

"Prior" Intoxicated/illegal per se offs-**5 dys**; "Persistent" Intoxicated/illegal per se offs-**10 dys** §577.023.4 See Footnote No. 3. See Community Service on p. 3-273.

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"<sup>1</sup>-Not more than **\$1,000**; "persistent offender"<sup>2</sup>-Not more than **\$5,000**

Mandatory Min. Fine (\$):

None

<sup>1</sup>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.

<sup>2</sup>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.

<sup>3</sup>For a "prior" or a "persistent" offender, except for community service, an offender is not eligible for either parole or probation until they serve these mandatory sentences. §577.023.4

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Mayo*, 915 S.W.2d 758 (Mo.banc 1996)(cert. den., 519 U.S. 813, 117 S.Ct. 61, 136 L.Ed.2d 23 (1996))

**Historical Note:** In 1993, the Missouri Legislature amended §577.023 in order to clarify the meanings of the terms "prior offender" and "persistent offender". This action abrogated a Missouri Supreme Court decision which had interpreted these terms contrary to legislative intent. *State v. Stewart*, 832 S.W.2d 911 (Mo.banc 1992)

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

Other Penalties:	
Community Service:	<u>In Lieu of Imprisonment:</u> "Prior" Intoxicated/illegal per se offs- <b>30 dys</b> ; "Persistent" Intoxicated/illegal per se offs- <b>60 dys</b> §577.023.4
Restitution (eg Victim's Fund)	(1) Victim's compensation fund. §§595.010 et seq. (2) The court may also order direct compensation by defendants to victims. §§595.200 & 595.203
Other:	For a 1st intoxicated off., the sentence may be suspended provided the defendant is placed on probation for a minimum of 2 yrs. §577.010.2 <b>Assault.</b> 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:	
<u>Pre-DWI Conviction</u> Licensing Action:	See Double Jeopardy on p. 3-272 and the Special Note Nos. 1 below.
Administrative Per Se Law:	<b>Yes</b> $\geq 0.08$ BAC/BrAC <sup>1</sup> For Persons Under 21 Years Old (See Special Note No. 2 below.) $\geq 0.02$ BAC/BrAC <sup>1</sup> §§302.309.3(5)(i) & 302.500 et seq. <u>1st Violation-Susp-30 dys</u> <sup>2,3</sup> (mand) with a limited license for an additional 60 dys (provided there has been no prior "alcohol related enforcement contact" <sup>4</sup> (w/n 5 yrs) §§302.309.3(5)(h) & 302.525.2(1); <u>Subsequent Violation-Rev-1 yr</u> <sup>5,6</sup> (mand) (if there has been an "alcohol related enforcement contact" <sup>7</sup> w/n 5 yrs) (Restricted driving privileges may be granted pending the outcome of a trial de novo in the courts on an admin. per se action. §302.535) See the Special Note on p. 3-276.
Other:	<b>None</b>

<sup>1</sup>Standard: Percent by wgt. of alcohol in the blood. However, this concentration is defined to mean grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§302.500(1), 302.505.1 & 577.037.2

<sup>2</sup>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

<sup>3</sup>*Barnes v. Director of Revenue*, 856 S.W.2d 108 (Mo.App. W.D. 1993), *Richard v. Director of Revenue*, 869 S.W.2d 913 (Mo.App. E.D. 1994), *State Ex Rel. Dir. of Revenue v. McHenry*, 861 S.W.2d 562 (Mo.banc 1993), and *Director of Revenue v. Pennoyer*, 944 S.W.2d 265 (Mo.App. E.D. 1997)

<sup>4</sup>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

<sup>5</sup>*Shelton v. Director of Revenue*, 861 S.W.2d 213 (Mo.App. W.D. 1993) & *Frieden v. Director of Revenue*, 864 S.W.2d 27 (Mo.App. S.D. 1993)

**Special Note No. 1:** The administrative per se law does not violate a person's constitutional right to equal protection of the laws. *Collins v. Director of Revenue*, 691 S.W.2d 246 (Mo.banc 1985), & *Riche v. Director of Revenue*, 987 S.W.2d 331 (Mo.banc 1999)

**Special Note No. 2:** For administrative licensing action against a person <21 yrs old, who was operating a motor vehicle with a BAC/BrAC  $\geq 0.02$ , it must be established that the original stop by law enforcement officers was base on "probable cause" that the drivers committed a drunk driving offense under either §577.010 (driving while intoxicated) or 577.012 (illegal per se BAC/BrAC  $\geq 0.10$ )

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

Post DWI Conviction Licensing Action:

Type of Licensing Action  
(Susp/Rev):

Intoxicated off, 1st off-8 points<sup>1</sup>; Per se off, 1st off-8 points<sup>1&2</sup>; Intoxicated off where there was a prior Illegal Per Se off or an Illegal Per Se offense where there was a prior Intoxicated off<sup>3</sup>-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)<sup>5</sup> §302.304.4; Per se off, 1st off-30 dys (plus 60 dys restricted driving privileges)<sup>3&5</sup> §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<sup>6</sup>-1 yr; 2nd off (w/n 5 yrs) of violating the laws related to driving while intoxicated<sup>4</sup>-5 yrs §302.060(10); 3rd and subsequent offs of violating the laws related to driving while intoxicated<sup>4</sup>-10 yrs/Permanent<sup>6</sup> §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

<sup>1</sup>**Point System:** Under the point system, 8 points equals a **suspension** and 12 points equals a **revocation**. §§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. See IV under the Special Note on p. 3-276.

<sup>2</sup>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

<sup>3</sup>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.

<sup>4</sup>**Special Note:** Sec. 302.060(9) provides that a person, who has been convicted "more than twice" of an offense "relating to driving while intoxicated", is subject to a denial of driving privileges for at least 10 yrs. The term "relating to driving while intoxicated" has been interpreted to include illegal per se offenses. *Wilson v. Director of Revenue*, 873 S.W.2d 328 (Mo.App. E.D. 1994)

<sup>5</sup>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 or the licensing agency may grant limited driving privileges for employment, educational or medical reasons after the 30 dy mandatory period.

<sup>6</sup>*Appleby v. Director of Revenue*, 851 S.W.2d 540 (Mo.App. W.D. 1993)

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

Mandatory Minimum Term of  
Withdrawal:

1st off Intoxicated off-30 dys See Footnote No. 5 on p. 3-274. 1st Per Se off-None See Footnote Nos. 2 & 5 on p. 3-274. Intoxicated off where there was a prior Illegal Per Se off or an Illegal Per Se offense where there was a prior Intoxicated off-1 yr See Footnote No. 3 on p. 3-274. 2nd off (w/n 5 yrs) of violating the laws related to driving while intoxicated-2 yrs See Footnote No. 4 on p. 3-274. After 2 yrs, restricted driving privileges may be granted. After 5 yrs, driving privileges may be fully restored. 3rd and sub. off-3yrs/10yrs/Permanent After 3 yrs hardship driving privileges may be granted. **Important.** See the Special Note below. After 10 yrs of the revocation period have passed, a court may order the licensing agency to issued an offender a license provided the offender is no longer a threat to the public safety. Such an order can only be issued once. See the Comment below. See Footnote No. 4 on p. 3-274. §§302.060(9) & (10), 302.304, sub. 6 and 302.309, sub. 3(6)

A person under 21 yrs old, who is convicted of a DWI offense, has their driver's license suspended for 90 dys for a 1st off and revoked for 1 yr for a 2nd or sub. off. A restricted lic. is available via §302.309. See the Note below. §§577.500 & 577.510

Note: I. A limited license via either a court order or licensing agency is available for employment, educational or medical purposes. Such a license cannot be issued to a person who has been convicted of a 2nd or subsequent Intoxicated offense. §302.309.3(5)(c)

II. No limited driving privileges of any type may be granted to a person who has been convicted of operating a motor vehicle while under the influence of either narcotic drugs or a controlled substance. §302.309.3(5)(d)

**Comment:** Even though the law is not perfectly clear, it would appear that, if a person cannot obtain a license (full driving privileges after 10 yrs via court order), they are ineligible for hardship driving privileges.

**Special Note:** The Missouri Supreme Court has held that a person, who has been convicted of a felony drunk driving offense, is ineligible for hardship driving privileges. Under §302.309.3(6)(a), a person may be granted such privileges unless they are "otherwise ineligible". An ineligible person, under §302.309.3(5)(b), includes a person, who has been convicted of a felony in which a motor vehicle was used. The court interpreted the term "felony" in §302.309.3(5)(b) to include any person who has been convicted of a felony drunk driving offense. As a result, hardship driving privileges cannot be granted to such a person. *Hagan v. Director of Revenue*, 968 S.W.2d 704 (Mo.banc 1998)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC  $\geq 0.04$  (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or drugs or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any "measurable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Finally, it is a Class B misd to drive A CMV with either BAC/BrAC/UrAC  $\geq 0.04$  or while under the influence of either alcohol or a controlled substance. Note: The term "controlled substance" may not apply to all drugs. §302.780(1)(3) The sanctions for this offense are imprisonment for not more than 6 mos and/or a fine of not more than \$500. §§302.309.3(5)(g), 302.700.2(2), (6), (10), (13) & (14), 302.745, 302.750, 302.755 and 302.780

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

Other:	
Rehabilitation:	
Alcohol Education:	Intoxicated off, 1st off- <b>Yes</b> ; Per se off- <u>1st off-Yes</u> Required for persons under 21 years old who have committed an alcohol offense. §577.525 See the Special Note below.
Alcohol Treatment:	Intoxicated off, <u>1st off-Yes</u> ; Per se off, <u>1st off-Yes</u> See the Special Note below.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	<b>Impoundment/Forfeiture.</b> Under §82.1000, certain cities with populations over 100,000 may enact motor vehicle impoundment or forfeiture ordinances. I. A motor vehicle is subject to such action if (1) the driver has had one or more intoxicated related traffic offense convictions (including illegal per se) <u>and</u> (2) they are operating the vehicle while their license is in a suspended or revoked status either for an intoxicated related traffic offense or for involuntary manslaughter related to intoxicated driving. II. A motor vehicle is subject to such action if the driver has had two or more intoxicated related traffic offense convictions (including illegal per se) <u>and</u> they either have a BAC/BaAC $\geq 0.10$ ( $\geq 0.02$ if $< 21$ yrs old) or they refuse to submit to chemical test under the implied consent law. <b>Important:</b> The above actions apply to the vehicle operated by the offender irrespective of its ownership.
Terms Upon Which Vehicle Will Be Released:	
Other:	None
Miscellaneous Sanctions Not Included Elsewhere:	<b>DWI Enforcement Cost.</b> 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 <b>Ignition Interlock.</b> I. For either an intoxicated or illegal per se drunk driving offense, the court <u>may</u> , in the case of a 1st offender, and <u>must</u> , in the case of a 2nd or subsequent offender, require such a person to only operate motor vehicles that are equipped with an ignition interlock device for not less than 1 mo following license reinstatement. II. Such a requirement is <u>mandatory</u> as a condition for granting limited (hardship) driving privileges under §302.309 for subsequent offenders. §577.600

**Special Note:** I. For either a 1st or subsequent intoxicated/illegal per se conviction, the court must order a defendant to successfully completed an alcohol or drug education or rehabilitation program. §577.049 II. For persons who have violated the administrative per se law, driving privileges cannot be restored until they have successfully completed an alcohol or drug education or rehabilitation program. For cause, the court may modify or waive this requirement unless the offender's BAC/BrAC was  $> 0.15$ . §302.540.1 III. Persons  $< 21$  yrs old, who have been convicted of any drunk driving offense, cannot have their driving privileges restored until they successfully complete an alcohol or drug education program. §577.520.1 IV. If a driver's license has been either suspended or revoked under the point system for a drunk driving offense, such license cannot be reinstated until the driver completes a substance abuse program. For cause, the court may modify or waive this requirement unless the offender's BAC/BrAC was  $\geq 0.15$ . §302.304.14

Other Criminal Actions Related to DWI:

<u>Homicide by Vehicle:</u>	See Second Degree Murder below.
State Has Such a Law:	<b>Yes</b> (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 <b>7 yrs</b> §558.011
Mandatory Minimum Term:	<b>None</b>
Fine (\$ Range):	Not more than <b>\$5,000</b> §560.011
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	<b>Rev (License Denial)</b> §302.060(10)
Length of Term of Licensing Withdrawal:	<b>5 yrs</b> §302.060(10)
Mandatory Action--Minimum Length of License Withdrawal:	<b>5 yrs</b> §302.060(10)
Other:	Victim's compensation fund §595.010 et seq.
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:</u>	See Footnote Nos. 1 & 2.
Sanction:	
Criminal:	
Imprisonment (Term):	Not more than <b>1 yr</b> (Cl A misd) §§302.302, 302.321 & 558.011
Mandatory Minimum Term of Imprisonment:	<b>48 cons hrs</b> (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 <b>\$1,000</b> §560.016
Mandatory Minimum Fine:	<b>None</b>

<sup>1</sup>An offender must act "with criminal negligence with respect to knowledge of the fact that his driving privilege has been canceled, suspended or revoked." §302.321.1

<sup>2</sup>I. It is a Cl A misd to operate a CMV during a CDL disqualification. The sanctions for this offense are imprisonment for not more than 1 yr, a fine of not more than \$1,000 and CDL license revocation for 2 yrs. An offender must serve either 48 con hrs of confinement or 10 dys (involving at least 40 hrs) of community service. §§302.725, 558.011.1(5) & 560.016.1(1) II. It is also a Cl A misd to operate a CMV while under a CDL out-of-service order. Again, the sanctions for this offense are imprisonment for not more than 1 yr, a fine of not more than \$1,000. However, a violator is also subject to a civil penalty of \$1,000 and the following CDL disqualification periods: 1st off-90 dys; 2nd off (w/n 10 yrs)-1 yr; and 3rd and sub off (w/n 10 yrs)-3 yrs. §§302.755, 302.756.1 558.011.1(5) & 560.016.1(1)

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

**Second Degree Murder.** A person, who causes a death while committing a drunk driving offense as a "persistent offender" (a felony offense), may be charged with and convicted of second degree felony murder. *State v. Pembleton*, 978 S.W.2d 352 (Mo.App. E.D. 1998)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action  
(Susp/Rev):

**Rev** Under the point system-12 points §302.302.1(5)

Length of Term of License

**1 yr** §302.304.6

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

**None** Restricted hardship driving privileges may be granted. This privilege, however, may only be granted once in 5 yrs. §302.309.3(5)

**Special Note:** See Vehicle Impoundment/Confiscation under Sanctions Following a Conviction for a DWI Offense on p. 3-276.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

**No**

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

**Yes** §§58.445, 58.447 & 58.449

BAC Chemical Test Is Given to the  
the Following Persons:

Driver:

**Yes**

Vehicle Passengers:

**Yes**

Pedestrian:

**Yes**

Other State Laws Related To Alcohol Use: (continued)Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1945) §§311.310, 311.325, 312.400 &amp; 312.407

Minimum Age (Years) Possession:

21<sup>1</sup> §§311.325 & 312.407

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

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

**Yes** §537.053<sup>2</sup> Note: This law provides that a cause of action for damages under the dram shop act may only be brought against a liquor by the drink licensee. This law further abrogates case law that had established dram shop liability based either on "ordinary" negligence or on negligence resulting from a violation of a criminal statute (e.g., serving alcoholic beverages to a person under 21 yrs old).

"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. S.D. 1990), & *Shelter Mut. Ins. Co. v. White*, 930 S.W.2d 1 (Mo.App. W.D. 1996)

Other:

An injured intoxicated patron may be a cause of action for damages under the dram shop act (§537.053). Of course, the same pre-condition (i.e., a licensee's conviction for a liquor law violation) still applies. *Von Ruecker v. Holiday Inns, Inc.*, 775 S.W.2d 295 (Mo.App. E.D. 1989), cert. den. 493 U.S. 1075

In general, a law enforcement officer, who releases an intoxicated person, is not liable for the injuries sustained by or the death of that person. *Deuser v. King*, 24 S.W.3d 251 (Mo.App. E.D. 2000)

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 &amp; 312.510

Term of Imprisonment:

Not more than 1 yr

Fine (\$ Range):

\$50 to \$1,000

<sup>1</sup>The appellate courts have held that, if the State charges a minor with the offense of possessing "intoxicating liquor," it must establish, that the alcoholic content of the beverage in question satisfies the definition for this beverage. *State v. Perkins*, 773 S.W.2d 237 (Mo.App. S.D. 1989), & *State v. Christ*, 975 S.W.2d 945 (Mo.App. W.D. 1998) The courts' reasons are based on the fact that there are two separate statutory provisions (with accompanying definitions) related to the possession of alcoholic beverages by person <21 yrs old. Secs. 311.325 and 312.407 respectively prohibit such persons from possession "intoxicating liquor" and "nonintoxicating beer." Sec. 311.020 defines "intoxicating liquor" as a beverage with an alcoholic content of >0.5% alcohol by volume not including "nonintoxicating beer." Sec. 312.010(2) defines "nonintoxicating beer" as beer with an alcoholic content >0.5% by volume but ≤3.2% by weight.

<sup>2</sup>The law, §537.053.3, also has a provision that provides that a cause of action for damages under the dram shop act may only be brought against a licensee who has been convicted of the offense of selling alcoholic beverages either to a person under 21 yrs old or to an obviously intoxicated individual. This statutory limitation (but not the entire dram shop law) was held to be unconstitutional under "open courts" provision of the State's constitution. *Kilmer v. Mun*, 17 S.W.3d 545 (Mo.banc 2000) Note: The *Kilmer* case overruled *Simpson v. Kilcher*, 749 S.W.2d 386 (Mo.banc 1988), which had upheld the constitutionality of this limitation.

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Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:  
License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term of License Withdrawal:

**Yes Rev** §§311.720 & 312.510

For licensees who sell alc. bev. over 3.2% alc. by wgt. -Length of rev. is not specified in the statute; for licensees who sell non-intoxicating beer (over 0.5% but not more than 3.2% alc. by wgt.)-**1 yr rev**

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:  
Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

**Misd** §§311.310, 311.880, 312.400, 312.500 & 312.510  
Not more than **1 yr**  
**\$50 to \$1,000**

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:  
License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes Rev** §§311.720 & 312.510

For licensees who sell alc. bev. over 3.2% alc. by wgt. -Length of rev. is not specified in the statute; for licensees who sell non-intoxicating beer (over 0.5% but not more than 3.2% alc. by wgt.)-**1 yr rev**

Anti-Happy Hour Law/Regulations:

**No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:  
Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**No**

**Yes** Applies to persons while they are operating a vehicle. §577.017

STATE:  
General Reference:

**MONTANA**  
Montana Code Annotated

Basis for a DWI Charge:

Standard DWI Offense: Illegal Per Se Law (BAC/BrAC):	Under the influence of alcohol §61-8-401(1)(a) I. $\geq 0.10$ <sup>1&amp;2</sup> §61-8-406(1)(a) II. $\geq 0.04$ <sup>1&amp;2</sup> if Operating a Commercial Motor Vehicle §61-8-406(1)(b) <u>Persons Under 21 Years Old</u> -> $0.02$ §61-8-410*
Presumption (BAC/BrAC): Types of Drugs/Drugs and Alcohol:	> $0.10$ <sup>2</sup> §61-8-401(4)(c) <sup>3</sup> Under the influence of (1) <b>Any Drug</b> , (2) a Dangerous Drug or (3) Alcohol and Any Dangerous or Other Drug §61-8-401(b), (c) & (d).
Other:	For Commercial Motor Vehicle Operators, see p. 3-286.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	<b>Yes</b> <sup>4</sup> §§61-8-409 & 61-8-806(1) (CMV operators)
Implied Consent Law:	
Arrest Required (Yes/No):	<b>Yes</b> §61-8-402(1) <sup>5</sup>
Implied Consent Law Applies to Drugs (Yes/No):	<b>Yes</b> §61-8-402(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	<b>Yes</b> (Criminal Cases) §61-8-404(2) <sup>6</sup>
Other Information:	<b>None</b>

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

Blood:	<b>Yes</b> §61-8-402(1)
Urine:	<b>No</b>
Other:	<b>None</b>

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	<b>No</b> <sup>7</sup>
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<sup>1</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of 0.10 (0.04 for Commercial Motor Vehicle Operators) or more or (2) a urine alcohol concentration of 0.10 or more. Note: The 0.04 alcohol concentration for Commercial Motor Vehicle Operators does not apply to alcohol concentrations in urine.

<sup>2</sup>The standards for "alcohol concentration" are (1) grams of alc. per 100 milliliters of blood or (2) grams of alc. per 210 liters of breath. §61-8-407

<sup>3</sup>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.

<sup>4</sup>The results of a PBT test may used as evidence in a drunk driving offense trial. §61-8-404

<sup>5</sup>**Special Note:** The implied consent law does not make reference to the illegal per se law (§61-8-406).

<sup>6</sup>This provision was held constitution on both Federal and State grounds. *State v. Jackson*, 672 P.2d 255 (Mont. 1983)

<sup>7</sup>A DWI offender is not eligible for pretrial diversion. §46-16-130(3)

\*The State supreme court has held this statute to be constitutional on both due process (no conclusive presumption was created) and equal protection grounds. *State v. Luchau*, 992 P.2d 840 (Mont. 1999)

**MONTANA**

Adjudication of DWI Charges: (continued)

Anti-Plea Bargaining Statute (Yes/No): **No**  
Pre-Sentencing Investigation Law (PSI)  
(Yes/No): **Yes Alcohol Screening §61-8-732(2)<sup>1&2</sup>**

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): **Same as for implied consent. §61-8-409(4)**  
Other: **None**

Refusal to Take Implied Consent

Chemical Test:  
Criminal Sanction (Fine/Jail): **None**  
Administrative Licensing Action  
(Susp/Rev): **1st Refusal-Susp-6 mos (mand); 2nd or subsequent refusals (w/n 5 yrs)-Rev-1 yr (mand) No restricted probationary license can be issued. A peace officer shall seize the defendant's license and forward it to the driver licensing agency. §61-8-402<sup>3</sup>**  
Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: **See the Special Note on p. 3-283.**  
Imprisonment: **Important. For offenders under 21 years old, see p. 3-285.**  
Term (Day, Month, Years,  
Etc.): **See the Special Note below.**

**I\*. Driving While Under the Influence Offs (misd)<sup>4&5</sup>: 1st Off-24 cons hrs to 6 mos; 2nd Off (w/n 5 yrs)-7 dys to 6 mos; 3rd Off (w/n 5 yrs)-30 dys to 1 yr; 4th or Sub Off (w/n 5 yrs) (felony)-See Subsequent Offense on p. 3-283. §§61-8-401, 61-8-711(1), 61-8-714, 61-8-731 & 61-8-734**  
**II.\* Illegal Per Se Offs (misd)<sup>5</sup>: 1st Off-Not more than 10 dys; 2nd Off (w/n 5 yrs)-48 cons hrs to 30 dys; 3rd Off (w/n 5 yrs)-48 cons hrs to 6 mos; 4th or Sub. Off (w/n 5 yrs) (felony)-See Subsequent Offense on p. 3-283. §§61-8-406, 61-8-711(1), 61-8-722, 61-8-731 & 61-8-734**

<sup>1</sup>A "chemical dependency assessment" is mandatory for any person convicted (1st or subsequent offense) of either driving under the influence of alcohol under §61-8-401 or illegal per se (BAC/BrAC ≥0.10) under §61-8-406.

<sup>2</sup>Note: A PSI is given if the crime carries a prison sentence of 1 yr or more. §46-18-111

<sup>3</sup>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. 2 on p. 3-285.

<sup>4</sup>Driving While Under the Influence (alcohol or drugs) offenses except illegal per se (BAC/BrAC >0.10).

<sup>5</sup>Imprisonment term can be served in a "facility" other than a jail. §61-8-734(2)

\*A subsequent offense under either I or II includes a prior offense of the other. §61-8-734(a)(c)

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

Mandatory Minimum Term:

III. Neg. Veh. Assault (misd)<sup>1</sup>-**Not more than 1 yr** §§45-2-101(41) and 45-5-205(1) & (2) See the Special Note below.

IV. Neg. Veh. Assault (felony)<sup>2</sup>-**Not more than 10 yrs** §§45-2-101(22) and 45-5-205(1) & (3) See the Special Note below.

I. Driving While Under the Influence Offs:<sup>3</sup> 1st Off-24 cons hrs<sup>4</sup> must be served in the county jail and cannot be served as "home arrest" (may only be suspended for the defendant's physical and mental well-being); 2nd Off-3 dys,<sup>4</sup> 48 con hrs must be served in the county jail and cannot be served as "home arrest" (may not be suspended except for the defendant's physical or mental well-being); 3rd Off-10 dys,<sup>4</sup> 48 hrs must be served in the county jail and cannot be served as "home arrest"; 4th or Sub Off (felony)-See Subsequent Offense below. §§61-8-714, 61-8-731 & 61-8-734

II. Illegal per se offs<sup>3</sup>: 1st Off-None; 2nd & 3rd Offs-48 con hrs must be served in the county jail and cannot be served as "home arrest"; 4th or Sub Off (felony)-See Subsequent Offense below. §§61-8-722, 61-8-731 & 61-8-734

III. Neg. Veh. Assault (misd)-None

IV. Neg. Veh. Assault (felony)-None

Fine:  
Amount (\$ Range):

I. Driving While Under the Influence Offs: 1st Off-\$100 to \$500; 2nd Off (w/n 5 yrs)-\$300 to \$500; 3rd Off (w/n 5 yrs)-\$500 to \$1,000; 4th or Sub. Off (w/n 5 yrs) (felony)-\$1,000 to \$10,000 §§61-8-401, 61-8-711(1), 61-8-714, 61-8-731 & 61-8-734

II. Illegal Per Se Off: 1st Off-\$100 to \$500; 2nd Off (w/n 5 yrs)-\$300 to \$500; 3rd Off (w/n 5 yrs)-\$500 to \$1,000; 4th or Sub. Off (w/n 5 yrs) (felony)-\$1,000 to \$10,000 §§61-8-711(1), 61-8-722, 61-8-731 & 61-8-734

III. Neg. Veh. Assault (misd)-Not more then **\$1,000** §45-5-205(2) See the Special Note below.

<sup>1</sup>Negligent Vehicle Assault-A person commits a misd if they cause body injury to another person while driving while under the influence of alcohol, a dangerous drug, any drug or any combination of these.

<sup>2</sup>Negligent Vehicle Assault-A person commits a felony if they cause serious body injury to another person while driving while under the influence of alcohol, a dangerous drug, any drug or any combination of these.

<sup>3</sup>See Home Detention under Miscellaneous Sanctions on p. 3-286.

<sup>4</sup>The incarceration sanction may be extended up to the maximum allowable for this offense pending the successful completion of a chemical dependency assessment, education or treatment program. However, except of the mandatory term of incarceration, the rest of the incarceration sanction may be suspended for up to 1 yr upon the successful completion of these programs. Note: In order to assure compliance with this requirement, the court retains jurisdiction to impose sentence for up to 1 yr. §§61-8-714(1), (2) & (3) and 61-8-732(10)

**Subsequent Offense.** The law provides that, for a 4th or subsequent offense, a person must be sentenced to 13 a month term in a residential alcohol treatment program and that the prison term of not more than 5 yrs must be suspended. The suspended prison term is to run consecutively to the residential treatment. **Comment.** It is not clear how much of the 13 month residential treatment term is mandatory. The law provides that this term can neither be deferred nor suspended and that the offender is not eligible for parole. However, the law also states that, if the offender successfully completes the residential treatment program, the remainder of this 13 months is to be served on probation. §61-8-731(a) & (b)

**Special Note:** For negligent vehicle assault, the court may suspend a term of incarceration on condition that the offender pay either a fine or restitution. §45-5-205(4)

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

Mandatory Min. Fine (\$):	IV. Neg. Veh. Assault (felony)-Not more than <b>\$10,000</b> §45-5-205(3)(a) See the Special Note on p. 3-283. <b>None</b>
Other Penalties: Community Service:	<b>Yes</b> Imposed as part of deferred sentencing. §46-18-201(1)(a)(ix). Even though §46-18-201(1)(a) provides for community service as part of deferred sentencing, it also provides that the court is not to defer the imposition of the of sanctions (e.g., mand imprisonment) for drunk driving offenses.
Restitution (eg Victim's Fund)	<b>Yes</b> (1) If a person has suffered a pecuniary loss as a result of the defendant's illegal actions, the court <u>must</u> order the defendant pay restitution to such person. A defendant may be ordered to participate in community service if they are financially unable to pay restitution. §46-18-241 (2) A victim can also receive compensation from the State's Victims' Compensation Fund. §53-9-101 et seq. (3) Persons convicted of <u>serious</u> bodily negligent vehicle assault <u>shall</u> be ordered to pay restitution. §34-5-205(3)(b)
Other:	<b>Surcharges.</b> The following surcharges are imposed: For <u>any</u> misd offense- <b>\$15</b> ; for <u>any</u> felony offense, <b>\$20</b> or 10% of the fine imposed whichever is greater; and, in <u>addition</u> , for any drunk driving offense conviction under either §61-8-401 (the regular DWI offense) or §61-8-406( the illegal per se offense at 0.10), <b>\$10</b> . These surcharges are in addition to any fine sanction. §46-18-236(1)(a), (b) & (c) and (3)
Administrative Licensing Actions: <u>Pre-DWI Conviction</u> Licensing Action: Administrative Per Se Law: Other:	<b>None</b> 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.
<u>Post DWI Conviction</u> Licensing Action:	<b>Important.</b> I. For Persons Under 21 and 18 Years Old, see p. 3-285. II. See <b>Ignition Interlock</b> under Miscellaneous Sanctions on p. 3-286.
Type of Licensing Action (Susp/Rev):	All Drunk Driving Offs <sup>1&amp;2</sup> : <u>1st Off-Susp</u> ; <u>2nd off</u> (w/n 5 yrs)- <b>Rev</b> ; <u>3rd and subsequent off</u> (w/n 5 yrs)- <b>Rev</b> <u>Neg. Veh. Assault-Rev</u> §§61-5-205(2) & (7) and 61-5-208
Term of License Withdrawal (Days, Months, Years, etc.):	All Drunk Driving Offs <sup>1</sup> : <u>1st Off-6 mos</u> ; <u>2nd off</u> (w/n 5 yrs)- <b>1 yr</b> ; <u>3rd and subsequent off</u> (w/n 5 yrs)- <b>1 yr</b> <u>Neg. Veh. Assault-1 yr</u> §§61-5-205(2) & (7) and 61-5-208

<sup>1</sup>Includes illegal per se offs.

<sup>2</sup>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.

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

Mandatory Minimum Term of  
Withdrawal:

Important. See **Ignition Interlock** on p. 3-286.

All Drunk Driving Offs<sup>1</sup>: 1st Off-None<sup>3&4</sup>; 2nd and subsequent off  
(w/n 5 yrs)-See Footnote Nos. 2 & 3 and the Special Note under  
Alcohol Education below. Neg. Veh. Assault-See Footnote Nos.  
2 & 3.

Other:  
Rehabilitation:  
Alcohol Education:

Yes 1st and sub offs<sup>4&5</sup>**Mandatory** chemical education  
dependency course §61-8-732

**Special Note:** Under §61-5-208(2), for 2nd and sub. offs (w/n 5  
yrs), a person's license is rev for 1 yr or until they complete an  
alcohol education/treatment program whichever is longer.

Alcohol Treatment:

Yes 1st off<sup>4&5</sup>-If an assessment indicates the need, an offender  
**must** be ordered to take a chemical dependency treatment  
program. 2nd or sub offs<sup>4&5</sup>-A chemical dependency treatment  
program is **mandatory** §61-8-732 See Sub Offense on p. 3-283.

<sup>1</sup>Includes illegal per se offs.

<sup>2</sup>A person, who has had their driving privileges susp or rev, may be issued a restricted probationary license and have such the susp/rev action stayed, if they participate in a driver rehabilitation or improvement program. A person is eligible to participate in such a program if they meet the following conditions. (1) They are subject to susp/rev because of a violation of the traffic laws or (2) they have (i) completed 3 mos of a 1 yr rev or (ii), for a 2nd or subsequent drunk driving offense (any type), are in "compliance with the **ignition interlock**" restrictions or (3) have completed 1 yr of a 3 yr rev. In addition, they must otherwise met the requirements for "reobtaining" a driver's license. §§61-5-208(2)(a) & 61-2-302 and Administrative Rules of Montana 23.3.231 Note: A restricted license cannot be issued to allow a person to operate a Commercial Motor Vehicle during any period of disqualification, suspension or revocation. §61-2-302(9)(b)

<sup>3</sup>A court may recommend that a restricted probationary license be issued in lieu of a susp on the condition that the person attends, if available, an alcohol treatment program. §61-11-101(2) & Administrative Rules of Montana 23.3.231

<sup>4</sup>Driving while under the influence and illegal per se offenses.

<sup>5</sup>For driving while under the influence and illegal per se offenses, a restricted license may be issued on condition that the offender participates in an alcohol education or treatment program. §61-11-101(2) See Footnote No. 2 above.

**Sanctions Against Persons Under 21 Years Old Who are Operating a Motor Vehicle with a BAC/BrAC  $\geq 0.02$ .** 1st offense-A fine of not less than \$100 nor more than \$500 and license suspension for 90 dys (30 dys mand if the offender is < 18 yrs old). 2nd offense-A fine of not less than \$200 nor more than \$500; license suspension for 6 mos (30 dys mand if the offender was < 18 yrs old); and, if the offender was > 18 yrs old, an incarceration term of not more than 10 dys. 3rd or subsequent offense-A fine of not less than \$300 nor more than \$500; license suspension for 1 yr (30 dys mand if the offender was < 18 yrs old); and, if the offender was > 18 yrs old, an incarceration term of not less than 24 con hrs nor more than 60 dys. In addition to these sanctions, an offender must comply with the chemical dependency education and chemical dependency treatment provisions of §61-8-732. §61-8-410 **Comment:** Offenders < 18 years old, who have a BAC/BrAC  $\geq 0.10$ , could also be subject to the sanctions below.

**Persons Under 18 Years Old.** Under separate provisions of law, offenders < 18 yrs old are subject to the following sanctions if the operate a motor vehicle either while under the influence of alcohol or drugs or with BAC/BrAC  $\geq 0.10$  (illegal per se). (1) A fine may be imposed; this fine cannot exceed that which could be imposed on an adult. (2) Their license may be susp/rev; the period of susp/rev is set by the court. And, (3) The vehicle owned by or used by the minor may be impounded for 60 days. An offender < 18 yr old cannot be incarcerated for these offenses. §61-8-723

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

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

**Vehicle Forfeiture.** For a 3rd or subsequent driving while under the influence offense or illegal per se offense (w/n 5 yrs), the driver's vehicle must be forfeited. §61-8-733

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<sup>1</sup> or the initial 48 hrs of a 2nd or sub. off<sup>2</sup>, an offender may be allowed to serve their incarceration term under "home arrest". §61-8-734(3)  
**Incarceration Costs.** A defendant may be allowed to serve a term of imprisonment in a non-jail facility such as a prerelease center. Except for 4th or subsequent offenses, an offender, if financially able, must pay the expenses for such alternative incarceration. §61-8-734(2)

**Ignition Interlock. I. Discretionary Action.** For a 1st offense, via an order, a court may restrict an offender to only operate motor vehicles that are equipped with "ignition interlock devices" provided the defendant had a blood alcohol concentration  $\geq 0.18$ .  
**II. Mandatory Action.** For either a 2nd or subsequent offense, a defendant, who is issued a "probationary license", is restricted to operating motor vehicles that equipped with "ignition interlock devices". §61-5-208(2) In addition, for 4th or subsequent offenses, if an offender is permitted to operate motor vehicles as a condition of probation, such vehicles must be equipped with "ignition interlock devices". §61-8-731(3)(h)

**III. Important.** Licensing action against a person for a drunk driving offense is stayed while they are participating in the "ignition interlock" program. §61-5-208(3) The duration of this restriction is equal to the period of license suspension or revocation. §61-8-442

<sup>1</sup>Driving while under the influence offenses.

<sup>2</sup>Includes all drunk driving offenses

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "suspended" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they either (1) have an "alcohol concentration"  $\geq 0.04$  (Note: See Footnote No. 2 on p. 3-281.), (2) are convicted of violating the drunk driving laws (§§61-8-401 or 61-8-406) or (3) refuse to submit to a chemical test for an alcohol concentration. For a subsequent violation of operating a CMV with an "alcohol concentration"  $\geq 0.04$ , the "suspension" is for life with 10 yrs mand as may be allowed by Federal regulations. For a subsequent refusal to submit to a chemical test, the "suspension" is for life with 10 yrs mand as may be allowed by Federal regulations. For a second drunk driving offense conviction associated with operating a CMV, the "suspension" is for life except as allowed by Federal regulations. For a third drunk driving offense conviction associated with operating a CMV, the "suspension" is for life (mand). A person who operates a CMV with "any measurable amount or detected presence of alcohol" must be placed "out-of-service" for 24 hours. §§61-1-134, 61-5-208(6), 61-8-805, 61-8-806 & 61-8-811. Note: A previous violation of the drunk driving laws (§§61-8-401 & 61-406) while operating a CMV is considered a prior offense for the purpose of determining license suspension action. §§61-8-805(4)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law: **No** 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:  
 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: See Footnote Nos. 2 & 3.  
 Criminal:  
 Imprisonment (Term): **Misd 2 dys to 6 mos** §61-5-212  
 Mandatory Minimum Term  
 of Imprisonment: **2 dys**  
 Fine (\$ Range): **Not more than \$500** §61-5-212  
 A surcharge of **\$15** is imposed. This surcharge is in addition to  
 any fine sanction. §46-18-236(1)(a) & (3)  
 Mandatory Minimum Fine: **None**  
 Administrative Licensing Actions:  
 Type of Licensing Action  
 (Susp/Rev): **Susp or rev** §61-5-212

<sup>1</sup>I. 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 revocation period if a person complies with the terms of a driver improvement program. §61-2-302(9)

II. If a person commits a reckless driving offense that results in either a death or a serious bodily injury, the following sanctions apply: Imprisonment-not more than **1 yr**; and, fine-not more than **\$10,000**. §61-8-715(3)

<sup>2</sup>**CMV Operators.** I. The sanctions given for driving while suspended or revoked also apply to CDL operators who drive a CMV while their privileges to operate such a vehicle are suspended. §61-5-212(1) II. A CMV operator, who violates an out-of-service order is subject to the following CDL suspensions: 1st off-6 mon (mand); 2nd off (w/n 10 yrs)-1 yr (mand); 2nd off (w/n 10 yrs) while transporting hazardous materials or more than 15 passengers-3 yrs (mand); and, 3rd off (w/n 10 yrs)-3 yrs mand. §61-8-812

<sup>3</sup>A first offender, who had their license suspended or revoked for any drunk driving related offense, must have the vehicle owned and operated by them seized or rendered inoperable for 30 dys.

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

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Other Criminal Actions Related to DWI: (continued)

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): Grounds for Being Declared an Habitual Offender:	Yes §61-11-201 et seq.  Accumulation of 30 points in a 3 yr period Note: A DWI offense = 10 points. §61-11-203(2)
Term of License Rev While Under Habitual Offender Status:	Rev 3 yrs If a driver participates in a driver rehabilitation and improvement program, a restricted probationary license may be issued after 1 yr of the revocation period has passed. §§61-2-302(2)(a)(ii) & (9), 61-11-211 and 61-11-212
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Misd §§61-11-201 & 61-11-213
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	Not less than 14 dys nor more than 1 yr
Imprisonment (Term):	14 dys <sup>1</sup>
Mandatory Minimum Term of Imprisonment:	Not more than \$1,000
Fine (\$ Range):	A surcharge of \$15 is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1)(a) & (3)
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	Yes License revocation is extended for an additional period of 1 yr. §61-11-213

Other State Laws Related To Alcohol Use:

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

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

<sup>1</sup>A 14 dy jail sanction appears to be mandatory. However, the law is not specific on this point.

Other Criminal Actions Related to DWI: (continued)Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21<sup>1</sup> (Year Eff: 1987) §§16-3-301(4)(a) & (b) and (4) &  
16-6-305(1)(a) & (b)

Minimum Age (Years) Possession:

21<sup>2</sup> §45-5-624(1) There is an employment exemption.

Minimum Age (Years) Consumption:

21<sup>2</sup> §45-5-624(1) There is an employment exemptionDram Shop Laws and Related Legal Actions:

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

**Yes** §27-1-710<sup>3,4&5</sup> Note: The case law indicated below may  
have been abrogated by this statute."Dram Shop Law" Concept Has Been  
Adopted Via a Change to the Common  
Law Rule by Action of the Highest  
Court of Record in the State (Case  
Citation):**Yes** *Hehring v. La Counte*, 712 P.2d 1329 (Mont. 1986), &  
*Bissett v. DMI, Inc.*, 717 P.2d 545 (Mont. 1986) Note: These  
cases may have been indirectly abrogated by §27-1-710.

Dram Shop Actions-Social Hosts:

**Yes Limited** §27-1-710 See Footnote No. 4.

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(1)(a), 16-6-304, 16-6-314 & 46-18-212

Term of Imprisonment:

Not more than **6 mos**

Fine (\$ Range):

Not more than **\$500**<sup>6</sup> Note: A civil fine may be assessed by the  
licensing agency and such fine is not to exceed \$1,500. §16-4-406Administrative 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:

The period of susp may not be more than 3 mos; the period of rev  
is not specified in the statute.

<sup>1</sup>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)

<sup>2</sup>The law makes it an offense for certain persons to have in their possession an "intoxicating substance". For persons under 21 years old, this includes alcoholic beverages. The law provides that the offense of possession of an alcoholic beverage includes consumption.

<sup>3</sup>Licensees are liable for the injuries caused by patrons who are either under the legal drinking age (i.e., <21 yrs old) or "visibly intoxicated". Note: The dram shop law also applies to innkeepers. §70-6-513

<sup>4</sup>Under §§16-6-305(4), 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 of 0.05 or more or (2) substantial, visible mental or physical impairment. §16-6-305(1)(c)

<sup>5</sup>*Jevning v. Skyline Bar*, 726 P.2d 326 (Mont. 1986)

<sup>6</sup>A surcharge of \$15 is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1)(a) & (3)

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Other Criminal Actions Related to DWI: (continued)

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

Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

**Misd** 16-3-301(1)(a), 16-6-305, 16-6-314 & 46-18-212  
Not more than **6 mos**  
Not more than **\$500**<sup>1</sup> 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 Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes Susp or rev** §16-4-406  
The period of susp may not be more than 3 mos; the period of rev is not be specified in the statute.  
**No**

Anti-Happy Hour Laws/Regulations:

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

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**Limited**<sup>2</sup> §16-3-106(2)  
**Limited**<sup>2</sup> Driver and passengers §16-3-106(2)

<sup>1</sup>A surcharge of **\$15** is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1)(a) & (3)

<sup>2</sup>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." **Comment:** Because this language appears in the alcoholic beverage control provisions of the Montana Code, this law may be limited only to persons who are operating "common carriers".

STATE:  
General References:

**NEBRASKA**  
Revised Statutes of Nebraska &  
Nebraska Administrative Code (NAC)

Basis for a DWI Charge:

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

Under the influence of alcoholic liquor\* §60-6,196(1)(a)  
≥ 0.08<sup>1&2</sup> §60-6,196(1)(b) & (c)  
Persons Under 21 Years Old-BAC/BrAC ≥ 0.02 but < 0.08<sup>2</sup>  
Traffic Infraction (Civil Offense) §§60-6,211.01 & 60-672

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

None  
Under the influence of **Any Drug**\* §60-6,196(1)(a)  
For Commercial Motor Vehicle Operators, see p. 3-295.

Chemical Breath Tests for Alcohol Concentration:

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

Yes §§60-6,197(3) & 60-6,211.02(2)

Yes<sup>3</sup> §60-6,197(2)

Yes §60-6,197(1)

Yes §60-6,197(11) (Criminal Cases) & *State v. Romell*, 204  
N.W.2d 573 (1973)

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.<sup>4</sup> §60-6,197(9)

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

Blood:  
Urine:  
Other:

Yes §60-6,197(1)

Yes §60-6,197(1)

None

Adjudication of DWI Charges:

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

No Pretrial diversion of DWI cases is prohibited. §29-3604

No

Yes<sup>5</sup> Alcohol screening is required for either a 1st or subsequent  
offender. §60-6,196(8)

<sup>1</sup>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.

<sup>2</sup>Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. §§60-6,196(1) & 60-6,211.01

<sup>3</sup>Probable cause (not an arrest) is need prior to requesting a person under 21 yrs old to submit to a test for evidence related to a violation of §60-6,211.01 (driving with a BAC/BrAC ≥ 0.02). §60-6,211.02(2)

<sup>4</sup>A surviving driver (or pedestrian) 16 years old or older, who is involved in an accident where there has been a fatality, shall be required to submit to a chemical test of their blood, breath or urine in order to determine the amount of alcohol or drugs in their body. The tests' results and the identity of the persons tested are considered public records and are subject to being disclosed. §§60-6,103 & 60-6,104

<sup>5</sup>"A court may order a presentence investigation in any case." §29-2261(2) & (3)

\*In cases involving "driving while under the influence" where both alcohol and drugs are involved, it is not necessary for the State to prove which substance, alcohol or drugs, caused the impairment. *State v. Falcon*, 615 N.W.2d 436 (Neb. 2000)

NEBRASKA

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 & 60-6,197(3)

Administrative Licensing Action  
(Susp/Rev):  
Other:

**None**  
Persons Under 21 Years Old. A person under 21 yrs old, who refuses to submit to a preliminary breath test to determine if they were driving with a BAC/BrAC  $\geq 0.02$ , may be arrested for a violation of §60-6,211.01. §60-6,211.02(2)

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

**Important:** See Persons Under 21 Years Old on p. 3-293.  
1st off (Cl W misd)-Not more than **\$500/60 dys**; 2nd off (w/n 12 yrs)(Cl W misd)-Not more than **\$500/90 dys**; 3rd off (w/n 12 yrs)(Cl W misd)-Not more than **\$600/1 yr**; 4th or sub. off (w/n 12 yrs)(Cl IV felony)-Not more than **\$10,000/5 yrs** See Footnote No. 1 on p. 3-293. §§28-105, 28-106 & 60-6,197

**Mandatory Sanctions:**

I. If probation is not granted: 1st off-**\$400/7 dys**<sup>1</sup>; 2nd off (w/n 12 yrs)-**\$500/30 dys**<sup>1</sup>; 3rd off (w/n 12 yrs)-**\$600/90 dys**<sup>1</sup>; 4th or sub. off (w/n 12 yrs)-**10 dys** §§28-106 & 60-6,197(4)

II. If probation is granted: 1st off-**\$400**; 2nd off (w/n 12 yrs)-**\$500/5 dys or 240 hrs of community service**<sup>1</sup>; 3rd off (w/n 12 yrs)-**\$600/10 dys or 480 hrs community service**<sup>1</sup>; 4th or sub. off (w/n 12 yrs)-**\$1,000/10 dys or 480 hrs community service**<sup>1</sup> §§28-106 and 60-6,197(4) See the Comment on p. 3-293.

Administrative Licensing Action  
(Susp/Rev):

I. The following revocations are mandatory if probation is not granted:<sup>3</sup> 1st off-**Rev 6 mos**; 2nd off-**Rev 1 yr**; 3rd and sub. off-**Rev 15 yrs**<sup>2</sup> §§28-106 & 60-6,197

II. If probation is granted, the following mandatory revocations must be imposed:<sup>3</sup> 1st off-**Rev 60 dys**; 2nd off-**Rev 1 yr**; 3rd and sub. off-**Rev 1 yr**<sup>4</sup> §§28-106 & 60-6,197

III. Administrative action<sup>5</sup>: 1st and sub. refusals-**Rev 1 yr** (mand)  
A person is not eligible to operate a motor vehicle equipped with an **ignition interlock** device until this revocation period is completed. §60-6,206 & 247 NAC §026

**Important.** See Immobilization and Ignition Interlock on p. 3-296.

<sup>1</sup>See Footnote No. 1 on p. 3-293 concerning whether minimum mandatory sentences must be served consecutively.

<sup>2</sup>Reduced to 7 yrs provided the person (1) has completed a chemical dependency program, (2) has not been convicted of either a DWI or implied consent offense, (3) has abstained from the excessive consumption of alcoholic beverages and (4) is not under suspension or revocation for any other reason. §60-6,209

<sup>3</sup>These revocations are based upon a conviction under §60-6,197.

<sup>4</sup>The license is suspended for this period of time. §60-6,197(2)(c)(¶2) & (d)(¶2)

<sup>5</sup>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.

Sanctions for Refusal to Take Implied Consent  
Chemical Test: (continued)

Other:

Persons Under 21 Years Old. A person under 21 yrs old, who refuses to submit to a chemical test to determine if they have BAC/BrAC  $\geq 0.02$  but  $< 0.08$ , commits a Traffic Infraction. Sanctions: Jail-None; fine-1st off Not more than \$100, 2nd off (w/n 1 yr) not more than \$200, 3rd and sub off (w/n 1 yr) not more than \$300. Admin. Action. For either a 1st or sub offense-90 dys license "impoundment" Restricted driving privileges for employment are available. §§60-672, 60-689, 60-6,211.02 & 60-6,211.03 The driver licensing record for this admin. action must be expunged after 120 dys. §60-6,211.06(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See the Comment below and Double Jeopardy on p. 3-294.

Imprisonment:

Term (Day, Month, Years,  
Etc.):

1st off (CI W misd)-Not more than 60 dys; 2nd off (w/n 12 yrs)(CI W misd)Not more than 90 dys; 3rd off (w/n 12 yrs)(CI W misd)-Not more than 1 yr; 4th and sub. offs (w/n 12 yrs)(CI IV felony)-Not more than 5 yrs §§28-105, 28-106 & 60-6,196 DWI w/serious bodily injury-CI IV Felony-Not more than 5 yrs §§28-105 & 60-6,198

Mandatory Minimum Term:

Persons Under 21 Years Old ( $\geq 0.02$  but  $< 0.08$ )-None

I. If probation is not granted: 1st off-7 dys<sup>1</sup>; 2nd off (w/n 12 yrs)-30 dys<sup>1</sup>; 3rd off (w/n 12 yrs)-90 dys<sup>1</sup>; 4th or sub. off (w/n 12 yrs)-10 dys<sup>1</sup> §§28-106 and 60-6,196(2)

II. If probation is granted: 1st off-None; 2nd off (w/n 12 yrs)-5 dys<sup>1</sup>; 3rd or sub. off (w/n 12 yrs)-10 dys<sup>1</sup> §§28-106 & 60-6,196(2) DWI w/serious bodily injury-None

Fine:

Amount (\$ Range):

1st off-\$500; 2nd off (w/n 12 yrs)-\$500; 3rd off (w/n 12 yrs)-\$600; 4th and subsequent offs (w/n 12 yrs)-\$10,000; DWI w/serious bodily injury-CI IV Felony-Not more than \$10,000 §§28-105 & 60-6,198

Persons Under 21 Years Old ( $\geq 0.02$  but  $< 0.08$ )-1st off-Not more than \$100, 2nd off (w/n 1 yr)-Not more than \$200, 3rd and sub. off (w/n 1 yr)-Not more than \$300 §60-689

<sup>1</sup>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 suspend a sentence and grant probation in either DWI or implied consent refusal criminal cases. If the court does not exercise this discretion, it must impose the minimum mandatory sanctions in §28-106. Of course, if this discretion is exercised, §28-106 mandatory sanctions do not have to be imposed. However, the court is required to impose the minimum mandatory sanctions associated with the granting of probation in §§60-6,196 & 60-6,197. *State v. Soe*, 366 N.W.2d 439 (Neb. 1985), *State v. Schultz*, 378 N.W. 165 (Neb. 1985), & *State v. Stastny*, 395 N.W.2d 492 (Neb. 1986)

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

Mandatory Min. Fine (\$):

I. If probation is not granted: 1st off-\$400; 2nd off (w/n 12 yrs)-\$500; 3rd off (w/n 12 yrs)-\$600; 4th or sub. off (w/n 12 yrs)-None §§28-106 and 60-6,196

II. If probation is granted: 1st off-\$400; 2nd off-\$500; 3rd off-\$600; 4th or sub off-\$1,000 §§28-106 & 60-6,196(2)  
DWI w/serious bodily injury-None

Other Penalties:

Community Service:

**Yes** I. As an alternative to incarceration if probation is granted, an offender is required to perform the following periods of community service: 2nd off (w/n 12 yrs)-Not less than **240 hrs** (mand); 3rd or sub off (w/n 12 yrs)-Not less than **480 hrs** (mand) §60-196(2)

II. A criminal law violator may be sentence to perform community service. However, community service cannot be used either as a substitute for mand jail or fine or in cases where there is serious bodily injury. §29-2278 See §29-2279 for the length of community service.

Restitution

(eg Victim's Fund)

I. A defendant may be ordered to pay restitution to a victim. §29-2280 II. Victims' compensation fund §81-1801 et seq.

Other:

**Driver Education Program.** Persons must attend and successfully complete a driver's education program of at least 8 hrs duration. §60-4,183

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

See Double Jeopardy and Constitutionality below.

**Yes** ≥ **0.08** (BAC/BrAC See Footnote No. 2 on p. 3-291.) §§60-6,197(4), 60-6,205 & 60-6,206 1st violation-Rev 90 dys (30 dys mand<sup>1</sup>) A person is eligible for employment (hardship) driving privileges after the 30 dy mand period (but not for the operation of a CMV). Sub. violation (w/n 12 yrs)-Rev **1 yr**<sup>1</sup> (mand) 247 NAC §026<sup>2</sup>

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 canceled and the license is reinstated. §60-6,206(4)

<sup>1</sup>Following the 30 dy mand rev period, either employment driving privileges may be granted or driving privileges may be granted with the condition that the offender only operate motor vehicles that are equipped with an "ignition interlock" device. For subsequent violators, the entire 1 yr revocation period is mandatory. §§60-4,118(8)(a) & 60-6,206(2) and 32 of Legislative Bill 38 (2001)

<sup>2</sup>Regulation 247 NAC §026 also provides that a person is ineligible for a restricted (hardship) license if they are a subsequent violator.

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Hansen*, 542 N.W.2d 424 (Neb. 1996), & *State v. Young*, 530 N.W.2d 269 (Neb.App. 1995)

**Constitutionality.** I. The administrative license revocation (ALR) law "does not create an unconstitutional classification between those who submit to urine tests and those who submit to blood and breath tests.... Therefore, [the ALR law] does not violate the prohibition on special legislation found in Neb. Const. art. III, §18." *Kalisek v. Abramson*, 599 N.W.2d 834 (Neb. 1999) II. The administrative per se law does not violate the constitutional principles of equal protection of the laws and cruel and unusual punishment. *Schindler v. Department of Motor Vehicles*, 593 N.W.2d 295 (Neb. 1999)

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

Other:	None
<u>Post DWI Conviction Licensing Action:</u> Type of Licensing Action (Susp/Rev):	<b>Rev<sup>1</sup> §§60-424 &amp; 60-6,196 Persons Under 21 Years Old ≥ 0.02 but &lt; 0.08 Impoundment §60-6,211.02(3)</b>
Term of License Withdrawal (Days, Months, Years, etc.):	<u>1st off-6 mos; 2nd off (w/n 12 yrs)-1 yr; 3rd &amp; sub. off (w/n 12 yrs)-15 yrs<sup>2</sup> §60-6,196 DWI w/serious bodily injury-Cl. IV Felony-15 yrs §60-6,198(1) Persons Under 21 Years Old ≥ 0.02 but &lt; 0.08-30 dys<sup>3</sup> (Driving privileges are available for employment.) §§60-6,211.02(3) &amp; 60-6,211.03(2)</u>
Mandatory Minimum Term of Withdrawal:	If probation is <u>not</u> granted: <u>1st off-6 mos</u> (See the Comment below and Footnote No. 1 on p. 3-296.); <u>2nd off (w/n 12 yrs)-1 yr; 3rd &amp; sub. off (w/n 12 yrs)-7 yrs<sup>2</sup> §60-6,196</u> If probation is granted: <u>1st off-60 dys</u> (See the Comment below and Footnote No. 1 on p. 3-296.); <u>2nd off (w/n 12 yrs)-1 yr; 3rd &amp; sub. off (w/n 12 yrs)-1 yr<sup>4</sup> §60-6,196 &amp; State v. Matthews, 465 N.W.2d 763 (Neb. 1991) DWI w/serious bodily injury-Cl. IV Felony-60 dys §60-6,198(1)</u> <b>Special Note:</b> Any period of rev. imposed for DWI off. conviction shall be reduced by any rev. period imposed for an admin. per se action. §60-6,196(5)
Other: Rehabilitation: Alcohol Education:	<b>Yes</b> In addition to any other sanction, a DWI offender may be required to attend an alcoholism or drug treatment program as a condition of probation. §60-6,196(8)

<sup>1</sup>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. §§60-4,129, 60-4,182 & 60-4,183

<sup>2</sup>Reduced to 7 yrs provided the person (1) has completed a chemical dependency program, (2) has not been convicted of either a DWI or implied consent offense, (3) has abstained from the excessive consumption of alcoholic beverages and (4) is not under suspension or revocation for other reasons. §60-6,209

<sup>3</sup>The driver licensing record for this offense must be expunged after 90 dys. §60-6,211.06(1)

<sup>4</sup>The license is suspended for this period of time. §60-6,196(2)(c)(¶2) & (d)(¶2)

**Comment:** Secs. 60-6,196(5) & 60-6,206(2) give persons, who have been convicted of 1st DWI offense, a chance to obtain employment (hardship) driving privileges. These sections provide that a person, who is also a 1st admin. per se law violator, is eligible for an employment driving permit after a 30 day revocation period.

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 100 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§60-4,138, 60-4,163, 60-4,164 & 60-4,168 **Historical Note:** The law requiring CDL operators to submit to a urine test for alcohol concentration via implied consent was repealed. §60-4,164(1) as amended by §6 of Legislative Bill 323 enacted in 1996

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

Alcohol Treatment:  
Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:  
Terms Upon Which Vehicle  
Will Be Released:  
Other:

**Yes** See Alcohol Education above.

**No**

**Immobilization.** See Ignition Interlock below. A person, who has been convicted of either a 2nd or subsequent drunk driving/implied consent refusal offense (w/n 12 yrs), must have **all** of the motor vehicles they own "immobilized" for not less than **5 dys nor more than 8 mos.** However, a co-owner of the vehicle may have the vehicle release to them if there is either a need to use such vehicle to continue employment or for the well-being of the co-owner's children or parents. §60-6,197.01(1)(a) & (1)(b)(i)

Miscellaneous Sanctions  
Not Included Elsewhere:

**Ignition Interlock.**<sup>1</sup> The court may order a person, who has been convicted of either a 2nd or subsequent drunk driving/implied consent refusal offense (w/n 12 yrs), as an alternative to vehicle immobilization, to have **all** of the vehicles owned by them equipped with ignition interlock devices. This requirement must last for not less than **6 mos** stating at the end of any license revocation period. One yr of the license revocation period must be completed before any ignition interlock devices can be installed. §60-6,197.01(2)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes** (1) Cl I Misd (unintentional death caused while operating a motor veh in violation of law except as noted); (2) Cl IV Felony (if homicide was the result of DWI, reckless driving or willful reckless driving); (3) Cl III Felony (death as a result of DWI where the defendant has had a prior DWI offense conviction) §§28-105, 28-106, & 28-306

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

Cl I Misd-not more than **1 yr**; Cl IV Felony-not more than **5 yrs**;  
Cl III Felony-not more than **20 yrs**

Mandatory Minimum Term:  
Fine (\$ Range):

Cl III Felony-**1 yr**  
Cl I Misd-not more than **\$1,000**; Cl IV Felony-not more than **\$10,000**; Cl III Felony-not more than **\$25,000**

Mandatory Minimum Fine:

**None**

<sup>1</sup>A DWI or implied consent law offender, who has been placed on probation, may be ordered to only operate motor vehicles that are equipped with "ignition interlock" devices. If such an order is issued, the offender is eligible for a special license that restricts them to driving motor vehicles that are equipped with these devices. A 1st offender is eligible for such a license after 30 dys of rev have been completed. A 2nd or sub offender is not eligible for such a license until at least 1 yr of revocation has been completed. §§60-6,211.05 & 32 of Legislative Bill 38 (2001)

Other Criminal Actions Related to DWI: (continued)

<p>Administrative Licensing Action: Licensing Authorized and Type of Action:</p>	<p>CI I Misd-<b>Rev</b><sup>1</sup>; CI IV Felony-<b>Rev</b>; CI III Felony-<b>Rev</b> (A person must also attend and successfully complete a driver's education course of at least 8 hrs duration. §60-4,183) §§28-306(3)(b) &amp; (c), 60-424, 60-4,182 and 60-4,183</p>
<p>Length of Term of Licensing Withdrawal:</p>	<p>(1) CI I Misd Offense-<b>6 mos</b> from the date of revocation or after the date of release from confinement whichever is later.<sup>1</sup> (2) CI IV Felony Offense-<b>15 yrs</b> The rev. shall not run concurrently with any jail term. (3) CI III Felony Offense-<b>60 dys to 15 yrs</b> The rev. shall not run concurrently with any jail term.</p>
<p>Mandatory Action--Minimum Length of License Withdrawal:</p>	<p>(1) CI I Misd Offense-<b>None</b> An employment driving permit may be issued. §§60-4,129 &amp; 60-4,183 (2) CI IV Felony Offense-<b>60 dys</b> and the rev. shall not run concurrently with any jail term. §28-306(3)(b) (3) CI III Felony Offense-<b>60 dys</b> and the rev. shall not run concurrently with any jail term. §28-306(3)(c)</p>
<p>Other:</p>	<p><b>None</b></p>
<p><u>Driving While License Suspended or Revoked</u> <u>Where the Basis Was a DWI Offense*</u>: Sanction: Criminal: Imprisonment (Term):</p>	<p>See Footnote Nos 2 &amp; 3 and .the Special Note below.</p> <p>Driving While Suspended: <u>1st &amp; sub. offs</u>-CI III Misd-Not more than <b>3 mos</b> Driving While Revoked: <u>1st &amp; sub. offs</u>-CI II Misd-Not more than <b>6 mos</b> §§28-106, 60-557, 60-4,108 &amp; 60-4,109</p>

<sup>1</sup>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. §60-4,182 & 60-4,183

<sup>2</sup>A person commits a felony if they operate a motor vehicle while their license is revoked if the basis for the revocation was three or more DWI/implied consent offense convictions. 1st offense (CI IV felony)-Imprisonment for not more than 5 yrs and/or a fine-not more than \$10,000. Subsequent offense (CI III felony)-Imprisonment for not more than 20 yrs (1 yr minimum) and/or a fine-not more than \$25,000. §§28-105, 60-6,196(6) & 60-197(7)

<sup>3</sup>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, 60-4,129 & 60-4,186

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

**Special Note:** These sanctions also apply to the operation of CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 3 mos and/or a fine of not more than \$500. §§28-106 & 60-4,141.01 If a person is convicted of violating an out-of-service order, they are also subject to the following disqualification periods: 1st offense-90 dys (mand); 2nd offense (w/n 10 yrs)-1 yr (mand); and, 3rd or sub offense (w/n 10 yrs)-3 yrs (mand). If the CMV operator was driving a CDL either containing hazardous materials or designed to carry 15 or more persons, the CDL disqualification periods are as follows: 1st offense-180 dys (mand); and, sub offense (w/n 10 yrs)-3 yrs (mand). §60-4,168.01

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Other Criminal Actions Related to DWI: (continued)

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

None

Driving While Suspended: 1st & sub. offs-CI III Misd-Not more than **\$500** §28-106

Driving While Revoked: 1st & sub. offs-CI II Misd-Not more than **\$1,000** §28-106

None

Mandatory Minimum Fine:  
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 vehicle, operated by any person whose license has either been revoked or suspended for any drunk driving or any implied consent conviction, must be impounded for not less than 10 nor more than 30 dys.

Length of Term of License  
Withdrawal Action:

Driving While Suspended: 1st & sub. offs-1 yr

Driving While Revoked: 1st off-1 yr<sup>1</sup>; sub. off-2 yrs<sup>1</sup>

Mandatory Term of License  
Withdrawal Action:

Driving While Suspended: 1st & sub. offs-1 yr

Driving While Revoked: 1st off-1 yr<sup>1</sup>; sub. off-2 yrs<sup>1</sup>

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No):  
Grounds for Being Declared an  
Habitual Offender:  
Term of License Rev While  
Under Habitual Offender Status:  
Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status  
Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:  
Imprisonment (Term):  
Mandatory Minimum Term of  
Imprisonment:  
Fine (\$ Range):  
Mandatory Minimum Fine (\$):  
Licensing Actions (Specify):

No

<sup>1</sup>The court also orders revocation for the same period of time. §§60-4,108 & 60-4,109

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

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

Yes §60-6,102

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 &amp; 53-180.01

Minimum Age (Years) Possession:

21 There are exemptions for possession in a "permanent place of residence", for religious purposes and for certain employment purposes by those &gt;19 yrs old. §§53-103(23), 53-168.06 &amp; 53-180.02

Minimum Age (Years) Consumption:

21 There are exemptions for consumption in a "permanent place of residence" or for religious purposes. §§53-101(41) &amp; 53-180.02

Dram Shop Laws and Related Legal Actions:

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

No

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

No Note: For cases denying liability, see *Holmes v. Circo*, 244 N.W.2d 65 (1976), *Arant v. G.H., Inc.*, 428 N.W.2d 631 (Neb. 1988), and *Schroer v. Synowiecke*, 435 N.W.2d. 875 (Neb. 1989).

Dram Shop Actions-Social Hosts:

No (No Cases)

Other:

A licensee cannot be held liable for injuries sustained by an intoxicated minor patron. *Pelzek v. American Legion*, 463 N.W.2d 321 (Neb. 1990)

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

Type of Criminal Action:

C I Misd §§53-180, 53-180.05 &amp; 28-106

Term of Imprisonment:

Not more than 1 yr

Fine (\$ Range):

Not more than \$1,000

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp/Rev<sup>1</sup> §§53-116.2, 53-128 & 53-1,104

Length of Term of License Withdrawal:

Not specified in the statute.

<sup>1</sup>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

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Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

**Cl I Misd** §§53-180, 53-180.05 & 28-106  
Not more than **1 yr**  
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):  
Length of Term License Withdrawal:

**Yes Susp/Rev<sup>1</sup>** §§53-116.2, 53-128 & 53-1,104  
Not specified in the statute.

Anti-Happy Hour Laws/Regulations:

**Yes Regulation** 237-6.019.01U  
This regulation does not regulate the price of "single" drinks. It does, however, prohibit the selling of an unlimited quantity of drinks at one price or two or more drinks at the same price.

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

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**Yes Driver and passengers** §60-6,211.08  
**Yes Driver and passengers** §60-6,211.08 See §53-186 where the State or a local government may provide for certain exceptions on public property.

<sup>1</sup>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 and Nevada Administrative Code (NAC)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor §484.379(1)(a)

Illegal Per Se Law (BAC/BrAC):

I.  $\geq 0.10$ <sup>1&2</sup> §§484.0135 & 484.379(1)(b) & (c)

II. **Certain Amounts of Prohibited Substances**<sup>3</sup> in the Blood or Urine §484.379(3)

Presumption (BAC):

**None** Presumption law, §484.381, repealed. §3 Ch. 249 (1993)

Types of Drugs/Drugs and Alcohol:

I. Under the influence of (1) **A Controlled Substance** or (2) a Combination of Intoxicating Liquor and a Controlled Substance §484.379(2)

II. Any Person Who Inhales, Ingests, Applies or Otherwise Uses any Chemical, Poison, Organic Solvent and Any Compound or a Combination of These to a Degree which Renders Him Incapable of Safely Driving. §484.379(2)

Other:

For Commercial Motor Vehicle Operators, see p. 4-304

For Taxicab Drivers, see p. 3-304.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Yes**<sup>4</sup> §484.382

Implied Consent Law:

Arrest Required (Yes/No):

**No**<sup>4</sup> §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

Other Information:

If a person fails to submit to a test, a blood sample may be obtained without consent (i.e., via force) if there is "reasonable grounds to believe" that the driver has been driving under the influence of alcohol or a controlled substance.<sup>5</sup> §484.383(7)

<sup>1</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more. §484.0135

<sup>2</sup>Standards: "Concentration of alcohol" is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§483.025, 484.0135, 484.379(1)(a) & 484.379(2)(a)

<sup>3</sup>The "prohibited substances" and the amounts prohibited are as follows: I. An amount of prohibited substance in a person's **blood** that is equal to or greater than the following nanograms of prohibited substance per milliliter of blood: (a) amphetamine 100, (b) cocaine 50, (c) cocaine metabolite 50, (d) heroin 50, (e) heroin metabolite: (1) morphine 50 or (2) 6-monoacetyl morphine 10, (f) lysergic acid diethylamide 10, (g) marijuana 2, (h) marijuana metabolite 5, (i) methamphetamine 100 or (j) phencyclidine 10.

II. An amount of prohibited substance in a person's **urine** that is equal to or greater than the following nanograms of prohibited substance per milliliter of urine: (a) amphetamine 500, (b) cocaine 150, (c) cocaine metabolite 150, (d) heroin 2,000, (e) heroin metabolite: (1) morphine 2,000 or (2) 6-monoacetyl morphine 10, (f) lysergic acid diethylamide 25, (g) marijuana 10, (h) marijuana metabolite 15, (i) methamphetamine 500 or (j) phencyclidine 25. §§484.1245 & 484.379(3)

<sup>4</sup>A law enforcement officer only needs "reasonable grounds to believe" that a drunk driving offense was committed before they can request a driver to submit to blood, breath or urine tests under the implied consent law. This same standard also applies to requests concerning preliminary breath tests.

<sup>5</sup>See Footnote No. 1 on p. 3-302.

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

Blood:	Yes <sup>1</sup> §484.383(1)
Urine:	Yes-Limited <sup>2</sup> §484.383(1)
Other:	Or other unspecified bodily substances §484.383(1)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes Note: A DWI charge cannot be exchanged for a lesser charge unless there is no evidence to support such a DWI charge. §484.3792(3)

Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes I. An alcohol or drug evaluation must be administered to 3rd or sub. offenders and to offenders who have caused either an injury or death. §§176.135, 484.3792(1)(c) & 484.3796 II. Either a 1st offender, who registers a BAC/BrAC $\geq 0.18$ , or any 2nd offender (w/n 7 yrs) must be administered an evaluation to determine if they are an abuser of alcohol or drugs. §484.37943(1) III. A 1st offender, who is <21 yrs old, or a 1st or sub offender, who is <18 yrs old, must be administered an evaluation to determine if they are an abuser of alcohol or drugs. §§62.020(1), 62.2275(1) & 484.37943(2) IV. The above offenders must be examined by individuals who have been certified or approved to make alcohol and drug evaluations. The finding of this evaluation must be reported to the court. §484.37943(1)(a)(3)
--	--

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	None
Criminal Sanctions (Fine/Jail):	
Administrative Licensing Action (Susp/Rev):	None <sup>3</sup>
Other:	If a person refuses to submit to a preliminary breath test where there is "reasonable grounds to believe" that they have committed a drunk driving offense, the law enforcement officer requesting such a test must seize the person's license and arrest them for such offense. §484.382(2)

<sup>1</sup>A person may be directed to submit to blood test for controlled substances. §484.383(5) In addition, a law enforcement officer may "direct" a person to submit to blood test if there is "reasonable grounds to believe" the person, while operating a vehicle, either (1) caused either death or serious injury while under the influence intoxicating liquor or a controlled substance or (2) has been stopped for a subsequent drunk driving offense w/n 7 yrs. §484.383(4)(c)

<sup>2</sup>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 stopped for driving under the influence of a controlled substance. §484.383(3), (5) & (6)

<sup>3</sup>Historical Note: The administrative licensing sanction (i.e. a 90 dy revocation) for a refusal to submit to a preliminary breath test was repealed. Sec. 484.384 as amended by §4 of Chapter 546, Laws of 1995

Chemical Test: (continued)

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

**None**  
**None** See the Historical Note below.  
**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
 Imprisonment:  
 Term (Day, Month, Years,  
 Etc.):

See Double Jeopardy on p. 3-305.

1st & 2nd DWI offs are misd; 3rd DWI or sub offs are Category B felonies §§193.120 & 484.3792 **Special Note:** If there is substantial bodily harm related to a DWI offense, the sanctions imposed are the same as for DWI vehicle homicide. §484.3795 See Homicide by Vehicle on p. 3-307.

1st off-2 dys to 6 mos; 2nd off (w/n 7 yrs)-10 dys to 6 mos (or residential confinement with electronic monitoring in a treatment facility-10 dys to 6 mos); 3rd and subsequent off (w/n 7 yrs)-1 to 6 yrs (State prison) §§484.379 & 484.3792

Mandatory Minimum Term:

1st off-2 dys Important: See the Special Note below. 2nd off (w/n 7 yrs)-10 dys (with at least 48 con hrs §484.3792(4)) Important: See the Special Note below. 3rd and subsequent off (w/n 7 yrs)-1 yr (with at least 48 con hrs §484.3792(4))

Fine:  
 Amount (\$ Range):

1st off-\$400 to \$1,000; 2nd off (w/n 7 yrs)-\$750 to \$1,000; 3rd and subsequent off (w/n 7 yrs)-\$2,000 to \$5,000 Special Note: 1st off and 2nd off (w/n 7 yrs)-If rehabilitation is taken, the fine can be no more than the minimum fine indicated.

Mandatory Min. Fine (\$):

1st off-\$400; 2nd off-\$750 3rd and sub. off-\$2,000 §§484.3792(3) & 484.3974(4)(c)(3)

Other Penalties:  
 Community Service:

1st off-48 (mand) to 96 hrs (alternative to imprisonment) or, if rehabilitation is taken, 48 hrs §§484.3792(1)(a)(2) & 484.3794(1)(c)(1) 2nd off (w/n 7 yrs)-Unless extenuating circumstances exist, 100 (mand) to 200 hrs (in addition to imprisonment) or, if rehabilitation is taken, 50 (mand) to 100 hrs §§484.3792(1)(b)(3) & 484.3794(1)(c)(2) Important: See the Special Note below.

**Special Note:** Either a 1st or 2nd offender (w/n 7 yrs), who has been classified as an alcohol/drug abuser, may have their sentence suspended if they agree to participate in an alcohol or drug treatment program. A 1st offender must be placed in this program for 6 mos and must serve 1 dy in jail or perform 48 hrs of community service. A 2nd offender (w/n 7 yrs) must be placed in the program for 1 yr and must serve 5 dys in jail and perform not less than 50 (mand) nor more than 100 hrs of community service. In addition, offenders must agree to pay any treatment program costs. A person is not eligible for this program if they have been convicted of a drunk driving offense related either to injury or death. §§484.37937 & 484.3794

**Historical Note:** The administrative licensing sanctions for a refusal to submit test under the implied consent law (i.e., 1st refusal-rev 1 yr (mand); 2nd or sub refusal (w/n 7 yrs)-rev 3 yrs (mand)) were repealed. §§484.384 & 484.385 as amended by §§4 & 5 of Chapter 546, Laws of 1995

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

Community Service: (continued)

Offenders <18 yrs old may be required to perform community service. §62.2275(3)(c)(2)

Restitution  
(eg Victim's Fund)

**Yes** (1) As a condition for a suspended sentence, the court may order a defendant to pay compensation to a victim §§4.373 & 5.055 and (2) via a victims' compensation fund §217.010 et seq.  
**Residential Confinement.** The court may order that the defendant be confined to his/her home for a conviction of a misd. off. This sentence may be supervised by means of electronic devices. §§4.430, 4.440, 5.053 & 5.054

Other:

A **Civil Fine of \$35** must be imposed. This fine is paid into a victims' compensation fund. §484.3791

**Chemical Test Fee.** In addition to any fine, a defendant must pay a fee of **\$60** for any chemical analysis that was performed to determine alcohol concentration or the presence of a controlled substance in the blood, breath or urine. §484.3798

**Administrative Assessment.** DWI misdemeanor offenders are subject to administrative assessments in addition to any fine this is imposed. These assessments may range from **\$10 to \$100** depending upon the size of the fine that is imposed. §176.059(1)

**Evaluation Assessment Fee.** An offender, who has been ordered to submit to alcohol or drug evaluation, must pay a fee of not more than **\$100**. §484.37943(6)

**Impact Meeting.** An offender shall be ordered to attend a meeting (if available) with victims of DWI offenses in order to discuss the impact of the offense on such victims. §484.3797

**Taxicab Drivers:** It is illegal for a person to "drive a taxicab or go on duty while under the influence of, or impaired by, any controlled substance, dangerous drug, or intoxicating liquor or drinking liquor while on duty." §706.8849(1)(g) A person, who violates this provision, is subject to the following sanctions: 1st offense-A fine of not more than **\$100** and/or driver's license suspension from 1 to 5 dys; 2nd offense-A fine of not more than **\$300** and/or driver's license suspension from 6 to 20 dys; and, 3rd offense-A fine of not more than **\$500**. In addition to these sanctions, a driver's license may be revoked. §706.8849(2) Note: The law does not state a revocation period.

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** The State's Public Service Commission and Department of Motor Vehicles and Public Safety have promulgated regulations that adopt by reference 49 CFR Parts 383 and 392. Under 49 CFR §383.51, a person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC  $\geq 0.04$  or (2) are under the influence of alcohol or a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). Note: If there is "reasonable grounds to believe" that a CMV operator (1) is under the influence of intoxicating liquor or a controlled substance or (2) has violated any provision of the drunk driving or DWI vehicle homicide laws, a law enforcement officer must administer either a blood, breath or urine test to such driver in order to determine either the alcoholic content or the presence of a controlled substance in the operator's system. **Comment:** It would appear that the law allows law enforcement officers to obtain samples of bodily substances (e.g, of blood) for testing via "force". Under 49 CFR §392.5, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. It is misdemeanor to violate a State regulation. The sanctions for this offense are a jail term of not more than 6 mos and/or a fine of at least \$100 (mand) but not more than \$1,000. In addition, a person, who violates a State regulation, may also be liable for a civil penalty which is not to exceed \$10,000. §§483.904, 483.908, 483.922, 706.173, 706.756 & 706.771, NAC §706.247 and 49 USC 31301 et seq.

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

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Term of License Withdrawal

(Days, Months, Years, etc.):

Mandatory Minimum Term of

Withdrawal:

See Double Jeopardy below.

See the Special Note on p. 3-306.

**Yes  $\geq 0.10$  (BAC/BrAC<sup>1</sup> See Footnote No. 2 on p. 3-301.) or a Detectable Amount of a Prohibited Substance in the Blood or Urine (Amphetamine, cocaine, cocaine metabolite, heroin or heroin metabolite (morphine/6-monoacetyl morphine), lysergic acid diethylamide, marijuana, marijuana metabolite or methamphetamine)-Rev 90 dys (mand)<sup>3</sup> §§484.383, 484.384, 484.385 & 484.1245**

Persons Under 21 Years Old- $> 0.02$  but  $< 0.10$  (BAC/BrAC) (See Footnote No. 2 on p. 3-301.) **Susp 90 dys** (45 dys mand A restricted license may be issued after this mand period.) §§483.461, 483.462 & 483.464

Under §§483.473(1)(a) & 483.490(1), a person's license may be susp for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

On p. 3-306, see the Special Note and **Persons Under 18 Years Old.**

1st off-**Rev**; 2nd off (w/n 7 yrs)-**Rev**; 3rd and subsequent offs (w/n 7 yrs)-**Rev** §483.460. See Footnote No. 1.

1st off-**90 dys**<sup>3</sup>; 2nd off (w/n 7 yrs)-**1 yr**; 3rd and subsequent off (w/n 7 yrs)-**3 yrs**<sup>3</sup> (For a 3rd or subsequent offense, the license revocation period does not "run" while the offender is under jail or residential confinement.) §483.460

1st off-**45 dys**<sup>3</sup>; 2nd off (w/n 7 yrs)-**1 yr**; 3rd and subsequent offs (w/n 7 yrs)-**1 1/2 yrs**<sup>3</sup> (After a 1 yr mand rev, a restricted license may be issued if the person is allowed to use an ignition interlock.) §§483.460(1)(b)(5) & 483.490(2)

**Ignition Interlock.** 1 The court may or must require a defendant to install this device as a condition for restricted driving privileges as follows: 1st offense-**3 to 6 mos** (discretionary);

<sup>1</sup>An admin. per se licensing action can be based either on the result of an implied consent test or a preliminary breath test. §484.384(1)

<sup>2</sup>**Comment:** Sec. 484.385 authorizes admin. licensing action via a revocation against a person who operates a motor vehicle with a BAC/BrAC  $\geq 0.10$  or a detectable amount of a "prohibited substance" their blood or urine. However, this section does not provide for a specific revocation period. Sec. 484.384(1) provides for a 90 dy rev if the driver has a BAC/BrAC  $\geq 0.10$  but does not provided for a revocation period if the driver has a detectable amount of a "prohibited substance".

<sup>3</sup>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) For a 1st offender, after 45 dys a restricted license may be issued if they have been allowed to participate in the ignition interlock program. §483.490(2)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Lomas*, 955 P.2d 678 (Nev. 1998)

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

	<p><u>2nd offense</u>-(no requirement); and, <u>3rd and subsequent off-12 to 36 mos</u> (mandatory). §484.3943(1) II. The court <u>may</u> require a defendant to install this device as a condition for the reinstatement of driving privileges. The period of use is determined by the court. §484.3943(2)</p>
Other:	
Rehabilitation:	<p><u>Important:</u> See the Special Note on p. 3-303</p>
Alcohol Education:	<p><u>Yes 1st off</u>-Course on alcohol/drug abuse unless treatment is required or authorized. §484.3792(1)(a)(1) A temporary alcohol education program may be established. §5 of Ch. 583 of the laws of 1987</p>
Alcohol Treatment:	<p><u>Yes<sup>1</sup> 1st off</u>-Possible but mandatory if BAC/BrAC &gt;0.18; <u>2nd off</u>-1 yr treatment mandatory for non-death/non-injury related offs<sup>2</sup> §§209.425 et seq., 484.3792(1)(a)(4) &amp; (1)(b)(4) and 484.3794. Note: Under §209.425, an alcohol treatment program is available for incarcerated DWI offenders. Persons &lt;18 yrs old may also be required to participate in a treatment program. §62.2275(3)(c)</p>
Vehicle Impoundment/Confiscation:	
Authorized by Specific	
Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	
Other:	<p><u>Vehicle Registration Suspension.</u> For a <u>2nd or sub drunk driving</u> (§484.379)/<u>drunk driving related vehicle homicide</u> (§484.3795) <u>off</u> (w/n 7 yrs), the registrations of <u>all</u> of the vehicles owned by the offender must be <u>suspended for 5 dys</u>. There is an exception in the case of a non-offender family member who needs to use a vehicle for employment purposes, medical reasons, school or other necessities. §§482.451 &amp; 484.37975</p>
Miscellaneous Sanctions	
Not Included Elsewhere:	<p><u>Child Endangerment.</u> 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)</p>

<sup>1</sup>Persons Under 18 Years Old: I. Under separate provisions of law, a drunk driving offender, who is under 18 yrs old, is subject to a license revocation of 90 dys. However, this licensing action is not mandatory. A restricted license is available either (1) for either going to and from or for use during employment or (2) for medical care. §§62.227 & 483.490 II. Under general provisions of the law governing juvenile offenders (offenders < 18 yrs old), a court has the authority to suspended such a person's license for 90 dys to 2 yrs as a sanction for most criminal acts. Restricted driving privileges are available either (1) for going to and from employment or (2) for use during employment. §§62.020(1), 62.040, 62.211(1)(h) & 483.490(2) II. Such an offender must complete an alcohol/drug treatment program if a alcohol/drug evaluation indicates that such treatment is needed. §62.2275

<sup>2</sup>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. §484.37945

**Special Note:** If a license rev for a DWI off conviction follows one for an admin. per se action, the admin. per se rev is cancelled. The driver shall be given credit towards any DWI off conviction rev period for any time he/she was not eligible for a license under the admin. per se rev. Also, following the cancellation of the administrative per se rev, the legal provisions, concerning min. mandatory terms of license withdrawal and issuance of restricted licenses after a DWI off conviction, would apply.

Other Criminal Actions Related to DWI:Homicide by Vehicle:

State Has Such a Law:

**Yes** (1) Death caused by reckless driving where there is wanton disregard for the safety of others-Category B felony and (2) death caused by a DWI<sup>1</sup> off-Category B felony §§484.377 & 484.3795  
See **Vehicle Registration Suspension** above.

## Sanctions:

Criminal Sanction:

Imprisonment (Term):

Reckless Driving-**1 to 6 yrs**; DWI related offs<sup>2</sup>-**2 to 20 yrs**<sup>3</sup>.  
§§484.377 & 484.3795

For a DWI related death-**2 yrs**<sup>2&4</sup>

Mandatory Minimum Term:

Fine (\$ Range):

Reckless Driving-Not more than **\$5,000**; DWI related offs-**\$2,000 to \$5,000**<sup>3</sup>

For a DWI related death-**\$2,000**<sup>3&4</sup>

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

**Rev** §483.460 (Applies to either reckless driving or DWI related deaths.) See Ignition Interlock below.

For offenders < 18 yrs old, see II under Footnote No. 1 on p. 3-306.

Length of Term of

Licensing Withdrawal:

For a DWI related death, **3 yrs** The license revocation period does not "run" while the offender is under jail or residential confinement. §483.460(1)(a)(3) Note: For any non-alcohol related death or other manslaughter off. not noted above caused by veh operations, the driver's license is revoked for **1 yr**. §483.460(1)(b)(1)

Mandatory Action--Minimum

Length of License

Withdrawal:

**1½ yrs** (Death related DWI offs.); **6 mos** (Non-alcohol related death offs.) §§483.460(1) and 483.490(1) & (2)

Other:

1) A person, who has been convicted of DWI related vehicle homicide, may be required to serve a ten (10) period of probation. §484.3795(3)(b)

2) A person must be evaluated for an alcohol or drug abuse problem. If a person has such a problem, they are assigned to a treatment program. §§484.3796 & 209.425 et seq.

<sup>1</sup>The sanctions for this offense also apply to DWI injury related offenses. §484.3795

<sup>2</sup>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)

<sup>3</sup>This sanction also applies to a person who causes substantial bodily harm as a result of a DWI offense. §484.3795(1)

<sup>4</sup>This minimum sanction may not be suspended nor may probation be granted. §484.3795(2)

**Ignition Interlock.** I. A person who has been convicted of a vehicle homicide based on recklessness (not drunk driving) may be required to install and use an ignition interlock device on the vehicles they operate and, as a condition for using such a device they are eligible to obtain restricted driving after a 180 dy revocation period. II. A person who has been convicted of a vehicle homicide based on drunk driving must install and use an ignition interlock devices on the vehicles they operate for 12 to 36 mos. Such a person, is eligible for restricted driving privileges after a 1 yr revocation period. §§483.490(2), 484.3941 & 484.3943(1)

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Other Criminal Actions Related to DWI: (continued)

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

See the Special Note below.

Sanction:

Criminal:

Imprisonment (Term):

Misd 30 dys to 6 mos<sup>1&2</sup> §483.560(2)

Mandatory Minimum Term

of Imprisonment:

30 dys<sup>1,2&3</sup>

Fine (\$ Range):

\$500 to \$1,000<sup>1&2</sup>

Mandatory Minimum Fine:

\$500<sup>1&2</sup>

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(5) For persons < 18 yrs old, see  
II under Footnote No. 1 on p. 3-306.

Length of Term of License

Withdrawal Action:

The original susp period extended a like period The original rev  
extended 1 yr §483.560(5)

Mandatory Term of License

Withdrawal Action:

See above. Note: The restricted license provisions of  
§483.490(2) may apply. See Footnote No. 2 on p. 3-305.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

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):

<sup>1</sup>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.

<sup>2</sup>**Alternative Sanctions:** Residential confinement from 60 dys (mand) to not more than 6 mos and a fine of \$500 (mand) to not more than \$1,000. §483.560(2)

<sup>3</sup>Under §483.560(3), any segment of imprisonment must consist of at least 24 hrs.

**Special Note:** The CMV law prohibits the operation of a CMV during either a CDL disqualification or a CDL out-of-service order. However, this law does not appear to provide specified sanctions for this prohibition. §483.924(2) It is not clear whether the law that prohibits the illegal use of a license applies. If it does, the following sanctions could be imposed: Imprisonment for not more than 6 mos and/or a fine of not more than \$1,000. Community service may be imposed in lieu of these sanctions. §§193.150, 483.530(7) & 483.620

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

State Has Such a Law (Yes/No): **Yes** §484.394  
 BAC Chemical Test Is Given to the  
 the Following Persons:

Driver: **Yes**  
 Vehicle Passengers: **Yes**  
 Pedestrian: **Yes**

Laws Establishing the Minimum 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 possession 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** §41.1305<sup>1</sup>  
 "Dram Shop Law" Concept Has Been  
 Adopted Via a Change to the Common  
 Law Rule by Action of the Highest  
 Court of Record in the State (Case  
 Citation):

**No** Note: For cases denying liability, see *Hamm v. Carson City Nugget*, 450 P.2d 358 (Nev. 1969), *Yoscovitch v. Wasson*, 645 P.2d 975 (Nev. 1982), and *Hinegardner v. Marcor Resorts*, 844 P.2d 800 (Nev. 1992).

Dram Shop Actions-Social Hosts:  
 Other:

**No**<sup>2</sup> §41.1305<sup>1</sup>  
 A minor decedent's estate has no cause of action in negligence against a licensee who served alcoholic beverages to the minor even though the consumption of such beverages was a factor in the minor's death. *Snyder v. Viani*, 885 P.2d 610 (Nev. 1994)

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

Type of Criminal Action:

**No Comment:** The State grants local governments broad power to license and regulate liquor retail establishments. Therefore, local laws may have been enacted to control the sale of alcoholic beverages to intoxicated persons.

Term of Imprisonment:  
 Fine (\$ Range):

**N/A**  
**N/A**

<sup>1</sup>The law provides that, persons, who serve or sell alcoholic beverages, are not liable either (1) for the injures caused by the individuals, who consumed such beverages, or (2) for the injures sustained by such individuals. **Comment:** The law appears to apply to both alcoholic beverage licensees and social hosts.

<sup>2</sup>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.

NEVADA

Other State Laws Related To Alcohol:  
(continued)

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No): N/A  
Length of Term of License Withdrawal: N/A

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

Type of Criminal Action: Misd §§193.150 & 202.055  
Term of Imprisonment: Not more than 6 mos<sup>1</sup>  
Fine (\$ Range): Not more than \$1,000<sup>1</sup>

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

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No): Note: Controlled by local law.  
Length of Term License Withdrawal: Note: Controlled by local law.

Anti-Happy Hour Laws/Regulations: No

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

Open Container Law (Yes/No): Yes §484.448(2)  
Anti-Consumption Law (Yes/No): Yes Driver only §484.448(1) Note: The law states that "it is unlawful for any person to drink any intoxicating liquor in a motor vehicle while such person is driving such motor vehicle upon a highway."

<sup>1</sup>A person may be allowed to perform community service in lieu of all or part of the jail/fine sentence. §193.150

STATE:

General Reference:

**NEW HAMPSHIRE**

New Hampshire Revised Statutes Annotated

Basis for a DWI Charge:

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

Under the influence of intoxicating liquor<sup>1&5</sup> §§265:82, I(a)  
≥ **0.08**<sup>2,3&5</sup> §265:82, I(b)

Persons Under 21 Years Old-> **0.02**<sup>3,4&5</sup> §265:82, I(b)

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

**None**

Under the influence of (1) **Any Controlled Drug** and (2) any  
Combination of Intoxicating Liquor and Controlled Drugs  
§265:82(I)(a)

Other:

I. An alcohol concentration ≥ **0.08**<sup>3</sup> is *prima facie* evidence of  
intoxication. §265:89

II. **Aggravated Driving While Intoxicated Offense.** (1) Either  
driving while under the influence of intoxicating liquor or any  
controlled drug or any combination of intoxicating liquor and a  
controlled drug or with a BAC/BrAC ≥ 0.08 and one of the  
following: Exceeding the *prima facie* speed limit by more than 30  
MPH; causing a collision that results in a serious bodily injury to  
another person; or, attempting to elude a law enforcement officer.

(2) Driving with a BAC/BrAC ≥ 0.16. §265:82-a

III. For Commercial Motor Vehicle Operators, see p. 3-315.

Chemical Breath Tests for Alcohol Concentration:

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

**Yes** §§215-A:11 & 265:92-a

**Yes** §265:84

**Yes** §265:84

**Yes** (Criminal & Civil Cases) §265:88-a & *State v. Parker*, 902  
A.2d 306 (N.H. 1997)

Other Information:

I. If there is probable cause of DWI, a driver, involved in a  
collision resulting in a death or serious injury, shall be tested for  
evidence of alcohol or controlled drugs. §265:93

II. Under the implied consent law (§265:84), in addition to  
chemical tests, a person is deemed to have consented to "physical  
tests and examinations". A person, who refuses to submit to these  
tests or examinations, is subject to the same licensing action as for  
a refusal to submit to a chemical test.

<sup>1</sup>The term "intoxicating liquor" is defined to include all alcohol beverages containing more than one per cent alcohol by volume. §21:33

<sup>2</sup>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 of 0.08 or more. §259:3-b

<sup>3</sup>The term "alcohol concentration" is defined as grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine. §259:3-b

<sup>4</sup>The sanctions for this offense (criminal and administrative) are the same as for any other drunk driving offense.

<sup>5</sup>Under §265:89, it is *prima facie* evidence that a person was not driving while under the influence of intoxicating liquor per §265:82, I(a) if their BAC was 0.03 or less. As a result, a driver <21 yrs old, who is charged with driving while under the intoxicating liquor, is entitled to use §265:89 as defense against this charge, if their BAC is 0.03 or less, even though other provisions of the law, §265:82, I(b), make it illegal per se for them to operate a motor vehicle with a BAC ≥ 0.02. It should be noted that in the case cited, the court specifically stated that the *prima facie* defense only applies to the §265:82, I(a) offense. *State v. Clyde*, 766 A.2d 250 (N.H. 2001)

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

Blood:	Yes §265:84
Urine:	Yes §265:840
Other:	None

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):	Yes (Limited) <u>3rd and sub offs</u> (w/n 10 yrs) §265:82-b, II(b)((2) Note: Under §651:4, a pre-sentence investigation is not normally required in misdemeanor cases.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test: Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	<u>1st refusal</u> where there has been no previous DWI off- <b>Susp for 180 dys</b> (mand); <u>2nd refusal</u> or a 1st refusal where there has been a previous DWI off- <b>Susp for 2 yrs</b> (mand) §§265:91-a, II(a) & 265:92 These revocations are <u>not</u> to run concurrently with any other suspension or revocation. §265:92, II See Footnote No. 1.
Other:	

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	See Gainful Employment & Home Confinement on p. 3-313.
Term (Day, Month, Years, Etc.):	<u>1st off</u> -Violation-Not a Crime §629:9, II(b)-None; <u>1st off- Aggravated Driving While Intoxicated Offense</u> (except bodily injury offenses) Misd <sup>2</sup> -Not more than <b>1 yr</b> ; <u>2nd off<sup>3</sup></u> (including Aggravated DWI non-injury offs) (w/n 10 yrs)-Misd <sup>2</sup> -Not more than <b>1 yr</b> ; <u>3rd off<sup>3</sup></u> (including Aggravated DWI non-injury offs) (w/n 10 yrs)-Misd <sup>2</sup> -Not more than <b>1 yr</b> ; <u>4th or sub offs<sup>3</sup></u> (including Aggravated DWI non-injury offs) (w/n 10 yrs)-Felony-See the Comment on p. 3-313.

<sup>1</sup>A person holding an "at risk" probationary license whom police have reasonable cause to believe is driving with a BAC/BrAC  $\geq 0.03$  and who refuses to take a chemical test shall have their license suspended for 90 days. §263:14-a(III). See Misc. Sanctions on p. 3-316.

<sup>2</sup>The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

<sup>3</sup>For sentencing purposes, a prior offense includes a prior motor vehicle homicide offense related to drunk driving and an Aggravated Driving While Intoxicated offense relate to serious bodily injury. §265:82-b, II

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

Mandatory Minimum Term:	<p><b>Aggravated Driving While Intoxicated Offense with Serious Bodily Injury</b>-Cl B Felony-Not more than 7 yrs<sup>1</sup> §§265:9, IV(A); 265:82; 265:82-a; 265:82-b, I(b) &amp; II and 651:2, I(c)</p> <p><b>Special Note:</b> 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) <u>2nd and sub. off</u> (all offenses including Aggravated (DWI)(w/n 10 yrs)-Misd-10 cons dys The 10 con dys are to be served as follows: 3 con 24 hour periods in the county house of corrections and 7 con 24 hour periods in a State operated 7-dy multiple DWI offender intervention detention center. <u>Important.</u> See <b>Special Sanctions for Certain Multiple Offenders</b> on p. 3-314. §265:82-b, II(a)(3), (b), (c) &amp; (d) Aggravated DWI-Serious Bodily Injury-None</p>
Fine: Amount (\$ Range):	<p><b>1st off</b>-\$350 to \$1,000; <b>1st off</b>-Aggravated Driving While Intoxicated Offense (except bodily injury offenses)-\$500 to \$2,000; <b>2nd off</b><sup>2</sup> (w/n 10 yrs)-\$500 to \$2,000; <b>3rd off</b><sup>2</sup> (w/n 10 yrs)-\$500 to \$2,000; <b>4th or sub offs</b><sup>2</sup> (w/n 10 yrs)-\$500 to \$4,000</p> <p><b>Aggravated Driving While Intoxicated Offense with Serious Bodily Injury</b>-\$1,000 to \$4,000 §§265:82-b, I &amp; II and 651:2, VI(a)</p>
Mandatory Min. Fine (\$):	<p><b>1st off</b>-\$350; <b>1st off</b>-Aggravated DWI-\$500; <b>2nd off</b><sup>2</sup> (w/n 10 yrs)-\$500; <b>3rd off</b><sup>2</sup> (w/n 10 yrs)-\$500; <b>4th or sub offs</b><sup>2</sup> (w/n 10 yrs)-\$500 <b>Aggravated Driving While Intoxicated Offense with Serious Bodily Injury</b>-\$1,000 §265:82-b, I &amp; II</p>
Other Penalties: Community Service:	<p><b>Yes</b> 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</p>

<sup>1</sup>A defendant may receive an extended term of imprisonment of from 10 to 30 yrs if they have committed an Aggravated DWI involving serious bodily injury and either (1) they have been convicted of either a prior like offense "or any crime in any other jurisdiction involving driving a motor vehicle under the influence of controlled drugs or intoxicating liquors" or (2) they have been convicted two prior drunk driving offenses in either New Hampshire or any other jurisdiction. §651:6, I(l) & (m) and II

<sup>2</sup>All offenses including non-injury Aggravated DWI.

<sup>3</sup>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:8-1

**Gainful Employment & Home Confinement.** Offenders not confined to the State prison may be released for purposes of "gainful employment" or allowed to serve their sentence under home confinement. If home confined is allowed, the offender must first serve either 8 consecutive weekends or 14 consecutive dys in jail. §651:19

**Comment.** The sentencing provisions of the drunk driving law provide that a 4th or subsequent offense is a felony. However, this law does not specify or classify whether this is Class A or Class B felony. §265:82-b, II(c) Furthermore, unlike the provisions concerning unclassified misdemeanor offenses in the crime classification statute, §625:9, the law does not provide for a "default" classification for felony offenses in situations where an offense is defined as a felony but is not classified. Note: The incarceration sanctions for Class A and Class B felonies are respectively not more than 15 and 7 yrs and the fine sanction for either felony is not more than \$4,000. §651:2, II & IV(a)

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

Restitution  
(eg Victim's Fund)

Other:

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

Other:

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

I. Payment by the defendant to the victim.<sup>3</sup> §651:62 et seq.

II. A victim may receive compensation for damages from a State fund. §21-M:8-g et seq

**Penalty Assessment.** An offender must pay an assessment of either \$2 or 20% of the fine imposed. This assessment is used to fund police training and victim assistance programs. §188-F:31

**Liability for Response.** A DWI offender may be liable to reimburse a public agency for up to \$10,000 (or up to 500 hrs of community service) of the cost incurred in responding to an incident involving the negligent use of a vehicle while under the influence of alcohol. §§151-B:17 & 151-B:22

**Special Sanctions for Certain Multiple Offenders.** Any person who has completed a multiple DWI offender intervention program and who is subsequently convicted of a DWI offense shall be imprisoned for 30 con. 24 hour periods. In addition, they must complete, at their own expense, either a 28 day residential treatment program or "an intensive course of substance abuse treatment" before their license can be restored. §265:82-b, II-a

Yes  $\geq 0.08$  BAC/BrAC/UrAC ( $\geq 0.02$  for persons under 21 years old) See Footnote No. 3 on p. 3-311. 1st violation-Susp-6 mos (appears mand); sub. violation-Susp-2 yrs (appears mand) A subsequent admin. per se violation also includes a prior refusal or DWI offense. §265:91-a et seq.

**Special Note:** If a person is subject to both an admin. per se suspension and a license revocation based on a DWI conviction as a result of the same occurrence, the total license suspension/revocation time cannot exceed the longer of the two periods. §265:91-c

Under §§263:56(I)(a) & 263:56(III), a person's license may be susp/rev for not more than 1 yr if they have "committed" an off that requires mandatory license rev (e.g., DWI). A preliminary hearing is required before such action can be taken. **Comment:** Such action could occur prior to a conviction.

See the Special Note above.

**1st off-Rev; 1st off-Aggravated Driving While Intoxicated Offense** (except bodily injury offenses)-Rev; **2nd off<sup>1</sup>** (w/n 10 yrs)-Rev; **3rd off<sup>1</sup>** (w/n 10 yrs)-Rev; **4th or sub offs<sup>1</sup>** (w/n 10 yrs)-Rev; **3rd or sub offs<sup>1</sup>** (w/n 10 yrs) where there was a prior motor vehicle related negligent homicide offense-Rev

**Aggravated Driving While Intoxicated Offenses with Serious Bodily Injury-Rev** See Rehabilitation on p. 3-315. §§263:65, 263.66 & 265:82-b

<sup>1</sup>All offenses including Aggravated DWI.

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

Term of License Withdrawal (Days, Months, Years, etc.):	See Persons Under 21 below. <b>1st off-90 dys to 2 yrs; 1st off-Aggravated Driving While Intoxicated Offense</b> (except bodily injury offenses)- <b>1 to 2 yrs; 2nd off<sup>1</sup></b> (w/n 10 yrs)-Not less than <b>3 yrs; 3rd off<sup>1</sup></b> (w/n 10 yrs)-For at least <b>5 yrs; 4th or sub offs<sup>1</sup></b> (w/n 10 yrs)- <b>Indefinitely; 3rd or sub offs<sup>1</sup></b> (w/n 10 yrs) where there was a prior motor vehicle related negligent homicide offense- <b>Indefinitely Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-1 to 2 yrs</b> See Footnotes Nos. 2 & 3.
Mandatory Minimum Term of Withdrawal:	<b>1st off-90 dys; 1st off-Aggravated Driving While Intoxicated Offense</b> (except bodily injury offenses)- <b>1 yr; 2nd off<sup>1</sup></b> (w/n 10 yrs)- <b>3 yrs; 3rd off<sup>1</sup></b> (w/n 10 yrs)- <b>5 yrs; 4th or sub offs<sup>1</sup></b> (w/n 10 yrs)- <b>7 yrs; 3rd or sub offs<sup>1</sup></b> (w/n 10 yrs) where there was a prior motor vehicle related negligent homicide offense- <b>10 yrs Aggravated Driving While Intoxicated Offense with Serious Bodily Injury-1 yr</b> 265:82-b, II See Footnotes Nos. 1 & 2. <b>Child Endangerment.</b> 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. <sup>4</sup> §265:82-b, VIII
Other: Rehabilitation: Alcohol Education:	<b>Yes</b> For any alcohol related driving off, a defendant must be complete an impaired driver intervention program before their license can be restored. §263:65a
Alcohol Treatment: Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority: Terms Upon Which Vehicle Will Be Released:	<b>None</b>

<sup>1</sup>All offenses including Aggravated DWI.

<sup>2</sup>If a 2nd or subsequent offense (w/n 10 yrs) is not alleged in the complaint but such is found to be the case, the defendant's license is suspended from 180 dys to 3 yrs. The minimum 180 dys appears to be mandatory. §265:82-b, III

<sup>3</sup>A 2nd or subsequent offender (w/n 10 yrs) must successfully complete a 7 dy residential intervention program before their license can be reinstated. §336:4, VI

<sup>4</sup>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. §§172-B:2-b & 265:82-b, VIII

**Persons Under 21 Years Old.** Offenders, who are <21 yrs old, must have their driving privileges revoked for not less than 1 yr. A 1 yr revocation appears to be mandatory. §265:82-b, I-b See Ignition Interlock on p. 3-316.

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person's privilege to operate a CMV is suspended for at least 1 yr (1 yr mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) are under the influence of alcohol with an alcohol concentration (BAC/BrAC/UrAC)  $\geq 0.04$  (See Footnote No. 3 on p. 3-311.) or (2) are under the influence of a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the suspension is for life (10 yrs mand). If a person refuses to submit to a chemical test under the implied consent law while operation a CMV, their CDL is "revoked" for a 1st refusal for not less than 1 yr (1 yr mand) and for a 2nd or subsequent refusal for not less than 10 yrs (10 yrs mand). In addition, a CMV operator who has any alcohol in their system must be placed "out-of-service" for 24 hours. §§259:3-b, 259:12-e, 259:14, 259:20-a, 263:94, 263:95 & 263:96

NEW HAMPSHIRE

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

Other:

**Vehicle Registration Revocation.**<sup>1</sup> For either (1) a 2nd or subsequent DWI offense conviction or (2) an **Aggravated Driving While Intoxicated** offense conviction, the driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. §261:180, III

Miscellaneous Sanctions  
Not Included Elsewhere:

**At Risk Driver (Probationary License).** Any person who shall apply for reissuance of their license following an drunk driving offense conviction is an "at risk" driver and their license shall be probationary for 3 yrs. Such probationary license may be suspended from **90 to 180 days** if the driver operates a motor vehicle with a BAC/BrAC  $\geq 0.03$ . §263:14a(I) & (II) Note: This suspension may not be mandatory.

**Ignition Interlock.** Aggravated DWI or subsequent DWI offenders may be required to install an ignition interlock device on the vehicles the own or regularly use for 6 mos to 2 yrs following license reinstatement. Any DWI offenders < 21 yrs old, may be required to use this device for 12 mos or until they reach 21 whichever is longer. §265:82-e, I & III

**Liquor Forfeiture.** Except for liquor intended for sale, any liquor on the defendant's person at the time the defendant is taken into custody is forfeited to the State. §179:4

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes I.** Death (or serious bodily injury) caused by unlawful motor vehicle operation without intent (Vehicle Assault)-CI A misdemeanor §265:79-a

**II.** Death caused by negligent operation of a motor vehicle (Negligent Homicide)-CI B Felony §630:3, I

**III.** Death resulting from the operation of a motor vehicle while DWI (Negligent Homicide)-CI A Felony §630:3, II

**IV.** Death caused by the reckless operation of a motor vehicle (Manslaughter)-CI A Felony §§625:9, III(a)(1) & 630:2, I

Criminal Sanctions:  
Imprisonment (Term):

**I.** Not more than **1 yr** §651:2, II(c)

**II** Not more than **7 yrs** §651:2, II(b)

**III.** Not more than **15 yrs**<sup>2</sup> §651:2, II(a)

**IV.** Not more than **30 yrs** §630:2, II

**None**

Mandatory Minimum Term:

**I.** Not more than **\$2,000** §651:2, IV(a)

Fine (\$ Range):

**II & III.** Not more than **\$4,000** §651:2, IV(a)

<sup>1</sup>Under §261:180, IV, hardship registrations for the vehicles involved are available. In order to obtain such registrations, it must be shown that either a spouse or another individual must operate the vehicle or vehicles in order to avoid a hardship to either a family or an individual. N.H. Admin. Rules Saf-C 3001.01, 3003.01, 3003.03 & 3003.16

<sup>2</sup>A defendant may receive an extended term of imprisonment of from 10 to 30 yrs if they have committed an DWI vehicle homicide and either (1) they have been convicted of either a prior like offense "or any crime in any other jurisdiction involving driving a motor vehicle under the influence of controlled drugs or intoxicating liquors" or (2) they have been convicted two prior drunk driving offenses in either New Hampshire or any other jurisdiction. §651:6, I(l) & (m) and II

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine:	IV. The law is not specific but a fine of not more than <b>\$4,000</b> may be possible. §§625:9, III(a)(1), 630:2 & 651:2, (IV(a) <b>None</b>
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	I, II, III & IV. Rev §§263:56, I(g), 630:2, II & III and 630:3, III
Length of Term of Licensing Withdrawal:	I & II. Up to <b>7 yrs</b> §§263:56, III(a) & 630:3, III III. <b>Indefinitely</b> <sup>1</sup> §630:3, III IV. <b>Indefinitely</b> §630:2, III
Mandatory Action--Minimum Length of License Withdrawal:	I & II. <b>None</b> III. <b>7 yrs</b> The use of an <u>ignition interlock</u> device may also be required for not more than 5 yrs following license reinstatement. §630:3, III IV. <b>Indefinitely</b> §630:2, III
Other:	<b>Vehicle Registration Revocation.</b> <sup>2</sup> For Negligent Homicide and Manslaughter offenses, the driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. §261:180, III See <b>Penalty Assessment</b> on p. 3-314.
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:</u>	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	Misd (classified as a CI A misd)- Not more than <b>1 yr</b> §§625:9, IV(a)(2), 263:64 & 651:2, II(c)
Mandatory Minimum Term of Imprisonment:	<b>7 con 24 hrs</b> periods §263:64, IV
Fine (\$ Range):	Not more than <b>\$1,000</b> §263:64, IV See <b>Penalty Assessment</b> on p. 3-314.
Mandatory Minimum Fine:	<b>None</b>

<sup>1</sup>**Persons Under 21 Years Old.** Offenders, who are <21 yrs old, must have their driving privileges revoked for not less than 1 yr. A 1 yr revocation appears to be mandatory. §265:82, I-b

<sup>2</sup>Under §261:180, IV, hardship registrations for the vehicles involved are available. In order to obtain such registrations, it must be shown that either a spouse or another individual must operate the vehicle or vehicles in order to avoid a hardship to either a family or an individual. N.H. Admin. Rules Saf-C 3001.01, 3003.01, 3003.03 & 3003.16

**Special Note:** I. It appears to be a violation of the general provisions of the law, which prohibit the operation a motor vehicle while suspended or revoked, to operate a CMV during a CDL suspension. A person convicted of this offense is subject to probation, conditional st have their driving privileges revoked for not less than 1 yr. A 1 yr revocation appears to be mandatory. §265:82-b, or unconditional discharge or a fine of not more than \$1,000. §§263:64, I & VII and 651:2, III & IV(a)

II. A person, who operates a motor vehicle while their license is either suspended or revoked, commits a CI B felony (misd if they are <20 yrs old) if, as a result of a collision, they cause either the death or serious bodily injury to another person. "Evidence the driver violated any of the rule of the road shall be *prima facie* evidence that the driver caused or materially contributed to the collision." §263:64, V-a(a) & (b) The sanctions for a CI B felony are imprisonment for not more than 7 yrs and a fine of not more than \$4,000. The sanctions for a misdemeanor (CI A misd) are incarceration for not more than 1 yr and a fine of not more than \$1,200. §§625, IV(a)(2) and 651:2, II(b), II(c) & IV(a)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Rev §263:64, IV

Length of Term of License

An additional 1 yr

Withdrawal Action:

Mandatory Term of License

An additional 1 yr

Withdrawal Action:

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

**Vehicle Registration Revocation.** The habitual offender's vehicle's registration must be revoked for the same period of time as the driver's license revocation. §261:180, III Under §261:180, IV, hardship registrations for the vehicles involved are available. In order to obtain such registrations, it must be shown that either a spouse or another individual must operate the vehicle or vehicles in order to avoid a hardship to either a family or an individual. N.H. Admin. Rules Saf-C 3001.01, 3003.01, 3003.03 & 3003.16

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 CI 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 As an alternative, home confinement provided the offender first serves either 8 con weekends or 14 con dys in jail. §262:23, I & III

Fine (\$ Range):

Possible fine of not more than \$4,000 No fine is stated in §262:23. However, §651:2, IV(a) provides that a person convicted of a felony may be subject to a fine of not more than \$4,000. See **Penalty Assessment** on p. 3-314.

Mandatory Minimum Fine (\$):

None

Licensing Actions (Specify):

None

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

State Has Such a Law (Yes/No):

Yes (Required) §§262-A:69-1 &amp; 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<sup>1</sup> (Year Eff: 1985) §§175:1, 179:5 & 179:6

Minimum Age (Years) Possession:

21 There are employment exemptions. §§179:10 &amp; 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.<sup>2</sup> 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. Anttil*, 211 A.2d 900 (N.H. 1965).

Dram Shop Actions-Social Hosts:

Yes *Hickingbotham v. Burke*, 662 A.2d 297 (N.H. 1995),<sup>3</sup> & *MacLeod v. Ball*, 663 A.2d 632 (N.H. 1995)

Other:

Under §507-F:5, a licensee may be held liable for the injuries sustained by an intoxicated patron if the serve of alcoholic beverages was reckless.

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

Type of Criminal Action:

See **Penalty Assessment** on p. 3-314.

Term of Imprisonment:

**Misd**<sup>4</sup> (For corporations-Felony) §§179:5 & 179:58, I

Fine (\$ Range):

Not more than 1 yr §651:2, I(c)

Not more than \$2,000 §651:2, IV(a) (For corporations-not more than \$100,000) §651:2, IV(b)

<sup>1</sup>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)<sup>2</sup>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.<sup>3</sup>The court based its decision on whether there was negligence based upon the reckless service of alcoholic beverages by the social host. The case concerned an injured intoxicated minor guest. **Comment:** Language in the case would seem to indicated that either an injured adult guest or a third party, who has been injured by an intoxicated guest, could also recover damages against a social host<sup>4</sup>The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

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Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:  
License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term of License Withdrawal:

**Yes Susp/Rev §179:57**  
Time period is not specified in the statute for either susp or rev.  
Administrative fine of \$100 to \$5,000 in lieu of a susp/rev.  
§179:57

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:  
Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

**Misd<sup>1</sup>** (For corporations-Felony) §§179:5, 179:6 & 179:58, I  
Not more than **1 yr** §651:2, I(c)  
Not more than **\$2,000** §651:2, IV(a) (For corporations-not more than \$100,000 §651:2, IV(b)  
See **Penalty Assessment** on p. 3-314.

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:  
License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes Susp/Rev §179:57**  
Time period is not specified in the statute for either susp or rev.  
Administrative fine of \$100 to \$5,000 in lieu of a susp/rev.  
§179:57

Anti-Happy Hour Laws/Regulations:

**No<sup>2</sup>**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:  
Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**Yes** §§179:27-a, II & 265:81  
**No<sup>3</sup>**

<sup>1</sup>The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

<sup>2</sup>However, the service of "free drinks" is prohibited except for wine tasting purposes. §179:44

<sup>3</sup>However, the law does prohibit drivers and passengers from possessing alcoholic beverages within the passenger area of any motor vehicle. This prohibition does not apply to persons transporting, carrying, possessing such beverages in a chartered bus, taxi, limousine for hire, or a section of a motor vehicle designed for overnight accommodations. §265:81, II, III & IV(a)

STATE:

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General Reference:

New Jersey Statutes Annotated

Basis for a DWI Charge:

See the Special Note below.

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

Under the influence of intoxicating liquor §39:4-50(a)  
≥ **0.10**<sup>1,2&3</sup> §39:4-50(a)  
Persons Under 21 Years Old ≥ **0.01** but < **0.10**<sup>1&2</sup> §39:4-50.14

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

**None**  
Under the influence of (1) **A Narcotic** (2) **A Hallucinogenic Drug** or (3)  
**A Habit-Producing Drug**<sup>4</sup> §39:4-50(a)

Other:

For Commercial Motor Vehicle Operators, see p. 3-324.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**No**

Implied Consent Law:

Arrest Required (Yes/No):

**Probably Yes** Under §39:4-50.2(a) only "reasonable grounds" seems to be required. However, under §39:4-50.4a, a driver's license can only be revoked when the refusal is based on an arrest.

Implied Consent Law Applies to

Drugs (Yes/No):

**No**

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

**Yes** (Criminal Cases) *State v. Stever*, 527 A.2d 408 (N.J. 1987)  
(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".<sup>5</sup> *State v. Dyrk*, 478 A.2d 390 (N.J. 1984), & *State v. Woomeer*, 483 A.2d 837 (N.J. Super. A.D. 1984)  
(2) Tests for alc. shall be made on 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

<sup>1</sup>Standard: Percent by weight of alcohol in the blood. §§39:4-50(a) & 39:4-50.14

<sup>2</sup>In *State v. Downie*, 569 A.2d 242 (N.J. 1990), the New Jersey Supreme Court held that breathalyzer results must be given "judicial notice". The court felt that this was in keeping with the legislature's policy of measuring alcohol in the brain for the purpose of determining whether a person was DWI. **Comment:** The practical end result of this decision was to in effect create a "judicial" illegal per se law based on BrAC. See the dissenting opinion in the *Downie* case.

<sup>3</sup>*State v. Lentini*, 573 A.2d 464 (N.J. Super. A.D. 1990)

<sup>4</sup>"[N]arcotic, hallucinogenic or habit-producing drug includes an inhalant or other substance containing a chemical capable of releasing any toxic vapors or fumes for the purpose of inducing a condition of intoxication, such as any glue, cement or any other substance containing one or more of the following chemical compounds: acetone and acetate, amyl nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrate or propyl nitrite or their isomers, toluene, toluol or xylene or any other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance." § 39:4-50(a)

<sup>5</sup>A forced test may be unreasonable and unconstitutional if an offender objects to the taking of a blood sample and there is sufficient evidence to convict the person for drunk driving without a BAC. *State v. Pavotto*, 777 A.2d 301 (N.J. 2001)

**Special Note:** Under separate statutory provisions, it is illegal for a person to operate a motor vehicle while under the influence of intoxicating liquor, any narcotic or any habit forming drug (1) on highways operated by the Port Authority of New York and New Jersey, (2) on any "project" of the New Jersey Highway Authority, (3) on any "project" of the New Jersey Turnpike Authority or (4) on any "project" of the South Jersey Transportation Authority. §§27:12B-18, 27:23-26, 27:23-32, 27:25A-21, 32:1-154.3, 32:1-154.9, 32:1-154.10, 32:1-154.14, 32:1-154.18(2) & 32:1-154.19 It is illegal to operate a motorized bicycle while under the influence of intoxicating liquor, any narcotic drug or any habit forming drug. §39:4-14.3g The law provides that a violation of these provisions results in the same sanctions as for violating the regular DWI law (§39:4-50).

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

Blood:	No
Urine:	No
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (Alcohol Screening Required) §39:4-50(b)

Sanctions for Refusal to Submit to a Chemical Test:

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

Refusal to Take <u>Implied Consent Chemical Test</u> : Criminal Sanction (Fine/Jail):	See <b>School Property/Crossing</b> below. Fine <b>\$250 to \$500</b> §39:4-50.4a
Administrative Licensing Action (Susp/Rev):	<u>1st Refusal-Rev 6 mos</u> <sup>1</sup> (Mand); <u>2nd refusal-Rev 2 yrs</u> <sup>1</sup> (Mand); <u>sub refusal-Rev 10 yrs</u> <sup>1</sup> (Mand) §§39:4-50.2 & 39:4-50.4a(a) See Footnote No. 2.
Other:	<b>Surcharge.</b> A surcharge of <b>\$100</b> §39:4-50.8

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: Imprisonment: Term (Day, Month, Years Etc.):	See <b>School Property/Crossing</b> on p. 3-324 and Footnote No. 3 below.  <b>Special Note:</b> A drunk driving offense is not a "crime". <sup>2</sup>  <u>1st off</u> -Not more than <b>30 dys</b> ; <u>2nd off</u> (w/n 10 yrs of a first off)- <b>48 cons hrs-90 dys</b> ; <u>3rd and subsequent offs</u> (w/n 10 yrs of a second off)-Not less than <b>180 dys</b> §39:4-50
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<sup>1</sup>Under separate statutory provisions, a person, who refuses to submit to a chemical test, after being charged with operating a CMV either with a BAC  $\geq 0.04$  or while under the influence of a controlled substance, is subject (1) to a fine of \$250 to \$500 and (2), for a 1st refusal, mand license revocation (i.e., a loss of all driving privileges) for a for 6 mos or, where there has been either a prior refusal or a prior drunk driving offense under any provisions of law mand license revocation for 2 yrs. §§39:3-10.13 & 39:3-10.24(f)

<sup>2</sup>*State v. Hamm*, 577 A.2d 1259 (N.J. 1990) (cert. denied, 499 U.S. 947, 111 S.Ct. 1413, 113 L.Ed.2d 466), & *State v. Hammond*, 571 A.2d 942 (N.J. 1990) However, a traffic law violation, including a violation of the implied consent law, is considered "quasi-criminal" in nature. See for example, *State v. Widmaier*, 724 A.2d 241 (N.J. 1999).

<sup>3</sup>The only sanctions for driving w/a BAC  $\geq 0.01$  but  $< 0.10$  if  $< 21$  yrs old are community service and forfeiture of driving privileges. **School Property/Crossing.** If the refusal occurred either (1) on property owned by or w/n 1,000 ft. of an elementary/secondary school, (2) while driving through a designed school crossing zone or (3) while driving through a non-designed school crossing zone when juveniles are present, the following sanctions apply: For either a 1st or sub off-a fine of **\$500 to \$1,000**; for a 1st off-lic. **susp for 1 yr** (mand); for a 2nd off-lic. **susp for 4 yrs** (mand); and, for a 3rd or sub off-lic. **susp for 20 yrs** (mand). §39:4-50.4a(b)

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

Mandatory Minimum Term:	<u>1st off-No<sup>1&amp;2</sup>; 2nd off-48 con hrs<sup>1&amp;2</sup>; 3rd and sub offs-90 dys<sup>1,2&amp;3</sup></u>
Fine:	
Amount (\$ Range):	<u>1st off-\$250 to 400<sup>4</sup>; 2nd off (w/n 10 yrs of a first off)-\$500 to 1,000<sup>4</sup>; 3rd and subsequent offs (w/n 10 yrs of a second off)-\$1,000<sup>4</sup> §39:4-50</u>
Mandatory Min. Fine (\$):	<u>1st off-\$250<sup>4</sup>; 2nd off (w/n 10 yrs of a first off)-\$500<sup>4</sup>; 3rd and subsequent offs (w/n 10 yrs of a second off)-\$1,000<sup>4</sup> §39:4-50, <i>State v. Laurick</i>, 4 575 A.2d 1340 (N.J. 1990), &amp; <i>State v. Hamm</i>, 577 A.2d 1259 (N.J. 1990)</u>
Other Penalties:	
Community Service:	<u>2nd off-30 dys<sup>5</sup>; 3rd and subsequent off-Not more than 90 dys as an alternative to imprisonment; i.e. not more than 90 dys of the 180 dy sentence may be served performing community service. <u>Persons Under 21 Years Old</u>-BAC ≥0.01 but &lt;0.10-15 to 30 dys community service.<sup>6</sup> §39:4-50.14</u>
Restitution (eg Victim's Fund)	<u>Yes (1) Paid by the defendant to a victim §2C:1-5(b), 2C:43-2, 2C:43-3 &amp; 2C:44-2 (2) A victim is also eligible to receive payment from the State's Violent Crimes Compensation Board. §52:4B-11 See <b>Child Endangerment</b> on p. 3-324.</u>
Other:	
Administrative Licensing Actions:	
<u>Pre-DWI Conviction</u> Licensing Action:	<u>None</u>
Administrative Per Se Law:	
Other:	<u>For an "alleged" DWI related injury or death (as well as for other serious driving offenses), the licensing agency may issue a preliminary suspension <u>without</u> a hearing. When the agency notifies the driver of the preliminary action, it also advises them of any final licensing action that is to be taken. The driver can, of course, request a hearing prior to the final action being taken. §§39:5-30(e) &amp; 39:5-31</u>
<u>Post DWI Conviction</u> Licensing Action:	
Type of Licensing Action (Susp/Rev):	<u>Rev (probably) The statute uses the terminology "forfeit his right to operate a motor vehicle." §§39:4-50 &amp; 39:4-50.14 <b>Special Note:</b> Under separate statutory authority, the licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30(a)</u>

<sup>1</sup>See Rehabilitation on p. 3-324.

<sup>2</sup>**Work Release.** At the court's discretion, a defendant may be allowed to participate in a work release program. §39:4-51 **Comment:** The law does not require that a minimum period of incarceration be served prior to participating in this program.

<sup>3</sup>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) The law requires some type of confinement for at least 90 dys. *State v. George*, 608 A.2d 957 (N.J. Super. A.D. 1992)

<sup>4</sup>**Additional Fees & Surcharges.** A \$100 fee is imposed for the Alcohol Education and Enforcement Fund (§39:4-50(b)) and a \$100 surcharge is imposed for the Drunk Driving Enforcement Fund (§39:4-50.8). One dollar (\$1) is add to any fine for the Body Armor Replacement Fund and \$1 is also added for the N.J. Spinal Cord Research Fund. §39:5-41(d) & (e)

<sup>5</sup>May be mandatory and in addition to the minimum term of imprisonment.

<sup>6</sup>The community service and driver licensing sanctions against a person under 21 yrs old for operating a motor vehicle with a BAC ≥0.01 but <0.10 are in addition to any other penalties that may be imposed for a violation of any other DWI related law. §39:4-50.14

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

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

1st off-6 mos to 1 yr<sup>1</sup>; 2nd off-2 yrs<sup>1</sup>; 3rd and subsequent offs<sup>1</sup>-10 yrs  
Persons Under 21 Years Old-BAC ≥0.01 but <0.10-30 to 90 dys See  
Footnote No. 6 on p. 3-323.

Special Note: For discretionary licensing actions under §39:5-30, the  
law does not specify the periods of license suspension or revocation.

Mandatory Minimum Term of  
Withdrawal:

1st off-6 mos; 2nd off-2 yrs; 3rd and subsequent offs-10 yrs See the  
Special Note below.

Persons Under 21 Years Old-BAC ≥0.01 but <0.10-30 dys See  
Footnote No. 6 on p. 3-323.

Other:

Rehabilitation:

See the Special Note below.

Alcohol Education:

Yes

Persons Under 21 Years Old-BAC ≥0.01 but <0.10-Yes §39:4-50.14

Alcohol Treatment:

1st Off-Yes<sup>2</sup>; 2nd Off-Yes<sup>3</sup>; 3rd and subsequent offs-Yes<sup>4</sup> §39:4-50

Persons Under 21 Years Old-BAC ≥0.01 but <0.10-Yes §39:4-50.14

<sup>1</sup>For offenders <17 yrs old, license forfeiture through their 17th birthday plus the regular forfeiture period. §39:4-50

<sup>2</sup>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.

<sup>3</sup>The imprisonment term may be served in an intoxicated driver resource center.

<sup>4</sup>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 privilege to operate a CMV is "suspended" for not less than 1 yr (1 yr mand) nor more than 3 yrs (3 yrs (mand) if transporting hazardous materials) if, while operating a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of intoxicating liquor or a controlled substance, (3) violate the drunk driving law (§39:4-50), (3) refuse to submit to a chemical test for an alcohol concentration or (4) their CDL is either suspended, revoked, disqualified or under an out-of-service order. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the privilege to operate a CMV is "revoked" is for life (10 yrs mand). A CMV operator, who refuses to submit to a chemical test, is subject to a fine of not less than \$250 nor more than \$500. §39:3-10.9 et seq. See Footnote No. 1 on p. 3-322.

**School Property/Crossing.** I. If the drunk driving offense occurred either (1) on property owned by or w/n 1,000 ft. of an elementary/secondary school, (2) while driving through a designed school crossing zone or (3) while driving through a non-designed school crossing zone when juveniles are present, the following sanctions apply: 1st off-Jail-Not more than 60 dys, fine \$500 (mand)-\$800 and lic susp-1 yr (mand)-2yrs; 2nd off-Jail-Not more than 180 dys (w/96 con hrs mand), fine \$1,000 (mand)-\$2,000, community service-60 dys (mand) and lic susp-not less than 4 yrs (mand); and, 3rd off-Jail-180 dys (mand), fine-\$2,000 (mand) and lic susp-20 yrs (mand). Note: The license suspension period begins after the completion of any incarceration sanction. §39:4-50(g)

II. A person commits assault by auto, a 2nd Degree crime, if they cause a serious bodily injury while violating the drunk driving laws and the offense occurred either (1) on property owned by or w/n 1,000 ft. of an elementary/secondary school, (2) while driving through a designed school crossing zone or (3) while driving through a non-designed school crossing zone when juveniles are present. Sanctions: Imprisonment-5 to 10 yrs; and, a fine-not more than \$150,000. §§2C:12-1(c)(3), 2C:43-3(a)(2) & 2C:43-6(a)(2)

**Child Endangerment.** In addition to any other sanctions for a drunk driving offense, a person, who commits such an offense while transporting a passenger ≤17 yrs old is guilty of a "disorderly persons offense". The sanctions for this offense are as follows: 1st offense-Jail-None, fine-\$25 to \$100; sub off -Jail-Not more than 90 dys, fine-\$100 to \$200. For either a 1st or sub off-community service for not more than 5 dys and license suspension for not more than 6 mos. §§39:5C-1 & 39:4-50.15

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

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:  
Terms Upon Which Vehicle  
Will Be Released:  
Other:

No<sup>1</sup>

**Vehicle Registration Revocation.**<sup>2&3</sup> As an alternative to "ignition interlock usage", the registrations of ALL of the vehicles owned by the offender **must** be revoked as follows: 2nd off-2yrs; 3rd or sub off-10 yrs §§39:3-40.1(a)(3) and 39:4-50(a)(2) & (3) Temporary registration with special tags may be issued so that other persons can use the vehicle for employment, educational, health or medical purposes. §39:3-40.2

Miscellaneous Sanctions  
Not Included Elsewhere:

**Special Assessment.** A defendant shall be assessed a penalty of \$50 which is to be paid into a fund administered by the Violent Crimes Compensation Board. §2C:43-3.1(c)

**Insurance Surcharges.** A DWI offender must pay the following insurance surcharges: 1st & 2nd offs-\$**1,000** per yr for 3 yrs for a total surcharge of **\$3,000** for each conviction; and, 3rd off (w/n 3 yrs)-**\$1,500** per yr for 3 yrs for a total surcharge of **\$4,500**. §17:29A-35(b)(2)

**Per Diem Fees.** DWI offenders, who are incarcerated in an Intoxicated Driver Resource Center, must pay the following *per diem* fees: 1st Off-\$75; 2nd Off-\$100. Note: These fees may be increased via regulations promulgated by the Commissioner of Health after consulting with the Governor's Council on Alcoholism and Drug Abuse. §39:4-50(f)

**Assault by Auto.** I. A person commits assault by auto, a crime of the 4th Degree, if they violate the drunk driving laws and cause a bodily injury. The following sanctions apply: Imprisonment-not more than **18 mos**; and, a fine-not more than **\$10,000**. II. A person commits assault by auto, a crime of the 3rd Degree, if they violate the drunk driving laws and cause a serious bodily injury. The following sanctions apply: Imprisonment-**3 to 5 yrs**; and, a fine-not more than **\$15,000**. §§2C:12-1(c)(2), 2C:43-3(b)(1) & (2) and 2C:43-6(a)(3) & (4)

**Drunk Driving on School Property or Within a School Crossing Zone (Designated or Not Designated).** 1st offense -Jail not more than 60 dys, fine \$500 to \$800 and lic susp 1 yr (mand) to 2 yrs; 2nd offense - 96 con hrs (mand but may be reduced to 6 dys with community service up to 90 dys) to 180 dys, community service 60 dys, fine \$1,000 to \$2,000 and lic susp not less than 4 yrs (mand); and, 3rd offense-Jail- 180 dys, fine \$2,000 and lic susp for 20 yrs (mand). For either a 1st of sub off, license suspension is co commence upon the completion of any imprisonment sanction. §39:4-50(g)

**Ignition Interlock.**<sup>2</sup> After the license suspension period has been completed, a person may be required to install an ignition interlock

<sup>1</sup>The vehicle operated by the offender may be impounded for 12 or more hrs following their arrest. The offender (after this period) or another person (before the end of the period) may claim the vehicle if they are lawfully able to operate it. P.L. 2001, Ch. 69 <sup>2</sup>**Vehicle Registration Revocation** may be imposed as an alternative sanction to ignition interlock usage.

<sup>3</sup>Under §39:5-30(a), the licensing agency has the discretionary authority to suspend or revoke the vehicle registration certificates of a person for any violation of the traffic laws or on "other reasonable grounds".

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

**Ignition Interlock.** (continued) device on all of the motor vehicles they own, lease or regularly operate. The device remains installed for the following periods: 1st offense-discretionary-6 mos to 1 yr (6 mos required usage if ignition interlock use ordered); 2nd or sub offense-mandatory ignition usage for 1 (mand) to 3 yrs or mandatory vehicle registration revocation. See **Vehicle Registration Revocation** on p. 3-325 for details. §§39:4-50(a)(1), (2) & (3) and 39:4-50.17

**Visitation Program.** Either as part of probation or community service, offenders may be ordered by the court to participate in a visitation program to a medical facility that handles motor vehicle accident victims. §39:4-50(h)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

**Yes** Crime of the second degree<sup>1</sup> Death must have resulted from the reckless operation of a vehicle. "Death by auto" §2C:11-5

Sanctions:

Criminal Sanction:

See Footnote No. 1 on p. 3-328.

Imprisonment (Term):

**5 to 10 yrs** §2C:43-6(a)(2)

Mandatory Minimum Term:

I. 85% of the sentence imposed. §2C:43-7.2(a), (b) & (d)(3)

Fine (\$ Range):

II. If the offense was related to DWI<sup>2</sup>-3 yrs<sup>3</sup> §2C:11-5(b)(1)

Mandatory Minimum Fine:

Not more than **\$150,000** §2C:43-3(a)(2)

Administrative Licensing Action:

**None**

Licensing Authorized and

See "Other" under Pre-DWI Conviction Licensing Action on p. 3-323.

Type of Action:

I. If the offense was related to DWI/Refusal-Susp §2C:11-5(b)(4)  
II. The licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30(a)

Length of Term of

Licensing Withdrawal:

I. If the offense was related to DWI/Refusal-5 yrs to life §2C:11-5(b)(4)

II. For discretionary licensing actions under §39:5-30, the law does not specify the periods of license suspension or revocation.

Mandatory Action--Minimum

Length of License

Withdrawal:

If the offense was related to DWI/Refusal-Susp-5 yrs §2C:11-5(b)(4)

Other:

I. **Restitution** by the defendant (§2C:43-3) or via the Violent Crimes Compensation Board (§52:4B-1 et seq.)

II. **School Property/Crossing.** It is a 1st Degree crime to commit vehicle homicide if the offense occurred either (1) on property owned by or w/n 1,000 ft. of an elementary/secondary school, (2) while driving

<sup>1</sup>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 equal 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).

<sup>2</sup>Or if the offender was driving while their license was either suspended or revoked for either a DWI or Refusal offense.

<sup>3</sup>The minimum sentence is either between one-third and one-half of the sentence imposed or 3 yrs whichever is greater.

Other Criminal Actions Related to DWI: (continued)

<p><u>Driving While License Suspended or Revoked</u>  <u>Where the Basis Was a DWI Offense:</u>  Sanction:  Criminal:  Imprisonment (Term):  Mandatory Minimum Term  of Imprisonment:  Fine (\$ Range):  Mandatory Minimum Fine:  Administrative Licensing Actions:  Type of Licensing Action (Susp/Rev):</p> <p>Length of Term of License  Withdrawal Action:</p> <p>Mandatory Term of License  Withdrawal Action:</p>	<p>II. <b>School Property/Crossing.</b> (continued) through a designed school crossing zone or (3)while driving through a non-designed school crossing zone when juveniles are present. Imprisonment-<b>10 to 20 yrs</b>; fine-Not more than <b>\$200,000</b> Unless the offender's family would be subject to a serious hardship, the vehicle used in the offense <u>must</u> be <b>forfeited</b>. §§2C:11-5(b)(3) &amp; (e), 2C:43-3(a)(1) and 2C:43-6(a)(1)</p> <p>See the Special Note and <b>School Property/Crossing</b> below.</p> <p><b>10 to 90 dys</b> §39:3-40(f)(2)</p> <p><b>10 dys</b> may be mandatory §39:3-40(f)(2)</p> <p><b>\$500<sup>1</sup></b> §39:3-40(a) &amp; (f)(2) See Footnote No. 1 on p. 3-328.</p> <p><b>\$500<sup>1</sup></b> may be mandatory §39:3-40(f)(2)</p> <p><b>Susp</b> §39:3-40(f) Note: Under separate law, the licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30(a)</p> <p>An additional period of not less than <b>1 yr</b> nor more than <b>2 yrs<sup>2</sup></b> §39:3-40(f)(2) Note: For discretionary licensing actions under §39:5-30, the law does not specify the periods of susp/rev.</p> <p><b>1 yr</b></p>
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<sup>1</sup>**Comment.** Although the law is not specific, the following fines, which could be mandatory, may apply for subsequent offenses related to driving after license has been suspended for a drunk driving offense: 2nd offense-\$750; and, or subsequent offense-\$1,000. §39:3-40(b) & (c)

<sup>2</sup>**Vehicle Registration Revocation.** The registration of ALL of the offender's vehicles shall be revoked for the same period of time as the license suspension. However, temporary registration and tags may be issued so that other persons can use the vehicle for either employment, educational, health or medical purposes. §§39:3-40(a)(1), (b) & (c) and 39:3-40.1 et seq.

**Special Note:** I. If a person operates a CMV during either a CDL suspension/revocation or a CDL out-of-service order, they are subject to an imprisonment term of not more than 90 dys and/or a fine of not more than \$5,000. In addition, an offender is subject to an additional CDL suspension/revocation as noted under DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL) on p. 3-324. If an offender injures another person as a result of such illegal operation, they appear to be subject to a mandatory 90 dy jail sentence and a \$5,000 fine. §39:3-10.18(b)

II. If a violation of §39:3-40 results in an accident that causes either an injury or a death, the following sanctions are imposed: (1) For bodily injury, imprisonment for 45 (may be mand)to 180 dys; (2) for serious bodily injury, Crime of the 4th Degree, imprisonment for not more than 18 mos/fine not more than \$10,000 and an additional lic susp period of 1 yr which is to begin after release from incarceration; and, (3) for death of another person, Crime of the 3rd Degree, imprisonment from 3 to 5 yrs/fine not more than \$15,000 and an additional lic susp period of 1 yr which is to begin after release from incarceration. §§2C:40-22, 2C: 43-3(b)(1) & (2), 2C: 43-6(a)(3) & (4) and 39:3-40(e)

**School Property/Crossing.** If the offense occurred either (1) on property owned by or w/n 1,000 ft. of an elementary/secondary school, (2) while driving through a designed school crossing zone or (3) while driving through a non-designed school crossing zone when juveniles are present, the following sanctions apply: Imprisonment-1st off-60 dys (may be mandatory) to 90 dys; 2nd off-120 dys (may be mandatory) to 150 dys; and, 3rd off-180 dys (may be mandatory); fine-1st and sub offs-\$500 (may be mandatory); and, an additional lic susp-1 yr (appears mandatory) to 2 yrs. Note: The license suspension period begins after the completion of any incarceration sanction. §39:3-40(f)(3)

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Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No): **Yes** §39:5-30a  
Grounds for Being Declared an  
Habitual Offender: 3 license susps for traffic offenses w/n 3 yrs §39:5-30b  
Term of License Rev While  
Under Habitual Offender Status: **Susp** for not more than 3 yrs This susp is not to run concurrently with  
any other susp. §§39:5-30b & 39:5-30d  
  
Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual Offender Status: Not Specified  
Sanctions Following a Conviction of  
Driving While on Habitual Offender Status:  
Imprisonment (Term): **30 dys** or **45 dys** if the offense resulted in bodily injury §39:5-30e  
Mandatory Minimum Term of  
Imprisonment: **45 dys** if the offense resulted in bodily injury §39:5-30e  
Fine (\$ Range): **\$1,000<sup>1</sup>** §39:5-30e  
Mandatory Minimum Fine (\$): **\$1,000** §39:5-30e This fine appears to be mandatory  
Licensing Actions (Specify): The licensing agency has the discretion to suspend, revoke or prohibit the  
driving privileges of a person for any violation of the traffic laws.  
§39:5-30(a) The law does not specify the periods of license suspension  
or revocation.

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**  
Pedestrian: **Yes**

Other State Laws Related To Alcohol Use: (continued)

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<sup>2&3</sup>** §2C:33-15 There is an exemption for employment.  
Minimum Age (Years) Consumption: **21<sup>2&3</sup>** §§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<sup>4</sup>** §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.

<sup>1</sup>One dollar (\$1) is add to any fine for the Body Armor Replacement Fund and \$1 is also added for the N.J. Spinal Cord Research Fund.  
§39:5-41(d) & (e)

<sup>2</sup>Possession or consumption in a public place.

<sup>3</sup>A municipality may enact an ordinance that prohibits a person < 21 yrs old from either "knowingly" possessing or "knowingly" consuming  
alcoholic beverages on private property "without legal authority". §§40:48-1 & 40:48-1.2

<sup>4</sup>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 injured if the bartender continued to serve alcoholic beverages to the patron when it should have been known that the patron was  
intoxicated.

Other State Laws Related To Alcohol Use: (continued)

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

Dram Shop Actions-Social Hosts:

**No**<sup>1</sup> Note: Previous case law (e.g., *Rappaport v. Nichols*, 156 A.2d 1 (N.J. 1959)) has been abrogated by the above dram shop statute.

**Yes** §2A:15-5.5 et seq. These provisions provide the exclusive remedy against a social host who has "provided" alcoholic beverages to an injury causing guest where (1) the guest is over the legal drinking age and is visibly intoxicated and (2) the injuries are the result of negligent operation of a vehicle by the guest (§2A:15-5.6). The courts have held that the term "provided" includes "self service" by guests as well as the "direct" service" of alcoholic beverages by the host on the social host's premises. The "provided" alcoholic beverages includes those alcoholic beverages that may have been brought by other guests. *Dower v. Gamba*, 677 A.2d 1364 (N.J. Super. A.D. 1994) Previous case law concerning "adult" guests appears to have been abrogated by these sections. *Kelly v. 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) Parents may be held liable for the injuries sustained by an intoxicated minor guest, who consumed alcoholic beverages at an unsupervised party hosted by the parents' child. *Witter v. Leo*, 635 A.2d 580 (N.J. Super. A.D. 1994)

Other:

Under §2A:22A-5, a licensee may be held liable for the injuries sustained by an intoxicated patron. Likewise, a social host is not liable for the injuries sustained by an adult social host where such injuries were the result of the negligent service of alcoholic beverages to such guest. §2A:15-5.7, *Kollar v. Lozier*, 669 A.2d 845 (N.J. Super. A.D. 1996), & *AAA Mid-Atlantic v. Predental Ins.*, 763 A.2d 788 (N.J. Super. A.D. 2000)

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

Type of Criminal Action:

Probably a petty disorderly persons offense<sup>2</sup> 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

<sup>1</sup>A Federal appellate court has held that, under New Jersey law, a gambling patron does not have a common law cause of action against a casino for gambling losses which might have been incurred as a result of the patron's intoxication. *Hakimoglu v. Trump Taj Mahal Associates*, 70 F.3d 291 (3rd Cir. 1995)

<sup>2</sup>§§2C:1-4, 2C:1-5b, 2C:43-1, 2C:43-3 & 2C:43-8

**Special Note:** Sec. 33:1-92 gives the sanctions for a "violation of this act" (i.e., the Alcoholic Beverage Control (ABC) Law). Sec. 33:1-12.37 gives a fine sanction for "violating any provision of this act (i.e., the ABC Law) or of any rule or regulation issued pursuant to this act." However, this section does not preclude the imposition of the sanctions under §33:1-92.

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Other State Laws Related To Alcohol Use: (continued)

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

Disorderly Person Off §§2C:33-17, 2C:43-3(c), 2C:43-8, and 33:1-77  
Not more than **6 mos**  
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):  
Length of Term License Withdrawal:

**Yes Susp/Rev §33:1-31**

Susp-Length of suspension is not specified in the statute; Rev-1st off-2 yrs; sub. off-Permanent revocation Note: A compromise sum of money may be paid in lieu of a suspension.

Anti-Happy Hour Laws/Regulations:

**Yes** NJAC 13:2-23.16 (regulation) Note: This regulation does not 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):  
Anti-Consumption Law (Yes/No):

**Yes<sup>1</sup>** Driver and passengers §39:4-51b

**Yes** Driver 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

<sup>1</sup>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 v. Moore*, 588 A.2d 889 (N.J.Super.A.D. 1991)

STATE:

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General Reference:

New Mexico Statutes Annotated

Basis for a DWI Charge:

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

Under the influence of intoxicating liquor §66-8-102(A)  
≥ 0.08<sup>1&2</sup> §§66-8-102(C) & 66-8-110(E)  
**None**  
Under the influence of **Any Drug** §66-8-102(B)  
**Aggravated DWI Offense:** Either (1) driving with a BAC/BrAC  
≥ 0.16<sup>2</sup>, (2) causing bodily injury (an injury which is not likely to  
cause death or great bodily harm) while under the influence of  
alcohol or drugs or (3) refusing to submit to a chemical test and  
driving while under the influence of intoxicating liquor or drugs.  
§66-8-102(D) & (L)(1)  
For Commercial Motor Vehicle Operators, see p. 3-334.

Chemical Breath Tests for Alcohol Concentration:

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

**No**  
**Yes** §66-8-107  
**Yes** §66-8-107  
**Yes**<sup>3</sup> (Criminal & Possibly Civil Cases) *McKay v. Davis*, 653  
P.2d 860 (N.M. 1982)  
A driver may be required to submit to a chemical test based on a  
search warrant issued by a court upon probable cause that the  
driver has killed or greatly injured another person while operating  
a motor veh or where there is probable cause to believe that the  
driver committed a felony while under the influence of alcohol or  
a "controlled substance". §66-8-111(A)

Other Information:

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

Blood:  
Urine:  
Other:

**Yes** §66-8-107  
**No**  
**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

**No**<sup>4</sup> **Special Note:** A driver must be charged with a DWI offense  
if they have an alcohol concentration ≥ 0.08. §66-8-110(C)

<sup>1</sup>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.

<sup>2</sup>Alcohol concentration is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §66-8-110(E)

<sup>3</sup>Refusal to perform field sobriety tests can also be admitted into evidence. *State v. Wright*, 867 P.2d 1214 (N.M.App. 1993)

<sup>4</sup>A DWI offender is not eligible for conditional discharge where the court, without entering an order of adjudication of guilt, places the offender on probation. §31-20-13

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Adjudication of DWI Charges: (continued)

Anti-Plea Bargaining Statute (Yes/No):	<b>Yes (Limited)</b> §§66-8-102.1 If a guilty plea is entered, it must be to one of subsections of the DWI statute when alcohol concentration is $\geq 0.08$ .
Pre-Sentencing Investigation Law (PSI) (Yes/No):	<b>Yes</b> DWI-PSI screening is required. §66-8-102(E) & (H)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	<b>N/A</b>
Administrative Licensing Action (Susp/Rev):	<b>N/A</b>
Other:	<b>N/A</b>
Refusal to Take <u>Implied Consent Chemical Test</u> : Criminal Sanction (Fine/Jail):	<b>None</b>
Administrative Licensing Action (Susp/Rev):	<b>Rev 1 yr (Mand)</b> §§66-5-35(A)(1) & 66-8-111(B)
Other:	<b>None</b>

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See the Special Note and Double Jeopardy below.
Imprisonment: Term (Day, Month, Years, Etc.):	DWI/Aggravated DWI Offenses: <u>1st off</u> -Not more than <b>90 dys</b> (For a 1st off, where there has been a dismissal of the charges, see Rehabilitation on p. 3-334.); <u>2nd and 3rd offs</u> -Not more than <b>364 dys</b> ; <u>4th &amp; sub. off</u> (4th Degree Felony)- <b>18 mos</b> §§31-18-15 & 66-8-102 Great bodily injury where the driver was under the influence of intoxicating liquor or drugs (3rd Degree Felony)- <b>3 yrs</b> <sup>1&amp;2</sup> §§31-18-15 & 66-8-101 See Footnote No. 3.

<sup>1</sup>For any noncapital felony offense, the sentence may be altered by as much as one third by the court depending upon the aggravating or mitigating circumstances. §31-18-15.1

<sup>2</sup>For each prior DWI offense conviction (w/n 10 yrs), the basic imprisonment sanction is increased by an additional 2 yrs.

<sup>3</sup>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

**Special Note:** For the purposes of determining whether a person is a subsequent offender, a 1st offender includes persons who have had DWI charges dismissed via a deferred sentence. As of February 25, 1994, deferred sentencing is prohibited for DWI offenses. §§31-20-13(C), 66-1-4.6(C), 66-1-4.16(Q) & 66-8-102(E)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State ex rel. Schwartz v. Kennedy*, 904 P.2d 1044 (N.M. 1995)

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

Mandatory Minimum Term:	DWI Offenses: <u>1st off-No<sup>1</sup></u> ; <u>2nd off-72 cons hrs</u> ; <u>3rd off-30 con dys</u> ; <u>4th &amp; sub. off-6 mos</u> Aggravated DWI Offenses: <u>1st off-48 con hrs</u> ; <u>2nd off-96 cons hrs</u> ; <u>3rd off-60 con dys</u> ; <u>4th &amp; sub. off-6 mos</u> §66-8-102 Great bodily injury where the driver was under influence of intoxicating liquor or drugs-3rd Degree Felony- <u>2 yrs</u> See Footnote No. 1 on p. 3-332.
Fine: Amount (\$ Range):	DWI/Aggravated DWI Offenses: <u>1st off-Not more than \$500<sup>2</sup></u> ; <u>2nd and 3rd offs-Not more than \$1,000</u> ; <u>4th &amp; sub. off-Not more than \$5,000</u> §§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 <u>\$5,000</u> §31-18-15
Mandatory Min. Fine (\$):	DWI/DWI Aggravated Offenses: <u>1st off-None</u> ; <u>2nd off-\$500</u> ; <u>3rd off-\$750</u> ; <u>4th &amp; sub. off-None</u> Great bodily injury where the driver was intoxicated-No
Other Penalties: Community Service:	DWI/Aggravated DWI Offs: <u>1st off-48 hrs</u> (or a \$300 fine) <sup>2</sup> ; <u>2nd off-48 hrs</u> (mand) §66-8-102
Restitution (eg Victim's Fund) Other:	<u>Yes</u> §31-17-1 Restitution is to be paid by the defendant. <sup>3</sup> <b>BAC Test Fee.</b> A fee of <b>\$65</b> is assessed against each defendant to defray the costs of chemical tests for DWI. §31-12-7(A) <b>DWI Program Fee.</b> A fee of <b>\$75</b> is assessed to fund comprehensive DWI community programs. §31-12-7(B)
Administrative Licensing Actions: <u>Pre-DWI Conviction Licensing Action:</u> Administrative Per Se Law:	See Double Jeopardy on p. 3-332. <u>1st Admin. Per Se Action</u> -(1) For persons ≥21 yrs old who have a BAC/BrAC ≥ <u>0.08<sup>4</sup></u> - <u>Rev 90 dys</u> (30 dys mand followed by restricted driving privileges <sup>5</sup> ) and (2) For persons <21 yrs of age who have a BAC/BrAC ≥ <u>0.02<sup>4</sup></u> - <u>Rev 6 mos</u> (30 dys mand followed by restricted driving privileges <sup>5</sup> ); <u>Subsequent Admin Per Se Action</u> (all persons)- <u>Rev 1 yr</u> (30 dys mand) <sup>3&amp;6</sup> §§66-5-35(B), 66-8-110(D), 66-8-111(C)(1), (2) & (3) and (D)
Other:	Under §§66-5-29, 66-5-30(A)(1) & 66-5-32(A), for certain 1st DWI offs and <u>all</u> 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 <u>without</u> a preliminary hearing.

<sup>1</sup>The only mandatory sanctions are either a fine or community service.

<sup>2</sup>As an alternative, an offender may be sentenced either to serve 48 hrs of community service or pay a \$300 fine. §66-8-102(E)

<sup>3</sup>Restitution appears to be required if a sentence is either suspended or deferred. §§31-17-1B & 31-20-6

<sup>4</sup>See Footnote No. 2 on p. 3-331.

<sup>5</sup>Restricted driving privileges are allowed for either employment or education purposes provided the driver is enrolled in a drunk driving school and alcohol screening program. §66-5-35(B)

<sup>6</sup>For subsequent admin. actions, a restricted license may be issued after 30 dys provided the licensee operates motor vehicles that are equipped with **ignition interlock** devices. §66-5-35(B)

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

Post DWI Conviction Licensing Action:

Type of Licensing Action  
(Susp/Rev):

DWI/DWI Aggravated Offenses<sup>1</sup>: 1st off-Rev; 2nd off-Rev  
§§66-5-29 & 66-5-32(B); 3rd off (w/n 10 yrs)-Rev §66-5-5(D)

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

DWI/DWI Aggravated Offenses: 1st off-1 yr; 2nd off-1 yr; 3rd off  
(w/n 10 yrs)-**10 yrs**

Mandatory Minimum Term of  
Withdrawal:

DWI/DWI Aggravated Offenses: 1st off-See the Special Note  
below. 2nd off-30 dys<sup>2</sup>; 3rd off-30 dys<sup>2</sup> §66-5-35(A)(3) & (C)

Other:

Rehabilitation:

Alcohol Education:

**Yes** DWI/DWI Aggravated Offenses: For 1st offenders, the court either (1) shall order the defendant to attend a "DWI school" or other "rehabilitative services" or (2), in its discretion, may defer the DWI charges and place a defendant on probation on condition that they attended alc. education or rehabilitation. After the probation period, the court dismisses the DWI charges. §§31-20-9 and 66-8-102(D), (E), (G) & (H)

Alcohol Treatment:

See Alcohol Education above. For subsequent DWI offenders, the court may order a defendant to complete an alcohol treatment program. §66-8-102(G)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

**None** An impoundment law (formally §66-8-102(I) was repealed in 1993. §7 of Act 66, Laws 1993 This law held was held constitutional in *State v. Barber*, 778 P.2d 456 (N.M.App. 1989) (cert. den. State supreme court, 778 P.2d 911 (N.M. 1989)

**Ignition Interlock.**<sup>2</sup> Persons, who have been convicted of a subsequent misdemeanor drunk driving offense prior to July 1, 2003, as a condition of probation, may be required to only operate motor vehicles that are equipped with ignition interlock devices. §66-8-102(I)

<sup>1</sup>For DWI great bodily injury offs, there appears to be a mand 1 yr lic rev based on felony offenses committed while operating a motor vehicle. No restricted license is available to persons convicted of this offense. §§66-5-29(A)(4) & (B) and 66-5-35(A)(4)

<sup>2</sup>For subsequent offenses, a restricted license may be issued after a mand. 30 dy rev period provided the offender is enrolled in a (1) DWI school and alcohol screening program and (2) operates vehicles that are equipped with **ignition interlock** devices. In addition, the person must present proof that they need a limited license for the purpose of either maintaining gainful employment, attending school or traveling to and from a "court-ordered treatment program". §66-5-35(A)(3), (C) & (D)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they either (1) have a BAC  $\geq 0.04$  but  $< 0.08$  (Standard: Percent by wgt. of alcohol in the blood), (2) are convicted of a drunk driving offense (§66-8-102) while operating a CMV or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). §§66-5-54, 66-5-68 & 66-5-68.1

**Special Note:** It appears that, if a person has been convicted of a 1st DWI/DWI Aggravated off but they are not subject to the mandatory license revocation provisions of the admin per se law, they may be able to obtain a restricted license. §66-5-35(A)

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

Miscellaneous Sanctions  
Not Included Elsewhere:

**Driving Safety Course.** A DWI offender may be required to take a driving safety course. §66-10-11

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes Misd** §66-8-7(A) However, if the driver was intoxicated-**3rd Degree Felony** §66-8-101(C), (D) & (F)

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

Misd-Not more than 90 dys; 3rd Degree Felony-3 yrs<sup>1</sup>  
§§31-18-15 & 66-8-7B

Mandatory Minimum Term:  
Fine (\$ Range):

3rd Degree Felony-2 yrs See Footnote No. 1 on p. 3-332.  
Misd-Not more than \$100; 3rd Degree Felony-Not more than \$5,000

Mandatory Minimum Fine:  
Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

**None**  
See the Special Note below.

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

Misd-Susp; 3rd Degree Felony-Susp/Rev §§66-5-29 & 66-5-30(A)(2)

Misd-1 yr; 3rd Degree Felony-1 yr

Other:

3rd Degree Felony-1 yr No restricted driving privileges may be granted. §66-5-35(A)(4)  
Misd-Restitution; 3rd Degree Felony-Restitution Victim restitution is either via the offender or via a State reparations fund. §§31-17-1 & 31-22-1 et seq.

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

See Footnote Nos. 2, 3, 4 & 5.

<sup>1</sup>For each prior DWI offense conviction (w/n 10 yrs), the basic imprisonment sanction is increased by an additional 2 yrs.

<sup>2</sup>Plea bargaining is not allowed to another offense. §66-5-39(A)

<sup>3</sup>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)

<sup>4</sup>It is a misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term for not more than 90 dys and/or a fine of not more than \$300. §§66-5-59(B) & 66-8-7

<sup>5</sup>A person, who operates a CMV in violation of an out-of-service order, is subject to the following sanctions: (1) A civil penalty of not less than \$1,000 nor more than \$2,500 and (2) is disqualified from operating a CMV as follows: 1st violation-a disqualification for not less than 90 dys (mand) not more than 1 yr; 2nd violation (w/n 10 yrs)-not less than 1 (mand) nor more than 5 yrs; and, 3rd or subsequent violation (w/n 10 yrs)-not less than 3 (mand) nor more than 5 yrs. If the person was operating a motor vehicle either carrying hazardous materials or designed to carry more than 15 persons including the driver, the disqualification periods are as follows: 1st violation-180 dys (mand) to 2 yrs; and, subsequent violation (w/n 10 yrs)-3 (mand) to 5 yrs. §§66-5-68(F) & 66-5-71

**Special Note:** I. The licensing agency has the authority to suspend a person's license for not more than 1 yr, if they have been convicted of an offense related a motor vehicle accident in which there was a death (or a personal injury). §§66-5-30(A)(2) & 66-5-32(A) II. In addition, such agency must revoke a person's license for 1 yr if they are convicted of either "manslaughter" or "negligent homicide" while operating a motor vehicle. §66-5-29(A)(1) & (B) III. Unless a death is related to a drunk driving offense per §66-8-101, it may be possible for persons, who have been convicted of these offenses, to obtain restricted driving privileges. §66-5-35(A)

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Other Criminal Actions Related to DWI: (continued)

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 suspension/revocation periods appear to be mandatory.**

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No): **No**  
Grounds for Being Declared an  
Habitual Offender:  
Term of License Rev While  
Under Habitual Offender Status:  
Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status  
Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:  
Imprisonment (Term):  
Mandatory Minimum Term of  
Imprisonment:  
Fine (\$ Range):  
Mandatory Minimum Fine (\$):  
Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic  
Accidents:  
State Has Such a Law (Yes/No): **Yes!** §24-11-6(B)  
BAC Chemical Test Is Given to the  
the Following Persons:  
Driver: **Yes!**  
Vehicle Passengers: **Yes!**  
Pedestrian: **Yes!**

<sup>1</sup>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)

Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

**21** (Year Eff: 1934) §§60-3A-3(P) & 60-7B-1

Minimum Age (Years) Possession:

**21** There is an exemption when the minor is on real property (not a licensed premises) under the control of a parent or guardian. §§60-3A-3(O) & 60-7B-1

Minimum Age (Years) Consumption:

**None** Note: A licensee cannot allow a person under 21 years old to consume alcoholic beverages on the licensed premises. §60-7B-1(A)(1)Dram Shop Laws and Related Legal Actions:

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

**Yes** §41-11-1<sup>1,2&3</sup>

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

**Yes** but abrogated via §41-11-1(H)<sup>3</sup>

Dram Shop Actions-Social Hosts:

**Yes** §41-11-1(E)<sup>1,2&3</sup> Liability is based upon the host providing alcoholic beverages to the guest in reckless disregard of the rights of others including the guest. *Walker v. Key*, 686 P.2d 973 (N.M.App. 1984)

Other:

**None**Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

**Petty Misd**-for persons; **Misd**-for corporations §§31-19-1(A) & (B), 31-20-1(A), 60-7A-16 & 60-7A-25

Term of Imprisonment:

**Not more than 6 mos**

Fine (\$ Range):

**Not more than \$500** (For corporations, not more than \$1,000)Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes**<sup>4</sup> §60-6C-1

<sup>1</sup>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.

<sup>2</sup>**Special Note:** The New Mexico Supreme Court has held that §41-11-1(I), which limits damage awards in dram shop cases, violates the equal protection clause of the New Mexico Constitution. *Richardson v. Carnegie Library Restaurant, Inc.*, 763 P.2d 1153 (N.M. 1988) Under this law, for each transaction or occurrence, damage awards are limited to either (1) \$50,000 for injuries/death and \$20,000 for property damage for one individual or (2) \$100,000 for injuries/death and \$20,000 for property damage for two or more persons.

<sup>3</sup>The dram shop law is the exclusive remedy for damages against either alcoholic beverage licensees or social hosts. §41-11-1(H) This provision, therefore, abrogated court decisions that had established liability via common law negligence. See, e.g., *Lopez v. Maze*, 651 P.2d 1269 (N.M. 1982), which concerned alcoholic beverage licensees, and *MRC Prop. v. Gries*, 652 P.2d 732 (N.M. 1982), which concerned social hosts.

<sup>4</sup>In emergency situations, licenses may be "summarily suspended". §60-6C-7

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Other State Laws Related To Alcohol Use: (continued)

Length of Term of License Withdrawal: **2 yrs** §60-6C-8  
An administrative fine of not more than \$10,000 can also be imposed. §60-6C-1(B) See the Special Note and Licensed Servers below.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:  
Type of Criminal Action: **Misd** §60-7B-1  
Term of Imprisonment: **None**<sup>1</sup>  
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**<sup>2&3</sup> §60-6C-1  
Length of Term License Withdrawal: **2 yrs** §60-6C-8

An administrative fine of not more than \$10,000 can also be imposed. §60-6C-1(B) See the Special Note and Licensed Servers below.

Anti-Happy Hour Laws/Regulations: **No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:  
Open Container Law (Yes/No): **Yes** §66-8-138(B) & (C)  
Anti-Consumption Law (Yes/No): **Yes** Driver and passengers §66-8-138(A)

<sup>1</sup>**Community Service.** A person, who is convicted of selling alcoholic beverages to a minor, must perform the community service related to reducing drunk driving as follows: 1st offense-30 hrs; 2nd offense-40 hrs; and, 3rd or subsequent offense-60 hrs. §60-7B-1(F)

<sup>2</sup>In emergency situations, licenses may be "summarily suspended". §60-6C-71

<sup>3</sup>In addition, a persons's license to sell alcoholic beverages under the Alcohol Server Education Act is suspended as follows: 1st violation-No suspension; 2nd violation-60 dy suspension; and, 3rd or subsequent violation-1 yr suspension. §60-7B-1(F)

**Special Note:** A license suspension/revocation or administrative fine is mandatory, if the licensee's employees or agents, "knowingly" serve alcoholic beverages in violation of the law and such violation was the second in 12 mos. §60-6C-1(B)

**Licensed Servers.** Persons, who serve alcoholic beverages at a business licensed to sell such beverages, must be individually licensed to serve these beverages. If such a person serves alcoholic beverages to either an intoxicated person or to one under the legal drinking age, the licensed individual is subject to the following administrative sanctions which are in addition to any criminal liability that may be imposed: 1st offense-An administrative fine of not more than \$500 and/or server permit suspended for 30 dys; 2nd offense-Server permit suspended for 1 yr; and, 3rd offense-Server permit permanently revoked. §60-6D-18

STATE:  
General Reference:

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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<sup>1</sup> V&T Law §1192(3)

≥ 0.10<sup>2</sup> V&T Law §1192(2)

**None**

Illegal Per Se Law (BAC):

Presumption (BAC):

Types of Drugs/Drugs and Alcohol:

**A Controlled Substance**<sup>3</sup> V&T Law §§114-a & 1192(4) and Public Health Law §3306

Other:

A BAC > 0.05 but < 0.07<sup>2</sup> is "relevant evidence" of being impaired. V&T Law §1195(2)(b) & (c)

A BAC > 0.07 but < 0.10<sup>2</sup> is *prima facie* evidence of impairment. V&T Law §1195(2)(b) & (c)

For Commercial Motor Vehicle Operators, see p. 3-342.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Yes** V&T Law §1194(1)(b) Note: The law does not specifically authorize the use of PBTs in all situations. The law only authorizes these tests in those situations where a driver has been involved in an accident and has committed a traffic law violation. A violation could include other offenses as well as DWI.

Implied Consent Law:

Arrest Required (Yes/No):

**No**<sup>4&5</sup> 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 either alcoholic or drug content if they have been involved in an accident related to a DWI offense and there has been a fatality or a serious physical injury.

<sup>1</sup>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.

<sup>2</sup>Standard: Percent by weight of alcohol in the blood. V&T Law §§1192(2) and 1195(2)(b) & (c) Percent by wgt. of alcohol in the blood may be expressed as grams of alcohol per 100 milliliters of blood. 10 NYCRR §59.1(b), *People v. Ritchie*, 511 N.Y.S.2d 482 (Sup. 1987), & *People v. McDonough*, 518 N.Y.S.2d 524 (A.D. 4 Dept. 1987)

<sup>3</sup>The law provides that no one shall drive while impaired by drugs as defined in the motor vehicle law.

<sup>4</sup>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)

<sup>5</sup>A person under 21 yrs old, who has been stopped for operating a motor vehicle "after having consumed alcohol," cannot be arrested. However, they can be "temporarily detained" by law enforcement officers for the purpose of requesting a chemical test. V&T Law §1194(2)(a)(4)

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

Blood: Yes V&T Law §1194(2)(a)  
Urine: Yes V&T Law §1194(2)(a)  
Other: Saliva V&T Law §1194(2)(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): 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)(a) A person under 21 yrs old, who has been charged with "driving while impaired," may satisfy such charge by agreeing to an administrative license suspension or revocation under V&T Law §1192-a. V&T Law §1192(10)(c)

Pre-Sentencing Investigation Law (PSI) (Yes/No): No Note: See Criminal Procedure Law §390.20 for the general requirements related to pre-sentence investigations following a conviction for either a misdemeanor or felony.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:  
Criminal Sanctions (Fine/Jail): **Infraction**<sup>1</sup> 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)<sup>2</sup>; **Rev** for at least **1 yr** for a 2nd or subsequent refusal (w/n 5 yrs) or a 1st refusal where there has been a previous DWI off conviction (w/n 5 yrs)  
**Special Note:** These revs are mandatory. V&T Law §1194(2)(d) See 15 NYCRR (New York Code Rules and Regulations) 13 ¶3 & 139.4 for a temporary lic. susp. prior to a hearing on a refusal.  
(1) Under V&T Law §1194(2)(b), a person who refuses to submit to a chemical test may have their license suspended at the time of arraignment based upon a sworn written police report.

Other:

<sup>1</sup>*People v. Steves*, 459 N.Y.S.2d 402 (Sup. 1983)

<sup>2</sup>For persons under 21 who have refused to submit to a chemical test and who have had either a previous alcohol/drug driving offense conviction or a prior administrative violation for operating a motor vehicle after having consumed alcohol, revocation for 1 year or until they reach 21 whichever is the longer revocation period.

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

Other: (continued)

(2) 1st refusal-\$300 (\$350 if operating a CMV) Civil Penalty; 2nd or sub refusal (w/n 5 yrs) or a 1st refusal where there has been a prior DWI off (w/n 5 yrs) **\$750** Civil Penalty V&T Law §1194(2)(d)(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment:  
Term (Day, Month, Years,  
Etc.):

See the Special Note below and School Bus Operators on p. 3-342.

I. "Impaired" alcohol status offs V&T Law §§1192(1) & 1193(1)(a)-1st off (Traffic Infraction)-Not more than **15 dys**; 2nd off<sup>1</sup> (w/n 5 yrs)(Misd)-Not more than **30 dys**; 3rd and any subsequent off<sup>1</sup> (w/n 10 yrs)(Misd)-Not more than **180 dys**  
II. Per Se and Intoxicated status offs<sup>2</sup>-1st off (Misd)-Not more than **1 yr** V&T Law §1193(1)(b); 2nd off<sup>3</sup> (w/n 10 yrs) Cl E Felony-Not more than **4 yrs**<sup>4</sup>; 3d off<sup>3</sup> (w/n 10 yrs) Cl D Felony-Not more than **7 yrs**<sup>4</sup> V&T Law §§1192 & 1193(1)(c)  
**None**

Mandatory Minimum Term:  
Fine:  
Amount (\$ Range):

I. "Impaired" alcohol status offs-1st off-\$300 to \$500; 2nd off<sup>1</sup> (w/n 5 yrs)-**\$500 to \$750**; 3rd and any subsequent offs<sup>1</sup> (w/n 10 yrs)-**\$750 to \$1,500** V&T Law §1193(1)(a)  
II. Per se and intoxicated status off<sup>2</sup>-1st off (Misd)-**\$500 to \$1,000** V&T Law §1193(1)(b); 2nd off (w/n 10 yrs) Cl E Felony-**\$1,000 to \$5,000**; 3rd off (w/n 10 yrs) Cl D felony-**\$2,000 to \$10,000** V&T Law §1193(1)(c)

Mandatory Min. Fine (\$):

I. "Impaired" alcohol status offs-1st off-\$300; 2nd off<sup>1</sup> (w/n 5 yrs)-**\$500**; 3rd and any subsequent offs (w/n 10 yrs)-**\$750**  
II. Per se and intoxicated off<sup>2</sup>-1st off (Misd)-**\$500**; 2nd off (w/n 10 yrs) Cl E felony-**\$1,000**<sup>5</sup>; 3rd off (w/n 10 yrs) Cl D felony-**\$2,000**<sup>5</sup>

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

**Yes** As a condition of probation. Penal Law §65.10(2)(h)

**Yes** (1) The court may require restitution by a defendant to a victim. Penal Law §§60.27 & 65.10(2)(g) (2) A person may also receive compensation from the State's victims' compensation fund. Executive Law §620 et seq.

<sup>1</sup>A previous alcohol offense conviction (of any type) is considered a previous offense.

<sup>2</sup>Includes driving while impaired by drugs.

<sup>3</sup>A previous offense also includes vehicle assault (Penal Law §§120.03 & 120.04) and vehicle homicide (Penal Law §§125.12 & 125.13).

<sup>4</sup>Penal Law §§70.00 & 80.00

<sup>5</sup>This fine (for a felony conviction) may not be mandatory. *People v. Porter*, 522 N.Y.S.2d 88 (Co.Ct. 1987)

**Special Note:** A person commits "Vehicle Assault", a Cl E Felony, if they injure another in a criminally negligent manner while in violation of the DWI law. It is a Cl D Felony if the offender committed this offense while driving on a suspended or revoked license where such action was based either on a refusal to submit to a chemical test or a drunk driving offense conviction. Penal Law §§120.036 & 120.04

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

Other:

**Ignition Interlock.** I. A driving while impaired/intoxicated offender, who is sentenced to probation, may be required to only operate vehicles equipped with an "ignition interlock" device. V&T Law §1198 (repealed 7/1/2003) II. The use of an "ignition interlock" may be a condition of probation for an illegal per se/intoxicated offense conviction. Penal Law §65.10(2)(k-1)

**Surcharges.** Felony-Mand surcharge of \$150 plus a \$5 crime victim assistance fee Misd-Mand surcharge of \$85 plus a \$5 crime victim assistance fee Penal Law §60.35 V&T Law §1809 provides that for any offense there is a mand surcharge of \$25.

**School Bus Operators:** A person, who operates a school bus with a least one student passenger, in violation of the drunk driving laws is subject to the following sanctions. 1st Impaired status off-(Cl A Misd)-Imprisonment for not more than 1 yr and/or a fine of \$500 to \$1,500. V&T Law §1193(1)(d)(1-a) and Penal Law §§55.10(2)(b) & 70.15 License revocation for 1 yr V&T Law §1193(2)(b)(4-a)(a) Sub Impaired status off (w/n 10 yrs) (Cl E Felony)-Imprisonment for not more than 4 yrs and/or a fine of \$1,000 to \$5,000. V&T Law §1193(1)(d)(1-a) & (4) and Penal Law §70.00 License revocation for 3 yrs V&T Law §1193(2)(b)(4-A)(b) Per Se, Intoxicated and driving while impaired by drugs offs-(Cl E Felony)-Imprisonment for not more than 4 yrs and/or a fine of \$1,000 to \$5,000. V&T Law §1193(1)(d)(4-a) and Penal Law §§70.00 & 80.00 License revocation for 1 yr. (**Comment:** The law is not clear but a subsequent offender may receive a 3 yr revocation.) V&T Law §1193(2)(b)(4-a) & (b) See Footnote No. 5 on p. 3-343.

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Licensing Action:** A person will have their privilege to operate a CMV "revoked" for one (1) year (mandatory) (three (3) years (mandatory) if they were transporting hazardous materials) if, while operating a CMV they either (1) had a BAC >0.04 (percent by weight of alcohol in the blood), (2) violated any provision of the DWI law (V&T §1192, subs. 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". V&T Law §§501-a, 510-a, 530(5), 1193(2)(b)(5), 1193(2)(e)(3), 1194(2)(d)(1)(c) & (d) and 1196(5) **Criminal Sanctions: Infraction:** A person commits an "infraction" if they operate a CMV with a BAC at or above 0.04 but below 0.07 (a CMV Per Se Level I Offense V&T Law §1192, subd. 5). The sanctions for an this "infraction" are the same as for "impaired" driving. **Misdemeanor:** A person commits a misdemeanor if they operate a CMV with a BAC at or above 0.07 but below 0.10 (a CMV Per Se Level II Offense V&T Law §1192, subd. 6). For a first Per Se Level II Offense, the sanctions are a fine of \$500 to \$1,500 and/or a jail term of not more than 180 days. Either (1) for a subsequent Per Se Level II Offense (within five (5) years) or (2) for a first such offense where there has been a previous DWI offense conviction (within five (5) years), the sanctions are a fine of \$500 to \$1,500 and/or a jail term or not more than one (1) year. A person commits a misdemeanor if they operate a CMV and violate the regular provisions of the DWI law (V&T §1192, subs. 1, 2, 3 & 4). The sanctions for this offense are a fine of \$500 to \$1,500 and/or a jail term or not more than one (1) year. **Felony:** A person commits a Class E felony if they are convicted of a Per Se Level II offense and have been convicted 2 or 3 times w/n 5 years of either (1) a Per Se Level II offense or (2) any DWI offense (One of these must be a misdemeanor.). A person commits a Class D felony if they are convicted of a Per Se Level II offense and have been convicted 4 or more times w/n 5 years of either (1) a Per Se Level II offense or (2) any DWI offense (One of these must be a misdemeanor.). **Class E felony sanctions:** A fine of \$1,000 to \$5,000 and/or a term of imprisonment of not more than 4 years. **Class D felony sanctions:** A fine of \$2,000 to \$10,000 and/or a term of imprisonment of not more than 7 years. V&T Law §1193(1)(d)(1), (2), (3) & (4) and Penal Law §§55.10(1)(b), 55.10(2)(b), 70.00 & 70.15(1)(a)

**DWI Offenses Involving Other Motor Vehicles Used In Commerce:** The following sanctions apply to persons who operate taxicabs, liveries or a 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, subs. 1, 2, 3 & 4). For a first offense the person commits a misdemeanor and may be fine \$500 to \$1,500 and/or a jail term of not more than one (1) year; in addition, their license is revoked for 1 year. For a 2nd offense (w/n 10 years), person commits a Class E felony and may be fined \$1,000 to \$5,000 and/or an imprisoned for of not more than 4 years; for a 3rd offense (w/n 10 years), person commits a Class D felony and may be fined \$2,000 to \$10,000 and/or an imprisoned for of not more than 7 years; in addition, such person is "disqualified" from operating these types of vehicles for at least five (5) years. V&T Law §§1193(1)(d)(1), (2), (3) & (4), 1193(2)(b)(4) & 1193(2)(e)(3) and Penal Law §§55.10(1)(b), 55.10(2)(b), 70.00 & 70.15(1)(a) Note: Operating a vehicle weighing >18,000 lbs while transporting flammable gas, radioactive materials or explosives and while either Per Se, Intoxicated or driving while impaired by drugs offs is also a Cl E Felony with the criminal sanctions as noted above. V&T Law §1193(1)(d)(5)

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

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

Persons Under 21 Years Old. Operating a motor vehicle "after having consumed alcohol" A person is only considered to have consumed alcohol if their BAC is >0.02 but <0.07 V&T Law §1192-a 1st action-Susp-6 mos<sup>1</sup> V&T Law §1193(2)(a) Sub. action-Rev-1 yr or until they reach 21 yrs old whichever is the greater period (mand)<sup>2</sup> V&T Law §1193(2)(b)(7) & (9)

Other:

I. **Temporary susp** is mandatory where a person is charged with a violation of V&T Law §1192(2), (3) & (4) and they have a previous alcohol/drug driving conviction of any type w/n 5 yrs. V&T Law §1193(2)(e)<sup>3</sup> See "Other" under Sanctions for Refusal to Submit to an Implied Consent Test on p. 3-340.

II. **Suspension Pending Prosecution.** (Eff. until October 1, 2002) A person, who has been arrested for driving while intoxicated or illegal per se under V&T Law §1192(2) & (3), must have their license suspended by the court, at the time of arraignment, if there is "reasonable cause to believe" that the person was operating a motor vehicle with a BAC ≥0.10 (percent by wgt. of alcohol in the blood). However, this suspension is not mandatory. An offender is eligible for a conditional license after the suspension as been in effect for 30 dys. In addition, they are eligible for immediate driving privileges based on a showing of "extreme hardship" for educational, employment or medical purposes. V&T Law §§1193(2)(e)(7) & 1196(7)(h)<sup>4</sup> **Comment:** The law does not provide for a specific period of suspension.

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

See the Special Note below and School Bus Operators on p. 3-342.

I. "Impaired" alcohol status off's<sup>5</sup>-1st off-Susp (Rev if person is under 21 years old); Sub off (w/n 5 yrs of 1 alcohol driving off

<sup>1</sup>This suspension is not mandatory. A conditional license is available if the offender participates in an alcohol rehabilitation program. V&T Law §1196(4) & (7)

<sup>2</sup>This revocation is mandatory even if the offender participates in an alcohol rehabilitation program.

<sup>3</sup>A violation of V&T Law §1192(2), (3) & (4) must be base upon "reasonable cause" before the court can impose this suspension.

<sup>4</sup>V&T Law §1193(2)(e)(7), the arraignment license susp law, has been held not to violate constitutional principles of due process of law. *Pringle v. Wolfe*, 668 N.E.2d 1376 (N.Y. 1996) In addition, a person, who has been subjected to licensing action under V&T Law §1193(2)(e)(7), may also be subsequently prosecuted and punished for a drunk driving offense. Such subsequent criminal action does not violate the constitutional prohibition against double jeopardy. *Smith v. County Court of Essex County*, 649 N.Y.S.2d 507 (A.D. 3 Dept. 1996), *People v. Conrad*, 654 N.Y.S.2d 226 (Sup. 1996), *People v. Haishun*, 656 N.Y.S.2d 660 (A.D. 2 Dept. 1997), *People v. Steele*, 661 N.Y.S.2d 908 (Sup. App. Term 1997), *People v. Uzquanio*, 661 N.Y.S.2d 438 (Sup.App.Term. 1997), *People v. Busby*, 670 N.Y.S.2d 960 (Sup.App.Term. 1997), & *People v. Malone*, 673 N.Y.S.2d 809 (Sup.App.Term 1997)

<sup>5</sup>If a person is convicted of an "impaired" alcohol offense while operating a motor vehicle on a probationary license, such license is suspended for 60 days (mandatory). V&T Law §510-b(1)

**Special Note:** I. A person under 21 yrs old, who is convicted of any alcohol driving offense shall for a 1st offense have their license revoked for 1 year and for a subsequent offense revocation for 1 year or until they reach 21 which ever is the greater period of time. A conditional license is not available even if the offender participates in an alcohol rehabilitation program. V&T Law §1193(2)(b)(6), (7) & (9) II. In addition to the licensing sanctions given, V&T Law §510(2)(b)(v) provides for a 6 mo susp for persons who have been convicted (1st or sub off) of violating V&T law §1192(4) (driving while their ability is impaired by certain defined drugs). This sanction is effective until October 1, 2002.

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

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

I. (continued) of any type or w/n 10 yrs of 2 alc driving offs of any type)-**Rev**  
II. Per se and intoxicated offs<sup>1</sup>-**1st off-Rev**; 2nd and any subsequent offs (w/n 10 yrs)-**Rev** V&T Law §1193(2) See Footnote No. 2.

Mandatory Minimum Term of  
Withdrawal:

I. "Impaired" alcohol status offs-**1st off-90 dys**; Sub off (w/n 5 yrs of 1 alcohol driving off of any type or w/n 10 yrs of 2 alc driving offs of any type)-**6 mos**  
II. Per se and intoxicated offs<sup>1</sup>-**1st off-At least 6 mos**; 2nd and any subsequent offs (w/n 10 yrs)-**At least 1 yr** V&T Law §1193(2)(a) & (b)

Other:  
Rehabilitation:  
Alcohol Education:  
Alcohol Treatment:  
Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

I. "Impaired" alcohol status offs-Sub off (w/n 5 yrs of 1 alcohol driving off of any type or w/n 10 yrs of 2 alc driving offs of any type)-**6 mos**  
II. Per se and intoxicated offs<sup>1</sup>-**2nd and any subsequent offs** (w/n 10 yrs)-**1 yr**<sup>3</sup> V&T Law §1193(2)(a) & (b) See Footnote No. 4.

**Yes** for all offs V&T Law §1196  
**Yes** for all offs V&T Law §1196

**Forfeiture.** A defendant's vehicle may be subject to forfeiture if they have been convicted of a felony drunk driving offense (e.g., a second or subsequent Per Se or Intoxicated offense w/n 10 yrs). This sanction is not mandatory. Civil Practice Law & Rules §§1301(5) & 1311(1)(a) and *Holtzman v. Bailey*, 503 N.Y.S.2d 473 (Sup. 1986)

Terms Upon Which Vehicle  
Will Be Released:  
Other:

**N/A**  
**Registration Suspension/Revocation.** The registration of a defendant's vehicle may be susp/rev. Registration susp/rev periods are the same as the license susp/rev periods for DWI offense convictions. Applies also to persons under 21 years old. V&T Law §1193(2)(a) & (b)

<sup>1</sup>Also includes driving while impaired by drugs under V&T Law §1192(4).

<sup>2</sup>**Bus/School Bus Operators (Disqualification).** A bus/school bus operator is disqualified from operating a bus/school bus for 5 yrs if they (1) are convicted of operating such vehicle in violation of any provision of the drunk driving law or (2) have been convicted to two such offenses while operating any other type of vehicle. In addition, the law further provides that, if a person has had their regular driving privileges suspended/revoked for a drunk driving law offense, they are disqualified from operation a bus/school bus during such suspension/revocation. However, such disqualification must last for not less than 6 mos. V&T Law §§509-c & 509-cc

<sup>3</sup>Under V&T Law §1193(2)(c), if a person is convicted of two (2) violations of either driving while intoxicated or driving while impaired by drugs (V&T Law §1192(3) & (4)) where a personal injury has resulted in each offense, their license is permanently revoked.

<sup>4</sup>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, they have participated in such a program w/n a five yr period or (2) if they have been convicted of a subsequent alcohol driving offense w/n 5 yrs. Successful completion of the program shall satisfy any sentence of imprisonment and allow an offender to apply for reinstatement of his/her driver's license. V&T Law §1196(4) & (7)

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

Miscellaneous Sanctions  
Not Included Elsewhere:

**Victim Impact Program.** A defendant may be required to attend a "victim impact program". This program consists of a single session in which prior DWI offenders discuss the impact that such an offense has had on them. V&T Law §1193(f)

**Civil Penalty.** A person <21 yrs old, who has had their license susp/rev for driving "after having consumed alcohol," is liable for a civil penalty of \$125. V&T Law §1194-a(2)

**Probation.** A defendant may be placed on probation with conditions provided such conditions are related to the offender's rehabilitation.<sup>1</sup> Penal Law §65.10(2)(f)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes** Vehicle Manslaughter in the 2nd degree-CI D felony Death of another based on criminally negligent action while in violation of the DWI laws. Penal Law §125.12 See Footnote No. 2.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than **7 yrs** Penal Law §70.00(2)(d)

Mandatory Minimum Term:

**None**

Fine (\$ Range):

Not more than **\$5,000** Penal Law §80.00(1)(a)

Mandatory Minimum Fine:

**None**

Administrative Licensing Action:

Licensing Authorized and

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 Vehicle Manslaughter are not eligible for the shock incarceration program. Correction Law §§865(1), 866 & 867

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

See Footnote Nos. 2 & 3.

<sup>1</sup>**Important.** Unless related to rehabilitation, a court cannot as a condition of probation, without specific statutory authority, (1) require a DWI defendant to affix to the license plates of the vehicles they operate a sign that states that they have been convicted of a drunk driving offense or (2) place such a defendant on "electronic monitoring". *People v. Letterlough*, 655 N.E.2d 146 (N.Y. 1995), & *People v. McNair*, 665 N.E.2d 167 (N.Y. 1996)

<sup>2</sup>If a person kills another while operating a motor vehicle while their license is either suspended or revoked for either an alcohol or a drug related driving offense or for refusal to submit to a chemical test, they have committed Vehicle Manslaughter in the 1st degree which is a Class C Felony. The sanctions for this offense are a jail sentence of not more than 15 yrs and/or a fine of not more than \$5,000. Penal Law §§70.00(2)(c), 80.00(1)(a) & 125.13

<sup>3</sup>If a person operates a CMV during either the suspension or revocation of their CDL, they appear to be subject the sanctions given in V&T Law §511. Also, if a person violates an out-of-service order, their CDL is suspended for 90 dys. V&T Law §510-a(3)(d)

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Other Criminal Actions Related to DWI: (continued)

Sanction:  
Criminal:  
Imprisonment (Term): **Misd 7 to 180 dys V&T Law §511(2)(a)(iii) & (2)(b) See Footnote Nos. 1, 2 & 3.**

Mandatory Minimum Term of Imprisonment: **None**  
Fine (\$ Range): **\$500 to \$1,000 V&T Law §511(2)(b)**  
Mandatory Minimum Fine: **None**  
Administrative Licensing Actions:  
Type of Licensing Action (Susp/Rev): **None**  
Length of Term of License Withdrawal Action:  
Mandatory Term of License Withdrawal Action:

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):

<sup>1</sup>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.

<sup>2</sup>A person, who operates a motor vehicle while DWI and while their license has either been suspended or revoked for a previous DWI conviction, commits the offense of aggravated unlicensed operation of a motor vehicle in the first degree which is a Class E Felony and they are subject to the following sanctions: Imprisonment-Not more than 4 yrs; fine-\$500 to \$5,000. As a condition of probation, the court may require a defendant to participate in either an alcohol or a drug treatment program. V&T Law §511(3) & (6) and Penal Code §70.00(2)(e) The defendant's vehicle may also be subject to forfeiture. Civil Practice Law and Rules §§1310(5) and 1311(1)(a)

<sup>3</sup>Note: A person, who operates a motor vehicle following either suspension or revocation not associated with a drunk driving offense, is guilty of the misd offense of aggravated unlicensed operating of a motor vehicle in the third degree. The sanctions for this offense are an imprisonment term of not more than 30 dys and/or a fine of \$200 to \$500 (\$500 to \$1,500 if the offender was operating a vehicle weighing more than > 18,000 lbs). V&T Law §511(1)

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

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

Yes N.Y. County Law §674(3)(b)<sup>1</sup>

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes (If 16 yrs or older)

Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21<sup>2</sup> (Year Eff: 1985) Alcoholic Beverage Control Law §§65, 65-b & 82 and Penal Law §260.20(2)

Minimum Age (Years) Possession:

21<sup>3</sup>

Minimum Age (Years) Consumption:

21<sup>3</sup>Dram Shop Laws and Related Legal Actions:

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

Yes N.Y. Gen. Oblig. Law §§11-100 &amp; 11-101

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

No However, see *Berkeley v. Park*, 262 N.Y.S. 2d 290 (Sup. 1965), a trial court opinion.

Dram Shop Actions-Social Hosts:

**Limited** Liability in situations where a person <21 yrs old is served alcoholic beverages.<sup>4&5</sup> N.Y. Gen. Oblig. Law §11-100

Other:

In general, a provider of alcoholic beverages is not liable for the injuries sustained by a intoxicated patron (even a minor) due to their voluntary consumption of alcohol.<sup>6</sup> *Sheehy v. Big Flats Community Day, Inc.*, 541 N.E.2d 18 (N.Y. 1989)<sup>7</sup>

<sup>1</sup>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)

<sup>2</sup>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

<sup>3</sup>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 yrs old is required as part of an educational curriculum to consume/taste alcoholic beverages or (2) such person has been provided alcoholic beverages by a parent/guardian.

<sup>4</sup>Under N.Y. Gen. Oblig. Law §11-100, a social host, who unlawfully procures alcoholic beverages for consumption by an underage person, may be held liable for any damages caused by such person who became intoxicated as a result of such consumption. *Cole v. O'Toole of Utica, Inc.*, 643 N.Y.S.2d 283 (A.D. 4 Dept. 1996). Also, a home owner, who was not at home when and who had no knowledge that alcoholic beverages were being served to an underage person, can be held liable for any damages caused by such person who became intoxicated as a result of such consumption. *Rust v. Reyer*, 693 N.E.2d 1074 (N.Y. 1998)

<sup>5</sup>The court found no social host liability at a party given by a business where alc. bev. were furnished to an adult guest who caused injuries as a result of becoming intoxicated at the party. *Joly v. Northway Motor Car Corp.*, 517 N.Y.S.2d 595 (A.D. 3 Dept. 1987)

<sup>6</sup>Nevertheless, under the dram shop law, a licensee, who serves alcoholic beverages to a minor child to the point of intoxication, is liable to either the child or the child's parents for any injures sustained by the minor while in such an intoxicated condition. *Ray v. Galloway's Cafe*, 634 N.Y.S.2d 495 (A.D. 2 Dept. 1995), & *Basile v. Francino*, 677 N.Y.S.2d 595 (A.D. 2 Dept. 1998)

<sup>7</sup>In *Sheehy*, the court held that there was no such liability either for a violation of Penal Law §260.20, which prohibits licensees from serving alcoholic beverages to minors, or under the common law. However, if such consumption was "imposed" on a person (e.g., via hazing to join a fraternity), liability may result. *Oja v. Grand Chapter of Theta Chi Frat.*, 667 N.Y.S.2d 650 (Sup. 1997)

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Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

**Class A Misd** §§65 & 130(5) of the Alcoholic Beverage Control Law and §§55.10(2)(b), 70.15(1) and 80.05(1) of the Penal Law  
**Not more than 1 yr**

Term of Imprisonment:

**Not more than \$1,000** (For corporations, the fine is not more than \$5,000.) §80.10(1)(b) of the Penal Law

Fine (\$ Range):

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes** Susp, canceled, or rev Alc. Beverage Control Law §17(3)  
Not specified in the statute

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:

**Class A Misd**<sup>1&2</sup> §§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:

**Not more than 1 yr**

Fine (\$ Range):

**Not more than \$1,000**<sup>3</sup> (Not more than \$5,000 for corporations)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes** Susp, canceled, or rev Alc. Beverage Control Law §17(3)  
Not specified in the statute

Length of Term License Withdrawal:

Anti-Happy Hour Laws/Regulations:

**Yes**<sup>4</sup> Alcoholic Beverage Control Law §117-a

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

Open Container Law (Yes/No):

**Yes**<sup>5</sup> Driver and passengers V&T Law §1227

Anti-Consumption Law (Yes/No):

**Yes**<sup>5</sup> Driver and passengers V&T Law §1227

<sup>1</sup>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.

<sup>2</sup>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).

<sup>3</sup>For a 2nd or sub off (w/n 5 yrs), there is a civil penalty of not more than \$500. Alcoholic Beverage Control Law §119(5)

<sup>4</sup>Prohibits the selling or delivering of an unlimited number of drinks during any set period of time for a fixed price.

<sup>5</sup>Does not apply to vehicles operating under certain certificates or permits issued by the U.S. Dept. of Tran. V&T Law §1227

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<sup>1</sup> §§20-4.01(14a) & 20-138.1(a)(1)

Illegal Per Se Law (BAC/BrAC):

≥ 0.08<sup>2&3</sup> §§20-4.01(0.2) & 20-138.1(a)(2)

**Persons Under 21 Years Old. Any Alcohol in the Body or a Controlled Substance in the Blood<sup>4</sup> §20-138.3.**

Presumption (BAC):

**None**

Types of Drugs/Drugs and Alcohol:

Under the influence of **Any Impairing Substance<sup>1</sup>** §§20-4.01(14a) & 20-138.1(a)(1)

Other:

Important. See Footnote No. 5 on p. 3-358 concerning vehicle operation with an open container of alcoholic beverages and "while the driver is consuming alcohol or while alcohol remains in the driver's body".

For Commercial Motor Vehicle Operators, see p. 3-350.

For School Bus and Child Care Veh. Operators, see p. 3-352.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Yes<sup>5</sup>** §§20-16.2(i), 20-16.3, 20-138.3(d), 20-138.2A & 20-138.2B

Implied Consent Law:

**Yes<sup>6</sup>** §20-16.2(a)

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

**Yes<sup>7</sup>** §§20-16.2(a) & (a1) and 20-139.1

Note: Sec. 20-139.1 only applies to procedures governing chemical tests for alcohol concentration.

Refusal to Submit to Chemical Test

Admitted into Evidence:

**Yes** (Criminal Cases) §§20-16.2(a)(3) & 20-139.1(f)

Other Information:

Under the implied consent law, if a person refuses to submit to a chemical test, none shall be given. However, the statute allows a law enforcement officer to obtain a test via other lawful procedures. §20-16.2(c) **Comment:** It is possible that a person could be required (forced) to submit to a chemical test.

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

Blood:

**Yes<sup>7</sup>**

Urine:

**Yes<sup>7</sup>**

Other:

**Yes<sup>7</sup>**

<sup>1</sup>"Impairing substance" means alcohol, a controlled substance (under Ch. 20), any other drug or psychoactive substance. §20-4.01(14a)

<sup>2</sup>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.

<sup>3</sup>Alcohol concentration means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §20-4.01(1b)

<sup>4</sup>**Special Note:** This law does not apply in situations where the controlled substance was lawfully obtained and is taken in therapeutically appropriate amounts. For details, see Persons Under 21 Years old on p. 3-353.

<sup>5</sup>Based upon "suspected" violations of driving either a CMV or school bus while consuming alcohol or while having any alcohol in the body, a preliminary breath may be administered and the results of a such a test may be admitted into evidence. A refusal to submit to such a test may also be admitted into evidence. §§20-138.2A(b2) & 20-138.2B(b2)

<sup>6</sup>Arrest or if criminal process for the DWI offense has been issued. §20-16.2(a1)

<sup>7</sup>A law enforcement officer shall "designate the type of chemical analysis to be administered". §20-16.2(a) & (b)

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Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plca 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 <sup>1</sup> §§20-179(f), (h), (i), (j) & (k) and 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):	Rev 12 mos <sup>2</sup> (with 30 dy <sup>3</sup> immediate license revocation) §§20-16.2(d) & 20-16.5 <sup>4</sup>

<sup>1</sup>A person is eligible for restricted driving privileges, if they complete substance abuse assessment. §20-179.3(b)(1)(e)  
<sup>2</sup>Limited License. There are two types of limited licenses that are available. I. A limited driving privilege license may be issued after 6 mos of the rev period have passed provided the driver either (1) has not had a previous chemical test refusal (w/n 7 yrs), (2) has not had a previous DWI offense conviction (w/n 7 yrs) or has not been charged with a DWI offense that involved either death or critical injury to another person. §20-16.2(e1) II. Under separate provisions, limited driving privileges may also be granted after 10 dys if the person does not have a conviction for an offense involving "impaired driving" and they agree to participate in a substance abuse training or treatment program. §20-16.5(p)  
<sup>3</sup>If the driver is late in surrendering or does not surrender their license to the court when ordered to do so, the immediate revocation period is 45 dys. §20-16.5(f) Limited driving privileges may be granted after 30 dys if the person does not have a conviction for an offense involving "impaired driving" and they agree to participate in a substance abuse training or treatment program. §20-16.5(p)  
<sup>4</sup>For persons <21 years old a rev for 1 yr (mandatory). This rev is in addition to and runs concurrently with any other licensing action authorized by law for an implied consent law violation. §§20-4.01(31a) & 20-13.2

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** I. A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (See Footnote No. 3 on p. 3-349.), (2) are under the influence of an impairing substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand but, for 3rd violation/refusal, disqualification for life is mand) II. It is a misdemeanor to operate a CMV (1) while under the influence of an impairing substance or (2) with a BAC/BrAC ≥0.04. The sanctions for this offense are the same as for a regular drunk driving offense (§20-179). III. The State has adopted by reference the "out-of-service" provisions of 49 CFR §§392.5 & 395.13. These provisions provide, among other things, that a CMV operator be place "out-of-service" for 24 hrs, if by general appearance or conduct, it appears the operator has consumed intoxicating beverages with the preceding 4 hrs. IV. Driving a CMV while consuming alcohol or while alcohol remains the body ( BAC/BrAC >0.00): 1st off (Cl 3 misd)-\$100 fine and disqualification for 10 dys (mand); 2nd or sub off (w/n 7 yrs) (misd)-Same criminal sanctions as for a DWI off and CDL disqualification for 1 yr (mand). An offender must have alc education/treatment prior to re-licensing. However, for a 4th off, disqualification is for life (mand). Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.2A). §§15-1340.23, 20-4.01(0.2), (3d), (5a), (14a), (24a) & (25a), 20-17(2), 20-17.4(a), (a1), (b), (b1) & (6), 20-17.6, 20-19(f), 20-37.12, 20-138.2, 20-138.2A and 20-179 See **BAC Restricted Licenses** on p. 3-352.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See (1) the Special Note and Double Jeopardy below and (2) Persons Under 21 Years Old on p. 3-353.
Imprisonment: Term (Day, Month, Years, Etc.):	<u>Level 1</u> Punishment- <b>30 dys-24 mos</b> ; <u>Level 2</u> Punishment- <b>7 dys-12 mos</b> ; <u>Level 3</u> Punishment- <b>72 hrs-6 mos</b> <sup>1</sup> ; <u>Level 4</u> Punishment- <b>48 hrs-120 dys</b> <sup>1</sup> ; <u>Level 5</u> Punishment- <b>24 hrs to 60 dys</b> <sup>1</sup> §20-179 See Footnote No. 2. <u>4th off or sub. off</u> (w/n 7 yrs) (Habitual Impaired Driving) (Class F Felony)- <b>≤ 59 mos</b> <sup>1</sup> §20-138.5
Mandatory Minimum Term:	<u>Level 1</u> Punishment- <b>30 dys</b> <sup>2</sup> ; <u>Level 2</u> Punishment- <b>7 dys</b> <sup>2</sup> §20-179(g) & (h) <u>4th off or sub. off</u> (w/n 7 yrs) (Habitual Impaired Driving) (Class F Felony)- <b>12 mos</b> <sup>3</sup> §20-138.5(b)
Fine: Amount (\$ Range):	<u>Level 1</u> Punishment-Not more than <b>\$4,000</b> ; <u>Level 2</u> Punishment-Not more than <b>\$2,000</b> ; <u>Level 3</u> Punishment-Not more than <b>\$1,000</b> ; <u>Level 4</u> Punishment-Not more than <b>\$500</b> ; <u>Level 5</u> Punishment-Not more than <b>\$200</b> §20-179 <u>4th off or sub. off</u> (w/n 7 yrs) (Habitual Impaired Driving) (Class F Felony)-Fines are authorized but are not specified in the statute. <sup>3</sup> §20-138.5.
Mandatory Min. Fine (\$):	<b>None</b>
Other Penalties: Community Service:	<u>Level 3</u> Punishment- <b>72 hrs</b> <sup>1</sup> ; <u>Level 4</u> Punishment- <b>48 hrs</b> <sup>1</sup> ; <u>Level 5</u> Punishment- <b>24 hrs</b> <sup>1</sup>

<sup>1</sup>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.

<sup>2</sup>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)

<sup>3</sup>The sanctions for Habitual Impaired Driving are an imprisonment term from 12 to 59 mos and a fine. The length of the imprisonment term above the minimum period of 12 mos is determined by the number of prior criminal convictions and by aggravating and mitigating circumstances. The fine amount is discretionary with the court. §§15A-1340.14, 15A-1340.16, 15A-1340.17 & 20-138.5(b)

**Special Note:** The level of punishment to be given a DWI offender is determined by weighing the aggravating (e.g., BAC ≥0.16, reckless/dangerous driving, negligent driving resulting in an accident or driving with a revoked license), and mitigating factors as specified in §20-179(d) & (e). However, the court must impose level 2 punishment (§20-179(h)) if (1) there has been a previous DWI conviction w/n a 7 yr period, (2) there has been a "serious injury" related to a DWI offense or (3) there was a child under 16 years old riding with the offender (**child endangerment**). The court must impose Level 1 punishment (§20-179(g)) if there has been two previous DWI offense convictions w/n 7 yrs (i.e., for a 3rd DWI offense). The court must also impose Level 1 punishment (§20-179(g)) if any two or more of the following conditions exist: (1) The defendant has a previous DWI offense conviction w/n 7 yrs of the offense charged; (2) the defendant at the time of the offense was driving on a revoked license where such revocation was based on a previous DWI offense conviction; (3) the present offense resulted in a "serious injury"; or (4) there was a child under 16 years old riding with the offender (**child endangerment**). §20-179(c)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Oliver*, 470 S.E.2d 16 (N.C. 1996)

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

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).

**Community Service Fee.** Offenders, who participate in community service, are assessed a fee of \$100. §20-179.4(c)

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

See Double Jeopardy on p. 3-351 and Due Process of Law below.  
**Yes**  $\geq 0.08$  ( $> 0.00$  for Persons Under 21 Years Old) **BAC/BrAC**<sup>1a2</sup> **Rev** for 30 dys<sup>3</sup> §20-16.5(b), (1b), (e) & (f)  
Note: If the driver is late in surrendering or does not surrender their license to the court when ordered to do so, the rev period is 45 dys.<sup>3</sup> §20-16.5(f) In addition, if the driver has a pending drunk driving offense at the time current one, their license is revoked for the present offense until a final judgement (including all appeals) has become final.<sup>3</sup> §20-16.5(e) & (f)  
See Persons Under 21 Years Old on p. 3-353.

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

1st off-Rev; 2nd off (w/n 3 yrs)-**Rev**; 3rd off (where the 2nd off was w/n 5 yrs of the 3rd)-**Rev** §§20-17, 20-19 & 20-179  
4th or sub. off (w/n 7 yrs)-**Rev** §20-138.5 Note: An offender, who is required to participate in either an alcohol education or treatment program, must complete such program before their license can be restored. §§20-17.6 & 122C-142.1

<sup>1</sup>See Footnote No. 3 on p. 3-349.

<sup>2</sup>For commercial motor vehicle operators, if the BAC/BrAC is  $\geq 0.04$ . §20-16.5

<sup>3</sup>**Mandatory Licensing Action & Limited Driving Privileges.** Limited driving privileges may be granted after 10 dys (after 30 dys for a 45 dy revocation) if the person does not have a conviction for an offense involving "impaired driving" and they agree to participate in a substance abuse training or treatment program. For revocations pending final judgement, limited driving privileges may be granted after 30 dys (after 45 dys if the license was not surrendered to the court). §20-16.5(p)

**BAC Restricted Licenses (Effective July 1, 2000).** I. After an offender's license has been restored, a restriction is placed on the license prohibiting them from driving at or above certain BAC levels as follows: (1) For a 1st restoration-BAC $\geq 0.04$ ; (2) for a 2nd or sub restoration-BAC  $> 0.00$ ; and, (3) for a restoration following either (i) a DWI conviction in a CMV or (ii) a conviction if  $< 21$  yrs old of driving with any BAC/controlled substances in the body or (iii) a conviction of a vehicle homicide offense-BAC  $> 0.00$ . II. These BAC restrictions are in effect for the following periods after license restoration. (1) If the offender's license was permanently revoked for a DWI offense but can be restored, the restriction lasts 7 yrs. (2) If the offender was  $< 21$  yrs old and their license was restored following a conviction for driving with any BAC/controlled substances in the body, the restriction lasts until the person is 21 yrs old. In all other cases, the restriction lasts for 3 yrs. §20-19(c3)

**School Bus, School Activity Bus or Child Care Vehicle Operators.** It is illegal to operate either a school bus, a school activity or a child care vehicle while consuming alcohol or while alcohol remains the body ( BAC/BrAC  $> 0.00$ ). 1st off (Cl 3 misd)-\$100 fine and license susp for 10 day (and). 2nd or sub off (w/n 7 yrs)-Same criminal sanctions as for a regular drunk driving offense and license revocation for 1 yr. A person must complete either an alcohol education or treatment program prior to re-licensing. §§20-17(a)(14), 20-17.6, 20-19(2), 20-138.2B & 20-179 Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.2B).

**Due Process of Law.** The administrative per se law does not violate a person's constitutional right to due process of law. *Henry v. Edmisten*, 340 S.E.2d 720 (N.C. 1986)

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

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

See **BAC Restricted Licenses** on p. 3-352.  
1st off-1 yr<sup>1&2</sup>; Sub. off not covered by one of the following categories-**1 yr**; 2nd off (w/n 3 yrs)-**4 yrs**; 3rd off (where the 2nd off was w/n 5 yrs of the 3rd)-**Permanent**; 4th or sub. off (w/n 7 yrs)-**Permanent** §§20-19(c1), (d) & (e) and 20-138.5

Mandatory Minimum Term of  
Withdrawal:

1st off-None<sup>1&2</sup>; Sub. off not covered by one of the following categories-**1 yr**; 2nd off-2 yrs (w/n 3 yrs) (After 2 yrs, a conditional license may be issued); 3rd off- 3 yrs (where the 2nd off was w/n 5 yrs of the 3rd) (After 3 yrs, a conditional license may be issued); 4th or sub. off (w/n 7 yrs)-**Permanent** §§20-19(d) & (e) and 20-138.5

Other:

Rehabilitation:  
Alcohol Education:  
Alcohol Treatment:

**Yes** §20-179(g), (h), (i), (j) & (k) See Alcohol Education below.  
**Yes I.** Offenders, regardless of the level of punishment, who are placed of probation, are required to participate in either an alcohol education or treatment program.<sup>3</sup> §20-179(g), (h), (i), (j) & (k)  
**II.** Under §20-179.1, treatment may be order by the court as a condition of probation.  
**III.** Under §29-179(k1), the court may order that a term of imprisonment imposed as a condition of probation be served in an inpatient alcohol treatment facility.

<sup>1</sup>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 and is subject to only levels 3, 4 or 5 punishment. See Ignition Interlock on p. 3-354. This privilege is not effective until after the court ordered license withdrawal period, if any, has been completed as a part of probation requirements. See Footnote No. 2.

<sup>2</sup>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).

<sup>3</sup>As part of the conditions for probation, the offender must participate in either alcohol education or treatment before their driving privileges can be restored. §20-179(g), (h), (i), (j) & (k)

**Persons Under 21 Years Old:** I. It is Cl 2 Misd for persons under 21 yrs old to operate a motor vehicle with any alcohol or controlled substance ("unless lawfully obtained and taken in therapeutically appropriate amounts") in the body but where such amount would not result in a normal DWI charge and conviction. The sanctions for this offense are a jail term of 1 to 60 dys and/or a fine of not more than \$1,000 The length of the imprisonment term is determined in part by the number of prior criminal convictions. An offender is also subject to rev for 1 yr. First offenders, who are 18, 19 or 20 yrs old, may receive limited driving privileges. See Ignition Interlock on p. 3-354. However, such revocation is mandatory for subsequent offenses. §§20-13.2, 20-138.3, 20-176(c) & 15A-1340.23 II. Persons <21 yrs old, who are convicted of a regular drunk driving offense, are subject to a rev for 1 yr plus a regular DWI rev. These revs, however, are to run concurrently. §§20-4.01(31a) & 20-13.2 **Comment:** The law is not clear, but a 1st offender may be eligible for limited driving privileges. §20-179.3 See Ignition Interlock on p. 3-354. III. Note: A person convicted under I above, a §20-138.3 offense, may also be convicted of a regular DWI offense (§20-138.1). I.e., a §20-138.3 offense is not a lesser included offense under §20-138.1. However, the aggregate punishment that can be imposed cannot exceed the maximum punishment for a DWI offense (§20-138.1). §20-138.3(c) See **BAC Restricted Licenses** on p. 3-352. Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.3).

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

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

See **Limited Forfeiture & Vehicle Registration Revocation**  
below.

**Forfeiture.** For a 4th or sub off (w/n 7 yrs) the motor veh driven for the offender is subject to forfeiture. This forfeiture may be mandatory. Certain innocent parties, who have an ownership interest in the vehicle, or a lien holder may have the vehicle released to them. §20-138.5(e)

Terms Upon Which Vehicle  
Will Be Released:

Miscellaneous Sanctions  
Not Included Elsewhere:

**Ignition Interlock.** I. Persons, eligible for restricted driving privileges, may be required to operate motor vehicles that are equipped with an ignition interlock device. II. This requirement is mandatory, if their BAC was  $\geq 0.16$  or they are a 2nd or sub offender (w/n 7 yrs).<sup>2</sup> III. Such use does not apply on employer owned vehicles. §§20-17.8(a), (b) & (c) and 20-179.3(g3) & (g5)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

See **Murder** on p. 3-355.  
**Yes** Death by Vehicle I. **Class G Felony** if death is DWI related<sup>3</sup>  
§20-141.4  
II. **Class 1 Misd** if death is not DWI related §20-141.4

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

I. Class G Felony-**8 to 36 mos**<sup>4</sup> §15A-1340.17  
II. Class 1 Misd-**1 to 120 dys**<sup>5</sup> §15A-1340.23  
**None**

Mandatory Minimum Term:

<sup>1</sup>A vehicle that is subject to forfeiture is also subject, at the time of the violation, to seizure by law enforcement officers. §20-28.3

<sup>2</sup>I. Required ignition interlock usage, after license restoration, is as follows: (1) 1 yr if license revocation was for 1 yr; (2) 3 yrs if license revocation was for 4 yrs; and (3) 7 yrs if the license was permanently revoked but can be restored. §20-17.8(c)

II. The following **requirements** also apply while using an ignition interlock device: (1) If BAC was  $\geq 0.16$ , a requirement that the person not drive with a BAC  $\geq 0.04$ ; and, for either a 2nd or sub DWI off, DWI in a CMV, DWI  $< 21$  yrs old after consuming alc/drugs or any veh homicide off, a requirement that the person not drive with a BAC  $> 0.00$ . §20-17.8(b)(3)

<sup>3</sup>Includes deaths that are related to CMV operation while in violation of §20-138.2.

<sup>4</sup>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

<sup>5</sup>The length of the imprisonment term is determined in part by the number of prior criminal convictions.

**Limited Forfeiture.** A vehicle (whether or not owned by the driver) is subject to forfeiture (which appears to be mandatory) if the driver was driving such vehicle (1) while in violation of the drunk driving laws and (2) while their license is still in a revocation status for either (1) a previous drunk driving conviction, (2) implied consent refusal, (3) admin. per se action or (4) other license revocation related alcohol. Certain innocent parties, who have an ownership interest in the vehicle, or a lien holder may have the vehicle released to them. §§20-28.2(b), (d) & (e), 20-28.5 and 20-138.5(e) See Footnote No. 1 above.

**Vehicle Registration Revocation.** Except for certain innocent owners, the registrations of all of the vehicles that are owned by a person are revoked (until their license is restored) if they have been convicted for a drunk driving offense while their license is still in a revocation status for either (1) a previous drunk driving conviction, (2) implied consent refusal, (2) admin. per se action or (4) any other license revocation related alcohol. In addition, such a person cannot register a recently purchased/obtained motor vehicle until their driving privileges are restored. §20-54.1

Other Criminal Actions Related to DWI: (continued)

<p>Fine (\$ Range):</p>	<p>I. Class G Felony-The fine amount is discretionary with the court. §15A-1340.17                  II. Class 1 Misd-The fine amount is discretionary with the court. §15A-1340.23</p>
<p>Mandatory Minimum Fine:</p>	<p>None</p>
<p>Administrative Licensing Action:                  Licensing Authorized and                  Type of Action:</p>	<p>Rev</p>
<p>Length of Term of                  Licensing Withdrawal:</p>	<p>1 yr unless the trial judge issues a limited driving privileges to the person convicted containing a condition that the defendant successfully complete a course of instruction at an Alcohol Drug Education Traffic School. If the defendant complies with these conditions, their license must be restored within 6 mos. §§20-17(1) &amp; 29-19(c) See Ignition Interlock on p. 3-354.</p>
<p>Mandatory Action--Minimum                  Length of License                  Withdrawal:</p>	<p>None</p>
<p>Other:</p>	<p>See BAC Restricted Licenses on p. 3-352.</p>
<p><u>Driving While License Suspended or Revoked                  Where the Basis Was a DWI Offense*:</u></p>	<p>See the Special Note below.                  See Vehicle Impoundment/Confiscation and Vehicle Registration Prohibition on p. 3-354.</p>
<p>Sanction:                  Criminal:                  Imprisonment (Term):</p>	<p>Driving While Revoked-Class 1 Misd-1 to 120 dys<sup>1</sup> §§20-28(a) &amp; (b) and 15A-1340.23</p>

<sup>1</sup>The length of the imprisonment term is determined in part by the number of prior criminal convictions. Community service is also authorized for misdemeanor offenses. §15A-1340.23(c)

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

**Special Note: I.** It is a Cl 1 misd (See the imprisonment and fine sanctions for this type of misd and Footnote No. 1 above.) to operate a CMV during a CDL disqualification. For a 1st offense, there is an additional disqualification for a period equal to the original disqualification. For a 2nd offense, there is an additional disqualification for a period equal to twice the original disqualification. And, for a subsequent offense, disqualification for life. §§20-28(d) II. It is a Cl 3 misd to operate a CMV while under a CDL out-of-service order. For a 1st or subsequent offense, an offender is subject to an imprisonment term of 1 to 20 dys (See Footnote No. 1 above.). For a 1st offense, an offender is subject a fine of not less than \$250. And, for a subsequent offense, an offender is subject a fine of not less than \$500. Also, the following CDL disqualifications are imposed: 1st off-90 dys; 2nd off (w/n 10 yrs)-1 yr; and, 3rd or sub off (w/n 10 yrs)-3 yrs. The following disqualification periods are imposed if the offender was operating a CMV carrying hazardous materials: 1st off-180 dys; and, 2nd or sub off (w/n 10 yrs)-3 yrs. §§15A-1340.23(c), 20-17.4(g) & (h), 20-37.12(b) and 20-37.21(a) In addition, via regulations, the State may adopt the fines of the CMV Safety Alliance for out-of-service violations. §20-17.7

**Murder.** A person can be convicted of second-degree murder, if they caused the death of another person while operating a motor vehicle at a high rate of speed and after consuming alcohol. Such behavior may be considered evidence of "malice" for the purposes of proving this offense. *State v. Grice*, 505 S.E.2d 166 (N.C.App. 1998) (review denied by the State supreme court, 350 N.C. 102, 1999 N.C. LEXIS 188) & *State v. Rich*, 527 S.E.2d 299 (N.C. 2000) However, the State supreme court has held that a person, who causes a death while DWI, even though they can be convicted of assault with a deadly weapon, cannot be convicted of first-degree murder under the murder felony rule. The court held that the defendant did not have the necessarily intent to commit the underlying felony in order to invoke this rule. *State v. Jones*, 538 S.E.2d 917 (N.C. 2000)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:

Fine (\$ Range)

Mandatory Minimum Fine:  
Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):

Length of Term of License  
Withdrawal Action:

Mandatory Term of License  
Withdrawal Action:

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No):  
Grounds for Being Declared an  
Habitual Offender:

Term of License Rev While  
Under Habitual Offender Status:

Type of Criminal off if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status

Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:

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

If a person's license has been permanently revoked and they thereafter drive, **30 dys** §20-28(b) See the Special Note below. Class 1 Misd-The fine amount is discretionary with the court. §15A-1340.23

**None** See the Special Note below.

**Rev**

1st off-1 yr (90 dys mand) rev added to original rev period; 2nd off-2 yrs (12 mos mand) rev added to original rev period; 3rd off-Permanent rev (3 yrs mand) §§20-28(a) & (c)

1st off-90 dys; 2nd off-12 mos; 3rd off-3 yrs (The licensing agency may issue a new license with or without conditions after these terms of license withdrawal.) §§20-28(c)

**No** Note: The Habitual Traffic Offender Law, §§20-220 to 20-231, was repealed by Session Laws 1977, Ch. 243, §1.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic

Accidents:

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

Driver:  
Vehicle Passengers:  
Pedestrian:

**No**

**Special Note:** If a person is convicted of a DWI off and they were at the time of such off driving while their license was revoked for a previous DWI off conviction (w/n 7 yrs), the Court must impose Level 1 punishment. §20-179(c) See Levels of Punishment on p. 3-351.

Other State Laws Related To Alcohol Use: (continued)

<u>Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:</u>	
Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1986) §§18B-302(a) & (b)
Minimum Age (Years) Possession:	21 §§18B-301(f)(4) & 18B-302(b) Employment exemption
Minimum Age (Years) Consumption:	21 §18B-301(f)(4)
<u>Dram Shop Laws and Related Legal Actions:</u>	
State Has a Dram Shop Law (Yes/No):	Yes §§18B-120 et seq. <sup>1</sup> Recovery limited 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 <i>Estate of Mullis by Dixon v. Monroe Oil</i> , 505 S.E.2d 131 (N.C. 1998) <sup>2</sup> , & <i>Smith v. Winn Dixie Charlotte, Inc.</i> , 542 S.W.2d 288 (N.C.App. 2001)
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. <i>Hart v. Ivey</i> , 420 S.E.2d 174 (N.C. 1992) <b>Comment:</b> Although the <i>Hart</i> 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. <i>Sorrells v. M.Y.B. Hospitality Ventures</i> , 423 S.E.2d 72 (N.C. 1992)
<u>Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
Type of Criminal Action:	<b>Class 1 Misd</b> §§18B-102 & 18B-305
Term of Imprisonment:	<b>1 to 120 dys</b> The length of the imprisonment term is determined in part by the number of prior criminal convictions. §15A-1340.23
Fine (\$ Range):	The fine amount is discretionary with the court. <sup>3</sup> §15A-1340.23
<u>Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes Board's discretion as to whether to suspend or to revoke. §§18B-104 & 18B-305 See Footnote No. 2 on p. 3-358.

<sup>1</sup>These statutory provisions create a Dram Shop type of liability in situations involving "underage persons" (persons under 21 yrs old) who cause damages while DWI. The law places limitations on damage amounts which can be awarded in such actions. However, the law specifically does not limit or prohibit Dram Shop actions based either on other statutes or on "common law". Note: A person (or the estate of a person) injured (killed) via the actions of an intoxicated individual is generally not entitled to recover damages for such injuries (death) if the injured (dead) person "aided or abetted" the intoxicated individual by purchasing alcoholic beverages for them. *Estate of Darby v. Monroe Oil Co., Inc.*, 488 S.E.2d 828 (N.C.App. 1997)

<sup>2</sup>See also, *Hutchens v. Hankins*, 303 S.E.2d 584 (N.C. App. 1983) (discretionary review denied by the North Carolina Supreme Court 305 S.E.2d 734 (N.C. 1983)), *Freeman v. Finney*, 309 S.E.2d 531 (N.C.App. 1983) (discretionary review denied by the North Carolina Supreme Court 315 S.E.2d 702 (N.C. 1984)), & *Chastain v. Litton Systems, Inc.*, 694 F.2d 957 (CA4, 1982) (cert. den., 462 U.S. 1106 (1983))

<sup>3</sup>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

**NORTH CAROLINA**

Other State Laws Related To Alcohol Use: (continued)

Length of Term of License Withdrawal: **Susp**-Not more than **3 yrs** **Rev** period is not specified in the statute.

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

Type of Criminal Action:  
Term of Imprisonment:

**Class 1 Misd** §§18B-102, 18B-302 & 18B-302A  
**1 to 120 dys** The length of the imprisonment term is determined in part by the number of prior criminal convictions.<sup>1</sup> §15A-1340.23

Fine (\$ Range):

The fine amount is discretionary with the court.<sup>1</sup> §15A-1340.23

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

**Yes**<sup>2</sup> Left to the Board's discretion as to whether to suspend or to revoke. §§18b-104 & 18B-302

Length of Term License Withdrawal:

**Susp**-Not more than **3 yrs** **Rev** period is not specified in the statute.

Anti-Happy Hour Laws/Regulations:

**Yes** (Regulation) T04: 02S.0200<sup>3</sup>

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** Driver and passengers §§18B-401(a)<sup>4</sup> & 20-138.7<sup>5</sup>

Anti-Consumption Law (Yes/No):

**Yes** Driver and passengers §§18B-401(a)<sup>4</sup> & 20-138.7<sup>5</sup>

<sup>1</sup>I. If the court does not impose "active punishment," it must, nevertheless, impose the following sanctions: 1st off-\$250 fine and at least 25 hrs of community service; and, subsequent off (w/n 4 yrs)-\$500 fine and at least 150 hrs of community service. §18B-302A II. The following administrative fines may also be imposed on a permittee: 1st off-up to \$500; 2nd off-up to \$750; 3rd off-up to \$1,000. §18B-104

<sup>2</sup>In lieu of either suspension or revocation, the permittee may agree to pay a penalty of not more than \$5,000. §18B-104

<sup>3</sup>North Carolina Administrative Code

<sup>4</sup>This law provides that "[i]t shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine." §18B-401(a)

<sup>5</sup>This law provides that "[n]o person shall drive a motor vehicle on a highway or the right-of-way of a highway: (1) While there is an alcoholic beverage in the passenger area in other than the unopened manufacturer's original container and (2) While the driver is consuming alcohol or while alcohol remains in the driver's body." In addition, "[n]o person shall possess an alcoholic beverage other than in the unopened manufacturer's original container, or consume an alcoholic beverage, in the passenger area of a motor vehicle while the motor vehicle is on a highway or the right-of-way of a highway." §20-138.7(a) & (a1)

STATE:

**NORTH DAKOTA**

General Reference:

North Dakota Century Code Annotated

Basis for a DWI Charge:

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

Under the influence of intoxicating liquor<sup>1</sup> §39-08-01(1)(b)  
≥ **0.10**<sup>2,3</sup> §§39-08-01(1)(a) and 39-20-07(3) & (4)

**None**

Under the influence of (1) **Any Drug or Substance**, (2) Any Combination of Drugs or Substances and (3) a Combination of Intoxicating Liquor and Any Drug or Substance §39-08-01(1)(c) & (d)

Other:

A person is considered to be "under the influence of intoxicating liquor" if they have an alcohol concentration of at least 0.10 (if under, 21 yrs old, this level is at least 0.02)<sup>3,4</sup> §39-20-07(3)  
For Commercial Motor Vehicle Operators, see p. 3-361

Chemical Breath Tests for Alcohol Concentration:

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

**Yes**<sup>5</sup> §39-20-14

**Yes** §39-20-01

**Yes** §39-20-01

**Yes** (Criminal and Civil Cases) §39-20-08 & *State v. Murphy*, 527 N.W.2d 254 (N.D. 1995)<sup>6</sup>

Other Information:

In any accident in which there is either a death or a serious bodily injury and there is probable cause showing that a driver has committed any DWI offense, such driver may be compelled to submit to a chemical test. §39-20-01.1

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

Blood:  
Urine:  
Other:

**Yes** §39-20-01

**Yes** §39-20-01

**Saliva** §39-20-01

Adjudication of DWI Charges:

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

**No**

**No**

<sup>1</sup>The term "intoxicating liquor" means and includes any beverage containing alcohol. §39-01-01(28)

<sup>2</sup>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 or more.

<sup>3</sup>Alcohol concentration is described as percent by wgt. of alcohol in the blood. However, this is defined to mean either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine. §39-20-07(4)

<sup>4</sup>These alcohol concentrations must still be supported by physical evidence of intoxication. N.D. Atty. Gen. Opinion 98-01, 1/8/98

<sup>5</sup>Under §39-06.2-10.2(5), a CMV operator is deemed to have given consent to a PBT under §39-20-14.

<sup>6</sup>See also, *City of West Fargo v. Maring*, 458 N.W.2d 318 (N.D. 1990), and *State v. Murphy*, 516 N.W.2d 285 (N.D. 1994). If an arrested drunk driving offender has not been given their *Miranda* warnings, statements that they made refusing to submit to a chemical test cannot be admitted into evidence at trial. However, the fact that they refused to submit to such a test is admissible. *State v. Beaton*, 516 N.W.2d 645 (N.D. 1994), & *State v. Satrom*, 524 N.W.2d 92 (N.D. 1994)

**NORTH DAKOTA**

Adjudication of DWI Charges: (continued)

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

Yes Addiction evaluation mand-ALL offenders. §39-08-01(4)

Sanctions for Refusal to Submit to a  
Chemical Test:

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

No

Same as for Implied Consent Refusal §§39-20-04 & 39-20-14  
There are no sanctions if they submit to an implied consent test.  
**None**

Other:

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

None

1st refusal Rev-1 yr; 2nd refusal<sup>1</sup> (w/n 5 yrs) Rev-2 yrs; 3rd or  
sub refusal<sup>1</sup> (w/n 5 yrs) Rev-3 yrs These license revocations are  
mandatory; i.e., no temporary restricted license may be issued.  
§§39-06.1-11(2) & 39-20-04 There is no licensing action for a  
refusal if a person pleads guilty to a DWI offense. §39-20-04(2)  
**None**

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment:  
Term (Day, Month, Years, Etc.):

See Double Jeopardy below and Misc. Sanctions on p. 3-363.

1st off (Cl B Misd)-Not more than **30 dys**; 2nd off (w/n 5 yrs) (Cl  
B Misd)-Not more than **30 dys**<sup>2</sup>; 3rd (w/n 5 yrs) (Cl A Misd)-Not  
more than **1 yr**; 4th off (w/n 7 yrs) (Cl A Misd)-Not more than **1**  
yr; 5th and sub offs (w/n 7 yrs) (Cl C felony)<sup>3</sup>-Not more than **5**  
yrs §§12.1-32-01 and 39-08-01(2) & (4)

Mandatory Minimum Term:

1st off-No; 2nd off (w/n 5 yrs)-**5 dys** of which 48 hrs must be  
served cons<sup>2</sup>; 3rd off (w/n 5 yrs)-**60 dys** of which 48 hrs must  
served cons<sup>2</sup>; 4th or sub off (w/n 7 yrs)-**180 dys** of which 48 hrs  
must be served cons<sup>4</sup> §39-08-01(4) & *State v. Nelson*, 417  
N.W.2d 814 (N.D. 1987)

<sup>1</sup>Previous DWI convictions are also considered as prior refusals.

<sup>2</sup>"Imprisonment" includes house arrest w/ electronic home detention where the offender is prohibited from consuming alcoholic beverages.  
However, this requirement does not apply to persons under the control of the department of corrections and rehabilitation.  
§39-08-01

<sup>3</sup>If sentence is not more than 1 yr of imprisonment, the offense is considered a misdemeanor. §12.1-32-02(9)

<sup>4</sup>**Alternative Mandatory Sentence.** Ten (10) dys of mandatory imprisonment on the condition that the offender under go and complete  
drug/alcohol evaluation. Based on this evaluation, the court may place the offender on probation and require them to submit to treatment  
and rehabilitation. §39-08-01(4)(e)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative  
per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the  
constitutional prohibition against double jeopardy. *State v. Zimmerman*, 539 N.W.2d 49 (N.D. 1995), *State v. Kvislen*, 544 N.W.2d 876  
(N.D. 1996), *State v. Jacobson*, 545 N.W.2d 152 (N.D. 1996), *State v. Barth*, 545 N.W.2d 162 (N.D. 1996), & *State v. Storbakken*, 552  
N.W. 78 (N.D. 1996)

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

	<b>Special Note:</b> 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):	<u>1st off</u> -Not more than <b>\$1,000</b> ; <u>2nd off</u> (w/n 5 yrs)-Not more than <b>\$1,000</b> ; <u>3rd offs</u> (w/n 5 yrs)-Not more than <b>\$1,000</b> ; <u>4th off</u> -Not more than <b>\$1,000</b> ; <u>5th and sub offs</u> -Not more than <b>\$5,000</b> §12.1-32-01
Mandatory Min. Fine (\$):	1st off- <b>\$250</b> ; <u>2nd off</u> (w/n 5 yrs)- <b>\$500</b> ; <u>3rd off</u> (w/n 5 yrs) <b>\$1,000</b> ; <u>4th or sub off</u> (w/n 7 yrs)- <b>\$1,000</b> See Footnote Nos. 2 and 4 on p. 3-360.
Other Penalties:	
Community Service:	<u>2nd off</u> (w/n 5 yrs)- <b>30 dys</b> as an alternative to imprisonment (does not apply to other subsequent offenses)
Restitution (eg Victim's Fund)	<b>Yes</b> 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:	<b>Ignition Interlock.</b> The court or driver licensing agency may order a defendant to install an "ignition interlock" device on their veh. The requirement to use an "ignition interlock" device does not effect the mandatory license suspension periods noted on p. 3-362. Such a requirement appears to apply only to the issuance of temporary restricted driving privileges. §§39-06.1-11 & 39-08-01.3.

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they either (1) have a BAC/BrAC/UrAC  $\geq 0.04$  (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters or breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or drugs or (3) refuse to submit to a chemical test for an alcohol concentration. Note: The disqualification section, §39-06.2-10, appears to only apply to a refusal to submit a chemical test for an alcohol concentration; however, the CMV implied consent section, §39-06.2-10.2, applies to tests for either an alcohol concentration or for the presence of other drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). A person, who operates a CMV with any "measurable or detectable amount of alcohol" in their system, must be placed "out-of-service" for 24 hrs. Note: It appears to be an infraction to operate a CMV with an alcohol concentration  $\geq 0.04$ . A person, who is convicted of committing an infraction, is subject to a fine of not more than \$500. However, under the criminal code, if they have been convicted of a prior infraction w/n 1 yr of the present offense, they may be convicted of a Cl B misd. The sanctions for this misd are an imprisonment term of not more than 30 dys and/or a fine of not more than \$1,000. §12.1-32-01(7), 39-06.2-02, 39-06.2-10, 39-06.2-10.1, 39-06.2-10.2, 39-06.2-10.9 & 39-07-06 and N.D. Admin. Code 37-10-01-01

**NORTH DAKOTA**

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

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

See Double Jeopardy on p. 3-360.

**Yes** (1)  $\geq 0.10$  or (2) Persons Under 21 Years Old  $\geq 0.02$  (BAC/BrAC/UrAC For standards, see Footnote No. 3 on p. 3-359.) §§39-06.1-11(2), 39-20-03.1, 39-20-04.1 & 39-20-07 1st off-91 dy susp (30 dys mand: A restricted lic. may be issued after this mand period.); 2nd off<sup>1</sup> (w/n 5 yrs)-**365 dy susp** (mand); 3rd and sub off<sup>1</sup> (w/n 5 yrs)-**2 yr susp** (mand)

Other:

**None**

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

See Persons Under 18 Years Old below.

See Alcohol Education/Treatment below.

1st off-Susp; 2nd off (w/n 5 yrs)- **Susp**; 3rd and sub off (w/n 5 yrs)-**Susp** §39-06.1-10 Note: For a 4th or subsequent offense (w/n 7 yrs), see II under Alcohol Treatment below.

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

1st off-91 dys; 2nd off (w/n 5 yrs)-**365 dys**; 3rd and sub off (w/n 5 yrs)-**2 yrs**

Mandatory Minimum Term of  
Withdrawal:

1st off-30 dys (A temporary license may be issued after the 30 dy mandatory period. §39-06.1-11(2)); 2nd off (w/n 5 yrs)- **365 dys**; 3rd and sub off (w/n 5 yrs)-**2 yrs** §§39-06.1-10(3.1) & 39-06.1-11

Note: No restricted licenses can be issued in cases where there has been a serious injury related to a DWI offense. §§39-06-31 & 39-06.1-11(2)

Other:  
Rehabilitation:  
Alcohol Education:  
Alcohol Treatment:

See Alcohol Treatment below.

**Yes I.** For a 1st, 2nd and 3rd DWI off conviction, the defendant must be referred to an alcohol rehabilitation facility for addiction evaluation. Following the evaluation, the court may require the defendant to complete an alcohol education or treatment program. §39-08-01(4) A defendant's license cannot be restored until they furnish a written statement from an approved treatment program either that they do not need alcohol education/treatment or that they have complied with the "attendance rules" of such program. §39-06.1-10(3.1)(a)

**II.** For a 4th or subsequent offense (w/n 7 yrs), a defendant must complete an addiction treatment program and have no alcohol or drug related offense convictions w/n 2 consecutive years before their driving privileges can be restored. §39-06.1-10(3.1)(b)

<sup>1</sup>A previous violation also includes a previous DWI offense conviction or previous implied consent refusal.

**Persons Under 18 Years Old.** A person under 18 yrs old, who commits a drunk driving offense, must have their driving privileges canceled. Such a person is considered to never to have had a license and, after any period of suspension or revocation, they may apply for and be issued an instructional permit. Such individuals must complete certain State required classroom and behind-the-wheel instruction and satisfy all other requirements for licensing prior to being issued a driver's license. §§14-10-01 & 39-06-01.1

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

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

**Forfeiture (Not Mandatory).** For a 2nd or subsequent DWI offense conviction (w/n 5 yrs), a defendant's vehicle may be subject to forfeiture. §39-08-01.3

Terms Upon Which Vehicle  
Will Be Released:  
Other:

**Impoundment.** License plates may be impounded following a conviction for an alcohol driving off. The period of impoundment is for the same period of time as the defendant's license susp. period. §39-08-01(3)

Miscellaneous Sanctions  
Not Included Elsewhere:

**Mandatory Sanctions DWI Injury/Death.** Mandatory imprisonment sanctions apply if either a death or a serious injury is DWI related. If a person is convicted of a homicide which is related to DWI (e.g., manslaughter (§12.1-16-02) or negligent homicide (§12.1-16-03)), there is a mandatory penalty of **1 yr.** imprisonment. If a person is convicted of DWI where there is a serious injury caused by the defendant, there is a mandatory penalty of **90 dys** imprisonment. §§39-06-31(1) & 39-08-01.2

**Child Endangerment.** It is a CI A misd (imprisonment term for not more than 1 yr and/or a fine of not more than \$1,000) for a person ≥21 yrs old to commit a DWI offense while transporting a "minor". §§12.1-32-1 & 39-08-01.4 Note: The term "minor" is not defined in the motor vehicle law (Title 39). However, North Dakota law usually defines a "minor" as any person under 18 yrs old (e.g., §14-10-01).

**Exemplary Damages.** A person, who while operating a motor vehicle, injures another person, either (1) while their BAC was >0.10, (2) they were under the influence of a controlled substance (except in cases where the substance was legally prescribed), (3) they were under the influence of alcohol and they refused to submit to a chemical test under the implied consent law, or (4) they were under the influence of a volatile chemical as list in §12.1-31-06, may be liable for "exemplary damages". §32-03.2-11

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**No** See the Special Note note above under Miscellaneous Sanctions for DWI offenses.

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):  
Mandatory Minimum Term:  
Fine (\$ Range):  
Mandatory Minimum Fine:

**NORTH DAKOTA**

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

**Special Note:** Even though this State does not have a veh homicide statute, it, nevertheless, provides for mandatory license rev from 30 dys to 1 yr for a conviction of manslaughter resulting from the operation of a motor veh. §39-06-31(1)

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

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

See The Special Note below.

Sanction:  
Criminal:  
Imprisonment (Term):

1st offense, 2nd offense (w/n 5 yrs) & 3rd offense (w/n 5 yrs)-CI B Misd Not more than **30 dys** Subsequent offense (w/n 5 yrs)-CI A Misd Not more than **1 year** §§12.1-32-01(5) & (6) and 39-06-42

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

**4 con dys** §§39-06-42(2) & 39-08-01  
1st offense, 2nd offense (w/n 5 yrs) & 3rd offense (w/n 5 yrs)-Not more than \$1,000 Subsequent offense (w/n 5 yrs)-CI A Misd Not more than **\$1,000** §12.1-32-01(5) & (6)  
**None**

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

I. For driving while license is suspended. The lic. suspension is extended for an additional period as follows: 1st off-at least 6 mos (90 dys if the original lic. susp was not DWI related); 2nd off (w/n 3 yrs)-**at least 6 mos**; 3rd and sub. off (w/n 3 yrs)-**1 yr** §39-06-43 II. For driving while license is revoked. The license revocation is extended for and additional period of **1 yr.** §39-06-43 Note: Special licensing actions apply for a violation of the conditions of a restricted license. 39-06.1-11, 39-06-43 & 39-08-01

**License Plate Impoundment.** Under §39-06-42(3), license plates may also be impounded for the duration of the driver's license susp/rev.

Length of Term of License  
Withdrawal Action:  
Mandatory Term of License  
Withdrawal Action:

See above.  
See above.

**Special Note:** It appears to be an infraction to operate a CMV during a CDL disqualification. Although the law is not clear, it may also be and infraction to operate a CMV while in violation of a CDL out-of-service order as prescribed by State regulations. A person, who is convicted of committing an infraction, is subject to a fine of not more than \$500. However, under the criminal code, if they have been convicted of a prior infraction w/n 1 yr of the present offense, they may be convicted of a CI B misd. The sanctions for this misd are an imprisonment term of not more than 30 dys and/or a fine of not more than \$500. §§12.1-32-01(7), 39-06.2-06(2), 39-06.2-10.9 & 39-07-06

Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:  
 State Has Such a Law (Yes/No): **No**  
 Grounds for Being Declared an  
 Habitual offender:  
 Term of License Rev While  
 Under Habitual Offender Status:  
 Type of Criminal Offense if  
 Convicted on Charges of  
 Driving While on Habitual  
 Offender Status  
 Sanctions Following a Conviction of  
 Driving While on Habitual Offender  
 Status:  
 Imprisonment (Term):  
 Mandatory Minimum Term of  
 Imprisonment:  
 Fine (\$ Range):  
 Mandatory Minimum Fine (\$):  
 Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on  
 Persons Killed in Traffic

Accidents:  
 State Has Such a Law (Yes/No): **Yes §39-20-13**  
 BAC Chemical Test Is Given to the  
 the Following Persons:  
     Driver: **Yes**  
     Vehicle Passengers: **Yes**  
     Pedestrian: **Yes**

Laws Establishing the Minimum Ages  
 Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** (Year Eff: 1936) §§5-01-08, 5-01-09, 5-02-01.1(2)(d) &  
 5-02-06  
 Minimum Age (Years) Possession: **21<sup>1&2</sup>** §5-01-08  
 Minimum Age (Years) Consumption: **21<sup>2</sup>** §5-01-08

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes §5-01-06.1 **Special Note:** The law prohibits an adult  
 passenger, who is injured while riding with an intoxicated driver,  
 from bringing a dram shop cause of action.**

"Dram Shop Law" Concept Has Been  
 Adopted Via a Change to the Common  
 Law Rule by Action of the Highest  
 Court of Record in the State (Case  
 Citation): **No**

<sup>1</sup>There is any employment exemption for persons who are 19-20 years old. §5-02-06.

<sup>2</sup>There is an exception when an "under age" person is accompanied by a parent or legal guardian. §5-01-08

**NORTH DAKOTA**

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:	<b>Yes<sup>1</sup></b> §5-01-06.1
Other:	<b>None</b>
 <u>Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
Type of Criminal Action:	Cl A Misd §5-01-09
Term of Imprisonment:	Not more than <b>1 yr</b> §12.1-32-01
Fine (\$ Range):	Not more than <b>\$1,000</b> §12.1-32-01
 <u>Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	<b>Yes Rev/susp</b> §§5-02-10 and 5-02-11
Length of Term of License Withdrawal:	Time period is not specified in the statute. §5-02-11
 <u>Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:</u>	
Type of Criminal Action:	Cl A Misd §§5-01-09 & 5-02-06
Term of Imprisonment:	Not more than <b>1 yr</b> §12.1-32-01
Fine (\$ Range):	Not more than <b>\$1,000</b> §12.1-32-01
 <u>Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	<b>Yes Rev/susp</b> §§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:	<b>No</b>
 <u>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:</u>	
Open Container Law (Yes/No):	<b>Yes</b> §39-08-18
Anti-Consumption Law (Yes/No):	<b>Yes</b> 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."

<sup>1</sup>*Olson v. Griggs County*, 491 N.W.2d 725 (N.D. 1992), & *Born v. Mayers*, 514 N.W.2d 687 (N.D. 1994)

STATE:  
General Reference:

**OHIO**  
Ohio Revised Code Annotated

Basis for a DWI Charge:

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

Under the influence of alcohol §4511.19(A)(1)  
I.  $\geq 0.10$  but  $< 0.17$ <sup>1&2</sup> §4511.19(A)(2), (3) & (4)  
II.  $\geq 0.17$ <sup>1&3</sup> §4511.19(A)(5), (6) & (7)

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

Persons Under 21 Years Old  $\geq 0.02$  but  $< 0.10$ <sup>1&4</sup> §4511.19(B)  
**None**  
Under the influence of (1) a **Drug Abuse** or (2) a Combination of Alcohol and a Drug of Abuse §4511.19(A)(1)

Other:

For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

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

**No**  
**Yes** §4511.191(A)  
**Yes** §4511.191(A)  
**Yes** §4511.191(A)

Other Information:

**Yes** (Criminal Cases) *City of Westerville v. Cunningham*, 239 N.E.2d 40 (Ohio 1968), & *Maumee v. Anistic*, 632 N.E.2d 497 (Ohio 1994)  
A conscious person cannot have a blood sample withdrawn via force for testing. *State v. Lampman*, 612 N.E.2d 779 (OhioApp. 1992)

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

Blood:  
Urine:  
Other:

**Yes** §4511.191(A)  
**Yes** §4511.191(A)  
Probably **No** "Other bodily" substance is applicable to §4511.19 but is not mentioned in the implied consent statute (§4511.191).

<sup>1</sup>Alcohol concentration standards are (1) percent by weight of alcohol in the blood, (2) grams of alcohol per 210 liters of breath or (3) grams of alcohol per 100 milliliters of urine. §§4511.19(A) & (B) and 4511.191(F)

<sup>2</sup>Also, (1) for a breath alc. concentration which is  $\geq 0.10$  but  $< 0.17$  or (2) for a urine alc. concentration which is  $\geq 0.14$  but  $< 0.238$ .

<sup>3</sup>Also, (1) for a breath alc. concentration which is  $> 0.17$  or (2) for a urine alc. concentration which is  $\geq 0.238$ .

<sup>4</sup>Under §4511.19(B), a person under 21 years old shall not operate a vehicle with an alcohol concentration of  $\geq 0.02$  up to 0.10 for blood or breath and  $\geq 0.028$  up to 0.14 for urine.

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 100 milliliters of urine.)  $\geq 0.04$ , (2) are under the influence of a controlled substance, (3) refuse to submit to a chemical test for the presence of either alcohol or controlled substances or (4) violate an "out-of-service" order. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (or for any other period as specified by Federal regulations) (mand). A violation of any of these items appears to be a 1st Degree misd; the sanctions for such a misd are an imprisonment for not more than 6 mos and/or a fine of not more than \$1,000. In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol or a controlled substance in their system must be placed "out-of-service" for 24 hours. **Special Note:** Under separate provisions of law, no person shall operate a CMV while their alertness is impaired; such impairment includes the use of any drug which would adversely affect such alertness or ability to operate a CMV. The sanctions for violating this prohibition are for a 1st offense (minor misd) a fine of not more than \$100 and for a 2nd offense (4th Degree misd) jail for not more than 30 dys and/or a fine of not more than \$250. §§2929.21, 4506.01(A), (E), (G), (H) & (V), 4506.15, 4506.16(A) & (B), 4506.17(A), 4511.79 and 4511.99(C)

**OHIO**

Adjudication of DWI Charges

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

Sanctions for Refusal to Submit to a  
Chemical Test:

Refusal to Take a Preliminary Breath Test:  
Criminal Sanctions (Fine/Jail): N/A  
Administrative Licensing Action  
(Susp/Rev): 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) Except as  
noted, occupational driving privileges may be granted after the  
mandatory period of lic. susp has passed. **Caution:** Occupational  
driving privileges cannot be granted if the driver has had 3 prior  
refusals w/n 7 yrs or 3 or more drunk driving or vehicle homicide  
offense convictions w/n 7 yrs. §4511.191(E), (I) & (K)  
**Special Note:** I. A susp for a refusal will not terminated if the driver is  
found "not guilty" of the related DWI offense. II. However, such susp  
will terminate if the person is either found guilty of or pleads guilty to a  
related DWI offense. §4511.191(H)(2) & (K)

Other: See the Special Note on p. 3-370 and Footnote No. 1 on p. 3-371.

Sanctions Following a Conviction for a DWI Offense\*:

Criminal Sanctions: See Aggravated Vehicle Assault and Double Jeopardy below.

Imprisonment:  
Term (Day, Month, Years,  
Etc.): 1st off & 2nd off (w/n 6 yrs)<sup>1</sup>(1st Degree misd)-Not more than **6 mos**;  
3rd off (w/n 6 yrs)(misd)<sup>1&2</sup>-Not more than **1 yr**; 4th off (w/n 6 yrs)(4th  
Degree felony)<sup>1</sup>-**6 to 30 mos**; sub offs (w/n any time period)(3rd  
Degree felony)<sup>1</sup>-**1 to 5 yrs** §§2929.14, 2929.16, 2929.18(B)(3),  
2929.19(C), 2929.21 & 4511.99(A)

<sup>1</sup>For sanction enhancement purposes, a previous offense also includes either a conviction for a vehicle homicide offense where alcohol or drugs were a factor or a violation of §4511.19(B) (persons under 21 years old who operate a motor vehicle with a BAC ≥0.02).

<sup>2</sup>A crime is classified as a misdemeanor if the imprisonment sanction is not more than 1 yr. §2901.02(F)

\*Unless specifically noted, the criminal and administrative sanctions given apply to **ALL** of the various types of drunk driving offenses.

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

Mandatory Minimum Term:

Offense for Persons Under 21 Years Old (>0.02 but <0.10). 1st off (4th Degree misd)-Not more than **30 dys**; 2nd off (w/n 1 yr) (3rd Degree misd)-Not more than **60 dys** §§2929.21, 4511.19(B) & 4511.99(N)(1)

I. 1st off-3 con dys<sup>1&2</sup> (Note: 3 con dys is defined as 72 con hrs.) §4511.991; 2nd off (w/n 6 yrs)-**10 con dys**<sup>2</sup> (Alternative: 5 con dys in jail and not less than 18 con dys "house arrest" with electronic monitoring<sup>3</sup>); 3rd off (w/n 6 yrs)-**30 con dys**<sup>2</sup> (Alternative: 15 con dys in jail and not less than 55 con dys "house arrest" with electronic monitoring<sup>3</sup>); sub offs (w/n 6 yrs)-**60 con dys**<sup>4</sup>

II. For illegal per se offenses with a **BAC ≥ 0.17**: 1st off-3 con dys in jail w/ 3 con dys of a driver's intervention program or 6 con dys in jail; 2nd off (w/n 6 yrs)-**20 con dys** (Alternative: 10 con dys in jail and not less than 36 con dys "house arrest" with electronic monitoring<sup>3</sup>); 3rd off (w/n 6 yrs)-**60 con dys** (Alternative: 30 con dys in jail and not less than 110 con dys "house arrest" with electronic monitoring<sup>3</sup>); sub offs (w/n any time period)-**120 con dys**

**Important:** See "I" under Alcohol Treatment on p. 3-372.

Offense for Persons Under 21 Years Old (>0.02 but <0.10). **None**

Fine:

Amount (\$ Range):

1st off-\$250 to \$1,000; 2nd off (w/n 6 yrs)-**\$350 to \$1,500**; 3rd off (w/n 6 yrs)-**\$550 to \$2,500**; sub offs-\$800 to \$10,000

Offense for Persons Under 21 Years Old (≥0.02 but <0.10). 1st off - Not more than **\$250**; 2nd off (w/n 1 yr)-Not more than **\$500**

<sup>1</sup>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.

<sup>2</sup>For a 1st, 2nd or 3rd off, a defendant may be given work release following the mandatory jail sentence. §4511.99(A)(5)(a) & (b)

<sup>3</sup>This alternative is imposed only when their are overcrowded jail conditions which prohibit the offender from commencing their term of imprisonment within 60 dys of sentencing. §4511.99(A)(12)

<sup>4</sup>**Special Conditions for DWI Felony Offenses.** I. For a first DWI felony offense, the 60 con dys must be served in a local incarceration facility (e.g., jail, a community based correctional facility, a halfway house, or other alternative residential facility). In addition, after the mand incarceration period is served, the offender may be placed in either community control probation or the electronic monitoring program. II. For a subsequent DWI felony offense, the 60 con dys must be served in State prison and such person is not eligible to participate in the electronic monitoring program. §§2929.13(G), 2929.15(A), 2929.17 & 2929.23(3)(d)

**Aggravated Vehicle Assault.** A person commits "Aggravated Vehicle Assault" if they cause serious injury to another person while operating a motor vehicle (e.g., DWI). 1st off (4th Degree felony): Jail-18 mos to 5 yrs; fine-not more than \$2,500; subsequent off (or a 1st off where the defendant has previously been convicted of a vehicle homicide offense) (3rd Degree felony): Jail-2 to 10 yrs; fine-not more than \$5,000. §§2903.08 & 2929.11 Note: "Shock probation" is not available for persons who are repeat offenders or who have a prior DWI or vehicle homicide offense conviction. §2903.08(C) At arraignment, the court may suspend a defendant's license until the matter is adjudicated on the merits if the court determines that the defendant's continued driving will be a treat to public safety. §2903.07(D)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Gustafson*, 668 N.E.2d 435 (Ohio 1996), & *Herbert v. Billy*, 160 F.3d 1131 (6th Cir. 1998)

## OHIO

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

Mandatory Min. Fine (\$):	<u>1st off-\$250; 2nd off (w/n 6 yrs)-\$350; 3rd off (w/n 6 yrs)-\$550; sub offs-\$800</u> See Footnote No. 1. <u>Offense for Persons Under 21 Years Old (<math>\geq 0.02</math> but <math>&lt; 0.10</math>). None</u>
Other Penalties:	
Community Service:	<b>Possible</b> 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)	<b>Yes</b> (1) A victim may receive payment only for property damage directly from a defendant. §2929.21(E) & <i>State v. Theuring</i> , 546 N.E.2d 436 (OhioApp. 1988). (2) A victim is also eligible for reparations from the State. §2743.51 et seq.
Other:	<b>Driver's Intervention Program.</b> §3720.66 <b>Ignition Interlock.</b> As a condition of probation by the court. <sup>2</sup> §§2951.02(I), 4507.16(C), 4511.83 & 4511.99(L) <b>Fine In Lieu of Vehicle Forfeiture.</b> See Footnote No. 2 on p. 3-372.
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	See Double Jeopardy on p. 3-369 and the Special Note below.
Administrative Per Se Law:	$\geq 0.10$ BAC/BrAC or $\geq 0.14$ UrAC (For standards, see Footnote No. 1 on p. 3-367.) (1) <b>Susp-90 dys</b> (15 dys mand) if the offender has no prior DWI, vehicle homicide or vehicle assault convictions. (2) <b>Susp-1 yr</b> (30 dys mand) if the offender has one prior DWI, vehicle homicide or vehicle assault conviction w/n 6 yrs. (3) <b>Susp-2 yrs</b> (180 dys mand) if the offender has two prior DWI, vehicle homicide or vehicle assault conviction w/n 6 yrs. (4) <b>Susp-3 yr</b> (mand) if the offender has three or more prior DWI, vehicle homicide or vehicle assault conviction w/n 6 yrs. Occupational licenses may be issued after the above mandatory suspension periods. Administrative license suspensions are to be "offset" by any license suspension imposed as a result of a DWI offense conviction. <b>Caution:</b> Occupational driving privileges <u>cannot</u> be granted if the driver has had 3 or more drunk driving or vehicle homicide offense convictions w/n 7 yrs.

<sup>1</sup>Ref: *State v. Cichy*, 480 N.W.2d 90 (Ohio App. 1984).

<sup>2</sup>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:** I. Usually, following a DWI arrest where there has been either a refusal to submit to a chemical test or where the test indicated an illegal alcohol concentration level (administrative per se), an offender's license is immediately suspended until the initial court appearance which must take place within 5 dys after the arrest. §§4511.191(D) & 4511.196 Important. The Ohio Supreme Court has held that the immediate suspension of a license by a law enforcement officer does not violate Federal or State constitutional provisions concerning due process of law. *State v. Hochhauster*, 668 N.E.2d 457 (Ohio 1996) However, in this same case, the court held that those provisions of the administrative per se law that prohibit the courts from granting a stay of license suspension violated constitutional principles of separation of powers. II. If an offender's license has not been suspended either for a refusal or under the administrative per se provisions, the court may impose a license suspension where the offender would pose a "threat to the public safety". §4511.196(B) III. Notwithstanding the fact that a court may on appeal terminate a license suspension based either on a refusal or under the administrative per se provisions, it may still impose a license suspension where the offender would pose a "threat to the public safety". §4511.196(B)

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

Other:	<p><b>Ignition Interlock.</b> For (1) and (2), a person <u>may</u> be required to use "ignition interlock" devices when operating a vehicle on an occupational license. For (3) and (4), a person <u>must</u> use these devices when driving on an occupational license.</p> <p><u>Note:</u> A susp for an administrative per se violation <u>will</u> terminate if the person is either (1) found "not guilty" of or (2) pleads "guilty" to a related DWI offense.</p> <p>§§4507.16 and 4511.191(F), (H)(2), (I)(4) &amp; (K)</p> <p><b>None</b></p>
<u>Post DWI Conviction</u> Licensing Action: Type of Licensing Action (Susp/Rev):	<p>See Point System below.</p> <p><u>1st off-Susp; 2nd off (w/n 6 yrs)-Susp; 3rd off (w/n 6 yrs)-Susp; sub offs (w/n 6 yrs)-Susp/Rev DWI Related Aggravated Vehicle Assault-Rev §§2903.08 &amp; 4507.16(B) See the Special Note below. Offense for Persons Under 21 Years Old (≥0.02 but &lt;0.10)-Susp §§4507.16(E), (G) &amp;(I)</u></p>
Term of License Withdrawal (Days, Months, Years, etc.):	<p><u>1st off 6 mos to 3 yrs; 2nd off (w/n 6 yrs)-1 to 5 yrs; 3rd off (w/n 6 yrs)-1 to 10 yrs; sub offs (w/n 6 yrs)-Susp for not less than 3 yrs or Permanent Revocation See Footnote No. 1. DWI Related Aggravated Vehicle Assault-Permanent Revocation Offense for Persons Under 21 Years Old (≥0.02 but &lt;0.10)-60 dys to 2 yrs §§4507.16(E), (G) &amp;(I)</u></p>
Mandatory Minimum Term of Withdrawal:	<p><u>1st off-15 dys<sup>2</sup>; 2nd off (w/n 6 yrs)-30 dys<sup>2</sup>; 3rd off (w/n 6 yrs)-180 dys<sup>2</sup>; sub offs (w/n 6 yrs)-3 yrs<sup>2</sup> §4507.16(F) &amp; (L) After these mandatory minimum susp periods, occupational driving privileges may be granted. <b>Caution:</b> Occupational driving privileges <u>cannot</u> be granted if the driver has had 3 or more drunk driving or vehicle homicide offense convictions w/n 7 yrs. See Footnote No. 1. §4507.16(F) &amp; (G) DWI Related Aggravated Vehicle Assault-Permanent Revocation Offense for Persons Under 21 Years Old (≥0.02 but &lt;0.10)-60 dys</u></p>

<sup>1</sup>**Persons Under 18 Years Old.** I. Persons <18 yrs old, who violated any provision of the DWI law (§4511.19), have their license suspended for 6 mos (appears mand). §4507.162(A) I.e., this suspension also applies to persons <18 yrs old who violate §4511.19(B) by driving with a BAC/BrAC ≥0.02 (UrAC ≥0.028) but <0.10 (UrAC <0.14). II. Persons <18 yrs old, who commit 3 or a combination of 3 violations as specified in §4507.162 w/n 2 yrs, have their license suspended for 1 yr (appears mand). These violations include refusal to submit to a chemical test, admin. per se and driving while suspended or revoked. §4507.162(A).

<sup>2</sup>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. 2 on p. 3-370. §4511.16(F) & (L)

**Point System.** A license may be suspended via a point system under §4507.021(D), (G)(11) & (K). In brief, under this section a DWI conviction results in an assessment of 6 points. If a driver accumulates 12 or more points from traffic violations within a 2 yr period, their license may be suspended for 6 mos. Also, 4 points are assessed for a 0.02 offense for persons under 21 years old.

**Special Note:** I. Under §4507.1610, the court is authorized to suspend a license for a violation of a municipal DWI ordinance which is substantial similar to State law. However, the suspension period cannot exceed that imposed under State law. II. The licensing agency can also suspend an offender's license for 6 mos. An occupational license is available after the person has served the same mandatory license suspension periods noted above. §4507.169(B) & (E)

**OHIO**

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

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

**Yes** I. A person, (1) who has been charged with a misdemeanor offense, (2) who has been determined by the court to be either an alcoholic or a person suffering from acute alcohol intoxication and (3) who would benefit from an alcohol or drug treatment program, may, in lieu of imprisonment, be placed in such a program under close supervision. However, a regular DWI offender, a §4511.19(A) offender, must be confined in a treatment facility for at least 3 dys. §2935.33(B)

**Special Note:** The State supreme court has held that this alternate confinement of 3 dys in lieu of jail per this program **only** applies to 1st but **NOT** to subsequent offenders. *State v. Johnson*, 491 N.E.2d 1138 (Ohio 1986)

II. For 2nd offs, the court may require a defendant to attend a treatment program. For 3rd and sub. offs, the court shall require the defendant to attend a treatment program. §4511.99(A)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

**Important.** See the Special Note below. 2nd off (w/n 6 yrs)-**Immobilization** of and **impoundment** of the license plates of the vehicle used in the offense for 90 dys; 3rd off (w/n 6 yrs)-**Criminal Forfeiture** of the vehicle used in the offense; Sub. off (w/n 6 yrs)-**Criminal Forfeiture** of the vehicle used in the offense §§4507.164, 4511.195 & 4511.99 See Footnote Nos. 2, 3 & 4.

Terms Upon Which Vehicle

Will Be Released:

Other:

4th or subsequent offense, motor vehicle registration prohibited for 5 yrs. §§4503.234(E) & 4507.021(C)(3)

Miscellaneous Sanctions

Not Included Elsewhere:

A person under 18 yrs old, who violates the regular DWI law, §4511.19(A), may be assigned to temporary custody of not more than 5 dys either (1) to a detention home, (2) to another similar institution for children or (3) to a school camp. §2151.356(A)(6)

<sup>1</sup>Even though the occupation licenses can be granted as indicated, under §4507.16(I), the court cannot suspend (1) the first 90 days of the license suspension period for a 1st off, (2) the first year of the license suspension period for a 2nd off, (3) the first year of the license suspension period for a 3rd off and (4) the first 3 years of the license suspension for a 4th or subsequent offense.

<sup>2</sup>A non-driver owner of the vehicle may avoid the forfeiture sanction if they can prove by a preponderance of the evidence that they neither knew or should have known that an offense was or would be committed. §4503.234(C)(3) If the vehicle is not subject to forfeiture due to this provision and the vehicle's registration has been either been assigned or transferred, the defendant may be required to pay a fine which is equal to the value of the vehicle. §§4503.234 & 4511.99(A)(4)(b)

<sup>3</sup>The court has discretionary authority to prohibit the defendant from either registering a vehicle or renewing or transferring the registration of any vehicle owned by a person who has been convicted of an offense that requires driver's license suspension or revocation. §4507.16(A)(2)

<sup>4</sup>**Important.** A vehicle, that is subject to immobilization/license plate impoundment, may be operated with special license plates. §§4507.02(F)(2) & 4507.164(F)

**Special Note:** The Ohio Supreme Court has held that the law providing for vehicle seizure and immobilization, without a prior hearing, violates U.S. Constitutional provisions concerning due process of law when it is applied against vehicle owners who were not operating the vehicle at the time of the drunk driving offense. *State v. Hochhauser*, 668 N.E.2d 457 (Ohio 1996)

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

Miscellaneous Sanctions

Not Included Elsewhere: (continued)

**Child Endangerment.** It is separate offense to operate a motor vehicle in violation of the drunk driving laws while carrying a passenger who is under 18 yrs old. 1st off (1st Degree misd)-imprisonment for not more than 6 mos and/or a fine of not more than \$1,000; 1st where there has been serious physical harm to the child or subsequent off (5th Degree felony)-imprisonment from 6 to 12 mos and/or a fine of not more than \$2,500; subsequent child endangerment off where there has been serious physical harm to the child or where there has been serious physical harm to the child and the driver has a prior drunk driving offense conviction (4th Degree felony)-imprisonment from 6 to 18 mos and/or a fine of not more than \$5,000 In addition to the above, offenders are subject to not more than 200 hrs of community service, which is not in lieu of community service that may be imposed via probation, and license suspension for 90 dys, which is consecutive to any other licensing action. §§2919.22, 2929.14, 2929.18 & 2929.21  
**Confinement Costs.** In some counties, offenders may have to pay the costs of confinement (workhouses). §§2929.223 & 2947.19

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

See the Special Note below.

**Yes** (1) Aggravated (Reckless) Vehicle Homicide-Felony §2903.06;  
(2) Vehicle Homicide (Negligence)-1st off-Misd; sub. off or driving while susp/rev-Felony §2903.07

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):(1)

Aggravated (Reckless) Vehicle Homicide: 1st off (aggravated Felony 3rd degree)-**1 to 5 yrs; sub. off<sup>1</sup>** (aggravated Felony 2nd degree)-**2 to 8 yrs;** (2) Vehicle Homicide (Negligence): 1st off (Misd 1st degree)-not more than **6 mos;** sub. off<sup>1</sup> or driving while susp/rev (Felony 4th degree)-**6 to 18 mos** §§2929.14 & 2929.21 See Footnote No. 2.

Mandatory  
Minimum Term:  
Fine (\$ Range):

See Footnote No. 2.

(1) Aggravated (Reckless) Vehicle Homicide: 1st off (aggravated Felony 3rd degree)-**not more than \$10,000;** sub. off<sup>1</sup> (aggravated Felony 2nd degree)-**not more than \$15,000;** (2) Vehicle Homicide (Negligence): 1st off (Misd 1st degree)-**not more than \$1,000;** sub. off<sup>1</sup> or driving while susp/rev (Felony 4th degree)-**not more than \$5,000** §§2929.18 & 2929.21

Mandatory Minimum Fine:

See Footnote No. 2.

<sup>1</sup>A previous offense includes either a §2903.06 or a §2903.07 offense.

<sup>2</sup>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)

**Special Note:** "Involuntary manslaughter" (death as a result of committing a felony or misdemeanor) may include DWI as an element of the offense. §2903.04 If the death is felony related, the offense is an aggravated felony 1st degree (Jail-3 to 10 yrs; fine-not more than \$20,000). If the death is misdemeanor related, the offense is an aggravated felony 3rd degree (Jail-1 to 5 yrs; fine-not more than \$10,000). §§2929.14 & 2929.18

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

For either Aggravated (Reckless) Vehicle Homicide or Vehicle Homicide (Negligence)-**Susp or rev** §§2903.06(B), 2903.07(B), 4507.16(A), 4507.16(D), 4507.34 & *City of Columbus v. Tyson*, 484 N.E.2d 155 (Ohio App. 1983) See the Special Note on p. 3-371.

Length of Term of  
Licensing Withdrawal:

For either Aggravated (Reckless) Vehicle Homicide or Vehicle Homicide (Negligence)-**susp-30 dys to 3 yrs** or rev-not more than **1 yr**  
For either offense, if alcohol or drugs were involved, the driver's license is **permanently revoked**. §4507.16(D) There is also **permanent license revocation** if a person has been convicted of "Involuntary Manslaughter" where DWI is an element of the offense. §2903.04(D)(1)(a)

Mandatory Action--Minimum  
Length of License  
Withdrawal:

For either Aggravated (Reckless) Vehicle Homicide or Vehicle Homicide-**susp-30 dys** §4507.16(G) For either offense, if alcohol or drugs were involved, the driver's license is **permanently revoked**. §4507.16(D) There is also **permanent license revocation** if a person has been convicted of "Involuntary Manslaughter" where DWI is an element of the offense. §2903.04(D)(1)(a)

Other:

For either vehicle homicide offense, 6 points are assessed against a driver's record. §4507.021(G)(3) A driver's license may be suspended for 6 mos if a person has accumulated 12 points w/n a 2 year period.  
**License Plate Impoundment.** A vehicle's license plates may be impounded if the owner thereof has had their driver's license either suspended or revoked for any death related vehicle offenses. §4507.164(A) See Footnote No. 3 on p. 3-372.  
**Suspension at Arraignment.** At the arraignment hearing for any vehicle homicide offense, the court may suspend a defendant's license until the matter is adjudicated on the merits if the court determines that the defendant's continued driving will be a treat to public safety. §2903.07(D)

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

See Footnote No. 1 and the Special Note below.

Sanction:  
Criminal:  
Imprisonment (Term):

1st Off (1st Degree misd)-not more than **6 mos**; 2nd Off (w/n 5 yrs) (misd)-**10 con dys to 1 yr**; 3rd & sub. Off (w/n 5 yrs) (misd)-**30 con dys to 1 yr** §§2929.21, 4507.02(D)(2) & 4507.99(B)

<sup>1</sup>Driving while suspended for an implied consent law violation (refusal)-1st Degree misd: Imprisonment-not more than 6 mos ; fine-not more than \$1,000 ; and license revocation-not more than 1 year §§2929.21(B)(1) & (C)(1), 4511.192 and 4511.99(B)

**Special Note:** It is a 1st Degree misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 6 mos and/or a fine of not more than \$1,000. In addition, if the offense concerned CDL operation while under an out-of-service order, the offender is subject to a CDL disqualification; see DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL) on p. 3-367. §§2929.21(B)(1) & (C)(1), 4506.04(A)(2) and 4506.99(A)

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	<u>1st Off-3 con dys</u> (Alternative: 30 con dys of "house arrest" with electronic monitoring. <sup>1</sup> ); <u>2nd Off</u> (w/n 5 yrs)- <b>10 con dys</b> (Alternative: 90 con dys of "house arrest" with electronic monitoring. <sup>1</sup> ); <u>3rd &amp; sub. Off</u> (w/n 5 yrs)- <b>30 con dys</b>
Fine (\$ Range):	<u>1st Off-\$250 to \$1,000</u> ; <u>2nd Off</u> (w/n 5 yrs)- <b>\$500 to \$2,500</b> ; <u>3rd &amp; sub. Off</u> (w/n 5 yrs)- <b>\$500 to \$2,500</b>
Mandatory Minimum Fine:	<u>1st Off-\$250</u> ; <u>2nd Off</u> (w/n 5 yrs)- <b>\$500</b> ; <u>3rd &amp; sub. Off</u> (w/n 5 yrs)- <b>\$500</b> See Footnote No. 2.
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	<b>Susp<sup>3</sup></b> §4507.99(B)(4)
Length of Term of License Withdrawal Action:	For 1st, 2nd, 3rd and sub. off-not more than <b>1 yr</b> §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 <b>1 yr</b> §4507.99(B)(4) See the Special Note below and Footnote No. 1 on p. 3-371.
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	<b>No</b>
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	

<sup>1</sup>This alternative is imposed only when there are overcrowded jail conditions which prohibit the offender from commencing their term of imprisonment within 60 dys of sentencing. §4507.99(B)(6)

<sup>2</sup>Ref: *State v. Cichy*, 480 N.E.2d 90 (Ohio App. 1984).

<sup>3</sup>(1) The vehicle used in the offense shall be "immobilized" and the license plates "impounded" for the following mandatory periods: 1st Off-30 dys; 2nd Off-60 dys and (2) for a 3rd or sub. off, the vehicle used in the offense will be subject to criminal forfeiture. §§4507.361(C), 4507.164(C) & 4507.99(B) A non-driver owner of the vehicle may avoid the forfeiture sanction if they can prove by a preponderance of the evidence that they neither knew or should have known that an offense was or would be committed. §4503.234(C)(3) If the vehicle is not subject to forfeiture due to this provision and the vehicle's registration has been either been assigned or transferred, the defendant may be required to pay a fine which is equal to the value of the vehicle. §4507.99(B)(3)

**Special Note:** In addition to the "immobilization" and license plate "impoundment" of a vehicle that was used in the offense, the law also provides via judicial action for the mandatory "impoundment" of the license plate(s) of vehicle(s) registered to the offender even if such vehicles were not used in the offense. The license plates of such vehicles shall be impounded until the offender's license is reinstated. §4507.02(F)(1) Nevertheless, under §§4507.02(F)(2) & 4503.231, such vehicle may be operated if special license plates are obtained. These special license plates must be different in appearance than the normal ones. (Note: Under §4507.164(C), discretionary judicial authority also exists for such registration suspension.) See Footnote No. 3 on p. 3-372.

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Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:  
Imprisonment (Term):  
Mandatory Minimum Term of  
Imprisonment:  
Fine (\$ Range):  
Mandatory Minimum Fine (\$):  
Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):	Yes §313.13(B)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes §313.13(B)
Vehicle Passengers:	No
Pedestrian:	No

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 <sup>1</sup> §§4301.22(A)(1), 4301.63 & 4301.69 (Year Eff: 1987)
Minimum Age (Years) Possession:	21 <sup>1</sup> §4301.632
Minimum Age (Years) Consumption:	21 <sup>1</sup> §§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 <i>Mason v. Roberts</i> , 244 N.E. 2d 844 (Ohio 1973) <sup>2</sup>

<sup>1</sup>It is illegal (1) for a licensee to sell to a person under 18 yrs old or (2) for a person under 18 yrs old to either purchase, possess or consume (unless accompanied by a parent, legal guardian or spouse who is over 18 yrs old) a low-alcohol beverage. §§4301.22(A)(2) & 4301.631 A low-alcoholic beverage, "means any brewed or fermented malt product, or any product made from the fermented juices of grapes, fruits, or other agricultural products, that contains either no alcohol or less than one-half of one per cent of alcohol by volume." However, such beverages do not include soft drinks (e.g., root beer, birch beer or ginger beer). §4301.01(B)(20)

<sup>2</sup>See also *Terry v. Markoff*, 497 N.E.2d 1133 (Ohio App. 1986), & *Great Central Insurance Co. v. City of Bowling Green*, 523 N.E.2d 354 (Ohio 1988).

Other State Laws Related To Alcohol Use: (continued)

## Dram Shop Actions-Social Hosts:

**Yes Limited** A social host is not liable for the actions of an intoxicated adult guest. *Settemyer v. Wilmington Veterans Post No. 49, American Legion, Inc.*, 464 N.E.2d 521 (Ohio 1984), & *Morrison v. Fleck*, 697 N.E.2d 1064 (OhioApp. 9 Dist. 1997) However, a social host may be held liable for either the death or injury of a third person caused by an intoxicated minor guest. *Mitseff v. Wheeler*, 526 N.E.2d 798 (Ohio 1988), *Huston v. Konieczny*, 556 N.E.2d 505 (Ohio 1990), and *Williams v. Veterans of Foreign Wars*, 650 N.E.2d 175 (Ohio App. 2 Dist. 1994)

## Other:

An intoxicated patron (or the estate of a deceased intoxicated patron), including a person under the legal drinking age, does not have a cause of action against a licensee for injuries they have sustained off the licensee's premises due to the consumption of alcoholic beverages at the licensed establishment. *Smith v. 10th Inning, Inc.*, 551 N.E.2d 1296 (Ohio 1990), *Klever v. Canton Sachsenheim, Inc.*, 715 N.E.2d 536 (Ohio 1999), *Fifer v. Buffalo*, 601 N.E.2d 601 (OhioApp. 6 Dist. 1991), *Gillum v. Fairgreens County Club*, 673 N.E.2d 637 (OhioApp. 4 Dist 1996), *Cole v. Broomsticks, Inc.*, 669 N.E.2d 253 (OhioApp. 1 Dist. 1996), & *Walker v. Capri Ent. Inc.*, 707 N.E.2d 1201 (OhioApp. 10 Dist. 1997) (Discretionary appeal was not allowed by the State supreme court. 691 N.E.2d 1062 (Ohio 1998)) Generally, a social host is not liable for the injuries that have been sustained by an intoxicated guest. *Holman v. George*, 713 N.E.2d 432 (OhioApp. 1998), & *Estate of Valesquez v. Cunningham*, 738 N.E.2d 876 (OhioApp. 5 Dist. 2000)

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) &amp; 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<sup>1</sup>** §§4301.25 and 4301.27

Length of Term of License Withdrawal:

**Indeterminate**

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

See the Special Note on p. 3-378.

**Misd<sup>2</sup>** 1st or 3rd Degree

<sup>1</sup>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

<sup>2</sup>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(F)

**OHIO**

Other State Laws Related To Alcohol Use: (continued)

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 Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

See the Special Note below.

**Yes Rev/Susp<sup>1</sup> §§4301.25 & 4301.27**  
**Indeterminate**

Anti-Happy Hour Laws/Regulations:

**Yes 4301:1-1-50 (regulation)<sup>2</sup>**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**Yes §4301.62(B)(4) & (5)**

**Yes Drivers and passengers §4301.64** The law states that "[n]o person shall consume any beer or intoxicating liquor in a motor vehicle."

<sup>1</sup>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

<sup>2</sup>This regulation prohibits the sale of alcoholic beverages either (1) in unlimited number of servings "during a set period of time for a fixed price" or (2) after 9:00 p.m. "at a price less than those charged to other patrons." This regulation was held to be constitutional. *DDDJ, Inc. v. Liquor Control Comm.*, 582 N.E.2d 1152 (Ohio App. 10 Dist. 1990)

**Special Note:** A licensee commits a 4th degree misdemeanor if they sell a low-alcohol beverage to a person under 18 yrs old. See Footnote No. 1 on p. 3-376. The sanctions for this offense are a jail term of not more than 30 dys and/or a fine of not more than \$250. §§2929.21(B)(4) & (C)(4) and 4301.99(B) However, they are not subject to having their license either suspended, revoked or canceled. §4301.22(A)(2)

STATE:  
General Reference:

**OKLAHOMA**  
Oklahoma Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	I. Under the influence of alcohol 47 §11-902(A)(2) II. Impaired by the consumption of alcohol (driving while impaired) 47 §761(A)
Illegal Per Se Law (BAC/BrAC):	$\geq 0.08$ <sup>1&amp;2</sup> 47 §11-902(A)(1) <u>Persons Under 21 Years Old-Any Measurable Quantity of Alcohol in the Blood or Breath</u> 47 §11-906.4(A) <sup>3</sup> <b>None</b>
Presumption (BAC):	I. Under the influence of (1) <b>Intoxicating Substances</b> <sup>4</sup> or (2) a Combination of These and Alcohol 47 §11-902(A)(3) & (4)
Types of Drugs/Drugs and Alcohol:	II. Impaired by <b>Any Other Substance</b> 47 §761(A) III. <u>Persons Under 21 Years Old</u> <sup>3</sup> -Under the influence of either (1) any other intoxicating substance or (2) a combination of alcohol and any other intoxicating substance 47 §11-906.4(A)
Other:	I. A BAC/BrAC $\geq 0.08$ <sup>2</sup> is also <i>prima facie</i> evidence that a person was under the influence of alcohol. 47 §756(A)(3) II. A BAC/BrAC $> 0.05$ but $< 0.08$ <sup>2</sup> is "relevant evidence" of Driving While Impaired. 47 §756(A)(2) III. <b>Any measurable</b> quantity of alcohol is <i>prima facie</i> evidence that a person $< 21$ yrs old violated 47 §11-906.4(A). 47 §756(A) For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	<b>No</b>
Implied Consent Law:	
Arrest Required (Yes/No):	<b>Yes</b> 47 §751(A)
Implied Consent Law Applies to Drugs (Yes/No):	<b>Yes</b> 47 §751(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	<b>Yes</b> (Criminal Cases) 47 §756(A)

<sup>1</sup>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. 47 §756(5)

<sup>2</sup>Alcohol concentration is defined as grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath. 47 §756(B)

<sup>3</sup>See **Persons Under 21 Years Old** on pp. 3-381 & 3-383 for the sanctions for violating this provision.

<sup>4</sup>"Other intoxicating substance" is defined as "any controlled dangerous substance" per Title 23, §2-101 et seq. or "other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing, or other sensory or motor function." 47 §1-140.1

**Special Note:** For any type of drunk driving offense, a defendant may be placed on probation before judgement. Following the completion of the proscribed probation period (which cannot exceed 5 yrs) and the satisfactory completion of any terms of probation (which could include jail, community service or restitution), the DWI charge is dismissed and the criminal record is expunged. 22 §991c  
Also, under 43A §3-452(A), upon a plea of guilty, *nolo contendere*, et al. by the defendant to either driving while under the influence or driving while impaired, the court, prior to judgment, may defer further proceedings on condition that the defendant agrees to attend and to successfully complete an alcohol and drug course or treatment program.

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials), if while operating a CMV they (1) have a BAC/BrAC  $\geq 0.04$  (See Footnote No. 3 above.), (2) are under the influence of alcohol or an intoxicating substance or (2) refuse to submit to a chemical test for an alcohol concentration. For either (1) a second "conviction" or (2) a combination of two "convictions" of any of the above listed items, the "disqualification" is for life (10 yrs mand). Note: A conviction includes an unvacated adjudication of guilt, a failure to comply with the provisions of the CMV law (47 §6-205.2) or a violation of the admin. per se law (47 §754). 47 §6-205.2

**OKLAHOMA**

Chemical Breath Tests for Alcohol Concentration: (continued)

Other Information:

(1) A mandatory chemical test may be ordered in situations where there is probable cause that a person "while intoxicated" has operated a motor vehicle and that such operation has caused either death or serious physical injury to another person. 47 §753 (2) 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. 47 §10-104(B)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:  
Urine:  
Other:

**Yes** For alcohol & intoxicating substances 47 §751(A)  
**Yes** For intoxicating substances only 47 §751(A)  
**Saliva** For intoxicating substances only 47 §751(A)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):  
Anti-Plea Bargaining Statute (Yes/No):  
Pre-Sentencing Investigation Law (PSI)  
(Yes/No):

**No**  
**No**

**Yes** 1st off-Driving While Under the Influence/Illegal per Se<sup>1</sup> and 1st or sub offs-Driving While Impaired-Offenders are required to submit to alcohol and drug evaluation prior to sentencing. 47 §§11-902(H) & 761(D)  
**Persons <21 Years Old** who violate 47 §11-906.4

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:  
Criminal Sanctions (Fine/Jail):  
Administrative Licensing Action  
(Susp/Rev):  
Other:

**N/A**  
**N/A**  
**N/A**

Refusal to Take Implied Consent  
Chemical Test:  
Criminal Sanction (Fine/Jail):  
Administrative Licensing Action  
(Susp/Rev):

**None**

1st Refusal-Rev 180 dys (May be modified.)<sup>2</sup>; 2nd Refusal (w/n 5 yrs)-**Rev 1 yr** (mand Cannot be modified.); Sub Refusal (w/n 5 yrs)-**Rev 3 yrs** (1 yr mand May be modified after 1 yr.)<sup>3</sup> 47 §§ 6-205.1, 6-211(I), 753, 754.1 & 755 See Footnote No. 2 on p. 3-382.

Other:

**None**

<sup>1</sup>A person, who has been convicted of driving under influence/illegal per se and who has had a prior conviction for these offenses w/n 10 yrs, does not undergo an alcohol and drug substance abuse evaluation. Instead, such an offender, as a condition of any sentence imposed, is required to participate in an alcohol and drug abuse treatment program. 47 §11-902(K)

<sup>2</sup>This licensing action may be "modified" upon a showing that no other adequate means of transportation exists. As a condition of modification, the driver must be agree, except in certain circumstances, to only operate motor vehicles that are equipped with an ignition interlock device. 47 §§ 754.1(B) & 755

Sanctions Following a Conviction for a DWI Offense:

## Criminal Sanctions:

## Imprisonment:

Term (Day, Month, Years,  
Etc.):

See Double Jeopardy, Prior Offenses and Persons Under 21 Years Old below and Ignition Interlock on p. 3-384.  
See Aggravated Driving below.

I. Driving While Impaired-Not more than **6 mos** 47 §761  
II. Driving While Under the Influence/Illegal Per Se: 1st Off (Misd)-**10 dys to 1 yr**; 2nd off (w/n 10 yrs) (Felony)-**1 to 5 yrs**; 3rd off (w/n 10 yrs) (Felony)-**1 to 7 yrs**; 4th and sub off (w/n 10 yrs) (Felony)-**1 to 10 yrs** 47 §11-902

See Schedule I-3 Felony under "Intoxicant Crimes Involving a Vehicle Matrix" below. 21 §9(B)

III. Personal Injury Accident (Driving While Under the Influence/Illegal Per Se)-1st Off (Misd) **90 dys to 1 yr**; 2nd or sub off-Schedule I-2 Felony See "Intoxicant Crimes Involving a Vehicle Matrix" below. 21 §9(B) & 47 §11-904(A)

IV. Great Bodily Injury (Driving While Under the Influence/Illegal Per Se)-Schedule I-1 Felony See "Intoxicant Crimes Involving a Vehicle Matrix" below. 21 §9(B) & 47 §11-904(B) See Great Bodily Injury below.

## Mandatory Minimum Term:

Driving While Under the Influence/Illegal Per Se-2nd off (w/n 10 yrs)-**5 dys** jail (or 5 dys inpatient treatment); 3rd or sub off (w/n 10 yrs)-**10 dys** jail (or 10 dys inpatient treatment); 4th or sub off (w/n 10 yrs)-**10 dys** jail (or 28 dys of inpatient treatment) 47 §11-902(C) See Community Service (p. 3-382) and Alcohol Treatment (p. 3-383).

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Kane v. State*, 915 P.2d 932 (Okla. Cr. 1996) In *Price v. Reed*, 725 P.2d 1254 (Okla. 1986), a person's driving privileges were withdrawn via the administrative per se law after they had been acquitted of a drunk driving offense. Nevertheless, the court upheld the licensing action and held that there was no double jeopardy issue.

**Persons Under 21 Years Old.** Persons <21 yrs old, who violate 47 §11-906.4(A) are subject to the following sanctions: 1st offense-a fine of **\$100 to \$500** and at least 20 hrs of community service; 2nd offense- a fine of **\$100 to \$1,000** and/or at least 240 hrs of community service; and, 3rd or sub offense-a fine of **\$100 to \$2,000** and at least 480 hrs of community service. For either a 1st or sub offense, a defendant may be required to complete a treatment program. 47 §11-906.4(B) & (C) An offender may also be prosecuted for a regular drunk driving offense. 47 §11-906.4(E)

**Intoxicant Crimes Involving a Vehicle Matrix.** Felony sanctions are determined via the "Intoxicant Crimes Involving a Vehicle Matrix". The matrix is divided into various sanction levels for each type of felony. For a Schedule I-1 Felony, the sanction levels range from 12-36 mos community service to 1-4 yrs imprisonment. For a Schedule I-2 Felony, the sanction levels range from 3-12 mos community service to 1-2.5 yrs imprisonment. And, for a Schedule I-3 Felony, the sanction levels range from 0-12 mos community service to 1-24 mos imprisonment. The court determines the appropriate sanction level based upon enhancement factors such as the number of prior offenses, whether a victim was older than 62 or less than 12 years old and/or whether a victim was maimed as a result of the offense. 21 §§9(A), 15(A), (B)(2) & (G), 16(A)(11), (12) & (13), 17(A)(2), (B)(5) & (C)(1) and 20.4

**Prior Offenses.** "Any person who, within ten (10) years after a previous conviction of a violation of murder in the second degree or manslaughter in the first degree in which the death was caused as a result of driving under the influence of alcohol or other intoxicating substance, is convicted of a violation of this section [47 §11-902] shall be deemed guilty of a felony." 47 §11-902(C)

**Great Bodily Injury.** Great bodily injury "means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss of or impairment of the function of any bodily member or organ." 47 §11-904(B)(2)

**Aggravated Driving.** A person is guilty of Aggravated Driving if they are convicted of driving under the influence with a BAC/BrAC  $\geq 0.15$ . The following sanctions are imposed and such do not preclude other possible punishments: Mand minimum treatment for 28 dys (inpatient) w/1 yr aftercare; 480 hrs of community service; and, **ignition interlock** use for a minimum of 30 dys. 47 §11-902(D)

**OKLAHOMA**

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Fine: Amount (\$ Range):	I. Driving While Impaired-\$100 to \$500 47 §761 II. Driving While Under the Influence/Illegal Per Se: <u>1st Off</u> (Misd)-Not more than \$1,000; <u>2nd off</u> (w/n 10 yrs)-Not more than \$2,500; <u>3rd and sub off</u> (w/n 10 yrs) (Felony)-Not more than \$5,000 47 §11-902 III. Personal Injury Accident (Driving While Under the Influence/Illegal Per Se)- <u>1st off</u> (Misd)-Not more than \$2,500; <u>2nd off</u> (Felony)-Not more than \$5,000 47 §11-904(A) IV. Great Bodily Injury (Driving While Under the Influence/Illegal Per Se) (Felony)-not more than \$5,000 47 §11-904(B)
Mandatory Min. Fine (\$):	None
Other Penalties: Community Service:	See "Intoxicant Crimes Involving a Vehicle Matrix" on p. 3-381 Driving Under the Influence/Illegal Per Se Felony Convictions- I. <u>3rd off-240 hrs</u> ; <u>4th or sub off-480 hrs</u> following any aftercare treatment 47 §11-902(C) II. A fine cannot be imposed in lieu of community service. 47 §11-902(M).
Restitution (eg Victim's Fund)	<b>Yes</b> The court may order a defendant to pay restitution to a victim. 22 §§991a(A)(1)(a), 991a-10 & 991f
Administrative Licensing Actions: <u>Pre-DWI Conviction</u> Licensing Action: Administrative Per Se Law:	See Double Jeopardy on p. 3-381. <b>Yes</b> (1) <b>BAC/BrAC ≥ 0.08</b> or (2) <b>Persons Under 21 Years Old- Any Measurable Quantity of Alcohol in the Blood or Breath</b> <sup>4</sup> See Footnote No. 3 on p. 3-379.- <u>1st Action-Rev 180 dys</u> (May be modified.) <sup>1</sup> ; <u>2nd Action</u> (w/n 5 yrs)- <b>Rev 1 yr</b> (mand Cannot be modified) <sup>2</sup> ; <u>Sub. Action</u> (w/n 5 yrs)- <b>Rev 3 yrs</b> (1 yr mand May be modified after 1 yr.) <sup>3&amp;2</sup> 47 §§6-205.1, 6-211(I), 754, 754.1, 755 & 756
<u>Post DWI Conviction</u> Licensing Action:	(1) See the Special Note & <b>Persons Under 21 Years Old</b> on p. 3-383 and (2) <b>Ignition Interlock</b> on p. 3-384.
Type of Licensing Action. (Susp/Rev):	Driving While Impaired-Susp 47 §761 Driving While Under the Influence <sup>2&amp;3</sup> : <u>1st Off-Rev</u> ; <u>Sub. Off-Rev</u> 47 §§6-205(A)(2) & 11-902

<sup>1</sup>This licensing action may be "modified" upon a showing that no other adequate means of transportation exists. As a condition of modification, the driver must be agree, except in certain circumstances, to only operate motor vehicles that are equipped with an ignition interlock device. 47 §§ 754.1(B) & 755

<sup>2</sup>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)

<sup>3</sup>The revs for a violation of 47 §11-902 would, it appears, apply also to violations of 47 §11-904 (personal injury accident or causing great bodily injury while operating a vehicle under the influence/illegal per se). 47 §§6-205, 6-205.1 & 756 There are no specific licensing actions in 47 §11-904.

<sup>4</sup>The administrative per se law provision, that provides for licensing action against persons under 21 years old, who have any measurable quantity of alcohol in their blood or breath, does not violate constitutional provisions concerning equal protection of the laws. *Collins v. State Ex Rel. DPS*, 991 P.2d 557 (Okla.Civ.App. 1999)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Term of License Withdrawal  
(Days, Months, Years, etc.):

Driving While Impaired-1st off-30 dys; 2nd off-6 mos; 3rd off-12 mos 47 §761 Driving While Under the Influence/Illegal Per Se: 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

Mandatory Minimum Term of  
Withdrawal:

Driving While Impaired: 1st off-None; 2nd off-6 mos; 3rd off-mos 12 47 §761 Driving While Under the Influence/Illegal Per Se: 1st Off-None (Licensing action may be modified.); 2nd Off-1 yr (Licensing action cannot be modified.); Sub Off-1 yr (Licensing action may be modified after 1 yr.)<sup>1</sup>

Note: The license suspensions or revocations for respectively driving while impaired or driving while under the influence/illegal per se do not apply if the defendant has had their license revoked for a refusal to submit to a chemical test or for an administrative per se violation based on the same incident. 47 §§6-205(A)(2) & 761

Other:  
Rehabilitation:  
Alcohol Education:

Yes 1st and subsequent offenders (all types of DWI offenses) may be ordered by the court to participate in alcohol or drug substance abuse courses.<sup>2</sup> A 1st offender must successfully complete this course before their license can be reinstated. 22 §§987.8(B)(11) & 991a(A)(6) and 47 §6-212.2

Alcohol Treatment:

Yes I. The court may order 1st and subsequent offenders (all types of DWI offenses) to participate in alcohol or drug rehabilitation treatment programs.<sup>2</sup> 22 §991a(A)(6)

II. Driving Under the Influence/Illegal Per Se-Treatment in lieu of incarceration: 2nd off-28 dys<sup>3</sup> w/30 dys aftercare; 3rd off-28 dys<sup>4</sup> w/90 dys aftercare; 4th or sub off-28 dys (inpatient)<sup>5</sup> w/1 yr aftercare 47 §11-902(C)

<sup>1</sup>See Footnote No. 1 on p. 3-382.

<sup>2</sup>For any drunk driving offense, a defendant's sentence may be suspended if they agree to attend and successfully completes an alcohol and drug abuse course or treatment program. 43A §452(B) However, a person, who has had a subsequent driving under the influence/illegal per se offense convictions w/n 10 yrs must participate in an alcohol and drug abuse treatment program. 47 §11-902(K)

<sup>3</sup>If the person does not spend at least 5 dys in inpatient care they must serve at least 5 dys of incarceration. 47 §11-902(C)(2)

<sup>4</sup>If the person does not spend at least 10 dys in inpatient care they must serve at least 10 dys of incarceration. 47 §11-902(C)(3)

<sup>5</sup>If the person does not spend at least 28 dys in inpatient care they must serve at least 10 dys of incarceration. 47 §11-902(C)(4)

**Special Note:** In addition to the regular licensing sanctions for drunk driving, under separate provisions of law, an offender < 18 yrs old, who is convicted of a regular drunk driving offense, is subject to having their license either canceled or denied for one of the following periods: 1st offense-6 mos, 1 yr, 2 yrs or until they reach 21 yrs old; and, 2nd or subsequent offense-2 yrs or until they reach 18 yrs old whichever is longer. Licensing action is not mandatory. A 1st or subsequent offender may obtain relief from this action upon a showing of hardship. 47 §§6-107.1 & 6-107.2

**Persons Under 21 Years Old.** Licensing sanctions for a violation of 47 §11-906.4(A). 1st off-(1), for offenders 18, 19 or 20 yrs old, discretionary cancellation of driving privileges for 6 mos, 1 yr, 2 yrs or until the person is 21 yrs old and, (2), for all offenders <21 yrs old, license revocation for 180 dys (may be "modified"); and, sub off, for all offenders <21 yrs old, cancellation of driving privileges for 2 yrs or until the person is 18 yrs old whichever is the longer cancellation period (hardship driving privileges are available) and license revocation for 1 yr (mand) for a 2nd off or 3 yrs (1 yr mand) for a sub off. 47 §§6-107.1, 6-107.2, 6-205(A)(2), 6-205.1(A) & 11-906.4(D) **Comment:** The law appears to provide for two independent licensing action schemes for these offenders.

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

**Vehicle Forfeiture (Discretionary).** A subsequent DWI offender's vehicle is subject to forfeiture.<sup>1</sup> 47 §11-902b

Terms Upon Which Vehicle

Will Be Released:

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

**Electronic Home Monitoring.** A person, who has been convicted of a felony offense, may be subject to court ordered electronic home monitoring. 22 §991a & 47 §11-902(K) Sec V under Ignition Interlock below.

**Victim Impact Program.** The court may order a defendant may to participate in a victim impact panel program and pay a **\$15 to \$25** fee to attend such program. 47 §11-902(I) and 22 §§987.2(B)(12) & 991a(A)(6)(b)

**Other Costs.** A defendant may be required to pay other costs such as reimbursing the State for the cost of a victim's medical expenses and for the cost of court appointed attorneys for the defendant. The defendant may also be required to pay amounts into victim's compensation trust funds. 22 §991a(A)

**Investigation Costs.** The defendant may be required by the court to reimburse the Oklahoma State Bureau of Investigation for any services that were associated with the defendant's criminal offense. There is an exception based on "manifest hardship" to the defendant. 22 §§987.8(B)(9) & 991a(A)(4)

<sup>1</sup>If a person's vehicle is involved in one of the offenses noted, it may be subject to forfeiture provided (1) the person has been convicted of either driving while under the influence/illegal per se, vehicle negligent homicide or a DWI injury related offense and they have a prior conviction for one of these offenses (w/n 10 yrs) and (2) one of the offenses, either present or prior, must have involved either an injury or a death to another person. 47 §11-902b

**Ignition Interlock. I.** The court may order a defendant to install an ignition interlock device on every vehicle used by them following reinstatement of their driving privileges. This requirement shall remain in effect for a period of time as the court deems proper. 22 §991a(A)(6)

II. As a condition of license modification either by the licensing agency or the court for either a refusal, an admin. per se violation or a driving while under the influence conviction, the licensing agency or the court must require a person to install ignition interlock devices on the vehicles they operate. 47 § 754.1 & 755

III. **For Driving While Under the Influence/Illegal Per Se Offenses: 2nd or sub off-**After any mandatory period of license revocation, the offender must install an ignition interlock device on all of the vehicles they own or regularly operate. The court must order a person so operate vehicles with this device for not less than 6 mos nor more than 3 yrs. For a 3rd or sub offense (felony), there is minimum use period of 30 dys. 47 §11-902(C) & (J)

IV. Following inpatient substance abuse treatment, an offender may be assigned to a halfway house, structured community placement or home placement. If such an assignment is made, the offender shall be required to have either **electronic home monitoring** or an **ignition interlock** use requirement. 57 §612(A)(2)

Other Criminal Actions Related to DWI:Homicide by Vehicle:

State Has Such a Law:

**Yes Negligent Homicide Misd<sup>1</sup> 21 §§5 & 6 and 47 §11-903**

Sanctions:

Criminal Sanction:

Not more than **1 yr** in the county jail

Imprisonment (Term):

Mandatory Minimum Term:

**None**

Fine (\$ Range):

**\$100 to \$1,000**

Mandatory Minimum Fine:

**None**

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

**Rev**

Length of Term of

Licensing Withdrawal:

**1st off-1 yr; Sub off (w/n 5 yrs)-3 yrs 47 §6-205(A)(1), (B) & (C)**

Mandatory Action--Minimum

Length of License

Withdrawal:

**1st off-1 yr; Sub off (w/n 5 yrs)-3 yrs**

Other:

**Restitution.** The court may order a defendant to pay restitution to a victim. 22 §§991a(A)(1)(a), 991a-10 & 991f**Vehicle Forfeiture.** See Vehicle Impoundment/Confiscation on p. 3-383.Driving While License Suspended or RevokedWhere the Basis Was a DWI Offense:

See Footnote No. 2.

Sanction:

Criminal:

Imprisonment (Term):

**Misd-Not more than 1 yr 47 §6-303(C)**

Mandatory Minimum Term

of Imprisonment:

**None**

Fine (\$ Range):

**\$500 to \$1,000 47 §6-303(C)**

Mandatory Minimum Fine:

**None**

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

**Susp or rev 47 §6-303(D)**

Length of Term of License

Withdrawal Action:

Period of susp/rev extended for **4 mos 47 §6-303(D)**

Mandatory Term of License

Withdrawal Action:

Period of susp/rev extended for **4 mos 47 §6-303(D)**

<sup>1</sup>**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)).

<sup>2</sup>I. It is a misd to operate a CMV during a CDL disqualification. The sanctions for this offense are an imprisonment term for not more than 1 yr and/or a fine of not less than \$100 and not more than \$500. 47 §6-205.2(I) II. A person, who violates and out-of-service order, is subject to the following CDL disqualification periods: 1st violation-90 dys (mand); 2nd violation (w/n 10 yrs)-1 yr (mand); and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand). If the offense involved the transportation of hazardous materials, the disqualification periods are as follows: 1st violation-1 yr (mand); and, 2nd or sub violation (w/n 10 yrs)-3 yrs (mand). 47 §6-205.2(G) & (H)

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Other Criminal Actions Related to DWI: (continued)

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No): No  
Grounds for Being Declared an  
Habitual Offender:  
Term of License Rev While  
Under Habitual Offender Status:  
Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status  
Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:  
Imprisonment (Term):  
Mandatory Minimum Term of  
Imprisonment:  
Fine (\$ Range):  
Mandatory Minimum Fine (\$):  
Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic  
Accidents:  
State Has Such a Law (Yes/No): No  
BAC Chemical Test Is Given to the  
the Following Persons:  
Driver:  
Vehicle Passengers:  
Pedestrian:

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:  
Minimum Age (Years) Sale/Purchase: 21 (Year Eff: 1983) 37 §§163.2(a), 241, 246(A) & 537(A)(1) & 528(E)  
Minimum Age (Years) Possession: 21 21 §1215<sup>1</sup> & 37 §246(A)<sup>2</sup>  
Minimum Age (Years) Consumption: 21<sup>3</sup> 37 §§241(C) & 246

Dram Shop Laws and Related Legal Actions:  
State Has a Dram Shop Law (Yes/No): No

<sup>1</sup>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."

<sup>2</sup>Under 37 §246(A), it is illegal for a person under 21 years old to possess "low-point beer" (alcoholic beverages containing more than ½ of 1% alcohol by volume but not more more than 3.2% alcohol by weight) with the intent to consume such beverages in public.

<sup>3</sup>I. Under 37 §246, it is only illegal for a person under 21 years old to consume "low-point beer" (alcoholic beverages containing more than ½ of 1% alcohol by volume but not more than 3.2% alcohol by weight) in public. II. Under 37 §241(C), it is illegal for a licensee to allow a person under 21 yrs old to consume "low-point beer" on the licensed premises.

Other State Laws Related To Alcohol Use: (continued)

"Dram Shop Law" Concept Has Been  
Adopted Via a Change to the Common  
Law Rule by Action of the Highest  
Court of Record in the State (Case Citation):

**Yes** *Brigance v. The Velvet Dove Restaurant, et al.*, 725 P.2d 300 (Okla. 1986), *Tomlinson v. Love's Country Stores, Inc.*, 854 P.2d 910 (Okla. 1993), & *Bennett v. 2 Poor White Boys, Inc.*, 973 P.2d 896 (Okla. Civ. App. Div. 4 1998)<sup>1</sup>

Dram Shop Actions-Social Hosts:

**No** *Troxell v. Bingham*, 774 P.2d 1073 (Okla. App. 1989), *Battles v. Cough*, 947 P.2d 600 (Okla. Civ. App. Div. 3 1997), & *Teel v. Warren*, 22 P.3d 234 (Okla. Civ. App. Div. 1 2001) (In this case, the court considered a fraternity as a social host.)

Other:

An adult patron has no cause of action against a licensee for injuries sustained as a result of becoming intoxicated at the licensee's establishment. *Ohio Cas. Ins. Co. v. Todd*, 813 P.2d 508 (Okla. 1991) However, a licensee may be held liable for the injuries sustained by an intoxicated minor patron. *Busby v. Quail Creek Golf & Country Club*, 885 P.2d 1326 (Okla. 1994), and *Mansfield v. Circle K. Corp.*, 877 P.2d 1130 (Okla. 1994)

Criminal Action Against Owner or Employees  
of Establishments that Serve Alcoholic  
Beverages to Intoxicated Patrons:

Type of Criminal Action:

For alcoholic beverages 3.2% and above - **Felony** 37 §506(3), §537(A)(2) & §538(G) For low point beer ½ of 1% to 3.2% alcohol - **Misd** 37 §247

Term of Imprisonment:

For felony off-Not more than **1 yr** 37 §538(G) For misd off-Not more than **6 mos** 37 §247

Fine (\$ Range):

For felony off-**\$500 to \$1,000** 37 §538(G) For misd off-Not more than **\$500** 37 §247

Administrative Actions Against Owners of  
Establishments that Serve Alcoholic  
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes Rev** 37 §§244, 247 and 528(C)(1) & (E)

Length of Term of License Withdrawal:

(1) For alcoholic beverages 3.2% and above - The period of revocation is not stated in the statute. Revocation periods are established via regulations. The law provides that the revocation period shall be "increasingly severe" for subsequent offenses. However, for a 4th offense w/n 24 mos, there is a mand. revocation. (2) For low point beer ½ of 1% to 3.2% alcohol - Rev by the district court for **12 mos**

Criminal Actions Against Owners or  
Employees of Establishments that Serve  
Alcoholic Beverages or the Wrong Type  
of Alcoholic Beverage to Those Persons  
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

For alcoholic beverages 3.2% and above - **Felony** 37 §§537(A)(1) & 538(F)

<sup>1</sup>The *Bennett* case concerned an action by a passenger injured in an automobile accident against a licensee who served alcoholic beverages to the vehicle's driver. The driver's intoxication was the cause of the injury resulting accident.

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Other State Laws Related To Alcohol Use: (continued)

Type of Criminal Action: (continued)

For low point beer ½ of 1% to 3.2% alcohol **Misd** 21 §§10, 21 & 1220 and 37 §§163.1, 163.2, 163.11, 163.20(a) & 241

Term of Imprisonment:

For felony off - Not more than **5 yrs** For misd off - Not more than **1 yr**

Fine (\$ Range):

For felony off - **\$2,500 to \$5,000** For misd off - Not more than **\$500**

**Special Note:** Separate provisions of law provide for special sanctions against out-of-State persons to sell any type of alcoholic beverages to persons less than 21 yrs old within the State contrary to State law. A person, who violates these provisions, is guilty of a Schedule G Felony. The sanctions for this felony are determined via a sentencing matrix. The matrix is divided into various sanction levels. For a Schedule G Felony, the sanction levels range from 0-12 mos community service to 1-27 mos imprisonment. The court determines the appropriate sanction level based upon enhancement factors. In addition, the court may impose a fine of not more than \$5,000. 21 §§15(G) & 20.1, 37 §505(c) and 47 §§163.20(b) & 163.26

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

**Yes Rev** 37 §§163.11(K)(3) & (L), 244, 528(C)(1), (D) & (E) and 538(E) & (F)

Length of Term License Withdrawal:

(1) For alcoholic beverages 3.2% or more alcohol- The period of rev not stated in the statute. Revocation periods are established via regulations. The law provides that the revocation period shall be "increasingly severe" for subsequent offenses.<sup>1</sup> However, for a 4th offense w/n 24 mos, there is a mand. revocation. (2) For low-point beer ½ of 1% to 3.2% alcohol- Rev by the district court for **1yr/12 mos** This rev is mand for sub offenses.

Anti-Happy Hour Laws/Regulations:

**Yes** 37 §537(B)(4)

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

**Yes** 21 §1220 and 37 §537(A)(7)

Anti-Consumption Law (Yes/No):

**Yes** Driver and passengers Under 37 §537(A)(8), "[i]t shall be unlawful to drink intoxicating liquor ... in a public place." And, under 37 §8, no person shall consume intoxicating liquor in or upon any passenger coach, streetcar or in or upon any other vehicle commonly used for the transportation of passengers.

<sup>1</sup>For package store licensees who "knowingly" sell alcoholic to persons under 21 years old, license revocation is mandatory. 37 §528(D)

STATE:  
General Reference:

**OREGON**  
Oregon Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor <sup>1</sup> §813.010(1)(b)
Illegal Per Se Law (BAC):	≥ <b>0.08</b> <sup>1&amp;2</sup> §813.010(1)(a)
Presumption (BAC):	<b>None</b>
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) <b>A Controlled Substance</b> (2) an Inhalant <sup>3</sup> or (3) Any Combination of Intoxicating Liquor, an Inhalant and a Controlled Substance <sup>1</sup> §813.010(1)(b) & (c)
Other:	A BAC of not less than <b>0.08</b> constitutes being under the influence of intoxicating liquor. §813.300(2) For Commercial Motor Vehicle Operators, see p. 3-393.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	<b>No</b>
Implied Consent Law:	<b>Yes</b> §§813.100 & 813.131
Arrest Required (Yes/No):	<b>Yes</b> <sup>4</sup> §813.131
Implied Consent Law Applies to Drugs (Yes/No):	<b>Yes</b> <sup>5</sup> (Criminal and Civil Cases) §813.310
Refusal to Submit to Chemical Test Admitted into Evidence:	I. There is also an implied consent law on field sobriety testing. <sup>3</sup> §813.135 <b>Important</b> . See Field Sobriety Tests on p. 3-394. II. The Oregon Supreme Court has indirectly indicated that law enforcement officers are not authorized via statute to obtain a blood sample via force for BAC testing in <u>DWI cases</u> . 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 & <i>State v. Milligan</i> , 748 P.2d 130 (Or. 1988)
Other Information:	

<sup>1</sup>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 ≥0.08 or driving while under the influence of either intoxicating liquor, a controlled substances or an inhalant. §813.010(1) The Oregon Supreme Court has held that §813.010 is one offense namely that of driving while under the influence of intoxicants. This offense may be proven by showing that a person operated a motor vehicle either (1) with a BAC ≥0.08 or (2) while under the influence of alcohol or a controlled substance. *State v. King*, 852 P.2d 190 (Or. 1993), & *State v. Miller*, 788 P.2d 974 (Or. 1990) Note: The term "intoxicating liquor" has been judicially defined to include beer, wine or any other substance that contains alcohol. *State v. Miles*, 492 P.2d 497 (Or.App. 1972)

<sup>2</sup>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.

<sup>3</sup>An inhalant "means any glue, paint, cement or other substance that is capable of causing intoxication and that contains one or more of the following chemical compounds: (1) Acetone; (2) amyl acetate; (3) benzol or benzene; (4) butane; (5) butyl acetate; (6) butyl alcohol; (7) carbon tetrachloride; (8) chloroform; (9) cyclohexanone; (10) difluoroethane; (11) ethanol or ethyl alcohol; (12) ethyl acetate; (13) hexane; (14) isopropanol or isopropyl alcohol; (15) isopropyl acetate; (16) methyl cellosolve acetate; (17) methyl ethyl ketone; (18) methyl isobutyl ketone; (19) nitrous oxide; (20) toluol or toluene; (21) trichloroethylene; (22) tricresyl phosphate; (23) xylol or xylene; (24) or any other solvent, material, substance, chemical or combination thereof having the property or releasing toxic vapors or fumes." §801.317 Note: A person is prohibited from either (1) possessing an inhalant with intent to or (2) using an inhalant to intoxicate an individual; sanctions-fine of not more than \$300 (minors, treatment/counseling in lieu of a fine). §167.808

<sup>4</sup>Footnote No. 3 on p. 3-390.

<sup>5</sup>The State supreme court has indirectly abrogated a statutory provision, §813.136, which provides that, if a person either fails or refuses to submit to field sobriety testing, this fact may be admitted into evidence in any criminal or civil action arising out of the allegation that the person was DWI. The court has held that such an admission violates the State's constitutional provision against self-incrimination. *State v. Fish*, 893 P.2d 1023 (Or. 1995)

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes Limited <sup>1&amp;2</sup>
Urine:	Yes Limited <sup>2&amp;3</sup>
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes §813.170 A diversion program for offenders who have not been convicted of a DWI off w/n 10 yrs. §§813.215 & 813.200 et seq.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol screening is required. §§813.020(1)(b) & 813.021

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:	See Special Note No. 1 and Vehicle Impoundment/Confiscation on p. 3-393.
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	1. <b>Susp-1 yr</b> if no previous susps for either a test refusal or a DWI off (90 dys are mandatory) <sup>4</sup> 2. <b>Susp-3 yrs</b> for either a previous test refusal or a previous DWI off/admin. per se violation based license susp w/n 5 yrs (1 yr mand) <sup>4</sup> §§813.100, 813.130, 813.131, 813.132, 813.410, 813.420, 813.430 & 813.520
Other:	Consecutive license suspensions for refusals to submit to both breath and urine tests. §813.132

<sup>1</sup>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)

<sup>2</sup>A law enforcement officer may obtain either a blood or urine sample for testing to determine either an alcohol concentration or drug content. Such samples may be obtained only (1) if the driver "expressly consents" to the taking of the sample or (2) if they are unconscious (or otherwise in condition rendering them incapable of expressly consenting) and there is probable cause to believe the person was violating the DWI law. §813.140 Note: A person can "expressly consent" by physical actions as well as by verbal communication. *State v. Doran*, 983 P.2d 569 (Or.App. 1995)

<sup>3</sup>A law enforcement officer may request a person to submit to a chemical test of their urine to determine the presence of a controlled substance. However, this requirement only applies if either (1) a breath test disclosed an alcohol concentration <0.08 or (2) the person was involved in an accident that resulted in either a personal injury or property damage. Nevertheless, in the case of either injury or property related accidents, a law enforcement officer may request a urine test following a breath test regardless of the results of the breath test. §813.131

<sup>4</sup>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:	See Double Jeopardy and the Special Note below.
Imprisonment:	
Term (Day, Month, Years, Etc.):	I. <u>1st, 2nd or 3rd off</u> -Cl A Misd-Not more than <b>1 yr</b> §§813.010(4) & 161.615(1) II. <u>4th off</u> (w/3 prior offs w/n 10 yrs)-Cl C Felony-Not more than <b>5 yrs</b> §§813.010(5) & 161.605(3) <b>All offenses-48 con hrs<sup>1</sup></b> §813.020(2)
Mandatory Minimum Term:	
Fine:	
Amount (\$ Range):	I. <u>1st, 2nd or 3rd off</u> -Class A Misd-Not more than <b>\$5,000<sup>2</sup></b> §161.635(1)(a) II. <u>4th off</u> (w/3 prior offs w/n 10 yrs)-Cl C Felony-Not more than <b>\$100,000<sup>2</sup></b> §§813.010(5) & 161.625(1)(c) <b>All offenses-1st off-\$1,000; 2nd off-\$1,500; 3rd off-\$2,000 (only if the person is not sentenced to a term of imprisonment §813.010(6))</b>
Mandatory Min. Fine (\$):	<b>All offenses-Not less than 80 hrs nor more than 250 hrs (as an alternative to imprisonment) §§813.020(2) &amp; 137.129(4)</b>
Other Penalties:	
Community Service:	<b>All offenses-Not less than 80 hrs nor more than 250 hrs (as an alternative to imprisonment) §§813.020(2) &amp; 137.129(4)</b>
Restitution (eg Victim's Fund)	<b>Yes</b> Direct compensation to victims by the defendant (§§137.102 to 137.109) and also via a victims' compensation fund (§147.005 et seq.) I. A <b>\$130 fee</b> 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. <b>All offenses-A Unitary Assessment of \$95.</b> §137.290(1)(c) III. <b>All offenses-A County Assessment</b> which is in addition to and which is based on the amount of fine they have to pay. The assessments vary in amount but are not more than <b>\$59.</b> §137.309
Other:	
Administrative Licensing Actions:	
<u>Pre-DWI Conviction</u> Licensing Action:	See Double Jeopardy below.
Administrative Per Se Law:	<b>Yes</b> $\geq 0.08$ (BAC See Footnote No. 2 on p. 3-389.) or <b>Any BAC for persons under 21 years old</b> 1. A <b>90 dy susp (30 dys are mandatory<sup>3</sup>)</b> if there has been no previous susp for either a chemical test refusal, an admin. per se violation or a DWI off .

<sup>1</sup>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).

<sup>2</sup>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)

<sup>3</sup>A restricted hardship license may be issued after this mandatory period. §813.520(2)

<sup>4</sup>This mand. susp is reduced by any mand. susp imposed for either a 2nd or sub. DWI off (w/n 5 yrs) if based on the same occurrence. §813.520

**Special Note:** A Cl C Felony DWI offense is a Category 6 Crime under the rules of the Oregon Criminal Justice Commission §813.012(1)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Phillips*, 909 P.2d 882 (Or.App. 1996)

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Other:	2. A <b>1 yr susp</b> (mandatory) <sup>4</sup> if there has been a previous susp for either a chemical test refusal, an admin. per se violation or a DWI off. §§813.100(4), 813.130, 813.300(2) & (3), 813.410, 813.420, 813.430 and 813.520 <u>Important:</u> See Special Note No. 1 on p. 3-393. See Vehicle Impoundment/Confiscation on p. 3-393.
<u>Post DWI Conviction Licensing Action:</u> Type of Licensing Action (Susp/Rev):	<u>1st Off-Susp</u> ; <u>2nd and 3rd offs</u> (w/n 5 yrs)- <u>Susp</u> ; <u>4th off</u> (w/ 3 prior offs w/n 10 yrs)- <u>Rev</u> See Special Note No. 3 on p. 3-393. See <b>Ignition Interlock</b> below.
Term of License Withdrawal (Days, Months, Years, etc.):	<u>1st Off-1 yr</u> ; <u>2nd and 3rd offs</u> (w/n 5 yrs)- <b>3 yrs</b> ; <u>4th off</u> (w/ 3 prior offs w/n 10 yrs)- <b>Permanent</b> §§809.235(1)(b) & (2), 809.420(2) and 813.400(2) Under §§809.260 & 809.280(7), a person under 17 but not younger than 13 who is convicted of a DWI offense is subject to the following licensing action: <u>1st off-Susp for 1 yr</u> or until the person reaches 17 whichever is the longer susp period; <u>2nd or sub. off.</u> -Susp for <b>1 yr</b> or until the person reaches 18 whichever is the longer susp period. <b>Persons Under 18 Years Old.</b> Also, under §809.405(4), persons under 18, who have been convicted of a DWI offense, must have their license suspended until they are 18 or are otherwise eligible for license reinstatement. <u>Important:</u> See Special Note No. 2 on p. 3-393.
Mandatory Minimum Term of Withdrawal:	<u>1st Off</u> -See Footnote No. 1; <u>2nd Off</u> (w/n 5 yrs)- <b>90 dys</b> <sup>2</sup> ; <u>3rd off</u> (w/n 5 yrs)- <b>1 yr</b> <sup>2</sup> ; <u>4th off</u> (w/ 3 prior offs w/n 10 yrs)- <b>10 yrs</b> after release on parole or post-prison supervision For persons under 17 but not younger than 13, <u>1st off-90 dys</u> ; <u>2nd or sub off-1 yr</u> <u>Important:</u> See Special Note Nos. 1 & 2 on p. 3-393.
Other: Rehabilitation: Alcohol Education: Alcohol Treatment:	<b>Yes</b> See Alcohol Treatment below. <b>Yes</b> I. A drunk driving offender must complete an appropriate treatment program for alcoholism or drug dependency. <b>Comment:</b> This could include an alcohol/drug education program. §§813.020(1)(b), 813.021 & 813.500

<sup>1</sup>A restricted hardship license may be issued. §§807.240 & 813.520 Note: A 30 dy susp is mandatory if the defendant within the previous yr has been convicted of a "traffic crime". §813.520(9)

<sup>2</sup>A restricted hardship license may be issued after this mandatory period. §813.520(4) & (5) Note: This mand. period is reduced by any mandatory 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

**Ignition Interlock.** I. Persons convicted of DWI offenses shall have an "ignition interlock" device installed in their vehicles prior to being issued a hardship license. Also, offenders must operate motor vehicles equipped with ignition interlock devices for 6 mos after the end of the license suspension or revocation period. II. The court may require the use of an ignition interlock device as part a diversion agreement. Note: There is an employment exception to the above requirements. §§813.602(1) (a), (1)(b) & (2) and 813.606

Sanctions Following a Conviction for a DWI Offense:  
(continued)

II. A 2nd or subsequent offender may be issued a restricted hardship license only on the condition that they complete an alcohol/drug assessment and, if required, enroll in an alcohol/drug rehabilitation program. However, if an assessment indicates that they are not required to participate in a rehabilitation program, they must, nevertheless, enter an alcohol/drug information program as a condition for obtaining restricted hardship driving privileges. §813.500

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

See Footnote No. 1.

I. **Forfeiture (Discretionary).** A vehicle used in a drunk driving offense may be forfeited if w/n 3 yrs the offender had either a prior drunk driving offense or a had been convicted of either murder, manslaughter, criminally negligent homicide or assault related to the operation of a motor vehicle. §809.730 Note: This law does not preempt similar forfeiture ordinances in either cities with a population > 400,000 or counties with a population > 500,000. §809.735

II. **Discretionary Impoundment/Immobilization.** 2nd or sub DWI offs or Driving While Susp/Rev-Not more than 1 yr<sup>2</sup> Applies to a vehicle that is either owned by or used by the offender.<sup>2</sup> Applies to vehicles (1) either owned and used by the offender or (2) owned b an offender but not used in the offense. §809.700

Terms Upon Which Vehicle  
Will Be Released:

The offender must pay the costs of removing, storing or immobilizing the vehicle. §809.700(1)(a), (2) & (6)

<sup>1</sup>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.

<sup>2</sup>An offender's vehicle's registration must be suspended for not more than 120 dys. §809.010

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person's CDL privilege is suspended if while operating a CMV they either (1) are convicted of a DWI offense (§813.010 offense), (2) had a BAC ≥ 0.04 (See Footnote No. 2 on p. 3-389.) or (3) refused to submit to a chemical test for alcohol concentration. For a 1st DWI conviction or a first violation of operating a CMV with a BAC ≥ 0.04, the CDL is suspended for 1 yr (mand); however, if the person was carrying hazardous materials, the suspension is for 3 yrs (mand). For a 1st refusal, the CDL is suspended for 3 yrs (mand); however, if the person was carrying hazardous materials, the suspension is for 5 yrs (mand). For a subsequent refusal, DWI conviction or violation of operating a CMV with a BAC ≥ 0.04 or a combination of these, the CDL privilege is suspended for life (mand). A CMV operator must be placed "out-of-service" for 24 hrs if (1) they have any amount of alcohol in their blood or (2) if they have consumed alcohol or other intoxicating beverage within 4 hrs of operating a CMV. §§813.050, 813.120, 813.130, 813.403, 813.404 & 813.410

**Special Note No. 1:** Under §807.220, persons may be issued an emergency driver's licenses if they are at least 14 years old. Except for restrictions that may placed on the emergency license such as when and where a vehicle may be operated, it appears that such a license could be issued for any emergency situation regardless of whether the person being issued this license has had the regular one either suspended or revoked for either (1) an implied consent law refusal, (2) an administrative per se law violation, (3) a DWI conviction or (4) convictions for other traffic law offenses. This section further provides that for persons 17 years old or younger, an emergency license includes the situation where the person has to use a vehicle to travel to and from school.

**Special Note No. 2:** In addition to the licensing sanctions in the DWI law for driving while under the influence of controlled substances, it appears, that independently under other sections, a driver's license can be suspended for six (6) months for this offense. A hardship license cannot be issued. However, under "compelling circumstances" a court does not have to suspended a license. §§807.250(2), 809.265 & 809.280(9)

**Special Note No. 3:** The State issues special licenses to persons 14 to 17 yrs old for the purpose of attending educational institutions. The State, it appears, can issue such licenses notwithstanding a DWI conviction and the mandatory licensing sanctions provided for such an off if veh transportation is needed by the minor to attend such institutions. §§807.230, 809.420 & 813.400

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Other:

**Impoundment Following Arrest.** If there is probable cause of either a drunk driving or an offense of driving while suspended or revoked, the vehicle used in such offenses may be impounded. The vehicle shall be released if the person entitled to lawful possession (1) has a valid driving privileges, (2) submits proof of financial responsibility and (3) pays any fees associated with the impoundment. §809.720

Miscellaneous Sanctions  
Not Included Elsewhere:

**Home Detention.** DWI defendants, who are placed on probation, may be "restricted" to their own residences. §137.540(2)(a) Note: This provision does not appear to interfere with the mand. jail requirements of §813.020(2).

**Diversion Filing Fee.** There is a diversion filing fee of **\$237.** §813.240(1)

**Diagnostic Assessment Fee.** There is a diagnostic assessment fee of **\$90.** §§813.020(1)(b) & 813.240(2)

**Victim Impact Program.** A DWI offender may be required to attend a victim impact treatment session. The offender may be required to pay a fee of from \$5 to \$50 to offset the cost of this program. §813.020(3)

**Incarceration & Medical Costs.** A city or county may seek reimbursement from an offender for the costs of medical care and incarceration. §§169.150 & 169.151

**No Deferred Proceedings.** A person, who has been found guilty of or who pleads guilty to a DWI offense, cannot be placed on probation and have the judgment of guilt not entered on the record via a deferred proceeding. §137.533

**School & Work Zones.** If the offense occurred in either a school or work zone, there is a **minimum mandatory** fine which is equal (1) to **20%** of the maximum fine for a misdemeanor offense and (2) **2%** of the maximum fine for a felony offense. §§811.230 & 211.235

**Safety Corridors (Repealed December 31, 2003).** If the offense occurred in a safety corridor, there is a **minimum mandatory** fine which is equal (1) to **20%** of the maximum fine for a misdemeanor offense and (2) **2%** of the maximum fine for a felony offense. §5 of Ch. 1071 (Laws of 1999) Note: This provision is not codified but is placed in the Oregon Revised Statutes after §811.235.

**Non Economic Damages.** A person may not be able to recover non economic damages for injuries related to the operation of a motor vehicle if they were in violation of the drunk driving laws. §18.592

**Field Sobriety Tests.** The Oregon Supreme Court has issued conflicting opinions concerning whether field sobriety tests are searches. In *State v. Nagel*, 880 P.2d 451 (Or. 1994), the court held that field sobriety tests are searches which are reasonable under both the Federal and State constitutions. The court further concluded that, given the facts in the case before it, such searches were not subject to the warrant requirement due to the fact that there existed both "probable cause" of a drunk driving offense and "exigent circumstances" based on the rationale that a suspect's intoxication would dissipate before a warrant could be obtained. However, an equally divided State supreme court affirmed a decision of the Oregon Court of Appeals that had held that such tests were not searches. *State v. Lawrence*, 843 P.2d 488 (Or.App. 1992), affirmed, 880 P.2d 431 (Or. 1994) However, a later case of the Oregon Court of Appeals has cited *Nagel* for authority. *Walls v. DMV*, 960 P.2d 888 (Or.App. 1998)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	No <sup>1</sup>
Sanctions:	
Criminal Sanction:	
Inprisonment (Term):	
Mandatory Minimum Term:	
Fine (\$ Range):	
Mandatory Minimum Fine:	
Administrative Licensing Action:	
Licensing Authorized and	
Type of Action:	
Length of Term of	
Licensing Withdrawal:	
Mandatory Action--Minimum	
Length of License	
Withdrawal:	
Other:	
<u>Driving While License Suspended or Revoked</u>	
<u>Where the Basis Was a DWI Offense:</u>	See Footnote Nos. 2, 3 & 4
Sanction:	
Criminal:	
Inprisonment (Term):	<b>Cl A Misd</b> -Not more than 1 yr §§811.182(4)(k) & 161.615(1)
Mandatory Minimum Term	
of Imprisonment:	<b>None</b>
Fine (\$ Range):	Not more than <b>\$5,000</b> §161.635(1)(a) There is also a Unitary Assessment of \$65 and a County Assessment of between \$5 and \$59. §§137.290(1)(b) & 137.309 See Incarceration & Medical Costs on p. 3-394.
Mandatory Minimum Fine:	<u>1st off-\$1,000; 2nd or sub off-\$2,000</u> §811.182(5)

<sup>1</sup>Even though this State does not have a veh homicide statute, the law, nevertheless, provides for mandatory license rev for **8 yrs** for murder, manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle. If the offender has been incarcerated, the revocation period begins after their release from confinement. §809.410(1) However, for murder or manslaughter in the first degree where a motor vehicle was used intentionally as a dangerous weapon, there is **permanent rev (10 yrs mand** after release on parole or post-prison supervision). §809.235(1)(a) & (2) Important: See Special Note No. 1 on p. 3-393. **Special Note:** Sec. 807.240 on hardship occupational licenses applies only to persons who have had their licenses suspended not revoked. See especially §807.240(1).

<sup>2</sup>It is Class B felony (imprisonment for not more than 10 yrs/a fine of not more than \$200,000) to operate a motor vehicle after license revocation for any degree of murder, manslaughter or criminally negligent homicide resulting from the operation of such vehicle or felony driving while under the influence of intoxicants. §§161.605(2), 161.625(1)(b) & 811.182(3) See **School & Work Zones** on p. 3-396.

<sup>3</sup>It is also a Class A misdemeanor to operate a CMV while under an out-of-service order. An offender is also subject to a civil penalty of \$1,000 to \$2,000 and additional CDL mand suspensions of 90 dys for a 1st violation and 3 yrs for a subsequent violation (w/n 10 yrs). However, if the CMV operator was either transporting hazardous materials or operating vehicle designed to carry 16 or more persons, the mand suspension periods for a violation of an out-of-service order are 1 yr of a 1st violation and 5 yrs of a subsequent violation (w/n 10 yrs) (regardless of the type of load or vehicle involved in the 1st violation). §§809.410(31),(32), (33) & (34), 813.050 and 813.052

<sup>4</sup>It is also a Class A misdemeanor for persons to operate vehicles while their licenses are suspended either for an implied consent refusal or for an admin. per se law violation (including persons <21 yrs old who operate a motor vehicle after administrative susp for driving with any alcohol in their blood). §§153.623(21)(b) & 811.182(4)(c)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action  
(Susp/Rev):

None

Length of Term of License  
Withdrawal Action:

Mandatory Term of License  
Withdrawal Action:

Other:

Note: See (1) Vehicle Impoundment/Confiscation and Footnote No. 2 on p. 3-393 and (2) Impoundment Following Arrest on p. 3-394

**School & Work Zones.** If the offense occurred in either a school or work zone, there is a **minimum mandatory** fine which is equal (1) to **20%** of the **maximum** fine for a misdemeanor offense and (2) **2%** of the **maximum** fine for felony offense. §§811.230 & 211.235

**Safety Corridors (Repealed December 31, 2003).** If the offense occurred in a safety corridor, there is a **minimum mandatory** fine which is equal to **20%** of the **maximum** fine for the offense. §5 of Ch. 1071 (Laws of 1999) Note: This provision is not codified but is placed in the Oregon Revised Statutes after §811.235.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):  
Grounds for Being Declared an  
Habitual Offender:

Yes §809.600 et seq.

(1) Three serious traffic offs (w/n 5 yrs) or (2) A combination of 20 or more minor and/or serious traffic offs (w/n 5 yrs)

Term of License Rev While  
Under Habitual Offender Status:

**5 yrs** Note: One (1) yr probationary and renewable license is available if certain conditions are met. §§807.270 & 809.650 Important: See Special Note No. 1 on p. 3-393.

Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status

**CI C Felony** §811.182

Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:

Imprisonment (Term):  
Mandatory Minimum Term of  
Imprisonment:  
Fine (\$ Range):

Not more than **5 yrs** §161.605

**None**

Not more than **\$100,000** §161.625

There is also a Unitary Assessment of \$105 and a County Assessment of between \$5 and \$59. §§137.290(1)(a) & 137.309 See Incarceration & Medical Costs on p. 3-394.

**None**

Mandatory Minimum Fine (\$):  
Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic  
Accidents:

State Has Such a Law (Yes/No):

Yes §146.113

Other State Laws Related To Alcohol Use: (continued)

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: **21** Note: Under §471.430(2), "personal possession" of an alcoholic beverage by a person under 21 years old includes "consumption".

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes**<sup>1</sup> §§30.950(2) & 30.960(1) In order to be liable, it must be shown either (1) that the licensee provided alcoholic beverages to a "visibly intoxicated" patron<sup>2</sup> or (2) to a minor where it can be demonstrated that a reasonable person would have requested identification.

"Dram Shop Law" Concept Has Been  
Adopted Via a Change to the Common  
Law Rule by Action of the Highest  
Court of Record in the State (Case  
Citation):

**No**<sup>3</sup>  
**Yes** §§30.950(2) & 30.960(1) In order to be liable, it must be shown either that the social host provided alcoholic beverages either (1) to a "visibly intoxicated" guest (adult or minor)<sup>2</sup> or (2) to a minor guest where it can be demonstrated that a reasonable person would have requested identification.

Dram Shop Actions-Social Hosts:

<sup>1</sup>An intoxicated passenger was injured in a traffic accident while riding with an intoxicated driver. It appears, that both individuals had been socializing and drinking alcoholic beverages purchased and/or consumed at numerous licensed establishments. The Oregon Supreme Court held that the passenger could bring a third party dram shop action against various alcoholic beverage licensees to recover damages for injuries sustained in the accident. *Grady v. Cedar Side Inn, Inc.*, 997 P.2d 197 (Or. 2000) (affirming *Grady v. Cedar Side Inn, Inc.*, 963 P.2d 36 (Or.App. 1998)) Note: In an earlier decision by the Oregon Court of Appeals, a minor passenger was injured in a traffic accident in which the motor vehicle they were riding in was operated by an intoxicated minor. The minor passenger assisted in the purchase of alcoholic beverages which caused the driver's intoxication. However, the injured minor passenger could not recover damages from the licensee where such beverages were purchased. *Smith v. Harms*, 865 P.2d 486 (Or.App. 1993)

<sup>2</sup>In addition, the injured party, third party plaintiff, must also prove that they did not "substantially contribute" to the intoxication of the injury causing patron or guest by either (1) providing alcoholic beverages to them, (2) encouraging them to either consume or purchase such beverages or (3) facilitating the consumption of these beverages by them in "any manner". §30.950(2)(b)

<sup>3</sup>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).

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Other State Laws Related To Alcohol Use: (continued)

Other:

A patron or guest, who voluntarily consumes alcoholic beverages, cannot bring a cause of action for injuries resulting from their intoxication either via statute or common law against either a licensee or social host. This exemption from liability applies even if the patron or guest was "visibly intoxicated" at the time they were served alcoholic beverages. This exemption does not apply to injuries or damages resulting from "negligent or intentional acts". §30.950(1) E.g., a licensee can be held liable for the injuries of an intoxicated patron if they suffer criminal assault after being ejected from the licensee's premises while in a highly intoxicated condition. *Cunningham v. Happy Place, Inc.*, 970 P.2d 669 (Or.App. 1998) Note: This law indirectly abrogated the holding in *Fulmer v. Timber Inn Restaurant and Lounge, Inc.*, 9 P.3d 710 (Or. 2000). In this case, the court held that, under common law negligence, a licensee may be liable for injuries sustained by intoxicated patrons.

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

Cl A Misd<sup>1</sup> §471.410(1) & (4)  
Not more than 1 yr §161.615  
Not more than \$5,000 §§161.635 & 161.655  
There is also a Unitary Assessment of \$65 and a County Assessment of between \$5 and \$59. §§137.290(1)(b) & 137.309  
See Incarceration & Medical Costs on p. 3-394.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term of License Withdrawal:

Yes Canceled/Rev §§471.315 & 471.385  
The length of any cancellation/revocation is not specified in the statute.<sup>2</sup>

<sup>1</sup>It is a Cl A Misd for a licensee to knowingly allow a patron to consume or to continue to consume alcoholic beverages if they are visibly intoxicated. §§161.555(3), 471.412 & 471.990 However, for the first 3 violations w/n 2 yrs, the only sanction is a letter of reprimand. §471.412(4)

<sup>2</sup>A licensee, who is subject to a suspension <30 dys, may also have an administrative monetary penalty imposed on them either in addition to or in lieu of such suspension. The monetary penalty is from \$100 to \$5,000. For persons holding a server permit, the penalty is from \$25 to \$500. §471.322 See Footnote No. 1 on p. 3-399.

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:  
 Type of Criminal Action:  
 Term of Imprisonment:  
 Fine (\$ Range):

See **Employees** below.  
**Cl A Misd** §471.410(2) & (4)  
 Not more than **1 yr**<sup>1</sup> §161.615  
 Not more than **\$5,000**<sup>1</sup> §§161.635 & 161.655  
 There is also a Unitary Assessment of \$65 and a County Assessment of between \$5 and \$59. §§137.290(1)(b) & 137.309  
 See Incarceration & Medical Costs on p. 3-394.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:  
 License to Serve Alcoholic Beverages Withdrawn (Ycs/No):  
 Length of Term of License Withdrawal:

**Yes Canceled/Rev**<sup>2</sup> §§471.315 & 471.385  
 The length of any cancellation/revocation is not specified in the statute.  
 See Footnote No. 2 on p. 3-398.

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):  
 Anti-Consumption Law (Yes/No):

**Yes** §811.170(1)(b) & (c)  
**Yes** driver and passengers §811.170(1)(a) Excludes passengers riding in a vehicle used to carry persons for hire.

<sup>1</sup>The following mandatory sanctions to persons who sell or serve alcoholic beverages to minors: 1st offense-a \$350 fine; 2nd offense-a \$1,000 fine; and, 3rd or subsequent offense-a jail sentence of 30 dys and a fine of \$1,000. Note: These mandatory sanctions do not apply to licensees. §471.410(4), (5) & (6)

<sup>2</sup>I. In lieu of either a civil penalty or license cancellation/suspension, a licensee may be allowed "to acquire and use equipment designed to prevent the sales of alcoholic beverages to minors." §471.342

II. A license shall not be canceled/revoked if an employee sells alcoholic beverages to a minor provided the licensee participates in a responsible vendor program. §471.344(2)

**Employees.** Employees of "off-premises" licensees are subject to the following sanctions if they sell alcoholic beverages to minors. I. They must attend special training program (1) that concerns the importance of not selling alcoholic beverages to either minors or visibly intoxicated persons, (2) that provides guidelines for checking and recognizing false/alterd identification and (3) that recommends approaches for refusing to sell alcoholic beverages to either minors or visibly intoxicated persons. II. They are also subject to a civil penalty of not more than \$500. §471.341

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General Reference:

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Pennsylvania Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC):

Presumption (BAC):

Type of Drugs/Drugs and Alcohol:

Other:

Under the influence of alcohol<sup>1</sup> 75 §3731(a)(1)

≥**0.10**<sup>1&2</sup> 75 §3731(a)(4)(i) & (a.1)<sup>3</sup>

Persons Under 21 Years Old. ≥**0.02**<sup>3</sup> 75 §3731(a)(4)(ii) & (a.1)<sup>3</sup>

**None**

Under the influence of (1) **A Controlled Substance** or (2) a Controlled Substance and Alcohol 75 §3731(a)(2) & (3)

For Commercial Motor Vehicle Operators, see p. 3-403.

Persons <21 Yrs Old. Any Alcohol in the System 75 §3718(a)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

**Yes** 75 §1547(k)

**No**<sup>4</sup>

**Yes** 75 §1547(a)

**Yes** (Criminal Cases) 75 §1547(e)

A person has a right to refuse to submit to a chemical test. A "forced" test cannot be administered if this right is exercised. 75 §1547(b)(1) & *Com. v. Eisenhart*, 611 A.2d 681 (Pa. 1992)<sup>5&6</sup>

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:

Urine:

Other:

**Yes** 75 §1547

**Yes** 75 §1547

**None**

<sup>1</sup>The State supreme court has determined that 75 §3731 establishes only one type of drunk driving offense that of driving under the influence to a degree that renders a person incapable of safely driving. The court held that, as matter law, such offense can be established if a person has a BAC ≥0.10. *Com. v. McCurdy*, 735 A.2d 681 (Pa. 1999)

<sup>2</sup>Standard: Percent by weight of alcohol in the blood. 75 §3731(a)(4) Percent by wgt. of alcohol in the blood may be expressed as grams of alcohol per 100 milliliters of blood. *Com. v. Karch*, 502 A.2d 1359 (Pa.Super. 1986)

<sup>3</sup>Title 75, §3731(a.1) provides that a chemical test of a driver's breath, blood or urine test which shows a BAC of ≥0.10 (≥0.02 for persons <21 yrs old & ≥0.04 for CMV operators), w/n 3 hrs after driving, is *prima facie* evidence of such BAC. The State supreme court has held that this provision does not violate a person's constitutional right to due process of law. *Com. v. MacPherson*, 752 A.2d 384 (Pa. 2000) See also, *Com. v. Murray*, 749 A.2d 513 (Pa.Super. 2000).

<sup>4</sup>Only "reasonable grounds", not an actual arrest, is all that is needed. *Com. v. Urbanski*, 627 A.2d 789 (Pa.Super. 1993)

<sup>5</sup>**Special Note:** Under 75 §1547(a)(2), a person implicitly consents to a chemical test if they were driving a vehicle that was involved in an accident that resulted in either a death or an injury that required treatment at a medical facility. The Pennsylvania Supreme Court has held that this provision is unconstitutional because it did not require law enforcement officers to have "probable cause" of a crime prior to conducting a chemical test. The court considered such test to be a search. *Com. v. Kohl*, 615 A.2d 308 (Pa. 1992)

<sup>6</sup>The results of a chemical test (obtained via a warrantless search) showing an alcohol concentration, where the test was conducted on a blood sample that was withdrawn from an injured driver by medical personal at a hospital for treatment purposes but where such withdrawal was without the driver's consent, are admissible into evidence at a DWI trial. Of course, there must have been probable cause of a drunk driving offense before such evidence is admissible. *Com. v. Riedel*, 651 A.2d 135 (Pa. 1995)

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Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	<b>Yes Limited</b> The original DWI charge cannot be reduced at a preliminary hearing or arraignment. 75 §3731(f)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	<b>Yes</b> Alcohol or drug screening is required. 75 §1548(a)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	<b>None</b>
Administrative Licensing Action (Susp/Rev):	<b>None</b>
Other:	<b>None</b>
Refusal to Take <u>Implied Consent Chemical Test</u> : Criminal Sanction (Fine/Jail):	<b>None</b>
Administrative Licensing Action (Susp/Rev):	<b>Susp 12 mos (Mand)</b> An occupational or probationary license is not available. 75 §§1547(b)(1), 1553(d)(7) & 1554(f)(9)
Other:	<b>None</b>

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Acceptance of Accelerated Rehabilitation Disposition (ARD), DWI Aggravated Assault and Persons <21 Years Old below.
Imprisonment: Term (Day, Month, Years, Etc.):	<u>1st or 2nd offs</u> -2nd Degree misd-Not more than <b>2 yrs</b> <u>3rd or sub offs</u> -1st Degree misd-Not more than <b>5 yrs</b> 18 §1104(1) & (2) and 75 §3731(c)(1)

**Accelerated Rehabilitation Disposition (ARD).** A first DWI offender may be placed in ARD. 75 §§1552 & 3731(e)(6) and Pa. Cr. Pro. Rule 175 et seq. 1) Acceptance into and satisfactory completion of program may lead to dismissal of DWI charge. 2) Acceptance determined by judge after hearing relevant facts of prosecutor, defendant and any victims. Judge also announces terms of ARD 3) The following conditions must be imposed: costs for alcohol evaluation, education, treatment or any other costs of ARD; restitution to any victims; not less than 1 nor more than 12 mos license susp; and, court supervision from 6 to 12 mos. 4) Programs duration shall not exceed 2 yrs. 5) If defendant is found by the judge, at a hearing, to have violated ARD terms the program will be terminated and the prosecutor may proceed with the DWI charge(s). 6) When defendant enters ARD program because of a DWI charge, the Pa. Dept. of Tran. shall keep a record for 7 yrs. **Important:** ARD applies only to a first offense and acceptance of ARD is considered a 1st conviction for purposes of computing any subsequent violations. 75 §3731(e)(2) **Special Note:** However, ARD may not be allowed if: (1) defendant was convicted or accepted ARD, because of DWI charge within last 7 yrs; (2) present off violated habitual offender statute; (3) if any person other than defendant was seriously injured or killed.

**DWI Aggravated Assault.** A person, who "negligently causes serious bodily injury to another person" while violating the DWI laws, commits "aggravated assault by vehicle while driving under the influence," a 2nd degree Felony, and is subject to an imprisonment term of not more than 10 yrs and/or a fine of not more than \$25,000. "Serious bodily injury" is defined to mean "any bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ." 18 §§1101(1) & 1103(2) and 75 §3735.1

**Persons <21 Years Old.** It is a Summary Offense for a person <21 yrs old to operate a motor vehicle "while having any alcohol in his system." The only sanction for this offense is a fine of \$100. 75 §3718(a) & (c) However, a person <21 yrs old commits a regular drunk driving offense if they operate a motor vehicle with a BAC ≥0.02. 75 §3731(a)(4)(ii)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Mandatory Minimum Term:	<u>1st off-48 con hrs</u> <sup>1</sup> ; <u>2nd off</u> (w/n 7 yrs)- <u>30 dys</u> <sup>1</sup> ; <u>3rd off</u> (w/n 7 yrs)- <u>90 dys</u> <sup>1</sup> ; <u>4th off</u> (w/n 7 yrs)- <u>1 yr</u> <sup>1</sup> 42 §9721 & 75 §3731(e) <i>Com. v. Sojourner</i> , 518 A.2d 1145 (Pa. 1986) <u>Important</u> . See the Special Note below.
Fine: Amount (\$ Range):	<u>1st or 2nd off</u> -Not more than <b>\$5,000</b> 18 §1101(4) <u>3rd or sub off</u> -Not more than <b>\$10,000</b> 18 §1101(3)
Mandatory Min. Fine (\$):	<u>1st off</u> <sup>1</sup> - <b>\$300</b> and a surcharge of \$50 <sup>2</sup> ; <u>2nd off</u> (w/n 7 yrs.) <sup>1</sup> - <b>\$300</b> and a surcharge of \$100 <sup>2</sup> ; <u>3rd off</u> (w/n 7 yrs.) <sup>1</sup> - <b>\$300</b> and a surcharge of \$200 <sup>2</sup> ; <u>4th off</u> (w/n 7 yrs) <sup>1</sup> - <b>\$300</b> and a surcharge of \$300 <sup>2</sup> 75 §§3731(e) & 6506(a)(7) See Footnote No. 3.
Other Penalties: Community Service: Restitution (eg Victim's Fund)	<u>1st off</u> -Possible under ARD  <b>Yes</b> <sup>4</sup> Restitution is to be paid by a defendant to a victim. 18 §1106 Restitution is required under ARD. 75 §3731(e)(6)(iii)

<sup>1</sup>**Work Release.** Day time work release is possible for 1st and sub offenses. 75 §3731(h) & *Com. v. Kriston*, 588 A.2d 898 (Pa. 1991)  
**Comment:** Although the statute would appear to confine work release to litter collection from either public or private property, a recent decision by the Pennsylvania Superior Court has held that such "work release is not limited to litter collection." *Com. v. Snyder*, 560 A.2d 165, 174 (Pa.Super 1995) In *Kriston*, the Pennsylvania Supreme Court mentioned this statutory provision in a case concerning a subsequent offense but it did not address the issue discussed in *Snyder*.

<sup>2</sup>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)

<sup>3</sup>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)

<sup>4</sup>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)

**Special Note:** The DWI law would appear to mandate the indicated minimum imprisonment sentences. 75 §3731(e) However, other provisions provide that, as an alternative to mandatory imprisonment, either a 1st or subsequent offender may be sentenced either to residential inpatient rehabilitation or to house arrest-electronic surveillance along with drug and alcohol treatment. The law does not specify a minimum mandatory period of time a defendant has to be in one of these alternative programs. However, the maximum time an offender can be sentenced to these alternatives is limited to the maximum imprisonment term for the offense. 42 §§9721(a.1), 9763(a) & (c) and *Com. v. Harrison*, 661 A.2d 6 (Pa.Super 1995) Prior to the enactment of these alternatives, the Pennsylvania Supreme Court had held that electronic home monitoring could not be used as a substitute for mandatory incarceration because it was not the equivalent of imprisonment. *Com. v. Kriston*, 588 A.2d 898 (Pa. 1991)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, they are convicted of driving a CMV (1) with a BAC  $\geq 0.04$  (percent by weight of alcohol in the blood See Footnote No. 1 on p. 3-401.) or (2) while under the influence of alcohol or a controlled substance. For either (1) a subsequent conviction or (2) a combination of two or more convictions of any of the above listed items, the "disqualification" is for life (10 yrs mand). Title 75 §3731(i)(4) makes it illegal to operate a CMV with a BAC  $\geq 0.04$ ; a person who violates this provision is subject to the same criminal sanctions as for any other DWI offense. A person is "disqualified" from operating a CMV for 1 yr if, while operating a CMV, they refuse to submit a chemical test for either an alcohol concentration or the presence of controlled substances. In addition, a CMV operator must be placed "out-of-service" for 24 hours if they have any amount of alcohol in their system. A person, who operates a CMV with any amount of alcohol in their system, commits a summary offense and is subject to a fine of \$100. 75 §§1603, 1611, 1612, 1613 & 3731(i) See Footnote No. 2 on p. 3-401.

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Other:	<b>ADR Program:</b> 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) <b>Ignition Interlock.</b> All vehicles owned by an offenders <u>may</u> for a 1st off and <u>must</u> for a subsequent one be equipped with ignition interlock devices for at least 1 yr following license reinstatement. <sup>1</sup> 42 §§7002 & 7003
Administrative Licensing Actions <u>Pre-DWI Conviction</u> Licensing Action: Administrative Per Se Law:	None
<u>Post DWI Conviction</u> Licensing Action: Type of Licensing Action (Susp/Rev): Term of License Withdrawal (Days, Months, Years, etc.):	See Habitual Traffic Offender Law on p. 3-406. <b>Susp</b> 75 §§1532(b)(3) & 3731(e)(6)(ii) See <b>Ignition Interlock</b> under Other above. <b>12 mos</b> <sup>1</sup> (1st offenders in ARD program, 1 to 12 mos <sup>2</sup> ) <b>Persons Under 18 Years Old.</b> <sup>3</sup> 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 <sup>1&amp;3</sup> An occupational or probationary license is not available. 75 §§1553(d)(6) & (8) and 1554(f)(8) & (10)
Other: Rehabilitation: Alcohol Education: Alcohol Treatment: Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	<b>Yes</b> <sup>2&amp;4</sup> <b>Yes</b> <sup>2&amp;4</sup> <b>Yes (Discretionary)</b> A vehicle used in a DWI offense is subject to forfeiture under the "common law". <i>Commonwealth v. Crosby</i> , 568 A.2d 233 (Pa.Super. 1990)
Terms Upon Which Vehicle Will Be Released:	

<sup>1</sup>If a 2nd or subsequent offender does not apply for "ignition interlock" usage, they are not eligible for license reinstatement for an additional 1 yr period (i.e., the total suspension period is 2 yrs). 42 §7003(5)

<sup>2</sup>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)

<sup>3</sup>**Junior Drivers.** Under separate provisions of law, a "junior driver" (a licensee 16 or 17 yrs old) is subject a suspension of their driving privileges until they are 18 yrs old or for a period not to exceed 90 dys if they are convicted of **any** violation of Title 75. This licensing action is in addition to any other licensing action. 75 §1503(c)(3)

<sup>4</sup>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)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Miscellaneous Sanctions  
Not Included Elsewhere:

**Laboratory Costs.** A defendant may be required to pay the costs associated with (1) laboratory services for BAC testing and (2) any court appearances by laboratory technicians. 42 §1725.3

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:  
Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

Yes<sup>1</sup> 18 §§1101, 1103, & 1104 and 75 §§3732 & 3735.  
See Laboratory Costs under Miscellaneous DWI Sanctions above.

Mandatory Minimum Term:

Misd 1st degree (non-alcohol related death 75 §3732)-Not more than **5 yrs** 18 §1104(1); Felony 2nd degree (alcohol related death 75 §3735)-Not more than **10 yrs** 18 §1103(2)

Fine (\$ Range):

Misd 1st Degree (non-alcohol related death)-**None**; Felony 2nd Degree (Alcohol related death)-**3 yrs** 75 §3735(a) & (b) and 42 §9721(a.1)

Mandatory Minimum Fine:  
Administrative Licensing Action:

Misd 1st Degree (Non-alcohol Related Death)-Not more than **\$10,000** 18 §1101(3); Felony 2nd Degree (Alcohol related death)-Not more than **\$25,000** 18 §1101(1)

Licensing Authorized and  
Type of Action:

**None**  
See Footnote No. 2 on p. 3-404 and Habitual Traffic Offender Law on p. 3-406.

Length of Term of  
Licensing Withdrawal:

Misd 1st Degree (Non-Alcohol Related Death)-**Rev**; Felony 2nd Degree (Alcohol Related Death)-**Rev** 75 §1532(a)(2) & (3)

Mandatory Action--Minimum  
Length of License  
Withdrawal:

Misd 1st Degree (Non-Alcohol Related Death)-**1 yr**; Felony 2nd Degree (Alcohol Related Death)-**1 yr** 75 §1532(a)(2) & (3)

Misd 1st Degree (Non-Alcohol Related Death)-**1 yr**; Felony 2nd Degree (Alcohol Related Death)-**1 yr** An occupational or probationary license is not available. 75 §§1532(a)(2) & (3), 1553(a)(2) and 1554(f)(11)

Driving While License Suspended or Revoked  
Where the Basis Was a DWI Offense:

See the Special Note and Injury or Death on p. 3-406

Sanction:  
Criminal:  
Imprisonment (Term):  
Mandatory Minimum Term  
of Imprisonment:

Summary Offense-Not less than **90 dys**<sup>2&3</sup> 75 §1543(b)

**90 dys**<sup>3</sup> 75 §1543(b) & 42 §9721(A.1) For subsequent offenses, see Footnote No. 1 on p. 3-406.

<sup>1</sup>I. The State must prove either recklessness or criminal negligence and not ordinary negligence in order to sustain a conviction for vehicle homicide. *Com. v. Heck*, 535 A.2d 575 (Pa. 1987) II. A person can also be charged with involuntary manslaughter in situations where they have caused a death related to a drunk driving offense. *Com. v. Huckleberry*, 631 A.2d 1329 (Pa.Super. 1993)

<sup>2</sup>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.

<sup>3</sup>For a subsequent offense, there is a jail term of not more than 6 mos and/or a fine of \$200 to \$1,000. 75 §6503

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Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range):	\$1,000 <sup>1</sup> 75 §1543(b)
Mandatory Minimum Fine:	\$1,000 <sup>1</sup> 75 §§1543(b) <sup>2</sup>
Administrative Licensing Actions: Type of Licensing Action (Susp/Rev):	Rev/Susp 75 §1543(c) See Footnote No. 2 on p. 3-404.
Length of Term of License Withdrawal Action:	If based on a susp-original susp. extended of an additional period of 1 yr If based on a rev-original rev. extended of an additional period of 2 yrs 75 §1543(c)
Mandatory Term of License Withdrawal Action:	Same as above. An occupational or probationary license is not available. 75 §§1553(d)(15) & 1554(f)(12)
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	Yes
Grounds for Being Declared an Habitual Offender:	3 convictions of any one or more of the following w/n a 5-yr period: 1) serious traffic offense (e.g., DWI, reckless driving, veh homicide); or 2) leaving the scene of an accident where there has been either a death, injury or property damage. 75 §1542
Term of License Rev While Under Habitual Offender Status:	5 yrs or for another offense committed w/n 5 yrs, an additional rev period of 2 yrs. 75 §1542
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	2nd Degree Misd 75 §6503.1
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than 2 yrs 18 §1104(2)
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not more than \$5,000 18 §1101(5)
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	

<sup>1</sup>For a subsequent offense, there is a jail term of not more than 6 mos and/or a fine of \$200 to \$1,000. 75 §6503

<sup>2</sup>*Com. v. Hill*, 549 A.2d 583 (Pa.Super. 1988), & *Com. v. Hoover*, 494 A.2d 1131 (Pa.Super. 1985)

**Special Note:** It is a summary offense either (1) with a fine of \$1,000, to operate a CMV while under a CDL out-of-service order based on driving with alcohol in the body, (2) with a fine of \$500 for a 1st offense and a fine of \$500 to \$1,500 for a subsequent one, to operate a CMV during an alcohol related disqualification or (3) with an imprisonment term of 6 mos and/or a fine of \$1,000, to operate a CMV during an alcohol-hazardous materials related disqualification. 75 §1606(c) & (d)

**Injury or Death.** I. A driver, who causes an accident which results in injury to another person while their license is either suspended, revoked or canceled, commits a 2nd degree Misd. and is subject to an imprisonment term of not more than 2 yrs and/or a fine of not more than \$5,000. II. A driver, who causes an accident which results in either serious injury or death to another person while their license is either suspended, revoked or canceled, commits a 3rd degree Felony and is subject to an imprisonment term of not more than 7 yrs and/or a fine of not more than \$15,000. A "serious bodily injury" is defined to mean "any bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ." For either offense, the vehicle used therein may be forfeited. 18 §§1101(2) & (4), 1103(3), 1104(2) and 75 §3742.1

## Other State Laws Related To Alcohol Use

Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic

## Accidents:

State Has Such a Law (Yes/No):

Yes 75 §3749<sup>1</sup> Urine samples may also be taken.BAC Chemical Test Is Given to the  
the Following Persons:

Driver:

Yes If &gt; 15 yrs old and died w/n 4 hrs of the accident.

Vehicle Passengers:

Yes But only if the driver of the veh cannot be determined.

Pedestrian:

Yes If &gt; 15 yrs old and died w/n 4 hrs of the accident.

Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff. 1935) 1 §1991, 18 §6308 &amp; 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<sup>1&2</sup>"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)<sup>2</sup>, &  
*Johnson v. Harris*, 615 A.2d 771 (Pa.Super. 1992)<sup>3</sup>

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.<sup>4</sup> See also *Klein v. Raysinger*, 470  
A.2d 507 (Pa. 1983)<sup>5</sup>, where the court found no social host  
liability for the actions of adult guests.<sup>6,7&8</sup><sup>1</sup>The law applies to either licensees or their employees and if the "customers" are "visibly intoxicated". *Detwiler v. Brumbaugh*, 656 A.2d 944 (Pa.Super 1995)<sup>2</sup>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 the *Matthews* case, a licensee was held liable for the actions of inebriated minors notwithstanding the fact the licensee did not sell them alcoholic beverages. I.e., liability occurred even though the injury causing minor received the alcoholic beverage from another minor who had purchased such beverages illegally from the licensee.<sup>3</sup>Negligence per se standard for a violation of 47, §4-492(1) which prohibits the service of alcoholic beverages to intoxicated patrons.<sup>4</sup>*Macleary v. Hines*, 817 F.2d 1081 (3rd Cir. 1987), & *Orner v. Mallick*, 527 A.2d 521 (Pa. 1987) Note: If adult (parent) social hosts are not at the residence and have not given permission for a minor social host to furnish alcoholic beverages to minor guests, the adult (parents) social host are not liable for the injuries sustained by an intoxicated minor guest who was served such beverages by the minor social host. *Maxwell v. Keas*, 639 A.2d 1215 (Pa.Super. 1994)<sup>5</sup>*Bemis v. Gumbeski*, 534 A.2d 1099 (Pa.Super. 1987), & *Sites v. Cloonan*, 477 A.2d 547 (Pa.Super. 1994)<sup>6</sup>A social host cannot be held liable for the injuries caused to a third person by an intoxicated minor guest, if the host did not "knowingly furnish" alcoholic beverages to such minor guest. *Alumni Ass'n v. Sullivan*, 572 A.2d 1209 (Pa. 1990)<sup>7</sup>Note: There is contrary case law as to whether a minor, a person under 21 yrs old, can be held liable as a social host where the injury causing guest is also a minor. *Kapres v. Heller*, 612 A.2d 989 (Pa.Super. 1992) (held against such liability), & *Muntz v. Com., Dept. of Transp.*, 630 A.2d 524 (Pa.Cmwith. 1993) (held in favor of such liability)<sup>8</sup>Social hosts served "illegal drugs" to adult guests who became intoxicated and caused injuries to third persons. The court held that the social hosts were not liable for such injuries. *Looby v. Local 13 Productions*, 751 A.2d 220 (Pa.Super. 2000)

**PENNSYLVANIA**

Other State Laws Related To Alcohol Use: (continued)

Other: See Footnote No. 3 on p. 3-407.

A licensee can be held liable for the injuries or death of an intoxicated patron via a violation of 47, §4-493(1). *Fandozzi v. Kelly Hotel, Inc.*, 711 A.2d 524 (Pa.Super. 1998)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

**Misd** 47 §§4-493(1) & 4-494(a)

Term of Imprisonment:

**3 mos to 1 yr**

Fine (\$ Range):

**Not more than \$5,000**

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes** or liquor control board may impose a fine of \$50 to \$1,000. 3rd or sub. off (w/n 4 yrs)-mand susp/rev 47 §4-471

Length of Term of License Withdrawal:

**3 yrs** if revoked (1 yr for location unless ownership changes hands, including immediate family members.); if susp, indeterminate 47 §4-471

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

**Misd<sup>1</sup>** 47 §§4-493(1) & 4-494(a)

Term of Imprisonment:

**3 mos to 1 yr**

Fine (\$ Range):

**Not more than \$5,000**

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes** or Liquor Control Board may impose a fine of \$1,000 to \$5,000 3rd or sub. off (w/n 4 yrs)-mand susp/rev 47 §4-471

Length of Term License Withdrawal:

**3 yrs** if revoked (1 yr for structure unless ownership changes hands, including immediate family); if susp, indeterminate

Anti-Happy Hour Laws/Regulations:

**No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

**Yes** Driver & Passengers 18 §7513

Anti-Consumption Law (Yes/No):

**Yes<sup>2</sup>** Driver & Passengers 18 §7513

<sup>1</sup>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)

<sup>2</sup>Also applies to the consumption of "controlled substances". 75 §3715

JURISDICTION:  
General Reference:

**PUERTO RICO**  
Laws of Puerto Rico Annotated\* (Updated through January 1, 2000)

Basis for a DWI Charge:

Standard DWI Offense:  
Illegal Per Se Law (BAC):  
Presumption (BAC):

Under the influence of intoxicating drinks 9 §1041(a)  
**None**  
≥**0.10**<sup>1</sup> 9 §1041(b)(2)  
≥**0.05**<sup>1</sup> 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 Alcohol Concentration:

Preliminary Breath Test Law:  
Implied Consent Law:  
Arrest Required (Yes/No):  
Implied Consent Law Applies to  
Drugs (Yes/No):  
Refusal to Submit to Chemical Test  
Admitted into Evidence:  
Other Information:

Yes 9 §1043(a)  
Yes 9 §1043(b)  
**No** 9 §1043(b)  
n.a.  
**None**

Chemical Tests of Other Substances for Alcohol  
Concentration Which Are Authorized Under  
the Implied Consent Law:

Blood:  
Urine:  
Other:

Yes 9 §1043(a)  
**No**<sup>2</sup>  
"Any other substance of his body" 9 §1043

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):  
Anti-Plea Bargaining Statute (Yes/No):  
Pre-Sentencing Investigation Law (PSI)  
(Yes/No):

**No**  
**No**  
**Yes** Alcohol screening is required. 9 §1042(d)

<sup>1</sup>Standard: Percent of alcohol by volume (grams in 100th milliliters of one (1) percent of volume of blood) in the driver's blood. 9 §1041(b)(2) & (3)

<sup>2</sup>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).

**\*Important.** The Legislature of Puerto Rico made substantial revisions Puerto Rico's motor vehicle laws in 2000. However, the annotated code has not been updated to reflect these revisions.

**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(c)**  
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<sup>1</sup>; 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<sup>1</sup>; 2nd off (Misd) (w/n 5 yrs)-90 dys to 6 mos; 3rd and subsequent off (Felony)-fixed jail term of 1 yr<sup>3</sup>

Serious Injury Related DWI Off (Felony): fixed jail term of 1 yr<sup>3</sup> 9 §1042

Mandatory Minimum Term:

Non-Injury DWI Off (Misd)-1st off-None<sup>1</sup>; 2nd off (w/n 5 yrs)-24 con. hrs<sup>2</sup>; 3rd off-30 dys; subsequent off-60 dys

Injury Related DWI Off: 1st off (Misd)-None<sup>1</sup>; 2nd off (Misd) (w/n 5 yrs)-24 con. hrs<sup>2</sup>; 3rd and subsequent off (Felony)-6 mos and 1 dy<sup>3</sup>

Serious Injury Related DWI Off (Felony): 6 mos and 1 dy<sup>3</sup> 9 §1042

<sup>1</sup>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 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)

<sup>2</sup>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 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)

<sup>3</sup>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)

<p>Fine: Amount (\$ Range):</p>	<p><u>Non-Injury DWI Off (Misd)</u>-1st off-not more than <b>\$100 to \$300</b><sup>1</sup>; 2nd off (w/n 5 yrs)-<b>\$200 to \$400</b>; 3rd off-<b>\$300 to \$500</b>; <u>subsequent off</u> <b>\$400 to \$500</b> <u>Injury Related DWI Off</u>: 1st off (Misd)-<b>\$200 to \$500</b><sup>1</sup>; 2nd off (Misd) (w/n 5 yrs)-<b>\$300 to \$500</b>; 3rd and subsequent off (Felony)-<b>\$501 to \$5,000</b><sup>2</sup> <u>Serious Injury Related DWI Off (Felony)</u>: <b>\$501 to \$5,000</b><sup>2</sup> 9 §1042 All offs-<b>None</b></p>
<p>Mandatory Min. Fine (\$):</p>	<p><b>All offs-None</b></p>
<p>Other Penalties: Community Service:</p>	<p><b>Yes</b> For 2nd off (either non-injury or injury DWI offs)-<b>10 dys</b> of community service in lieu of imprisonment. 9 §1042(m) See Footnote No. 2 on p. 3-410.</p>
<p>Restitution (eg Victim's Fund):</p>	<p><b>Yes</b> 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 A defendant may be ordered to take and pass a driver improvement course. 9 §1042(h)</p>
<p>Other:</p>	<p>A defendant may be ordered to take and pass a driver improvement course. 9 §1042(h)</p>
<p>Administrative Licensing Actions: <u>Pre-DWI Conviction</u> Licensing Action: Administrative Per Se Law: Other:</p>	<p><b>None</b> <b>None</b></p>
<p><u>Post DWI Conviction</u> Licensing Action: Type of Licensing Action (Susp/Rev): Term of License Withdrawal (Days, Months, Years, etc.):</p>	<p><b>Susp, Restriction or Rev</b> 9 §1042(n)  For either non-injury, injury or serious injury DWI offs: <u>1st off</u>-<b>up to 3 mos</b><sup>1</sup>; <u>2nd off</u> (w/n 5 yrs)-<b>3 mos-2 yrs</b>; <u>3rd off</u>-<b>3 yrs</b>; <u>4th off</u>-<b>permanent rev</b> 9 §1042(n)</p>
<p>Mandatory Minimum Term of Withdrawal:</p>	<p>Except in the case of a 4th off (where there appears to be permanent rev), offenders driving privileges may be either suspended, restricted or revoked by the court. Consequently, an offender is not necessarily subject to mand denial of ALL driving privileges or a specified period of time for either a 1st, 2nd or 3rd off. 9 §1042(n) See Rehabilitation on p. 3-412</p>

<sup>1</sup>See Footnote No. 1 on p. 3-410.

<sup>2</sup>Via 33, §3045

**PUERTO RICO**

Sanctions Following a Conviction for a DWI Offense:  
(continued)

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) However, an offender may obtain restricted provisional driving privileges during this time. 9 §1042(i)

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

No

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

Jurisdiction Has Such a Law:

**Yes** There are two vehicle homicide offs. (1) Involuntary manslaughter while operating a motor vehicle (Misdemeanor) 33 §4005; (2) Death caused by gross or willful negligence in driving a motor vehicle (Felony) 33 §§3044 & 4006

Sanctions:

Criminal Sanction:

Imprisonment (Term):

**Misdemeanor off-a fixed term of 1 yr** (3 yrs if there are aggravating circumstances; 6 mos and 1 dy if there are extenuating circumstances.); **felony off-a fixed term of 6 yrs** (10 yrs if there are aggravating circumstances; 4 yrs if there are extenuating circumstances.)

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

**None**

**Misdemeanor off-\$3,000; felony off-\$501 to \$5,000<sup>1</sup>**

**None**

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Length of Term of

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

**Rev** 33 §4007

**1 yr** 33 §4007

**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

<sup>1</sup>Via 33, §3045

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 or sub off-\$200 to \$500

Mandatory Minimum Fine: None

Administrative Licensing Actions:  
Type of Licensing Action  
(Susp/Rev): None

Length of Term of License  
Withdrawal Action:

Mandatory Term of License  
Withdrawal Action:

Habitual Traffic Offender Law:

Jurisdiction Has Such Law (Yes/No): No

Grounds for Being Declared an  
Habitual Offender:  
Term of License Rev While  
Under Habitual Offender Status:  
Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status

Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:  
Imprisonment (Term):  
Mandatory Minimum Term of  
Imprisonment:  
Fine (\$ Range):  
Mandatory Minimum Fine (\$):  
Licensing Actions (Specify):

\*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

**PUERTO RICO**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): **Yes** 9 §1043

BAC Chemical Test Is Given to the 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 <sup>1</sup> 13 §6107
Term of Imprisonment:	30 dys to 6 mos <sup>2</sup>
Fine (\$ Range):	\$100 to 500 <sup>2</sup>

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 §6107
Length of Term License Withdrawal:	1st off-Susp 12 mos; 2nd off (w/n 5 yrs)-Permanent Revocation

Anti-Happy Hour Laws/Regulations:	No
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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

<sup>1</sup>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 to 6 mos; fine-\$25 to \$500. 33 §§1021 & 3045 (2) Sanctions against dealers (Misd): Jail-30 dys to 1 yr; fine-\$100 to \$1,000. 13 §§6083 & 6116

<sup>2</sup>An administrative fine of not more than \$2,000 may be imposed at any time before a misd. trial of an alcohol offense. "In such cases, the court, after being notified by the Secretary, shall discontinue and declare the criminal proceedings initiated to that effect closed." 13 §6097

PUERTO RICO

20th Edition

3 - 416

STATE:  
General Reference:

**RHODE ISLAND**  
General Laws of Rhode Island

Basis for a DWI Charge:

Standard DWI Offense:  
Illegal Per Se Law (BAC):

Under the influence of intoxicating liquor\* §31-27-2(a)  
>**0.08**<sup>1</sup> and **Any Blood "Presence" of a Scheduled Controlled Substance**<sup>2</sup> §31-27-2(b)(1) & (2)

Persons under 21 years old who have a BAC ≥**0.02** but <**0.10**<sup>3</sup> are considered to have been driving "while impaired" which is not a criminal offense. §§31-27-2.5(d) & (g) and 31-27-2.7

Presumption (BAC):  
Types of Drugs/Drugs and Alcohol"

**None**  
Under the influence of (1) **Any Drug**, (2) Toluene, (3) any Controlled Substance or (4) Any Combination of These Substances and Intoxicating Liquor §31-27-2(a)

Other:

**DWI Serious Bodily Injury Offense.** Causing a serious bodily injury<sup>4</sup> to a person while under the influence of any intoxicating liquor, toluene or any controlled substance. §31-27-2.6(a)  
For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:  
Implied Consent Law:  
Arrest Required (Yes/No):  
Implied Consent Law Applies to  
Drugs (Yes/No):  
Refusal to Submit to Chemical Test  
Admitted into Evidence:  
Other Information:

**Yes** §31-27-2.3

**No**<sup>5</sup>

**Yes** §31-27-2.1

Note: There is no statutory or case law on this subject.

**None**

<sup>1</sup>Standard: Percent by weight of alcohol in the blood. §31-27-2(b) However, §31-27-2(e) provides that percent by weight of alcohol in the blood is to be based upon milligrams of alcohol per 100 cubic centimeters of blood.

<sup>2</sup>**Comment:** The law does not appear to provide for an exemption for persons who are legally entitled to use a scheduled controlled substance.

<sup>3</sup>Standard: Blood alcohol concentration is based upon percent by weight. §§31-27-2.5(d) & 31-27-2.7 **Comment:** There are no provisions in these sections that further defines this standard. However, §31-27-2(e) provides that percent by weight of alcohol in the blood is to be based upon milligrams of alcohol per 100 cubic centimeters of blood.

<sup>4</sup>A "serious bodily injury" is defined as a "physical injury that creates a substantial risk of death or causes serious physical disfigurement or protracted loss or impairment of the function of any bodily member or organ." §31-27-2.6(b)

<sup>5</sup>A request to submit to a chemical test is based on "reasonable grounds" of driving while under the influence of intoxicating liquor. §31-27-2.1

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person's privilege to operate a CMV is "suspended" for at least 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if they are convicted of driving a CMV (1) with a BAC ≥0.04 (Standard: Blood alcohol concentration is based upon percent by weight. There is no provision in the CMV law that further defines this standard. However, §31-27-2(e) provides that percent by weight of alcohol in the blood is to be based upon milligrams of alcohol per 100 cubic centimeters of blood.), (2) while under the influence of alcohol or controlled substances or (3) of a refusal to submit to a chemical test. For a second violation of any of the above listed items, a person's privilege to operated a CMV is "revoked" for life (10 yrs mand). In addition, a CMV operator who has any alcohol in their system must "cease" to operate a CMV for 24 hours. Note: A CMV operator commits a "regular" DWI offense if they should operate a CMV with a BAC ≥0.04. §§31-10.3-3(9), (11), (13) & (28) and 31-10.3-31

**\*Legislative Oversight.** Section 31-27-2(d)(1) was amended in 2000 by Public Law Chapters 168 & 264 to provide a sanctioning scheme for 1st offenders BASED on blood alcohol concentrations (BACs). However, as a result, a possible legislative oversight may have occurred. The law may not provide sanctions for a 1st offense for violating the standard DWI offense, driving while under the influence of intoxication liquor, where a BAC is NOT required.

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	<b>Yes</b> However, there is an exception on religious grounds. §§31-27-2 & 31-27-2.1
Urine:	<b>Yes</b> §§31-27-2 & 31-27-2.1
Other:	<b>None</b>

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	<b>No</b>
Anti-Plea Bargaining Statute (Yes/No):	<b>No</b>
Pre-Sentencing Investigation Law (PSI) (Yes/No):	<b>Yes</b> Alcohol Assessment (Not Mandatory) §31-27-2(d)(7)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	<b>None</b>
Administrative Licensing Action (Susp/Rev):	<b>None</b>
Other:	Administrative fine-\$50 §§31-27-2.3(B) & 31-41.1-4(a)

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.  
**Vehicle Registration Suspension.** See Vehicle Impoundment/Confiscation on p. 3-421.

Sanctions Following a Conviction for a DWI Offense:

**Criminal Sanctions:**

**Imprisonment:**

Term (Day, Month, Years,  
Etc.):

A Non-Injury DWI Off §31-27-2(b)(3): 1st off (BAC ≥0.08 but <0.10) (Civil Violation)-None; 1st off (BAC ≥0.10 but <0.15) (Misd)-Not more than **1 yr**; 1st off (BAC ≥0.15) (Misd)-Not more than **1 yr**; 2nd off (BAC ≥0.08 but < 0.10 w/n any time period) or ANY 2nd off (w/n 5 yrs) (Misd)-**10 dys to 1 yr**; 2nd off (w/n 5 yrs w/ BAC ≥0.15)-**6 mos to 1 yr**; 3rd and sub offs (w/n 5 yrs) (Felony)-**1 to 3 yrs**; 3rd and sub offs (w/n 5 yrs w/ BAC ≥0.15) (Felony)-**3 to 5 yrs** §31-27-2(d)

DWI serious bodily injury offs-Felony: 1st off-**1 to 10 yrs**; 2nd and sub. off (w/n 5 yrs)-**2 to 15 yrs** §§11-1-2 & 31-27-2.6 The sanctions for young persons who committed certain alcohol driving offenses are contained in the Miscellaneous Sanctions section on p. 3-421.

**Mandatory Minimum Term:**

ANY 1st off-None; 2nd off (either w/ BAC >0.08 but <0.10 or any 2nd off w/n 5 yrs)-**10 dys containing at least 48 cons hrs<sup>1</sup>**; 2nd off (w/n 5 yrs w/ BAC ≥0.15)-**6 mos<sup>1</sup>**; 3rd and subsequent offs (w/n 5 yrs)-**1 yr containing at least 48 con hrs<sup>1</sup>**; 3rd and sub offs (w/n 5 yrs w/ BAC ≥0.15) (Misd)-**3<sup>1</sup>**  
DWI serious injury offs-None

**Fine:**

Amount (\$ Range):

A Non-Injury DWI Off : 1st off (BAC ≥0.08 but <0.10) (Civil Violation)-**\$100 to \$250**; 1st off (BAC ≥0.10 but <0.15) (Misd)-**\$100 to \$300**; 1st off (BAC ≥0.15) (Misd)-**\$500**; 2nd off (BAC ≥0.08 but < 0.10 w/n any time period) or ANY 2nd off (w/n 5 yrs) (Misd)-**\$400**; 2nd off (w/n 5 yrs w/ BAC ≥0.15)-Not less than **\$1,000**; 3rd and sub offs (w/n 5 yrs) (Felony)-**\$400**; 3rd and sub offs (w/n 5 yrs w/ BAC ≥0.15) (Felony)-**\$1,000 to \$5,000** §31-27-2(d)

DWI serious injury offs: 1st off-**\$1,000 to \$5,000**; 2nd and sub. off (w/n 5 yrs)-**\$3,000 to \$10,000** §31-27-2.6 See Criminal Offender's Fees below.

**Mandatory Min. Fine (\$):**

A Non-Injury DWI Off : 1st off (BAC ≥0.08 but <0.10) (Civil Violation)-**\$100<sup>1</sup>**; 1st off (BAC ≥0.10 but <0.15) (Misd)-**\$100<sup>1</sup>**; 1st off (BAC ≥0.15) (Misd)-**\$500<sup>1</sup>**; 2nd off (BAC ≥0.08 but < 0.10 w/n any time period) or ANY 2nd off (w/n 5 yrs) (Misd)-**\$400<sup>1</sup>**; 2nd off (w/n 5 yrs w/ BAC ≥0.15)-**\$1,000<sup>1</sup>**; 3rd and sub offs (w/n 5 yrs) (Felony)-**\$400<sup>1</sup>**; 3rd and sub offs (w/n 5 yrs w/ BAC ≥0.15) (Felony)-**\$1,000<sup>1</sup>** §31-27-2(d)  
DWI serious injury off-None

<sup>1</sup>Neither jail, fines, assessments, "public community restitution" (i.e., community service) nor any other drunk driving offense sanction can be suspended. §31-27-2(i)

<sup>2</sup>Awards are limited to \$25,000 plus attorney's fees. §12-25-22(b)

<sup>3</sup>Note: Citations are to the Criminal Injuries Compensation Act of 1996.

**Criminal Offender's Fees.** Persons, who are convicted of a criminal offense, whether violent or not, must pay the following fees. These fees fund the victims of violent crimes fund and are used to in part compensate victims of DWI related deaths or injuries. Misd Off: Either \$30 or 15% of the fine imposed which ever is the greater amount. Felony Off (where imprisonment is <5 yrs): Either \$90 or 15% of the fine imposed which ever is the greater amount. Felony Off (where imprisonment is ≥5 yrs): Either \$150 or 15% of the fine imposed which ever is the greater amount. §12-25-28(a) & (b)

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Other Penalties:

Community Service:

Non-Injury DWI Off: 1st off (BAC  $\geq$ 0.08 but  $<$ 0.10)-**10 (mand) to 60 hrs**; 1st off (BAC  $\geq$ 0.10 but  $<$ 0.15)-**10 (mand) to 60 hrs**; 1st off (BAC  $\geq$ 0.15)-**20 (mand) to 60 hrs** §§31-27-2(d)(1) & (i) and 31-27-21

Restitution

(eg Victim's Fund)

**Yes** Victim's compensation fund §12-25-17 et seq.<sup>2&3</sup> See Criminal Offender's Fees below.

Other:

**Highway Assessment Fee.** In addition to the above fines, a defendant must pay a highway assessment fee of **\$500.**<sup>1</sup> §31-27-2(d)(5)(i)

**EMS Special Assessment.** In addition to any fine, an offender must be assessed **\$1.** §31-27-18 **Comment.** These funds are deposited into the general State fund and, therefore, do not appear to be obligated for EMS functions.

**Child Endangerment.** An offender, who is over 18 yrs old, is subject to an imprisonment term of not more than 1 yr if they were transporting a passenger under 13 yrs old at the time of the offense. §31-27-2(d)(4)(¶2)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

**None**

A license may be susp for not more than 1 yr if a person has "committed" an off that requires rev/susp (e.g., DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction. §31-11-7(a)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

See School Bus Operators below.

**Susp** all non-injury DWI offs<sup>1</sup> For DWI serious injury offs-**Rev** §§31-27-2(d) & 31-27-2.6 For young persons, see Miscellaneous Sanctions on p. 3-421.

Term of License Withdrawal

(Days, Months, Years, etc.):

Non-Injury DWI Off : 1st off (BAC  $\geq$ 0.08 but  $<$ 0.10)-Not more than **45 dys**; 1st off (BAC  $\geq$ 0.10 but  $<$ 0.15)-**3 to 6 mos**; 1st off (BAC  $\geq$ 0.15) (Misd)-**3 to 6 mos**; 2nd off (BAC  $\geq$ 0.08 but  $\leq$  0.10 w/n any time period) or **ANY 2nd off** (w/n 5 yrs) (Misd)-**1 to 2 yrs**; 2nd off (w/n 5 yrs w/ BAC  $\geq$ 0.15)-**2 yrs**; 3rd and sub offs (w/n 5 yrs)-**2 to 3 yrs**; 3rd and sub offs (w/n 5 yrs w/ BAC  $\geq$ 0.15) (Misd)-**3 yrs** after incarceration §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

<sup>1</sup>A person convicted of driving while under the influence of a "controlled substance" may have their license revoked for 1 year. §31-11-6(2)

**School Bus Operators.** A person may have their privileges to operate a school bus suspended for up to 5 yrs if they have been convicted of a criminal "motor vehicle driving offense" while driving any vehicle or of any alcohol or drug related motor vehicle driving related offense. §31-10.3-31(j)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Mandatory Minimum Term of  
Withdrawal:

Non-Injury DWI Off : 1st off (BAC ≥0.08 but <0.10)-None; 1st off (BAC ≥0.10 but <0.15)-3 mos; 1st off (BAC ≥0.15) (Misd)-3 mos; 2nd off (BAC ≥0.08 but < 0.10 w/n any time period) or ANY 2nd off (w/n 5 yrs) (Misd)-1 yr; 2nd off (w/n 5 yrs w/ BAC ≥0.15)-2 yrs; 3rd and sub offs (w/n 5 yrs)-2 yrs; 3rd and sub offs (w/n 5 yrs w/ BAC ≥0.15) (Misd)-3 yrs after incarceration §31-27-2(d) & (i)  
DWI serious injury offs: None

Other:

Rehabilitation:

Alcohol Education:

A Non-Injury DWI Off : 1st off (BAC ≥0.08 but <0.10) -A course on driving while intoxicated or under the influence of controlled substances MAY be required; For ALL other 1st offs - Such a course is REQUIRED §31-27-2(d) See "DWI Course Fees" below.

Alcohol Treatment:

2nd off-Yes (Required); 3rd off-Yes (Required) §31-27-2(d)  
1st or subsequent DWI Serious Injury Offs: A court may order a person to successfully complete an alcohol or drug treatment program. §31-27-2.6(c) & (d)

Vehicle Impoundment/Confiscation:

Authorized by Specific  
Statutory Authority:

**Yes Forfeiture (Discretionary)** 3rd or sub. DWI off (w/n 5 yrs)-A person's vehicle may be forfeited (confiscated) by the State §31-27-2(d)(3)(ii)

Terms Upon Which Vehicle  
Will Be Released:

Other:

**Vehicle Registration Suspension.** A person, who has had their license suspended or revoked for any reason, may also have the registrations of any vehicles they own suspended. However, such registrations are not suspended if financial responsibility is provided. §31-32-4(b)

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.** ANY 2nd offender may be required to operate motor vehicles equipped with "ignition interlock" devices from 1 to 2 yrs. ANY 3rd or sub offender may be required to use these devices for 2 yrs. These requirements begin following the completion of any incarceration period. §§31-27-2(d)(2) & (3) and 31-27-2.8

**Shock Incarceration.** Eighteen (18) to 28 year old non violent offenders, who have never been incarcerated following a conviction, are eligible to participate in a "shock incarceration" program. "The program shall include extensive physical regimentation, drug and alcohol abuse counseling, behavioral counseling and mandatory education courses and community services." §12-19-2.2 **Comment:** This program does not appear

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Miscellaneous Sanctions  
Not Included Elsewhere: (continued)

to interfere with the mandatory jail sanctions that must be imposed on 2nd and sub drunk driving offenders. §12-19-23.2

**Special Drunk Driving Offense Fee.** All DWI offenders must pay a special fee of \$86 for fiscal years 2000 through 2006. §31-27-2(d)(5)(ii)

**DWI Offenders Under 18 Years Old.** In addition, the following sanctions apply to persons convicted of DWI who are under 18 years old: 1st offense-a highway assessment fine of not more than \$500, 10 to 60 hrs. of "public community restitution" (i.e., community service) & a 6 to 18 mo. lic. susp (6 mos mand); 2nd and subsequent offense-confinement in a training school for not more than one (1) yr., a fine of not more than \$500 and license susp until the person is 21 (mand). §31-27-2(d)(6)

**Persons Under 21 Years Old with a BAC  $\geq 0.02$  but  $< 0.01$ .** There are two separate provisions of law that provided for sanctions against young persons who drive while impaired who drive with a BAC  $\geq 0.02$  but  $< 0.10$  but are **not** criminal offenses. §§31-27-2.5 & 31-27-2.7

I. For persons under 18 years old, who have been found to have been driving while impaired (BAC  $\geq 0.02$  but  $< 0.10$ ), the following sanctions apply. For 1st and sub. offs, an assessment fee of \$150 or "public community restitution" (i.e., community service) (§31-27-2.5(d)(1)) and the following licensing sanctions: 1st violation-6 to 12 mos susp (6 mos mand); 2nd violation-susp until the person is 21 years old (appears mand); 3rd and subsequent violations-suspension until the person is 21 yrs old plus an additional 2 yr susp (appears mand) §§31-27-2.5(d)(2), (3) & (4) and 31-27-21

II. For persons under 21 but  $\geq 18$  years old, who have been found to have been driving while impaired (BAC  $\geq 0.02$  but  $< 0.10$ ), the following sanctions apply. 1st violation: A fine of not more than \$250; "public community restitution" (i.e., community service) of 30 hrs; and, license suspension-1 to 3 mos (1 mo mand); 2nd and sub. violations: A fine of not more than \$250; a highway safety assessment fee of \$300 (mand); 60 hrs of "public community restitution" (i.e., community service); and, license suspension-3 to 6 mos (3 mos mand). For both 1st and sub. violations, a person may be ordered by the court to participate in either and alcohol education or treatment program. §§31-27-2.7 & 31-27-21

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:  
Criminal Sanction:  
Imprisonment (Term):

See School Bus Operators on p. 3-420.  
**Yes**

I. Death related DWI offs-felony-1st off - **5 to 15 yrs**; 2nd and subsequent (w/n 5 yrs) - **10 to 20 yrs** §§31-27-2.2 & 11-1-2  
II. Non-DWI related driving causing death-felony-Not more than **10 yrs** §§31-27-1 & 11-1-2

Mandatory Minimum Term:

**None**

Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range):	I. Death related DWI offs, <u>1st off</u> - <b>\$5,000 to \$10,000</b> ; <u>2nd and subsequent</u> (w/n 5 yrs) - <b>\$10,000 to \$20,000</b> II. Non-DWI related deaths - <b>None</b>
Mandatory Minimum Fine: Administrative Licensing Action: Licensing Authorized and Type of Action:	<b>None</b>  I. Death related DWI offs, <u>1st off-Rev</u> ; <u>2nd and subsequent</u> (w/n 5 yrs)- <b>Rev</b> II. Non-DWI related driving causing death- <b>Rev</b> §31-11-6
Length of Term of Licensing Withdrawal:	I. Death related DWI offs, <u>1st and subsequent offs</u> (w/n 5 yrs)- <b>5 yrs</b> II. Non-DWI related driving causing death- <b>3 yrs</b>
Mandatory Action--Minimum Length of License Withdrawal:	I. Death related DWI offs, <u>1st and subsequent offs</u> (w/n 5 yrs)- <b>5 yrs</b> II. Non-DWI related driving causing death- <b>3 yrs</b>
Other:	1st or subsequent offs: A court may order a person to successfully complete an alcohol or drug treatment program. §31-27-2.2(b)(1) & (2) See Vehicle Impoundment/Confiscation on p. 3-420. See Criminal Offender's Fees on p. 3-419.

Driving While License Suspended or Revoked  
Where the Basis Was a DWI Offense:

Sanction: Criminal: Imprisonment (Term):	See the Special Note below.  Where susp or rev is due to either a DWI conviction, a refusal to submit to chemical test, reckless driving, motor veh manslaughter or 3 moving violations in one yr. <sup>1</sup> <u>1st off</u> (Misd)- <b>10 dys to 1 yr</b> ; <u>2nd off</u> (w/n 5 yrs) (Misd)- <b>6 mos to 1 yr</b> ; <u>3rd and subsequent offs</u> (w/n 5 yrs) (felony)- <b>1 to 5 yrs</b> §§31-11-18.1, 31-27-13 & 31-27-14
Mandatory Minimum Term of Imprisonment:	<u>1st off</u> - <b>10 dys</b> ; <u>2nd off</u> (w/n 5 yrs)- <b>6 mos</b> ; <u>3rd and subsequent offs</u> (w/n 5 yrs)- <b>1 yr</b> §31-11-18.1(d)
Fine (\$ Range):	<u>1st off</u> - <b>\$500</b> ; <u>2nd off</u> (w/n 5 yrs)- <b>\$500</b> ; <u>3rd and subsequent offs</u> (w/n 5 yrs)- <b>\$1,000 to \$5,000</b> §31-11-18.1, 31-27-13 & 31-27-14 See Criminal Offender's Fees on p. 3-419.

<sup>1</sup>See §31-11-18 for sanctions related to driving after either susp or rev for other traffic law violations.

**Special Note:** I. The sanctions given appear to apply to the operation of a CMV during a CDL suspension or revocation for an alcohol related offense conviction. §31-11-18.1 II. A person, who does not "cease" to operate a CMV for 24 hrs when required to do so, commits a misdemeanor and is subject to a fine of \$150 and CDL revocation for 3 mos. §31-10.3-31(h) III. Under separate provisions of law, a CMV operator, who violates an out-of-service order issued by an authorized Federal or State official pursuant to Federal Regulations, is subject to the following CDL disqualifications: 1st violation-disqualification for 90 dys (mand); 2nd violation (w/n 10 yrs)-disqualification for 1 yr (mand); and, 3rd or subsequent violation (w/n 10 yrs)-disqualification for 3 yrs (mand). A CMV operator, who violates an out-of-service order either while transporting hazardous materials or while driving a CMV designed to transport 15 or more persons, is a CMV operator is to the following CDL disqualifications: 1st violation-disqualification for 180 dys (mand); and, 2nd or subsequent violation (w/n 10 yrs)-disqualification for 2 yrs (mand). In addition to the above disqualifications, the violator is subject to a "penalty" of \$1,000. §31-10.3-31(j)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Fine:	<u>1st off-\$500; 2nd off (w/n 5 yrs)-\$500; 3rd and subsequent offs (w/n 5 yrs)-\$1,000</u> §31-11-18.1(d)
Administrative Licensing Actions: Type of Licensing Action (Susp/Rev):	<b>Susp/Rev</b> §31-11-18.1 See Vehicle Impoundment/Confiscation on p. 3-420.
Length of Term of License Withdrawal Action:	For Driving While Susp: <u>1st &amp; 2nd off</u> -An additional susp period as the licensing agency " <b>deems proper</b> "; <u>sub. off</u> -Rev-for an additional period of <b>1 yr</b> For Driving While Rev: <u>1st &amp; sub. off</u> -Rev-for an additional period of <b>1 yr</b> §31-11-18.1
Mandatory Term of License Withdrawal Action:	For Driving While Susp: <u>1st off</u> -for an additional period of <b>3 mos</b> ; <u>2nd off</u> -for an additional period of <b>6 mos</b> ; <u>sub. off</u> -for an additional period of <b>1 yr</b> For Driving While Rev: <u>1st &amp; sub. off</u> -for and additional period of <b>1 yr</b> §31-11-18.1
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No): Grounds for Being Declared an Habitual Offender:	<b>Yes</b> §31-40-1 et seq.  Three or more convictions within 3 yrs for any of the following: 1) Motor veh manslaughter; 2) DWI (alcohol or drugs); 3) Driving while license suspended or revoked; 4) Willfully operating a motor veh without a license; 5) any felony off using a motor veh; 6) failure to stop and report death/injury after accident driver was involved in; 7) failure of driver to stop and report accident where damages equalled \$150 or more; <u>or</u> 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 White Under Habitual Offender Status:	<b>1-5 yrs</b> §31-40-7 See Vehicle Impoundment/Confiscation on p. 3-420.
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	<b>Felony</b> §11-1-2
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than <b>5 yrs</b> §31-4-8
Mandatory Minimum Term of Imprisonment:	The <b>5 yr</b> sentence may not be suspended <u>except</u> in cases where the defendant operated a vehicle in order to save life or limb. §31-40-8
Fine (\$ Range):	<b>None</b>
Mandatory Minimum Fine (\$):	<b>None</b>
Licensing Actions (Specify):	<b>None</b>

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

## Accidents:

State Has Such a Law (Yes/No):

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.<sup>1</sup>"Dram Shop Law" Concept Has Been  
Adopted Via a Change to the Common  
Law Rule by Action of the Highest  
Court of Record in the State (Case  
Citation):

No

Dram Shop Actions-Social Hosts:

No *Ferreira v. Strack*, 652 A.2d 965 (R.I. 1995)<sup>2</sup> & *Marty v. Garcia*, 667 A.2d 282 (R.I. 1995)

Other:

None

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

1st off-Petty Misd; 2nd off-Petty Misd; 3rd and Subsequent offs-Misd §§ 3-8-1, 3-11-5 & 11-1-2

Term of Imprisonment:

1st off-3 mos; 2nd off-6 mos; 3rd and subsequent offs-Not more than 1 yr

Fine (\$ Range):

1st off-Not more than **\$200**; 2nd off-Not more than **\$300**; 3rd and subsequent offs-Not more than **\$500** See Criminal Offender's Fees on p. 3-419.Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes Susp/Rev** §3-5-23

Length of Term of License Withdrawal:

Susp-Length is not specified §3-5-23; Rev.- **5 yrs** (under §3-5-23)<sup>3</sup><sup>1</sup>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.<sup>2</sup>The court held that there was no duty of care in a typical social host type dram shop situation. I.e., injured third parties did not have a common law cause of action for negligence against a social host for the injuries cause by an intoxicated guest.<sup>3</sup>If the revocation is under §3-5-22, the length would be 1 yr.

**RHODE ISLAND**

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

**Violations<sup>1</sup>** §§3-8-5 & 11-1-2

**None**

**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 Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

**Yes Susp/Rev §3-5-23**

Susp-Length is not specified §3-5-23; Rev. - **5 yrs** (under §3-5-23)<sup>2</sup>

Anti-Happy Hour Laws/Regulations:

**Yes §3-7-26**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

**Yes<sup>3</sup> §31-22-21.1**

**No<sup>4</sup>**

<sup>1</sup>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 See Criminal Offender's Fees on p. 3-419.

<sup>2</sup>If the revocation is under §3-5-22, the length would be 1 yr.

<sup>3</sup>The law makes it illegal for a person to "operate a motor vehicle upon the public highways with any unsealed alcoholic beverage container within the passenger section of said vehicle." Note: This prohibition does not apply to rented limousines or buses. Nevertheless, neither an operator nor a passenger under 21 years old shall possess an unsealed container of an alcoholic beverage.

<sup>4</sup>**Historical Note:** The statute that prohibited the consumption of alcoholic beverages by a driver, §31-22-21, was repealed by §1 of Chapter 99-382.

STATE:  
General Reference:

**SOUTH CAROLINA**  
Code of Laws of South Carolina Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol <sup>1</sup> §56-5-2930(1)
Illegal Per Se Law (BAC):	> <b>0.10</b> <sup>2&amp;3</sup> §56-5-2933 See Footnote No. 1 on p. 3-431.
Presumption (BAC):	> <b>0.10</b> <sup>2&amp;4</sup> ("inferred" instead of presumed) §56-5-2950(b)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) <b>Any Drug</b> , (2) Any Combination of Drugs or Substances or (3) A Combination of Alcohol and Other Drugs or Substances §56-5-2930(2) & (3)
Other:	For Commercial Motor Vehicle Operators, see p. 3-432.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	Yes §§56-5-2950(a) & 56-5-286(C)
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) <i>State v. Miller</i> , 185 S.E.2d 359 (S.C. 1971), & <i>City of Columbia v. Ervin</i> , 500 S.E.2d 483 (S.C. 1998) <sup>5</sup> A person <b>must</b> submit to a chemical test either if they have been arrested for or if there is probable cause that such person violated §56-5-2945 which makes it illegal to cause great bodily injury or death while in violation of the drunk driving law. <sup>6</sup> §56-5-2946
Other Information:	

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes <sup>7</sup> A breath sample test must be offered first. §56-5-2950(a)
Urine:	Yes <sup>7</sup> A breath test must be offered first. §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):	No <sup>8</sup>

<sup>1</sup>"Alcohol" any substance containing any form of alcohol (e.g., ethanol, methanol, propanol, and isopropanol). §56-1-10(16)  
<sup>2</sup>"Alcohol concentration" is defined to mean either (1) grams of alcohol per 100 milliliters of blood or (2) other bodily fluids as determined by the South Carolina Law Enforcement Division. §56-1-10(17)  
<sup>3</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with an "alcohol concentration" of ≥0.10 for other "bodily fluids" as determined by the South Carolina Law Enforcement Division. §§56-1-10(17) & 56-5-2933  
<sup>4</sup>>0.08 if §1 of Art. VIII-A of the State's constitution is amended w/respect to the sale of certain alcoholic beverages. Act 97 of 1999  
<sup>5</sup>In *Ervin*, an offender refused to submit to a breath test and instead insisted he obtain an independent blood test. A law enforcement officer transported defendant to a medical facility for blood test but the officer did not authorize such a test. The facility's staff refused to perform such test without police authorization. Evidence of refusal to submit to the breath test was admissible.  
<sup>6</sup>*State v. Mullins*, 489 S.E.2d 923 (S.C. 1997), abrogated by §§56-5-2946 (enacted in 1998) and 56-5-2950 (as amended in 1998).  
<sup>7</sup>Additional testing is not authorized if the driver has registered an alcohol concentration >0.10. §56-5-2950(a) See Footnote No. 4.  
<sup>8</sup>However, an alcohol assessment is needed for license reinstatement. §56-5-2990 (¶2)

**SOUTH CAROLINA**

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): N/A  
Administrative Licensing Action (Susp/Rev): N/A  
Other: N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): None  
Administrative Licensing Action (Susp/Rev):

1st refusal-90 dy susp; sub\_refusal<sup>1</sup> (w/n 10 yrs)-180 dys §56-5-2951(A) & (K) These susps are not mand. A person may be issued restricted driving privileges for either employment or college education purposes. §56-5-2951(J)  
Persons Under 21 Years Old (0.02 violation). 1st refusal-6 mos susp (mand); sub\_refusal<sup>1</sup> (w/n 5 yrs)-1 yr (mand) §56-5-286(B), (C) & (F)  
See Temporary Driving Privileges on p. 3-430.

Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:  
Term (Day, Month, Years,  
Etc.):

1st off (Misd)-48 hrs to 30 dys; 2nd off (w/n 10 yrs) (Cl C Misd)-48 hrs to 1 yr; 3rd off (w/n 10 yrs) (Cl A Misd)-60 dys to 3 yrs; 4th and subsequent off (w/n 10 yrs) (Cl F felony)-1 to 5 yrs §§16-1-10, 16-1-20, 16-1-90(F), 16-1-100(A) & (C) and 56-5-2940 DWI where there is great bodily injury-**Cl B felony, 30 dys to 15 yrs** §§16-1-10(B) & 56-5-2945

Mandatory Minimum Term:

1st off-48 hrs<sup>2</sup>; 2nd off-48 hrs<sup>2</sup>; 3rd off-60 dys<sup>2</sup>; 4th and subsequent offs-1 yr<sup>2</sup> DWI where there is great bodily injury-**30 dys<sup>2</sup>**

Fine:  
Amount (\$ Range):

1st off-\$300; 2nd off-\$2,000 to \$5,000; 3rd off-\$3,500 to \$6,000; 4th off-None DWI where there is great bodily injury-**\$5,000 to \$10,000**

Mandatory Min. Fine (\$):

1st off-\$300; 2nd off-\$1,000; 3rd off-\$3,500; 4th off-None DWI where is great bodily injury-**\$5,000** §§56-5-2940 & 56-5-2945

<sup>1</sup>This licensing sanction also applies if there has been a prior admin. per se violation (for person under 21 yrs old, this includes licensing action for a 0.02 violation) or prior drunk driving offense within the period of time indicated. §§56-1-286(F) & 56-5-2951(K)(2)

<sup>2</sup>I. Secs. 56-5-2940 and 56-5-2945(A)(2) provide that these minimum sanctions are mandatory and, therefore, cannot be either suspended or probated. *State v. Tisdale*, 467 S.E.2d 270 (S.C.App. 1996) However, there are exceptions. (1) An offender may be allowed to participate in out-of-jail **public service work** while serving an incarceration sentence. §24-13-660 Also, (2) the law provides, that notwithstanding other provisions providing for mandatory incarceration, an offender may be sentenced to **home detention** in lieu of incarceration with or without electronic monitoring. §24-13-1530 II. For an alcohol or drug offense for which a person can be imprisoned >90 dys, the court may suspend sentence and place the offender in an alcohol and drug rehabilitation center. Upon release from this center, the court must impose a term of probation. The length of this term appears to be discretionary with the court. §§24-13-1930 & 24-13-1950

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Other Penalties:  
Community Service:

Non-Injury DWI Offs: 1st off-A minimum of **48 hrs** in lieu of imprisonment<sup>1</sup>; 2nd off-Not less than **10 dys** in lieu of imprisonment<sup>1</sup>

Restitution  
(eg Victim's Fund)  
Other:

**Yes** Victims' Compensation Fund §16-3-1110 et seq.  
**Child Endangerment.** A person ≥ 18 yrs old, who commits either a drunk driving offense under §56-5-2930 or a death/serious bodily injury drunk driving offense under §56-5-2945 (but **NOT** an illegal per se violation) while transporting a child < 16 yrs old, is subject to additional jail and fine sanctions which are equal to not more than half maximum jail and fine sanctions for these offenses. These sanctions are mandatory if the jail or fine sanctions have been imposed for the original offense. Also, mand lic susp for 60 dys. §56-5-2947

**Mandatory Assessments.** I. In general sessions court and municipal court, a defendant must pay respectively an assessment which is equal to 62% and 74% of the fine actually imposed (i.e., that part of the fine that has not been suspended). §§14-1-206(A) & 14-1-208(A) II. For ANY drunk driving offense, there is a **\$100** (mand) surcharge obtained in general sessions court or a **\$25** (mand) surcharge obtained in magistrate's and municipal courts. §14-1-211(A)(1) III. There is an additional **\$100** (mand) surcharge for ANY drunk offense under §14-1-211(A)(2) IV. Every defendant must pay a **\$12** assessment in addition to any other sanction. §56-5-2995

Administrative Licensing Actions:  
Pre-DWI Conviction Licensing Action:  
Administrative Per Se Law:

See Temporary Driving Privileges on p. 3-430.  
≥ **0.15 BAC** (See Footnote No. 2 on p. 3-427.) 1st violation-**30 dy susp**<sup>2</sup>; sub violation<sup>3</sup>(w/n 10 yrs)-**60 dy susp**<sup>2</sup> §56-5-2951(A) & (K)

Persons Under 21 Years Old-≥ **0.02 BAC** (See Footnote No. 2 on p. 3-427.) 1st violation-**3 mo susp** (mand); sub violation<sup>3</sup> (w/n 5 yrs)-**6 mo susp** (mand) §56-1-286(A) & (G) A person must be attending or have completed an alcohol safety action program before their license can be restored. §56-1-286(H)

Other:

**None**

Post DWI Conviction Licensing Action:  
Type of Licensing Action  
(Susp/Rev):

See the Special Note on p. 3-430.

1st off<sup>4</sup>-**Susp**; 2nd off<sup>4</sup> (w/n 10 yrs)-**Susp**; 3rd off<sup>4</sup> (w/n 5 or 10 yrs)-**Susp**; 4th and subsequent offs<sup>4</sup> (w/n 10 yrs)-**Rev** §56-5-2990  
DWI off w/ great bodily injury-**Susp** §56-5-2945

<sup>1</sup>Home detention may be ordered in lieu of community service. §24-13-1530

<sup>2</sup>These susps are not mandatory as restricted driving privileges for either employment or college education purposes. §56-5-2951(J)

<sup>3</sup>This licensing sanction applies if there has been either a prior refusal or prior drunk driving offense within the period of time indicated. For persons under 21 yrs old, it also includes a prior violation of the 0.15 admin. per se law. §§56-1-286(F) & 56-5-2951(K)(2)

<sup>4</sup>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.

**SOUTH CAROLINA**

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Term of License Withdrawal  
(Days, Months, Years, etc.):

1st off-6 mos; 2nd off (w/n 10 yrs)-1 yr; 3rd off (w/n 10 yrs)-2 yrs; 3rd off (w/n 5 yrs)-4 yrs; 4th and subsequent offs (w/n 10 yrs)-Permanent §56-5-2990; DWI off where there is great bodily injury-Term of imprisonment plus 3 yrs §56-5-2945

Mandatory Minimum Term of  
Withdrawal:

1st off - For a 1st DWI off, a provisional license may be issued for the 6-mo susp period provided the defendant participates in an alcohol/drug education/treatment program §§56-1-1320 & 56-1-1330; 2nd off (w/n 10 yrs)-1 yr; 3rd off (w/n 10 yrs)-2 yrs; 3rd off (w/n 5 yrs)-4 yrs; 4th and subsequent offs (w/n 10 yrs)-7 yrs (§56-1-385(A)(1)); DWI off where there is great bodily injury-Term of imprisonment plus 3 yrs

Other:  
Rehabilitation:  
Alcohol Education:

An offender, who has had their license suspended, must successful complete an Alcohol and Drug Safety Action Program prior to license reinstatement.<sup>1</sup> However, upon the recommendation by the Medical Advisory Board, an offender's license may be restored notwithstanding the fact they have not successfully completed this program. §56-5-2990(b) & (d)

Alcohol Treatment:

Persons, who have had their driving privileges permanently revoked, must successfully complete an alcohol or drug treatment program before their license can be reinstated. §56-1-385(A)(2) **Yes** See Alcohol Education above and II under Footnote No. 2 on p. 3-428.

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

**Yes** For a 3rd or sub DWI off (w/n 10 yrs), the vehicle either (1) owned and operated by the offender or (2) operated by an offender who is a resident of the household of the registered owner **must be forfeited.** §56-5-6240(A)

Terms Upon Which Vehicle  
Will Be Released:  
Other:

<sup>1</sup>Notwithstanding the fact that they have not completed this program, a person, who has had their driving privileges suspended via the administrative per se law, must have such privileges restored after the suspension period has ended. Nevertheless, they must continue to participate in the Alcohol and Drug Safety Action Program. §56-5-2951(L)

**Special Note:** An offender, who is < 18 yrs old, may have their license suspended by the court until they reach their 18th birthday. §20-7-1333(B)

**Temporary Driving Privileges (Temporary Alcohol Restricted Driver's License).** At the time of arrest, a person, who is subject to licensing action under either the implied consent or the admin. per se laws, may be granted temporary driving privileges until they can obtain a hearing on the issues. However, these driving privileges are conditioned on the person enrolling in an Alcohol and Drug Safety Action Program and requesting a hearing w/n 10 dys of arrest (notice of susp). If a person fails to satisfy either of these two items, they wave their right to a hearing and to obtain a temporary driving privileges. §§56-1-286(M) & 56-5-2951(G)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Miscellaneous Sanctions  
Not Included Elsewhere:

**Publishing of Offenders' Names.** 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).

**Ignition Interlock.**<sup>1</sup> A person (1st or subsequent offender), who violates ANY drunk driving law, **may** be required to install an ignition interlock device on the vehicle they were operating (either titled in their name or a family member's name). The duration of ignition interlock usage is discretionary with the court. §56-5-2941

**Videotaping.**<sup>1</sup> The law requires that law enforcement officers videotape the conduct of persons who have been stopped for a drunk driving offense. §56-5-2953

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes** I. Cl B Felony if death is based on a DWI off  
II. Cl E Felony if death is caused by the reckless (non-DWI related) operation of a vehicle (reckless homicide). §§16-1-10, 16-1-20, 16-1-30, 16-1-90, 56-5-2910 & 56-5-2945.  
Important. See Child Endangerment on p. 3-429.

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

I. Cl B Felony-**1 to 25 yrs**<sup>2</sup> §56-5-2945(A)(2)  
II. Cl E Felony-not more than **10 yrs**<sup>2</sup> §56-5-2910  
I. Cl B Felony-**1 yr** §56-5-2945(A)(2)  
II. Cl E Felony-**None**

Mandatory Minimum Term:

I. Cl B Felony -**\$10,000 to \$25,000** §56-5-2945(A)(2)  
II. Cl E Felony-**\$1,000 to \$5000** §56-5-2910

Fine (\$ Range):

I. Cl B Felony-**\$10,000** §56-5-2945(A)(2)  
II. Cl E Felony-**None**

Mandatory Minimum Fine:

Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

I. Cl B Felony-**Susp** §§56-1-280(1) & (2) and 56-5-2945  
II. Cl E Felony-**Rev** §§56-1-280(1) & (2) and 56-5-2910

Length of Term of  
Licensing Withdrawal:

I. Cl B Felony-**Term of imprisonment plus 3 yrs** §56-5-2945  
II. Cl E Felony-**5 yrs** §56-5-2910

<sup>1</sup>**Important.** The Illegal per se and Ignition Interlock laws become effective either on January 1, 2001 or when the State certifies to the legislature that all breath test sites have been equipped with video cameras. §34 of Act No. 390 of the 2000 Legislative Session

<sup>2</sup>**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

SOUTH CAROLINA

Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum

Length of License

Withdrawal:

Other:

I. CI B Felony off-Term of imprisonment plus 3 yrs §56-5-2945

II. CI E Felony-1 yr<sup>1</sup> §56-5-2910

**Assessments.** I. In general sessions court, a defendant must pay an assessment which is equal to 62% of the fine actually imposed (i.e., the fine that has not been suspended). §14-1-206(A) II. There is a **\$100** (mand) surcharge obtained in general sessions court or a **\$25** (mand) surcharge obtained in magistrate's and municipal courts. §14-1-211(A)(1)

**Persons Under 18 Years Old.** An offender, who is < 18 yrs old, may have their license suspended by the court until they reach their 18th birthday. §20-7-1333(B)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

See the Special Note below.

1st off (Misd)-10 to 30 dys; 2nd off (w/n 5 yrs) (Misd)-60 dys to 6 mos; 3rd and subsequent off (w/n 5 yrs) (CI A Misd)-6 mos to 3 yrs §§16-1-10(C), 16-1-20, 16-1-100(A) and 56-1-460(A)(2) & (B)

<sup>1</sup>After 1 yr, a person may petition the circuit court for license reinstatement. The court may grant either (1) complete or (2) provisional driving privileges. A person, who is granted provisional driving privileges, is allowed to drive only for either employment or educational needs. Note: The court cannot grant either complete or provisional privileges if either intoxicating alcohol, beer, wine, drugs or narcotics were involved in the vehicular accident related to the reckless homicide offense. §56-5-2910(B)

**Special Note:** I. It is a misd to operate a CVM during a CDL disqualification. For a 1st offense, a person is subject to an imprisonment term for 30 dys (mand) and a fine of \$200 (mand). For a 2nd offense, a person is subject to an imprisonment term for 60 con dys (mand) and a fine of \$500 (mand). And, for a subsequent offense, a person is subject to an imprisonment term for 90 dys (mand) to 6 mos. §§16-1-10(C), 56-1-460 and 56-1-2070(D) II. A person, who operates a CMV while their CDL is under an out-of-service order, is subject to the following sanctions: 1st violation-disqualification for 90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-disqualification for 1 (mand) to 5 yrs; and, 3rd or subsequent violation (w/n 10 yrs)-disqualification for 3 (mand) to 5 yrs. In addition, 1st or subsequent offenders are subject to a civil penalty of \$1,000 to \$2,500. If the offender was operating a CMV either while (1) transporting either hazardous materials or (2) operating a vehicle designed to transport more than 15 persons, they are subject to the following sanctions: 1st violation-disqualification for 180 dys (mand) to 2 yrs; and, 2nd or subsequent (w/n 10 yrs)-disqualification for 3 (mand) to 5 yrs. In addition, 1st or subsequent offenders are subject to a civil penalty of \$1,000 to \$2,500. §56-1-2070(E)

**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  $\geq 0.04$  (Standard: Grams of alc. per 100 milliliters of blood.), (2) have an alcohol concentration  $\geq 0.04$  in "other bodily substances (fluids) as determined by the Law Enforcement Division, (3) are under the influence of alcohol, a controlled substance or a drug which impairs driving ability or (4) refuse to submit to a chemical test for an alcohol concentration. Note: The disqualification section, §56-1-2110(A)(5), appears to only apply to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent section, §56-1-2130, applies to tests for both an alcohol concentration and the presence of other drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any "measurable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§56-1-2030(1), (6), (7), (8), (10), (19) & (21), 56-1-2110, 56-1-2120, 56-1-2130 and 56-1-6190

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	<u>1st off-10 dys<sup>1&amp;2</sup>; 2nd off-60 dys<sup>1&amp;2</sup>; 3rd and sub off-6 mos<sup>1&amp;2</sup></u> §56-1-460(A)(2)
Fine (\$ Range):	<u>1st off-\$200<sup>3&amp;4</sup>; 2nd off-\$500<sup>3&amp;4</sup>; 3rd and sub off-None</u> §56-1-460(A)(1)
Mandatory Minimum Fine:	<b>None<sup>4</sup></b>
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	<b>Susp/Rev<sup>5</sup></b> §56-1-460(B)
Length of Term of License Withdrawal Action:	<b>Susp</b> 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 <b>1 yr</b> from the date such person would have otherwise been entitled to apply for a new license. §56-1-460(B) <b>Persons Under 18 Years Old.</b> An offender, who is < 18 yrs old, may have their license suspended by the court until they reach their 18th birthday. §20-7-1333(B)
Mandatory Term of License Withdrawal Action:	<b>None</b>
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	<b>Yes</b> §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:	<b>5 yrs</b> 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:	<b>Felony</b> §56-1-1100
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than <b>5 yrs<sup>1</sup></b> §56-1-1100

<sup>1</sup>(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

<sup>2</sup>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

<sup>3</sup>**Comment:** It is not clear whether a fine sanction can be imposed on a person who has been convicted of driving while suspended or revoked where the original license suspension or revocation was based on a DWI offense conviction.

<sup>4</sup>**Mandatory Assessments.** In general sessions court, a defendant must pay an assessment which is equal to 62% of the fine actually imposed (i.e., that part of the fine that has not been suspended). §14-1-206(A)

<sup>5</sup>**Forfeiture.** For a 4th or sub off (w/n 5 yrs), the vehicle either (1) owned and operated by the offender or (2) operated by an offender who is a resident of the household of the registered owner **must be forfeited**. §56-5-6240(A)

## SOUTH CAROLINA

### Other Criminal Actions Related to DWI: (continued)

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) §§20-7-8920, 20-7-8925, 61-4-50(A), 61-4-580(1), 61-6-1500 & 61-6-4080(A)

Minimum Age (Years) Possession: 21 There are exemptions for home, religious ceremonies and employment. The employment exemption applies only to persons over 18 years old. §§20-7-320, 20-7-8920 & 20-7-8925

Minimum Age (Years) Consumption: None

#### 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)<sup>1</sup>, *Christiansen v. Cambell*, 328 S.E.2d 351 (S.C.App. 1985), & *Steele v. Rogers*, 413 S.E.2d 329 (S.C.App. 1992)<sup>2</sup>

Dram Shop Actions-Social Hosts:

No *Garren v. Cummings & McCrady, Inc.*, 345 S.E.2d 508 (S.C.App. 1986)<sup>3</sup>, & *Hill v. Honey's, Inc.*, 786 F.Supp. 549 (D.S.C. 1992)

<sup>1</sup>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.

<sup>2</sup>A licensee can be held liable for the injuries caused by an intoxicated minor who consumed alcoholic beverages on the licensee's premises notwithstanding the fact that the licensee did not provide such beverages to the minor. The court held that by violating a State regulation that prohibits licensees from allowing minors to possess or consume alcoholic beverages on their premises, the licensee had committed a negligent act in that they violated a duty of care that they owed to the public to protect them against such intoxicated persons. *Norton v. Opening Break of Aiken, Inc.*, 462 S.E.2d 861 (S.C. 1995)

<sup>3</sup>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)

Other State Laws Related To Alcohol Use: (continued)

Other: A patron may not bring a cause of action against a licensee for injures they have sustained after becoming intoxicated at the licensee's establishment. *Tobias v. Sports Club, Inc.*, 504 S.E.2d 318 (S.C. 1998)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action: For alcoholic liquors<sup>1&2</sup>-(Misd) §61-6-1500 For nonintoxicating beverages-(Misd)<sup>1</sup> §§61-2-250 & 61-4-580(2)  
Alc. Beverages and Non-intoxicating Beverages: Not less than 3 mos §§62-2-250 & 61-6-4210  
 Term of Imprisonment: Alc. Beverages and Non-intoxicating Beverages: Not less than \$100 §§62-2-250 & 61-6-4210 §61-13-870 See Footnote No. 4 on p. 3-432.  
 Fine (\$ Range): Alc. Beverages and Non-intoxicating Beverages: Not less than \$100 §§62-2-250 & 61-6-4210 §61-13-870 See Footnote No. 4 on p. 3-432.  
 See admin. fines under Admin. Actions below.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):  
 Length of Term of License Withdrawal: **Yes Susp/Rev**  
Alcoholic Beverages: 1st off-Rev for 1 yr or pay a penalty of \$200; sub. off-Rev for 2 yrs or pay a penalty of \$500 §61-6-4260  
 Note: Under §61-6-4270, an admin. fine of from \$100 to \$1,500 may be paid in lieu of susp/rev.  
Non-intoxicating Beverages: Susp/Rev under §61-4-580-Length of susp/rev is not specified or an admin. fine of from \$25 to \$1,000 may be paid in lieu of susp/rev. §61-4-250

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:  
 Term of Imprisonment: Alcoholic Liquors<sup>1</sup>: (Misd); Non-intoxicating beverages<sup>1</sup>-(Misd)  
Alcoholic Beverages: 30 to 60 dys §§61-6-1500, 61-6-2600, 61-6-4080 & 61-6-4700 Non-intoxicating Beverages: 30 to 60 dys §61-4-50  
 Fine (\$ Range): Alcoholic Beverages: \$100 to \$200 §§61-6-1500, 61-6-2600, 61-6-4080 & 61-6-4700 Non-intoxicating Beverages: \$100 §61-4-50 See Footnote No. 4 on p. 3-432  
 See Admin. fines under Admin. Actions on p. 3-436.

<sup>1</sup>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. §61-4-10 The term "alcoholic liquors" applies to all other alcoholic beverages. §61-6-20(1)

<sup>2</sup>Nonprofit organizations, who are licensed to sell alcoholic liquors in minibottles, are prohibited from selling such beverages to intoxicated persons. §61-6-2220 The sanctions for a violation of this prohibition are as follows: 1st off-fine from \$200 to \$500 and/or license suspension for not more than 30 dys; 2nd off w/n 3 yrs-fine from \$200 to \$500 and/or license suspension for not more than 180 dys; and, 3rd off w/n 3 yrs-fine not less than \$500 and permanent license revocation. §61-6-2600 However, under §61-6-4270, an admin. fine of from \$100 to \$1,500 may be paid in lieu of susp/rev.

**SOUTH CAROLINA**

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:  
License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes Susp/Rev**

Alcoholic Beverages: 1st off-Rev for 1 yr or pay a penalty of \$200; sub. off-Rev for 2 yrs or pay a penalty of \$500 §61-6-4260

Note: Under §61-6-4270, an admin. fine of from \$100 to \$1,500 may be paid in lieu of susp/rev.

Non-intoxicating Beverages: Susp/rev §61-4-580-Length of susp/rev is not specified or an admin. fine of \$25 to \$1,000 may be paid in lieu of the susp/rev. §61-4-250

Anti-Happy Hour Laws/Regulations:

**Yes Limited** §61-4-160 & 61-6-4550<sup>1</sup>

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

**Yes** Driver and passengers §§61-4-110 & 61-6-4020

**Possible** Driver and passengers The law states that "[a]ny person who drinks alcoholic liquors in any public conveyance shall be deemed guilty of a misdemeanor." This provision does not apply either to railroad dining/club cars or to commercial aircraft. §61-6-4720

<sup>1</sup>The law prohibits the selling of alcoholic beverages (1) for free (there are exceptions), (2) for less than half the regular price or (3) on a "two for one" basis. Any alcoholic beverage (including beer) may be sold at less than the regular price between 4 and 8 p.m.

STATE:

General Reference:

**SOUTH DAKOTA**

South Dakota Codified Laws

Basis for a DWI Charge:

Standard DWI Offense:  
Illegal Per Se Law (BAC/BrAC):

Under the influence of an alcoholic beverage §32-23-1(2)  
≥ 0.10<sup>1</sup> §32-23-1(1)

Presumption (BAC):

**Persons Under 21 Years Old: ≥ 0.02<sup>1</sup> or Any Evidence of Marijuana or a Controlled Drug or Substance in the Body** §32-23-21  
≥ 0.10<sup>1</sup> §32-23-7 Note: This presumption also applies to vehicle homicide and vehicle battery offenses.

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) **Any Substance**, (2) Any Controlled Drug, (3) Marijuana or (4) a Combination of These Substances and an Alcoholic Beverage §32-23-1(3) & (4)

Other:

For Commercial Motor Vehicle Operators, see p. 3-439.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:  
Implied Consent Law:  
Arrest Required (Yes/No):  
Implied Consent Law Applies to  
Drugs (Yes/No):  
Refusal to Submit to Chemical Test  
Admitted into Evidence:  
Other Information:

**Yes** §32-23-1.2

**Yes** §32-23-10

**Yes** §32-23-10

**Yes** §§19-13-28.1 & 32-23-10.1<sup>2</sup> (Criminal Cases)

Chemical test required for persons who have been arrested either (1) for a third or subsequent DWI offense (alcohol or drug related) which constitutes a felony, (2) for vehicular homicide or (3) for vehicular battery. "Force" may be used to obtain a blood sample. §32-23-10, *State v. Heinrich*, 449 N.W.2d 25 (S.D. 1989), *State v. Lanier*, 452 N.W.2d 144 (S.D. 1990), *State v. Sickler*, 488 N.W.2d 70 (S.D. 1992), & *State v. Jacobson*, 491 N.W.2d 455 (S.D. 1992)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:  
Urine:  
Other:

**Yes** §32-23-10

**No** §32-23-10

"Other bodily substances" §32-23-10

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):  
Anti-Plea Bargaining Statute (Yes/No):

**No**

**No** An illegal per se charge may be reduced or dismissed only when written reasons for such have been filed with the court. §32-23-1.3

Pre-Sentencing Investigation Law (PSI)  
(Yes/No):

**Yes Limited** For 1st offenders where the BAC is ≥ 0.17, the court must require them to undergo an evaluation to determine if they are addicted to alcohol. §32-23-2.1 The courts have general authority to order discretionary pre-sentence investigation reports. §23A-27-5

<sup>1</sup>Based on percent by weight of alcohol in the blood. However, §32-23-7 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."

<sup>2</sup>This statute was held constitutional in *South Dakota v. Neville*, 459 U.S. 553 (1981).

**SOUTH DAKOTA**

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **None**  
Administrative Licensing Action (Susp/Rev): **None**

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): **None**  
Administrative Licensing Action (Susp/Rev): **Rev 1 yr<sup>1</sup> Restricted hardship lic is available. §§32-23-11 & 32-23-18**  
Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: See Persons Under 21 Years Old and Subsequent Offenses below.

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off CI 1 Misd-Not more than **1 yr** (county jail); 2nd off (w/n 10 yrs) CI 1 Misd-Not more than **1 yr** (county jail); 3rd off CI 6 Felony (w/n 10 yrs)-Not more than **2 yrs<sup>2</sup>** (State penitentiary); 4th & sub. off (w/n 10 yrs) CI 5 Felony-Not more than **5 yrs<sup>2</sup>** (State penitentiary) §§22-6-1, 22-6-2, 32-23-2, 32-23-3, 32-23-4 & 32-23-4.1 Vehicle Battery<sup>4</sup> (CI 4 Felony)-Not more than **10 yrs** (State penitentiary) §§22-6-1 & 22-16 42 **Limited<sup>3</sup>**

Mandatory Minimum Term:

Fine:

Amount (\$ Range):

1st off-Not more than **\$1,000**; 2nd off (w/n 10 yrs)-Not more than **\$1,000**; 3rd off (w/n 10 yrs)-Not more than **\$2,000**; 4th & sub. off (w/n 10 yrs)-Not more than **\$5,000** Vehicle Battery<sup>4</sup>-Not more than **\$10,000**

<sup>1</sup>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.

<sup>2</sup>A person convicted of a CI 5 or 6 Felony may be sentenced to serve not more than 1 yr in the county jail in lieu of the indicated incarceration period in the State penitentiary. §22-6-1.1

<sup>3</sup>Under §32-23-3, a 2nd offender, who was operating a motor vehicle without a license at the time of the offense, is subject to a mand 3 dys of imprisonment. Under §32-23-4, a 3rd offender, who was operating a motor vehicle without a license at the time of the offense, is subject to a mand 10 dys of imprisonment. Under §32-23-4.6, a 4th or subsequent offender, who was operating a motor vehicle without a license at the time of the offense, is subject to a mand 20 dys of imprisonment.

<sup>4</sup>Vehicle Battery: Causing serious bodily injury (including an unborn child) while driving or operating a motor vehicle in a negligent manner while under the influence of an alcoholic beverage, any controlled drug (substance), marijuana or a combination thereof.

**Persons Under 21 Years Old.** A person under 21 years old, who operates a motor vehicle with a BAC  $\geq 0.02$  or with any evidence of a marijuana or any controlled drug or substance in their body, commits a CI 2 Misd. The criminal sanctions for this offense are a jail term of not more than **30 dys** and/or a fine of not more than **\$200**. In addition, they are subject to the following licensing action: 1st offense-susp for **6 mos**; and, 2nd or sub offense-susp for **1 yr**. These licensing actions are not mandatory. Restricted driving privileges are available for either employment, education, or court ordered counseling programs. §§2-6-2 & 32-23-21

**Subsequent Offenses.** A subsequent offense is generally one committed w/n 10 yrs of a prior offense. "However, any period of time during which the defendant was incarcerated for a previous violation may not be included when calculating if the time period provided ... has elapsed." §32-23-4.1

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Mandatory Min. Fine (\$):	None
Other Penalties:	
Community Service:	Yes Community service may be condition of probation. §23A-27-18.3
Restitution (eg Victim's Fund)	Yes §§22-6-1, 22-6-2 & 23A-28-1 et seq. Restitution is to be paid by the defendants to the victims.
Other:	<b>Costs of Confinement.</b> If they are financially able, an offender may be required to pay for the costs of their confinement in a county jail. §24-11-45
Administrative Licensing Actions:	
<u>Pre-DWI Conviction</u> Licensing Action:	
Administrative Per Se Law:	None
Other:	None
<u>Post DWI Conviction</u> Licensing Action:	
Type of Licensing Action (Susp/Rev):	<u>Important:</u> See Persons Under 21 Years Old on p. 3-438.  <u>1st off-Rev</u> ; <u>2nd and sub off-Rev</u> ( <b>Special Note:</b> Susp-If 15 points accumulated in 12 cons mos or 22 points in 24 cons mos; DWI=10 points §§32-12-49.1 & 32-12-49.2) §§32-23-2, 32-23-3, 32-23-4 & 32-23-4.6 <u>Vehicle Battery (Cl 4 Felony)-Rev</u> §22-16-42
Term of License Withdrawal (Days, Months, Years, etc.):	<u>1st off-</u> Not less than <b>30 dys to 1 yr</b> ; <u>2nd off-</u> Not less than <b>1 yr</b> ; <u>3rd off-</u> For such a period as determined "by the court but in no event less than <b>one [1] year</b> from the date sentence is imposed or one [1] year from the date of discharge from incarceration, whichever is later;"

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 yr nor more than 3 yrs (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC  $\geq 0.04$  (Standard: Percent by weight of alcohol in the blood. This standard is not further defined in the CMV law. However, see Footnote No. 1 on p. 3-437.) (2) are under the influence of alcohol or a controlled drug or substance or (3) refuse to submit to a chemical test for alcohol concentration. (Note: The "disqualification" provision, §32-12-104(5), only applies to a refusal to submit a chemical test for alcohol concentration; however, the CMV implied consent provision, §32-12-111, applies to the testing for both alcohol concentrations and drugs.) For either (1) a second violation or (2) a combination of two violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). For either (1) a subsequent violation or (2) a combination of three or more violations of any of the above listed items, the "disqualification" is permanent for life. Operating a CMV with a BAC "between 0.04 to 0.10 or more" is a Class 2 Misdemeanor; the sanctions for the offense are (1) a jail of not more than 30 days, (2) a fine of not more than \$200 and (3) the possible payment of restitution. In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Note: A person, who has had their non-CMV driving privileges suspended or revoked, may obtain a court order granting them CMV driving privileges for employment purposes. §§22-6-2, 32-12-77(5), (9) & (20), 32-12-104, 32-12-105, 32-12-106.1, 32-12-110, 32-12-110.1, 32-12-111 and 32-12-117 **Special Note:** The State has also adopted by reference 49 CFR Parts 383 and 384. §32-12-124 These parts contain the following disqualification and out-of-service requirements for CMV operators. A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC  $\geq 0.04$  (Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath), (2) are under the influence of alcohol or a controlled drug or substance or (3) refuse to submit to a chemical test for alcohol concentration. For a second violation or a combination of two violations of any of the above listed items, the "disqualification" is for life. However, if they successfully complete a rehabilitation program, the disqualification may be reduced to a mandatory period of 10 yrs. For a third or subsequent violation or a combination of three or more violations of any of the above listed items, the "disqualification" is for life (mand). 49 CFR 383.5 & 383.51 The State has also adopted the out-of-service provisions of 49 CFR Part 392. §49-28A-3 Under 49 CFR 392.5, a person, who operates a CMV while having "any measured alcohol concentration", must be placed out-of-service for 24 hrs.

**SOUTH DAKOTA**

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Term of License Withdrawal  
(Days, Months, Years, etc.): (continued)

4th and sub. off-For such a period as determined "by the court but in no event less than **two [2] years** from the date sentence is imposed or two [2] years from the date of discharge from incarceration, whichever is later." (Under the point system susp 1 yr §32-12-47) Vehicle Battery (Cl 4 Felony)-**2 yrs** subsequent to release from incarceration §22-16-42

Mandatory Minimum Term of  
Withdrawal:

1st off-None<sup>1</sup>; 2nd off-1 yr (not mandatory in all situations)<sup>2</sup>; 3rd off-1 yr; 4th and sub. off-2 yrs Note: Under the point system, there is no mandatory susp. period. §32-12-52.1 Vehicle Battery (Cl 4 Felony)-**None Important.** See the Special Note & Comment below.

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

**None**

For **any** offense conviction, where a driver's license can be revoked or suspended, the registration of all vehicles owned by the driver shall also be suspended. §32-35-44

Miscellaneous Sanctions  
Not Included Elsewhere:

**None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

**Yes** Cl 3 Felony where death (including the death of an unborn child) is caused by driving or operating a motor vehicle in a negligent manner while under the influence of an alcoholic beverage, any controlled drug (substance), marijuana or a combination thereof. §22-16-41

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Not more than **15 yrs** §22-6-1

**None**

<sup>1</sup>A restricted hardship license is available for employment purposes and for attending court ordered counseling programs. §32-23-2

<sup>2</sup>Upon the successful completion of an alcohol treatment program, the court may grant a 2nd offender driving privileges for employment purposes and may place such conditions on this privileges as it sees fit. §32-23-3

**Special Note & Comment:** For drunk driving offenses, §32-12-52.1 provides that the State Secretary of Commerce and Regulation must either carry out court ordered mandatory licensing action or take the same licensing action in the absence of a court order. In addition, the Secretary has the authority under §32-12-49 to either revoke or take other action against a person's license if they have been convicted of an offense which requires mandatory licensing action. However, §32-12-49.4, allows the Secretary to issue restricted licenses (for employment or educational purposes) to a person who has had their driving privileges revoked or otherwise terminated under §32-12-49. The law, §32-12-49.4, is not clear as to whether it is possible to issue restricted driving privileges to a drunk driving law offender notwithstanding other provisions of law that would impose mandatory periods of license suspension or revocation.

Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range):	Not more than <b>\$15,000</b> §22-6-1
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Action: Licensing Authorized and Type of Action:	<b>Rev</b> §22-16-41
Length of Term of Licensing Withdrawal:	<b>2 yrs</b> subsequent to release from incarceration §22-16-41
Mandatory Action--Minimum Length of License Withdrawal:	<b>None</b>
Other:	See DWI Vehicle Impoundment/Confiscation on p. 3-440.
<u>Driving While License Suspended or Revoked</u>	
Where the Basis Was a DWI Offense*:	See Footnote No. 1.
Sanction:	
Criminal:	
Imprisonment (Term):	<u>For driving while revoked</u> , CI 1 Misd - Not more than <b>1 yr</b> <u>for driving while suspended</u> , CI 2 Misd - Not more than <b>30 dys</b> See Footnote No. 2. §§22-6-2, 32-12-65 & 32-12-84
Mandatory Minimum Term of Imprisonment:	<b>Special Note:</b> A 2nd or subsequent DWI offender, who was operating a motor vehicle without a license at the time of the drunk driving offense, is subject to certain mandatory imprisonment sanctions. See Footnote No. 3 on p. 3-438.
Fine (\$ Range):	<u>For driving while revoked</u> , CI 1 Misd - Not more than <b>\$1,000</b> <sup>3</sup> <u>For driving while suspended</u> , CI 2 Misd - Not more than <b>\$200</b> <sup>3</sup>
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Actions: Type of Licensing Action (Susp/Rev):	Susp-if the conviction was based on driving while suspended; <b>Rev</b> -if the conviction was based on driving while revoked §32-12-66 Note: See DWI Vehicle Impoundment/Confiscation on p. 3-440.

<sup>1</sup>It is a CI 1 misd to operate a CMV during either a CDI disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 1 yr and/or a fine of not more than \$1,000. In addition, for violating an out-of-service order, a person is subject to a civil penalty of from \$1,000 to \$2,500. In the case of driving while disqualified, an offender is subject to an additional CDL disqualification for 1 yr. However, for violating a CDL out-of-service order, the disqualification as follows: 1st violation-90 dys (mand); 2nd violation (w/n 10 yrs)-1 yr (mand); and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand). If the CMV operator was driving a CDL either containing hazardous materials or designed to carry more than 16 persons, the CDL disqualification periods are as follows: 1st violation-180 dys (mand); 2nd violation (w/n 10 yrs)-3 yrs (mand); and, 3rd or sub violation-5 yrs (mand). §§22-6-2, 32-12-66, 32-12-84, 32-12-119, 32-12-120, 32-12-121 & 32-12-122 **Special Note:** The State has adopted by reference 49 CFR Part 383. §32-12-124 This CFR part provides that if a person operates a CMV while under an out-of-service order, they are subject to the following disqualification periods: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. If the CMV operator was driving a CDL either containing hazardous materials or designed to carry more than 15 persons, the CDL disqualification periods are as follows: 1st violation-180 dys (mand) to 2 yrs; and, sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. 49 CFR 383.51

<sup>2</sup>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.

<sup>3</sup>**Costs of Confinement.** If they are financially able, an offender may be required to pay for the costs of their confinement in a county jail. §24-11-45

\*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

**SOUTH DAKOTA**

Other Criminal Actions Related to DWI: (continued)

Length of Term of License Withdrawal Action:	If the conviction was based on driving while suspended, an additional susp period equal to the original period of susp. If the conviction was based on driving while revoked the original rev period extended for <b>1 yr.</b> §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. <sup>1</sup> §32-12-66
Habitual Traffic Offender Law: State Has Such a Law (Yes/No):	<b>No</b>
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):	<b>Yes</b> §34-25-22.1
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	<b>Yes</b>
Vehicle Passengers:	<b>Yes</b>
Pedestrian:	<b>Yes</b>

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	<b>21</b> (Year Eff: 1988) §§35-4-78, 35-9-1 & 35-9-2
Minimum Age (Years) Possession:	<b>21<sup>2</sup></b> §§35-4-78, 35-9-1 & 35-9-2
Minimum Age (Years) Consumption:	<b>21<sup>2</sup></b> §§35-4-78, 35-9-1 & 35-9-2

<sup>1</sup>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.

<sup>2</sup>There is an exemption for either the possession or the consumption of alcoholic beverages by persons under 21 yrs of age for religious ceremonies.

Other State Laws Related To Alcohol Use: (continued)Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

No<sup>1</sup> Liability is prohibited via statutory law. §§35-4-78 & 35-11-1

"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):

Case law providing for dram shop liability has been abrogated by statutory law.<sup>1</sup>

Dram Shop Actions-Social Hosts:

No Liability is prohibited via statutory law. §35-11-2

Other:

None

Criminal Action Against Owner or Employees  
of Establishments that Serve AlcoholicBeverages to Intoxicated Patrons:

Type of Criminal Action:

Cl 1 Misd §§22-6-2 &amp; 35-4-78 See Administrative Fines on p. 3-444.

Term of Imprisonment:

Not more than 1 yr (county jail)

Fine (\$ Range):

Not more than \$1,000

Note: If they are financially able, an offender may be required to pay for the costs of their confinement in a county jail. §24-11-45

Administrative Actions Against Owners of  
Establishments that Serve AlcoholicBeverages 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<sup>2</sup> §§35-2-20 & 35-2-21

<sup>1</sup>**Historical Note:** The following is a brief chronology of recent dram shop liability events in South Dakota. In 1982, the South Dakota Supreme Court established dram shop liability via common law negligence. *Waltz v. City of Hudson*, 327 N.W.2d 12 (S.D. 1982) In 1985, in a case concerning the death of an intoxicated patron, the court reaffirmed its position in *Waltz*. *Selchert v. Lien*, 371 N.W.2d 791 (S.D. 1985) (Note: In *Selchert*, the court held that a wife had a cause of action in negligence against a licensee for the death of her intoxicated husband. The husband became inebriated at the licensee's establishment. While in this condition, he drove himself home and parked his vehicle in the garage and closed the garage's door via remote control. However, due to his intoxicated state, he was unable to exit the vehicle and did not turn off the vehicle's engine. As a consequence, he fell asleep and died of carbon-monoxide poisoning.) In response, the State legislature passed legislation in 1985 abrogating these decisions. §§35-4-78 & 35-11-1 However, in 1988, the State supreme court held that this legislation violated Art. VI, §20 of the State's constitution which provides that persons have a right to bring a cause of action either for personal injuries or for property damage. *Baatz v. Arrow Bar*, 426 N.W.2d 298 (S.D. 1988) (Note: On remand, the trial court granted summary judgement to the individual defendants (not the corporation). This decision was affirmed by the State supreme court. *Baatz v. Arrow Bar*, 452 N.W.2d 138 (S.D. 1990)) In 1997, apparently due to a change in the court's composition, the State supreme court reversed its decision in the *Baatz* (1988) case and reinstated the statutory law that precludes dram shop liability actions. *Wildeboer v. S.D. Junior Chamber of Comm.*, 561 N.W.2d 666 (S.D. 1997) (**Comment:** A majority of the court's justices took this action with little discussion and without specifically overruling the *Baatz* decision. See the dissenting opinion in the *Wildeboer* case.) In a later case, the State supreme court held that §35-11-1 does not violate constitutional principles regarding separation of powers. In this same case, the court also held that neither §35-4-78 nor §35-11-1 violate the State constitution's provision regarding "open courts" (Art. VI, §20) *Wegleitner v. Sattler*, 582 N.W.2d 688 (S.D. 1998)

<sup>2</sup>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

**SOUTH DAKOTA**

Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:  
Type of Criminal Action:

**Cl 1 Misd** Licensees who sell alcoholic beverages to persons under 21 years old §§22-6-2 & 35-4-78<sup>1</sup> See Administrative Fines below.  
Not more than 1 yr (county jail)  
Not more than **\$1,000**  
Note: If they are financially able, an offender may be required to pay for the costs of their confinement in a county jail. §24-11-45

Term of Imprisonment:  
Fine (\$ Range):

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:  
License to Serve Alcoholic Beverages Withdrawn (Yes/No):  
Length of Term License Withdrawal:

See Footnote No. 2 on p. 3-443.  
**Yes Rev/Susp<sup>2</sup>** §35-2-10  
**Rev-1 yr or Susp-not more than 60 dys** §§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):  
Anti-Consumption Law (Yes/No):

**Yes** §35-1-9.1  
**Yes** §35-1-9.1

<sup>1</sup>I. 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. For a violation of these statutory provisions, a person is also subject to the following action against their driving privileges. For a 1st violation, their driving privileges must be revoked for 30 dys to 1 yr (restricted driving privileges may be granted for reasons of employment or education). And, for a 2nd or subsequent violation, their driving privileges must be revoked for 60 dys (mand) to 1 yr. §35-9-7

II. It is a Cl 2 misd for an "on-sale" licensee to allow a person, who is under 21 years old, to consume alcoholic beverages on the licensee's premises. §35-4-79

III. 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. §22-6-2  
<sup>2</sup>A license cannot be susp/rev for an employee's action if (1) the licensee did not see the violation, (2) the employee has received training in preventing underage drinking, (3) there is written policy requiring the examination of "age-bearing identification" and (4) neither the licensee nor the employee has had a prior violation w/n 12 mos. §35-2-10.1

**Administrative Fines.** No criminal liability may be imposed on a person holding a "controlling interest" in a business licensed to sell alcoholic beverages at retail, if an employee of the business violates §35-4-78 and the person having such an interest is not present when the violation occurred. A person is considered to have "controlling interest" if they have an ownership interest in the business ≥10%. Nevertheless, such a person may be assessed an administrative fine as follows: 1st violation-\$500; 2nd violation (w/n 2 yrs)-\$700; and, 3rd violation (w/n 2 yrs)-\$1,000. §§35-4-78.1, 35-4-78.2, 35-4-78.3 & 35-4-78.4 **Comment:** It appears that these provisions are intended to insure that a decision of South Dakota Supreme Court, which held that a corporate licensee could be held criminally liable for the actions of its employees who sell alcoholic beverages to minors, continues to apply only to corporate entities. *State v. Hy Vee Food Stores, Inc.*, 533 N.W.2d 147 (S.D. 1995) Under these provisions, individual corporate owners and, in the case of partnerships, partners, who do not participate in the operation of the business, cannot be held criminally liable for the actions of an employee who violates §35-4-78. However, the corporate entity itself could still be held criminally liable under the *Hy Vee* decision.

STATE:

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General Reference:

Tennessee Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:

I. Under the influence of any intoxicant<sup>1</sup> (e.g., alcohol) §55-10-401(a)(1)

II. Adult Driving While Impaired (Persons ≥21 Years Old) §55-10-418(a)<sup>1</sup>

Illegal Per Se Law (BAC/BrAC):

> **0.10**<sup>2&3</sup> §55-10-401(a)(2)

Persons ≥16 but ≤21 Years Old- > **0.02**<sup>1&3</sup> (Underage Impaired Driving Offense) §55-10-415(a)(1)(A)

Presumption (BAC/BrAC):

I. 1st off-> **0.10**<sup>3&4</sup>; sub off-> **0.08**<sup>3&4</sup> §55-10-408(a) & (b)

II. Adult Driving While Impaired (Persons ≥21 Years Old)-> **0.08 but <0.10**<sup>3</sup> §55-10-418(c)

Types of Drugs/Drugs and Alcohol:

I. Under the influence of (1) **Any Intoxicant**, (2) Marijuana, (3) Narcotic Drug or (4) Drugs Producing Stimulating Effects on the Central Nervous System<sup>7</sup> §55-10-401(a)(1) II. Adult Driving While Impaired (Persons ≥21 Years Old) §55-10-418(a)<sup>1</sup>

Other:

For Commercial Motor Vehicle Operators, see p. 3-449.

Chemical Breath Tests for Alcohol Concentration:

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), & *State v. Frasier*, 914 S.W.2d 467 (Tenn. 1996)

Other Information:

None

<sup>1</sup>**Persons ≥16 but <21 Years Old.** Sec. 55-10-415 establishes the offense of "underage driving while impaired" (which is a lesser included offense of regular DWI) for persons age 16 or over but under age 21. This offense consists of (1) driving with an alcohol concentration >0.02 (Based on percent of alcohol in the blood. See Footnote No. 3 below.), (2) driving while under the influence of alcohol, (3) driving while under the influence of any intoxicant, marijuana, narcotic drug or stimulating drug under §55-10-401(b) or (4) driving while under the combined influence of alcohol and any of the substances or drugs listed in (3). For persons >18 but <21, this offense is a Class A misd; for persons >16 but <18, this offense is a "delinquent act". §55-10-415(d) & (e) Note: An appellate court has held that §55-10-415 does not violate a person's Federal or State constitutional rights to equal protection of the laws. *State v. Crain*, 972 S.W.2d 13 (Tenn. Cr. App. 1998)

**Persons ≥21 Years Old.** A person ≥21 yrs old commits an "adult driving while impaired" offense if they operate a motor vehicle while their ability to safely drive is impaired "as the proximate result of the consumption or ingestion of alcohol, drugs, any other intoxicant or any combination thereof." §55-10-418(a)

<sup>2</sup>This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.10 or more.

<sup>3</sup>Standard: Percent or percent by weight of alcohol in the blood. §§55-10-401(a)(2) and 55-10-408(a) & (b) The Tennessee Supreme Court has noted that blood alcohol concentration is expressed as "grams of alcohol per 100 cubic centimeters of blood or 210 liters of breath." *State v. Sensing*, 843 S.W.2d 412 (Tenn. 1993); see Footnote No. 2, 843 S.W.2d at 415. See also *State v. McKinney*, 605 S.W.2d 842 (Tenn. Cr. App. 1980) (Permission to appeal was denied by the Tennessee Supreme Court.).

<sup>4</sup>A lower BAC presumptive level for repeat offenders does not violate the constitutional principle of equal protection of the laws. *State v. Robinson*, 29 S.W.3d 476 (Tenn. 2000)

<sup>5</sup>Drugs "producing stimulating effects" include "[t]he salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenoethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit of internal use." §55-10-401(b)

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood: Yes §55-10-405(5)  
Urine: Yes §55-10-405(5)  
Other: None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): Yes §55-10-403(b)(1)<sup>1</sup>  
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):  
Administrative Licensing Action (Susp/Rev):

See Footnote No. 5 on p. 3-451.  
None

(1) **Rev-1 yr** w/no prior DWI, Veh. Homicide or Veh. Assault convictions (2) **Rev-2 yrs** w/a prior DWI, Veh. Homicide or Veh. Assault conviction (3) **Rev-2 yrs** where there has been an injury related accident (4) **Rev-5 yrs** where there has been a death related accident §55-10-406(a)(3) A restricted license may be issued. §55-10-406(d)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment:  
Term (Day, Month, Years,  
Etc.):

See Adult Driving While Impaired Offense on p. 3-447.

1st off (Cl A misd)-**48 hrs to 11 mos 29 dys**; 2nd off (w/n 10 yrs) (Cl A misd)-**45 dys to 11 mos 29 dys**<sup>2</sup>; 3rd off (w/n 10 yrs) (Cl A misd)-**120 dys to 11 mos 29 dys**; 4th and sub off (w/n10 yrs) (Cl E felony)-**1 to 6 yrs** §55-10-403 Vehicle Assault<sup>3</sup> (Cl

<sup>1</sup>Pre-trial diversion is prohibited until the minimum sentence is served. §55-10-403(b)(1) & *State v. Washington*, 866 S.W.2d 950 (Tenn. 1993)

<sup>2</sup>I. The court may order a 2nd offender to serve not more than 28 days of the jail sentence in an inpatient alcohol or drug treatment program. The remainder of the confinement period must be spent in jail. §55-10-403(a)(4) II. A 2nd offender, where the drunk driving offense involved neither a death nor an injury, is also eligible to participate in a work release program. To participate in this program, an offender must agree (1) to be screened daily for alcohol or drug use, (2) not to operate a motor vehicle, (3) to remain incarcerated when not at work and (4), if they are financially able, to pay the cost of their incarceration or treatment. §41-2-128(c)

<sup>3</sup>Recklessly causing a serious bodily injury to another person where such injury was the proximate result of operating a vehicle while in violation of §55-10-401.

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Mandatory Minimum Term:	D felony)- <b>2 to 12 yrs</b> §§39-13-106 and 40-35-111(b)(4) & (5) <b>Persons ≥ 16 but &lt; 21 Years Old</b> (Underage Impaired Driving)- <b>None</b> <u>1st off-48 hrs<sup>1</sup></u> (If BAC/BrAC ≥ 0.20- <b>7 con dys</b> ); <u>2nd off</u> (w/n 10 yrs)- <b>45 dys<sup>1</sup></b> See Footnote No. 2 on p. 3-446.; <u>3rd off</u> (w/n 10 yrs)- <b>120 dys<sup>1</sup></b> ; <u>4th and sub off</u> (w/n 10 yrs)- <b>150 con dys</b> Vehicle Assault-None
Fine: Amount (\$ Range):	<u>1st off-\$350 to \$1,500<sup>2</sup></u> ; <u>2nd off</u> (w/n 10 yrs)- <b>\$600 to \$3,500<sup>2</sup></b> ; <u>3rd off</u> (w/n 10 yrs)- <b>\$1,100 to \$10,000<sup>2</sup></b> ; <u>4th and sub off</u> (w/n 10 yrs)- <b>\$3,000 to \$15,000<sup>2</sup></b> §55-10-403 Vehicle Assault-Not more than <b>\$5,000<sup>1</sup></b> §40-35-111(b)(4) <b>Persons ≥ 16 but &lt; 21 Years Old</b> (Impaired Driving)- <b>\$250</b> §55-10-415(d)
Mandatory Min. Fine (\$):	<u>1st off-\$350</u> ; <u>2nd off</u> (w/n 10 yrs)- <b>\$600</b> ; <u>3rd and subsequent off</u> (w/n 10 yrs)- <b>\$1,100</b> Note: These fines are mandatory unless a judge determines that a defendant is indigent. §55-10-403(b)(2) Vehicle Assault-None <b>Persons ≥ 16 but &lt; 21 Years Old</b> (Underage Impaired Driving)- <b>\$250</b> <b>Comment:</b> The law is not clear on whether this fine is mandatory.
Other Penalties: Community Service:	<b>Special Note:</b> For sanction enhancement purposes for subsequent drunk driving offenses, a prior offense includes a previous vehicle homicide or assault offense related to drunk driving. §55-10-403  I. In metropolitan areas with a population of over 100,000, the court is authorized to sentence a 1st offender to perform 200 hrs of community service in lieu of the 48 hrs minimum jail term. §55-10-403 <sup>3</sup>

<sup>1</sup>DWI offenders, who are allowed to serve imprisonment sentences on non-consecutive days, must, nevertheless, spend the first 48 hrs of such a sentence in a consecutive manner. §40-35-216

<sup>2</sup>**Head Injuries Costs.** The State has established a three year pilot program to financially assist persons in need who have suffered "head injuries". To fund this program, every person who is convicted of a DWI offense must pay an assessment of \$5. This assessment is paid into the Impaired Drivers Trust Fund. The trust fund cannot expend more than \$98,000 annually on this project. §§9-4-206 & 55-10-403(i)

<sup>3</sup>**Comment:** Given the holding by the Tennessee Supreme Court in *State v. Tester*, 879 S.W.2d 823 (Tenn. 1994), there is a question as to whether this provision is constitutional. In this case, the court held that provision of the law, §41-2-128(c), that limited drunk driving work release programs for 2nd offenders to counties with a population > 700,000, violated Federal and State constitutional provisions concerning equal protection. This law was amended by the Tennessee Legislature in 1995 to eliminate this constitutional impediment. Public Chapter No. 187 of 1995

**Adult Driving While Impaired Offense.** 1st offense (C1 B Misd)-The **only** sanction is a fine of **\$500**. §55-10-418(d)(1) However, a person, who is convicted of this offense again, is subject to the same sanctions as a person who is convicted of "driving while under the influence of an intoxicant" (§55-10-401(a)(1) offense) for either a 2nd, 3rd, 4th or subsequent offense. §55-10-418(d)(3) A person is considered to be a 1st offender **only** if they have not had a previous drunk driving offense of any kind. If they have had one or more prior drunk driving offense convictions and are convicted of this offense for the first time, they are sentenced as if they were a 2nd or subsequent "driving while under the influence of an intoxicant" offender. §55-10-418(e)

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"driving while under the influence of an intoxicant" offender. §55-10-418(e)

Sanctions Following a Conviction for a DWI Offense:

(continued)

Restitution  
(eg Victim's Fund):

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 addition to other penalties. The community service work may be accomplished during non-working hrs. §55-10-104(a)(1)

III. **Persons ≥16 but <21 Years Old** (Underage Impaired Driving). The court may impose "public work" service. §55-10-415(d)

**Yes** (1) A defendant may be "sentenced" to pay compensation directly to a victim. §§39-11-118, 40-35-104 & 40-35-304 (2) A victim's compensation fund §§29-13-101 et seq. & 40-24-107(a)(3) Note: A "willing" or knowing passenger, who is injured while riding with a DWI offender, is not entitled to compensation. §§29-13-119 & 40-24-107(e) (3) Also, the defendant shall be ordered to pay restitution as a condition of probation if defendant can afford it. Probation may commence only after minimum jail sentence has been serve. §55-10-403(c)(3)

Other:

**BAC Test Fee.** DWI offenders in certain counties or counties with a metropolitan form of government are required to pay a BAC test fee. §55-10-403(h)

**Ignition Interlock.** In addition to any other penalties provided for a DWI offense conviction, a defendant may be required to operate vehicles equipped with "ignition interlock" devices.<sup>1</sup>

Administrative Licensing Actions:  
Pre-DWI Conviction Licensing Action:  
Administrative Per Se Law:  
Other:

**None**

Under §55-50-502(a), the licensing agency can suspended a person's license if they have "committed" an offense which requires mandatory license revocation. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:

See the Special Note on p. 3-449.

Type of Licensing Action (Susp/Rev):

See Adult Driving While Impaired Offense on p. 3-447.

**Prohibition/Rev<sup>2&3</sup>** §§55-10-403, 55-7-501(a)(2) & 55-7-502

**Persons > 16 but < 21 Years Old (Underage Impaired Driving).**

**Susp** §55-10-415(d)

**Vehicle Assault-The court prohibits** a person from operating a motor vehicle. §39-13-106

<sup>1</sup>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. §55-10-412(d) For a 2nd or subsequent DWI law offender, the law creates an inference that the court should order the use of an ignition interlock device as a means of protecting the public. The court may require the use of these devices during all or part of susp/restriction period or after such susp/restriction period has expired. §55-104-12(i)

<sup>2</sup>The law uses various terms to describe the licensing action that is to be taken against DWI offenders. Under §55-10-403, the courts "prohibit" the offender from driving. However, §55-7-501 provides that the licensing agency shall "revoke" the offender's license.

<sup>3</sup>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.

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Term of License Withdrawal  
(Days, Months, Years, etc.):

The following action is by the courts: 1st off-1 yr<sup>1</sup>; 2nd off (w/n 10 yrs)-2 yrs<sup>2</sup>; 3rd off (w/n 10 yrs)-3 to 10 yrs<sup>2</sup>; 4th and subsequent off (w/n 10 yrs)-5 yrs §§55-10-403 & 55-50-501 See Footnote No. 2 on p. 3-448.

**Persons ≥ 16 but < 21 Years Old (Underage Impaired Driving)-1 yr**

**Vehicle Assault-1st off-1 yr; 2nd off-2 yrs; 3rd off-3 yrs; 4th and sub off-5 yrs** §39-13-106

Mandatory Minimum Term of  
Withdrawal:

1st off-None (1 yr if injury/death related)<sup>3</sup>; 2nd off-2 yrs<sup>2</sup>; 3rd off-3 yrs<sup>2</sup>; 4th and subsequent off-5 yrs §55-10-403(d)(2) & (3) **Persons ≥ 16 but < 21 Years Old (Underage Impaired Driving)-1 yr** **Comment:** The law is not clear on whether this licensing action is mandatory.

**Vehicle Assault-1st off-1 yr; 2nd off-2 yrs; 3rd off-3 yrs; 4th and sub off-5 yrs** §39-13-106

**Special Note:** Under separate statutory authority, the court can impose the following additional licensing sanctions for DWI offense convictions. 1st off-Prohibit driving for up to and including 6 mos; 2nd off-Prohibit driving for up to and including 3 yrs; 3rd and sub. off-Prohibit driving for up to and including 10 yrs. §55-10-412(a)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

**Yes** See Alcohol Treatment below.

**Yes** Participation in an alcohol safety DWI prog. is required as part of probation. Note: Probation can begin only after serving the min. imprisonment term. §55-10-403(c)(1) For 2nd and subsequent convictions, a condition of probation is participation in a rehab. prog. treatment facility. §55-10-403(c)(2) Under §55-50-502(c), the licensing agency, prior to reissuing a license to a person following a 2nd or subsequent DWI conviction, must require them to complete an alcohol or drug abuse education or treatment program. See Footnote No. 2 on p. 3-446.

<sup>1</sup>Under §55-50-502(e)(4), if this is the defendant's first license revocation, it appears that they are able to apply for a new license after only 6 months.

<sup>2</sup>See Alcohol Treatment.

<sup>3</sup>Hardship license for employment, college/university education (only full time students), an alcohol safety program or ignition interlock monitoring is available following a 1st conviction only if no one was killed or seriously injured as a result of the DWI off. §55-10-403(d)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person's CDL is suspended for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC ≥ 0.04 (Standard: Percent by alcohol in the blood. See Footnote No. 3 on p. 3-445.) or (2) are under the influence of alcohol (with a BAC ≥ 0.04) or a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the suspension is for life (10 yrs mand). A commercial motor vehicle operator, who drives a CMV with a BAC ≥ 0.04 violates the regular DWI laws (§55-10-401). §§55-50-102(12), 55-50-405(a) & 55-50-408 The disqualification provisions also apply to non-CDL drivers who are operating commercial vehicles with a gross vehicle weight ≥ 10,001 lbs through 26,000 lbs. §55-50-405(f)

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

**Forfeiture (Appears to be Mandatory).**<sup>1</sup> The vehicle used in the offense is subject to forfeiture for a 2nd or sub. DWI offense conviction.<sup>2</sup> §55-10-403(k)(1)

Terms Upon Which Vehicle  
Will Be Released:  
Other:

None

Miscellaneous Sanctions  
Not Included Elsewhere:

**Child Endangerment.** I. A person commits a CI 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 CI D felony: Jail-2 to 12 yrs; fine-not more than \$5,000. III. If the child was killed at the time of the offense, the person commits a CI C felony: Jail-3 to 15 yrs; fine-not more than \$10,000. **Comment:** The mand. jail and fine sanctions for the misd offense may also apply to the felony offenses. However, the law is not clear on this point. §§40-35-111(b)(3) & (4), 40-35-111(e)(1) and 55-10-414

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes** I. CI C Felony §39-13-213(a)  
II. If DWI related-CI B Felony §39-13-213(a) & (b)  
III. Aggravated Vehicle Homicide<sup>3</sup>-CI A Felony §39-13-218

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

I. CI C Felony-**3 to 15 yrs** §40-35-111(b)(3)  
II. CI B Felony-**8 to 30 yrs** §40-35-111(b)(2)  
III. CI A Felony-**15 to 60 yrs** §40-35-111(b)(1)

Mandatory Minimum Term:  
Fine (\$ Range):

**None**  
I. CI C Felony-Not more than **\$10,000** §40-35-111(b)(3)  
II. CI B Felony-Not more than **\$25,000** §40-35-111(b)(2)  
III. CI A Felony-Not more than **\$50,000** §40-35-111(b)(1)

Mandatory Minimum Fine:  
Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

**None**  
**Rev/Prohibition** §§39-13-213 & 55-50-501(1)

<sup>1</sup>**Special Note:** Because of a lack of statutory authority, a court ordered DWI probation condition that provided for the temporary forfeiture of a defendant's vehicle was voided by the Tennessee Supreme Court. *State v. Bouldin*, 717 S.W.2d 584 (Tenn. 1986)

<sup>2</sup>One prior off must occur either on or after 1/1/97 and a second must occur w/n 5 yrs after the first. §55-10-403(k)(2)

<sup>3</sup>Aggravated Vehicle Homicide is vehicle homicide where the defendant had either (1) two or more prior DWI/vehicle assault convictions (or any combination of them), (2) a prior vehicle homicide conviction or (3), at the time of the vehicle homicide offense, a BAC  $\geq 0.20$  and a previous DWI or vehicle assault conviction. §39-13-218

Other Criminal Actions Related to DWI: (continued)

Length of Term of Licensing Withdrawal:	There are two (2) separate driving privilege withdrawal schemes which could apply to all vehicle homicide offenses. (1) The licensing agency can revoke the offender's license for period that period of time that <b>equals the term of the sentenced received</b> <sup>1</sup> . §55-50-501(a)(1) (2) The court can prohibit the offender from operating a motor vehicle from <b>3 to 10 yrs.</b> §39-13-213
Mandatory Action--Minimum Length of License Withdrawal: Other:	<b>3 yrs</b> §39-13-213 <b>None</b>
<u>Driving While License Suspended or Revoked</u>	
<u>Where the Basis Was a DWI Offense:</u>	
Sanction:	
Criminal:	
Imprisonment (Term):	I. If based on driving while rev for a 1st drunk driving off <sup>2</sup> - <b>2 dys to 6 mos</b> §55-50-504(a)(1) II. If based on driving while rev for a 2nd or sub drunk driving off <sup>6</sup> - <b>45 dys to 1 yr</b> §55-50-504(a)(2)
Mandatory Minimum Term of Imprisonment:	I. If based on driving while rev for a 1st drunk driving off <sup>2</sup> - <b>2 dys</b> §55-50-504(a)(1) & (f) II. If based on driving while rev for a 2nd or sub drunk driving off <sup>6</sup> - <b>45 dys</b> §55-50-504(a)(2) & (f)
Fine (\$ Range):	I. If based on driving while rev for a 1st drunk driving off <sup>2</sup> -Not more than <b>\$1,000</b> §55-50-504(a)(1) II. If based on driving while rev for a 2nd or sub drunk driving off <sup>6</sup> -Not more than <b>\$3,000</b> §55-50-504(a)(2)
Mandatory Minimum Fine:	<b>None</b>

<sup>1</sup>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)

<sup>2</sup>I. Under §55-50-405(a), a person is prohibited from operating a CMV during a CDL disqualification. However, the law is unclear as to whether there are specific sanctions for this offense. Note: The sanctions for operating a CMV without a valid CDL are (1) imprisonment for 30 dys to 90 dys and/or a fine of \$250 to \$1,000 for a 1st offense and (2) imprisonment for 90 dys to 1 yr and/or a fine of \$1,000 to \$2,500 for a subsequent offense. §§55-50-404(a) & 55-50-405(e) II. Tennessee law does not provide for CDL out-of-service orders for operating a CMV with any amount of alcohol in the body. Nevertheless, it does provide for licensing sanctions for violating such an order (e.g., under Federal law). A person, who is convicted of violating a CDL out-of-service order, is subject to the following CDL suspension periods: 1st off-90 dys (mand); 2nd off (w/n 10 yrs)-1 yr (mand); and, 3rd or sub off (w/n 10 yrs)-3 yrs (mand). However, the following disqualification periods apply if the out-of-service order conviction was the result of driving a CMV which was either transporting hazardous materials or 15 or more persons: 1st off-180 dys (mand); and, 2nd or sub off (w/n 10 yrs)-3 yrs (mand). §55-50-405(7) & (8)

<sup>3</sup>I. It is a Cl C misd to operate a motor vehicle in violation of a court ordered prohibition against driving following a conviction for a drunk driving offense. The sanctions for this misd are an imprisonment term of not more than 30 dys and/or a fine of not more than \$50. §55-10-412(b) II. 1st off driving while susp/rev-Cl B misd-Sanctions: Jail for not more than 6 mos and a fine of not more than \$500; 2nd or sub off driving while susp/rev-Cl A misd-Sanctions: Jail for not more than 11 mos 29 dys and a fine of not more than \$2,500 §§40-35-111(e)(1) & (2) and 55-50-504(a)(1) & (2)

<sup>4</sup>**Vehicle Forfeiture.** The vehicle used in the commission of the offense is subject to forfeiture if the original suspension or revocation was for a drunk driving offense. §55-50-504(h)

<sup>5</sup>Or a 1st vehicle assault/ vehicle homicide offense. §55-50-504(a)(1)

<sup>6</sup>Or a 2nd or sub vehicle assault/vehicle homicide offense. §55-50-504(a)(2)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions: Type of Licensing Action (Susp/Rev):	<b>Rev</b> <sup>1</sup> -If the conviction was based on driving while revoked for either a drunk driving or a vehicle homicide offense. §55-50-504(b)
Length of Term of License Withdrawal Action:	The original rev period extended <b>1 yr.</b> §55-50-504(b)
Mandatory Term of License Withdrawal Action:	The original rev period extended <b>1 yr.</b> §55-50-504(b)
Habitual Traffic Offender Law: State Has Such a Law (Yes/No):	<b>Yes</b> §§55-10-601 to 55-10-617
Grounds for Being Declared an Habitual Offender:	I. Three (3) or more serious traffic offenses <sup>2</sup> w/n 3 II. Three (3) or more serious traffic offenses <sup>2</sup> w/n 5 yrs. III. Five (5) or more serious traffic offenses <sup>1</sup> w/n 10 yrs.
Term of License Rev While Under Habitual Offender Status:	<b>3 yrs</b> <sup>3</sup> §55-10-615
Type of Criminal Off if Convicted on Charges of Driving While on Habitual Offender Status	<b>Cl E felony</b> §55-10-616
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	<b>1 to 6 yrs</b> §§40-35-111(b)(5) & 55-10-616
Imprisonment (Term):	<b>1 yr</b> <sup>4</sup> §55-10-616
Mandatory Minimum Term of Imprisonment:	Not more than <b>\$3,000</b> §§40-35-111(b)(5) & 55-10-616
Fine (\$ Range):	<b>None</b>
Mandatory Minimum Fine (\$):	<b>None</b>
Licensing Actions (Specify):	<b>None</b>

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

<u>Persons Killed in Traffic</u> <u>Accidents:</u> State Has Such a Law (Yes/No):	<b>Discretionary</b> §38-7-109
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	<b>Discretionary</b>
Vehicle Passengers:	<b>Discretionary</b>
Pedestrian:	<b>Discretionary</b>

<sup>1</sup>For driving while susp, the susp period is extended for an additional mand like period. §55-50-504(b)

<sup>2</sup>The following are serious traffic offenses: (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, canceled or suspended license; (6) aggravated vehicle homicide; (7) reckless driving; (8) drag racing; (9) reckless endangerment; and, (10) evading arrest.

<sup>3</sup>**Exception.** The court may immediately restore an offender's license on any conditions it sees fit if habitual offender status was the result of driving while susp/rev but where the underlying susp/rev was not one of the serious offenses listed in §55-10-603(2)(A).

<sup>4</sup>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: (continued)

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 §§1-3-113, 57-3-412(a)(3), 57-4-203(b)(2)(A) & (b)(3) and 57-5-301(e)(1)

Minimum Age (Years) Consumption: **21** §1-3-113

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §57-10-101 et seq.<sup>1&2</sup> **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. Ketner*, 54 Tenn. App. 656, 393 S.W.2d 755 (CA 1964)

Dram Shop Actions-Social Hosts:

**No** §§57-10-101 & 57-10-102

Other:

**None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action: See the Special Note on p. 3-454.  
**Cl A Misd** §§40-35-111, 57-3-204, 57-3-406(c), 57-3-412(a)(1), 57-4-203(c) & 57-4-203(j)(1)

Term of Imprisonment:

I. Pkg sales of alc. bev (Except beer containing less than 5% alc.)-**11 mos 29 dys** II. On premises consumption of all alc. bev-**11 mos 29 dys**

Fine (\$ Range):

I. Pkg sales of alc. bev (Except beer containing less than 5% alc.)-**\$2,500** II. On premises consumption of all alc. bev-**\$2,500**

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

**Yes Susp/Rev** §§40-35-111, 57-3-104(c)(1)(A), 57-3-214, 57-3-215(a), 57-4-202(a) & 57-4-203(j)(3)

Length of Term of License Withdrawal:

I. Pkg sales of alc. bev (Except beer containing less than 5% alc.)-Susp length not specified; Rev.-**1 yr** II. On premises consumption of all alc. bev-1st off-Length of susp/rev is not specified; 2nd off-**Permanent rev**

<sup>1</sup>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.

<sup>2</sup>Under the dram shop law, a licensee is not liable for the actions committed by intoxicated minors who did not directly purchase alcoholic beverages from the licensee. *Worley v. Weigels, Inc.*, 919 S.W.2d 589 (Tenn. 1996) Also, a licensee, who "gives" but does not "sell" alcoholic beverages to a minor, is not liable under the dram shop law for the injuries caused by a minor as a result of consuming such beverages. *LaRue v. 1817 Lake Inc.*, 966 S.W.2d 423 (Tenn.App. 1997)

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Other State Laws Related To Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

See the Special Note below.

**Cl A Misd** §§40-35-111, 57-3-406(d), 57-3-412(a)(1), 57-4-101(a), 57-4-203, 57-5-101, 57-5-301(a) & 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, 57-5-109(c) & (k) and 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**

Anti-Happy Hour Laws/Regulations:

**No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

**Yes Drivers only<sup>1</sup>** §55-10-416

Anti-Consumption Law (Yes/No):

**Yes Drivers only<sup>1</sup>** §55-10-416

<sup>1</sup>However, a municipality may enact an open container/anti-consumption ordinance that applies to passengers. §55-10-416(c)

**Special Note:** There are separate provisions of the code (1) that relate to sale of beer and other alcoholic beverages with a content of not more than 5% alcohol and (2) that apply to both package and by the drink sales of such beverages. These provisions do not provide sanctions for selling these types alcoholic beverages to an intoxicated person. However, they do have the following sanctions for selling such beverages to minors; in some respects, these sanctions "overlap" those given above. For a 1st off (Cl A misd), there is a jail term for not more than 11 mos 29 dys and/or a fine of not more than \$2,500. In addition, the license to sell such beverages may be either suspended or revoked. A revocation is for 1 year. However, as an alternative to either a suspension or revocation by a local authority, a licensee may pay a civil penalty of not more than \$1,500 in cases involving sales to minors or not more than \$1,000 for other offenses. As an alternative to license suspension or revocation by the State, a licensee may pay a fine of not more than \$1,500. If the sale is to a person over 18 but under 21 who (1) presents some type of identification of their age or (2) otherwise appears to be over the legal drinking age, the license cannot be revoked but it may be suspended for not more than ten (10) days. For a 2nd off (Cl E felony), there is an imprisonment term of from 1 to 6 yrs and/or a fine of not more than \$3,000. In addition, the license to sell such beverages is permanently revoked. §§40-35-111, 57-1-201(b)(1), 57-5-105, 57-5-108, 57-5-301(a)(1) & 57-5-303

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General Reference:

Most citations are to Vernon's Texas Transportation Code, Penal Code, Alcoholic Beverage Code or Code of Criminal Procedure.

Basis for a DWI Charge:

Standard DWI Offense:  
Illegal Per Se Law (BAC/BrAC):

Intoxicated while driving<sup>1</sup> Penal Code §§49.01(2)(A) & 49.04  
≥ 0.08<sup>1</sup> Penal Code §§49.01(2)(B) & 49.04  
Persons Under 21 Years Old- > 0.00<sup>2</sup> Alcoholic Beverage Code  
§§106.01 & 106.041(a)

Presumption (BAC):  
Types of Drugs/Drugs and Alcohol:  
Other:

**None**  
**Intoxicated** while driving<sup>1</sup> Penal Code §§49.01(2)(A) & 49.04  
I. For Commercial Motor Vehicle Operators, see p. 3-461.  
II. It is illegal for a person to operate a motor vehicle if they are  
"addicted to the use of alcohol or a controlled substance." Tran.  
Code §521.312

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:  
Implied Consent Law:  
Arrest Required (Yes/No):  
Implied Consent Law Applies to  
Drugs (Yes/No):  
Refusal to Submit to Chemical Test  
Admitted into Evidence:

**No**  
**Yes** Tran. Code §724.011(a)  
**Yes** Tran. Code §724.011(a)  
**Yes** (Criminal Cases) Tran. Code §724.061 & *Jamail v. State*,  
787 S.W.2d 380 (Tex.Cr.App. 1990)<sup>3</sup>

Other Information:

A law enforcement "shall require" a driver, who has been arrested  
for "driving while intoxicated" and has refused to submit to test  
voluntarily, to submit to a blood or breath test if the driver was  
involved in an accident that either resulted in a death or will likely  
result in one. Tran. Code §724.012

Chemical Tests of Other Substances for Alcohol  
Concentration Which Are Authorized Under  
the Implied Consent Law:

Blood:  
Urine:  
Other:

**Yes** Tran. Code §724.011(a)  
**No**  
**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

**No**

<sup>1</sup>The term "intoxicated" means either (1) not having normal use of mental or physical facilities by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug or a combination or two or more of these substances into the body or (2) having an "alcohol concentration" ≥0.08. Penal Code §49.01(2) (A) & (B) and *Sullivan v. State*, 807 S.W.2d 342 (Tex.App. — Houston [14th Dist.] 1991) (Note: This case was decided when the alcohol concentration level was an ≥0.10.) The term "alcohol concentration" is defined as grams of alc. per 100 milliliters of blood, grams or alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine. Penal Code §49.01(1)

<sup>2</sup>It is illegal for a person <21 yrs old to operate a motor vehicle while having any detectable amount of alcohol in their system. Alcoholic Beverage Code §§106.01 & 106.041(a)

<sup>3</sup>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)

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Adjudication of DWI Charges: (continued)

Anti-Plea Bargaining Statute (Yes/No):	No <sup>1</sup>
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes <sup>2</sup> 2nd or sub off (w/n 5 yrs)-An evaluation is conducted to determine the appropriateness of an alcohol or drug rehabilitation program. Code of Criminal Procedure Article 42.12, §9(h)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	

I. Refusal-Susp 180 dys II. Refusal where there has been a prior "alcohol-related or drug related enforcement contact" w/n 10 yrs- Susp 2 yrs See Footnotes Nos. 3 & 4.

**Occupational License.** If a person has not had a prior "alcohol-related or drug-related enforcement contact"<sup>4</sup>, an occupational license may be issued at any time based on essential need. If a person has had a prior "alcohol-related or drug related enforcement contact" w/n 5 yrs, such a license is not available until the person's license has been suspended for 90 dys. An occupational license is only available once in a 10 year period. Tran. Code §§521.241, 521.242, 521.245, 521.251, 524.011, 524.012, 524.022(a), 724.035 & 724.045

If a driver is acquitted of a DWI offense associated with a license suspension based on a refusal, such suspension must either not be imposed or be rescinded. Tran. Code §724.048(c)

Other:

<sup>1</sup>For persons ≥21 yrs old, there is no "deferred adjudication" for a drunk driving offense. Code of Criminal Procedure Art. 42.12, §5(d) For persons <21 yrs old, there is no "deferred adjudication" for a drunk driving offenses committed under the Penal Code and for a 3rd or sub offense of driving with any detectable amount of alcohol in the system. Family Code §53.03(g) Note: Under "deferred adjudication", a defendant is placed on probation and, after the probation period has been successfully completed, the charges against the defendant are dismissed.

<sup>2</sup>I. There is a general pre-sentence investigation law which has be codified as §9 of Art. 42.12 of the Code of Criminal Procedure. II. The law appears to allow a court defer the sentence of a drunk driving offender. As part of this deferral, the court may require an offender to submit to (1) diagnostic testing for alcohol/controlled substance/drug, (2) a psychosocial assessment or (3) alcohol/drug treatment. Art. 45.54(3)(f), (g) & (h) of the Code of Criminal Procedure

III. Before the court can assign a drunk driving offender to community supervision (probation), the offender is required to submit to alcohol and drug evaluation. Code of Criminal Procedure Article 42.12, §13 IV. See Treatment Alternative to Incarceration on p. 3-459.

<sup>3</sup>Even though the law specifically provides that a suspension based on a refusal cannot be "probated", an occupational license may be issued under certain conditions. Note: A court order granting an occupational license must also order the driver to submit to alcohol and drug counseling and rehabilitation. Tran. Code §§521.242, 521.251 & 724.045

<sup>4</sup>"Alcohol-related or drug-related enforcement contact" means a driver license suspension, revocation or disqualification based on a drunk driving offense, refusal to submit to a test under the implied consent law or administrative per se. Tran. Code §524.001(3)

Sanctions Following a Conviction for a DWI Offense:

## Criminal Sanctions:

## Imprisonment:

Term (Day, Month, Years, Etc.):

See Footnote No. 1 and Double Jeopardy below.

1st off (Cl B Misd)-**72 hrs to 180 dys**; 2nd off (w/n 10 yrs) (Cl A Misd)-**30 dys to 1 yr**; 2nd off where there has been a prior Intoxication Manslaughter off (w/n 10 yrs) or 3rd off (w/n 10 yrs) (3rd Degree Felony)-**2 to 10 yrs** Penal Code §§12.21, 12.22, 12.34, 49.04 & 49.09 Note: Penal Code §12.42 provides for increased imprisonment sanctions for repeat felony offenses.

Persons Under 21 Years Old (BAC > 0.00)-1st off-None; sub off-Not more than **180 dys** Alcoholic Beverage Code §106.041(b) & (c)

## Mandatory Minimum Term:

1st off (Cl B Misd)-None<sup>2</sup> (It appears the court may allow a DWI offender to participate in community supervision without first having to complete a mand period of confinement.); 2nd off (w/n 10 yrs) (Cl A Misd)-**30 dys** (if community supervision is granted, either (1) not less than 3 dys of confinement in the county jail or (2) not less than 5 dys of confinement in the county jail if "ignition interlock" usage is required); 2nd off where there has been a prior Intoxication Manslaughter off (w/n 10 yrs) or 3rd off (w/n 10 yrs) (3rd Degree Felony)-**2 yrs** (not less than 10 dys of confinement in the county jail if community supervision is granted) Penal Code §§49.04 & 49.09 and Code of Criminal Procedure Art. 42.12, §13(a) See Treatment Alternative to Incarceration on p. 3-459 and Alcohol Treatment on p. 3-461. Note: Under Penal Code §12.44, a 3rd Degree Felony offender may receive the imprisonment sanction of a Cl A Misd.

Important. See Miscellaneous Sanctions on p. 3-461.

Persons Under 21 Years Old (BAC > 0.00)-1st off-N/A; sub off-None Alcoholic Beverage Code §106.041(b) & (c)

## Fine:

Amount (\$ Range):

1st off (Cl B Misd)-Not more than **\$2,000**; 2nd off (w/n 10 yrs) (Cl A Misd)-Not more than **\$4,000**; 2nd off where there has been a prior Intoxication Manslaughter off (w/n 10 yrs) or 3rd off (w/n 10 yrs) (3rd Degree Felony)-Not more than **\$10,000** Penal Code §§12.21, 12.22, 12.34, 49.04 & 49.09

Persons Under 21 Years Old (BAC > 0.00)-1st off (Cl C Misd)-Not more than **\$500**; sub off-**\$500 to \$2,000** Alcoholic Beverage Code §106.041(b) & (c) and Penal Code §12.23

<sup>1</sup>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) Note: In cases involving intoxicated assault, an offender can be found to have used a "deadly weapon" (a motor vehicle) in the offense. See the definition of a "deadly weapon" in Penal Code §1.07(a)(17)B). Such a finding may impact on the types of sanctions that can be imposed (e.g., community service cannot be imposed Code of Civil Procedure Art. 42.12, §§3 & 3g) and on the duration of an offender's incarceration period before they are eligible for parole. *Rachuig v. State*, 972 S.W.2d 170 (Tex.App. — Waco 1998)

<sup>2</sup>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)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Tharp v. State*, 935 S.W.2d 157 (Tex. Cr. App. 1996)

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

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 CI Felony-240 to 800 hrs; 3rd CI Felony-160 to 600 hrs; CI A Misd-80 to 200 hrs; and, CI B Misd-24 to 100 hrs Code of Criminal Procedure Art. 42.12, §16 & *Mills v. State*, 799 S.W.2d 447 (Tex.App. - Corpus Christi 1990)  
Persons Under 21 Years Old (BAC >0.00)-1st off (CI C Misd)-8 to 12 hrs; sub off-20 to 40 hrs Alcoholic Beverage Code §106.041(d)

Restitution

(eg Victim's Fund)

**Yes** I. As a condition of community supervision Code of Criminal Procedure Art. 42.12, §11(14) II. A victim of a DWI offense can receive payments from a State victims' compensation fund via the State attorney general. Code of Criminal Procedure Art. 56.31 et seq.

Other:

**Ignition Interlock (2nd or sub off w/n 5 yrs).** The court must order these offenders to install ignition interlock devices on all of the motor vehicles they own for 1 yr following a period of license suspension. Note: If there is a conflict between this requirement and the one related to community supervision, this provision "controls". Penal Code §49.09(g)

See **Ignition Interlock** below for other provisions.

**Ignition Interlock. I. Ignition Interlock (community supervision).** For a 1st DWI, Intoxicated Assault and Intoxication Manslaughter off conviction, in situations where a defendant has been placed on community supervision, the court may require that the offender install an "ignition interlock" device on their vehicle. For 2nd and sub DWI, Intoxicated Assault and Intoxication Manslaughter off convictions (w/n 10 yrs), in situations where a defendant has been placed on community supervision, the court must require that the offender install an "ignition interlock" device on their vehicle. An offender may obtain an exemption from using an ignition interlock device if they are required to operate a motor vehicle as part of their employment and if the vehicle to be used is owned by their employer. However, such exemption does not apply in the situations where the offender is self employed and owns the vehicle. Code of Criminal Procedure Art. 42.12, §13(i) & Tran. Code §521.246

II. **Ignition Interlock (occupational license based on essential need).** §521.241 et seq. When applying for an occupational license, the court may require a 1st offender (DWI, Intoxicated Assault and Intoxication Manslaughter) and must require a sub offender (w/n 10 yrs) to only operate vehicles that are equipped with ignition interlock devices. An offender may obtain an exemption from using an ignition interlock device if they are required to operate a motor vehicle as part of their employment and if the vehicle to be used is owned by their employer. However, such exemption does not apply in the situations where the offender is self employed and owns the vehicle. The ignition interlock device must be used for half of the license suspension period. Note: For subsequent offenders (w/n 5 yrs), who are subject to the ignition interlock requirement, the time period for device usage is 1 yr. Tran. Code §521.246 Offenders, who do not have a prior record of either an implied consent refusal, an admin. per se violation or DWI conviction, can receive an occupational license without delay. However, an offender, who has had a previous refusal or admin. per se violation (w/n 5 yrs), must wait 90 dys to obtain such a license. Likewise, an offender, who has had a prior DWI offense conviction (w/n 5 yrs), must wait 180 day before obtaining occupational driving privileges. §521.251

III. **Ignition Interlock (via magistrate after release).** Unless the interests of justice indicate otherwise, a magistrate shall require an offender (Intoxicated Assault, Intoxicated Manslaughter or a subsequent DWI offense), after their release from confinement, to only operate vehicles that are equipped with ignition interlock devices. Code of Criminal Procedure Art. 17.441

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Other: (continued)

**Rehabilitation Fee.** A person convicted of a DWI offense must pay a \$25 fee which is deposited into a comprehensive rehabilitation fund. Code of Criminal Procedure §§102.081(b), 102.084 & 102.085 and Human Resources Code §111.060

**EMS Cost.** A defendant who causes an accident as a result of a DWI offense, is liable up to \$1,000 for the cost of any emergency response that was necessitated by such accident. Code of Criminal Procedure Art. 102.017(c)

**Treatment Alternative to Incarceration.** In counties with a population ≥ 550,000, an alcohol/drug treatment program must be established as an alternative to jail. Screening and assessment must be a part of this program when a person has been arrested for an offense in which use or possession of alcohol/drugs is an element. Health and Safety Code §461.017

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:  
Administrative Per Se Law:

See the Special Note below and Double Jeopardy on p. 3-457.  
> **0.08 BAC/BrAC/UrAC**<sup>1</sup> I. Admin Per Se Action-Susp 90 dys<sup>2</sup>  
II. Admin Per Se Action where there has been a previous DWI offense conviction w/n 10 yrs-**Susp 1 yr**<sup>2</sup>

**Occupational License.** If a person has not had a prior "alcohol-related or drug-related enforcement contact"<sup>4</sup>, an occupational license may be issued at any time based on essential need. If a person has had a prior "alcohol-related or drug related enforcement contact" w/n 5 yrs, such a license is not available until the person's license has been suspended for 90 dys. An occupational license is only available once in a 10 year period. Note: A court order granting an occupational license must order the driver to submit to alcohol and drug counseling and rehabilitation.

Tran. Code §§521.241, 521.242, 521.245, 521.251, 524.011, 524.012 & 524.022(a)

Persons Under 21 Years Old-> **0.00 BAC**<sup>3</sup>-1st Admin. Per Se Action-Susp 60 dys (30 dys mand); 2nd Admin. Per Se Action-Susp 120 dys (90 dys mand); Sub Admin. Per Se Action-Susp 180 dys (mand) A person is eligible for an occupational license after the mandatory suspension period. Note: A prior drunk driving offense conviction is considered a prior action for license sanctions enhancement purposes. Tran. Code §§524.001, 524.012 and 524.022(b) & (c)

Other:

<sup>1</sup>See the definition of "alcohol concentration" in Penal Code §49.01. Tran. Code §524.001(1)

<sup>2</sup>The law specifically provides that a suspension based on an admin per se action cannot be "probated". Tran. Code §524.021(b)

<sup>3</sup>The law provides that license suspension is based on operating a motor vehicle with any detectable amount of alcohol in the system. Tran. Code §524.012(b)(2)

<sup>4</sup>"Alcohol-related or drug-related enforcement contact" means a driver license suspension, revocation or disqualification based on a drunk driving offense, refusal to submit to a test under the implied consent law or administrative per se. Tran. Code §524.001(3)

**Special Note:** I. An admin. per se suspension is either not imposed or rescinded if a driver is acquitted of the drunk driving offense (including offenses committed by persons < 21 yrs old who are driving with any detectable amount of alcohol in their system) associated with such suspension. Tran. Code §524.015(b)

II. An admin. per se suspension is credited towards a suspension imposed for a DWI offense conviction. Tran. Code §524.023

TEXAS

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Term of License Withdrawal

(Days, Months, Years, etc.):

Susp<sup>1</sup> Tran. Code §521.344

I. DWI Offenses: The following susps must be based on a conviction that resulted from the introduction of alcohol into the body. 1st off-90 to 1 yr (365 dys)<sup>2&3</sup>; subsequent off-180 dys to 2 yrs<sup>2&3</sup>; subsequent off (w/n 5 yrs)-1 to 2 yrs<sup>1&2</sup> Tran. Code §521.344(a) & Code of Criminal Procedure Art. 42.12, §13(k)  
II. Intoxicated Assault: 1st off-90 to 1 yr (365 dys); subsequent off (w/n 5 yrs)-1 yr Tran. Code §521.344(a)

Mandatory Minimum Term of Withdrawal:

DWI Offenses: 1st off-None<sup>2&3</sup>; subsequent off (w/n 5 yrs) with required ignition interlock usage)-1 yr<sup>2&3</sup> Important. See Ignition Interlock on p. 3-458.

Intoxicated Assault: 1st off-None; subsequent off (w/n 5 yrs)-1 yr

I. After the mandatory suspension period, offenders may be issued an occupational license based on "essential need". 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. Tran. Code §§521.242(b)(2) & (d) and 521.244

II. 1st offenders, who are over 21 years old and who are placed on probation, are not subject to license suspension if they attend and alcohol education program. Tran. Code §521.344(d) and Code of Criminal Procedure §13(h) & (j)

<sup>1</sup>Under separate provisions of law, a person who has been convicted of a DWI offense based on driving while intoxicated by a "controlled substance" is also subject to a **susp for 180 dys**. Tran. Code §§521.371 & 521.372 A person is eligible for occupational driving privileges based on an essential need to drive. Tran. Code §§521.241 et seq. & 521.377(b)

<sup>2</sup>**DWI Offenders Under 21 Years Old.** License suspension for 1 yr. Except as noted, the licensing agency must suspend the offender's license regardless of whether the offender has been placed on probation and ordered to complete an alcohol education program. A persons's license is not subject to suspension if they are placed under community supervision and are required to only operate motor vehicles that are equipped with **ignition interlock** devices. Tran. Code §521.342 An occupational license is available. Tran. Code §§521.241 et seq. & 521.342(c) Notwithstanding other provisions of law, an offender, who is placed on community supervision, must have their license suspended for 90 dys, which must began at the time the offender is placed on such supervision, and they can only operate motor vehicles that are equipped with ignition interlock devices. Code of Criminal Procedure Art. 42.12, §13(n)

**DWI Offenders Under 17 Years Old.** A suspension until the person reaches 19 or for 365 dys whichever is the longer suspension period. An occupational license is available if the person is eligible for a provisional license. Tran. Code §521.241 et seq. and Family Code §§51.02(2) and 54.042(a)(1), (c) & (d)

<sup>3</sup>I. Except for subsequent DWI offenders (w/n 5 yrs) who are subject to required ignition interlock usage, a license cannot be suspended if a jury recommends community supervision and against such suspension. Tran. Code §521.344(d) & Code of Criminal Procedure Art. 42.12, §§4 & 13(g)

II. Except for subsequent DWI offenders (w/n 5 yrs) who are subject to required ignition interlock usage, 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. The suspension periods, including any mand susp period, are the same as for DWI. Tran. Code §521.344(d), Code of Criminal Procedure Art. 42.12, §13(k), & *Texas Dept. of Public Safety v. Duarte*, 809 S.W.2d 611 (Tex.App. — Corpus Christi 1991)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Rehabilitation:

Alcohol Education:

**Yes** For any DWI offense, including Intoxication Assault and Intoxication Manslaughter, an offender is required, as a condition of community supervision, to complete an alcohol education program. This requirement may be waived upon a showing of good cause by the offender. Code of Criminal Procedure Art. 42.12, §13(h) & (j)

Persons Under 21 Years Old (BAC->0.00)-1st off-An offender **must** attend an alcohol awareness course; sub\_off-An offender **may** be required to attend an alcohol awareness course Alcoholic Beverage Code §§106.041(d) & 106.115

Alcohol Treatment:

**Yes** Felony offenses (3rd or subsequent DWI, Intoxication Assault and Intoxication Manslaughter) may be confined in a substance abuse treatment facility in lieu of imprisonment from 6 mos to 1 yr. Code of Criminal Procedure Art. 42.12, §14

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

**Forfeiture (Does Not Appear to be Mandatory)** A vehicle owned and operated by an offender during a drunk driving offense may be subject to forfeiture by the State following three or more DWI convictions. Tran. Code §704.001

Terms Upon Which Vehicle

Will Be Released:

Other:

**None**

Miscellaneous Sanctions

Not Included Elsewhere:

**Work Release.** For misdemeanor and felony offenses (where imprisonment is in a county jail), the court may allow an offender to participate in a work release program. Code of Criminal Procedure Art. 42.034.

**Intermittent Sentence.** A sentence may be served intermittently including confinement as a condition of community supervision. Code of Criminal Procedure Art. 42.033

**Electronic Monitoring.** An offender may serve a county jail sentence via electronic monitored "house arrest". Code of Criminal Procedure Art. 42.035

**Incarceration Costs.** A person, who has been convicted of a misdemeanor offense, may be required to pay the cost, at a rate of \$25 per day, for any incarceration time that they serve in a county jail. Indigent defendants may not be required to pay this cost. Code of Criminal Procedure Art. 42.038(a) & (c)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration  $\geq 0.04$  (Standards: Grams of alc per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol concentrations or the presence of a controlled substance or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Tran. Code §§522.003(1), (2), (5), (9) & (23), 522.081, 522.082, 522.085, 522.086, 522.101 and 522.102

TEXAS

Other Criminal Actions Related to DWI:

Homicide by Vehicle: State Has Such a Law:	<b>Yes<sup>1</sup> Intoxication Manslaughter<sup>2</sup></b> (DWI related death) 2nd Degree Felony Penal Code §49.08
Sanctions:	
Criminal Sanction:	See Community Service for DWI offenders on p. 3-458.
Imprisonment (Term):	<u>2nd Degree Felony-2 to 20 yrs</u> Penal Code §12.33
Mandatory Minimum Term:	<b>120 dys</b> if community supervision is granted. Art. 42.12, §13(b) Code of Criminal Procedure
Fine (\$ Range):	<u>2nd Degree Felony-Not more than \$10,000</u> Penal Code §12.33
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	<b>Susp Tran.</b> Code §521.344(b)
Length of Term of Licensing Withdrawal:	<u>1st offense-180 dys to 2 yrs; 2nd or subsequent off</u> (w/n 10 yrs)- <b>1 to 2 yrs</b> Tran. Code §521.344(b) For persons under 21 years old-susp 1 yr (appears to be mand) Tran. Code §521.342(b)
Mandatory Action--Minimum Length of License Withdrawal:	<u>1st offense-None; 2nd or subsequent off</u> (w/n 10 yrs)- <b>1yr</b> Tran. Code §521.344(b) For persons under 21 years old, for either a 1st or sub off, 1 yr susp appears to be mand. Tran. Code §521.342(b)
Other:	<b>None</b> An offender may be issued an occupational (restricted) lic. with an ignition interlock requirement based on "essential need". <sup>3</sup> Tran. Code §521.241 et seq. See Ignition Interlock on p. 3-458.
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:</u>	See the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	<u>1st off-not less than 72 hrs nor more than 6 mos.; 2nd &amp; sub. off</u> (Class A Misd)-not more than <b>1 yr</b> Tran. Code §521.457 & Penal Code §12.21

<sup>1</sup>A person, who has killed another while driving a vehicle in a reckless or negligent manner while intoxicated, may also be convicted of involuntary manslaughter with the use of "deadly weapon". Penal Code §1.07(a)(17)(B), *Ray v. State*, 880 S.W.2d 795 (Tex.App. — Houston [1st Dist.] 1994), *Martinez v. State*, 883 S.W.2d 771 (Tex.App. — Fort Worth 1994), *Tyra v. State*, 897 S.W.2d 796 (Tex.Cr.App. 1995), & *Hall v. State*, 935 S.W.2d 852 (Tex.App. — San Antonio 1996)

<sup>2</sup>There is no deferred adjudication for this offense. Code of Criminal Procedure Art. 42.12, §5(d)

<sup>3</sup>**Offenders Under 21 Years Old.** The court may place these offenders on community supervision. If the court takes this action, it must suspend their driving privileges for 90 dys and require that such offenders only operate motor vehicles that are equipped with ignition interlock devices. Code of Criminal Procedure Art. 42.12, §13(m)

\*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

**Special Note:** There are two provisions that make it in an offense to operate a CMV during either a CDL disqualification or a CDL out-of-service order. Under Tran. Code §522.011, such offense is a CI C misd with a fine, per Penal Code §12.23, of not more than \$500. Under Tran. Code §522.071, such an offense is considered the same as driving while suspended or revoked per Tran. Code §521.457.

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	<b>None</b>
Fine (\$ Range):	<u>1st off</u> -not less than <b>\$100</b> nor more than <b>\$500</b> ; <u>2nd and sub. off</u> -not more than <b>\$4,000</b> Tran. Code §521.457 & Penal Code §12.21 See <b>Incarceration Costs</b> on p. 3-461.
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	<b>Susp</b> Tran. Code §521.294(b)(1) & (c)
Length of Term of License	
Withdrawal Action:	The regular suspension period is the lesser of either an additional period that is equal to the original period or for 1 yr.
Mandatory Term of License	
Withdrawal Action	<b>None</b> A restricted license may be issued based on essential need. Tran. Code §521.241 et seq.
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	<b>Yes</b> Tran. Code §521.294(h)
Grounds for Being Declared an Habitual Offender:	"Any person with 4 or more convictions arising out of different transactions in a consecutive period of 12 mos or 7 or more convictions arising out of different transactions w/in a period of 24 mos...." Tran. Code §521.294(h)
Term of License Rev While Under Habitual Offender Status:	
Offender Status:	<b>Susp</b> for not more than <b>1 yr</b> Tran. Code §521.294(c) An occasional license may be issued on a showing of "essential need". Tran. Code §521.241 et seq.
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	<b>None</b>
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):

**Limited**

BAC Chemical Test Is Given to the following Persons:

- Driver:
- Vehicle Passengers:
- Pedestrian:

- Discretionary<sup>1</sup>**
- No**
- No**

<sup>1</sup>A justice of the peace may order that a blood specimen be taken from a deceased person if there is evidence to indicated that such person was driving while intoxicated. Code of Criminal Procedure Art. 49.10(j)

TEXAS

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1986) Alcoholic Beverage Code §§106.01, 106.02 & 106.03<sup>1</sup>

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<sup>2k3</sup> Alcoholic Beverage Code §2.01 et seq. Under §2.02(b)(1), in order for a licensee to be liable, it must be proven that the patron was "obviously intoxicated to the extent that he presented a clear danger to himself and others" at the time they were sold/served alcoholic beverages. Also, under §2.03, these code provisions provide the exclusive remedy in situations where the patron is 18 years old or older.

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record (Case Citation):

Yes Note: The following case law may have been abrogated in part by the above provisions of the Alcoholic Beverage Code.<sup>4</sup> *El Chico Corp. v. Poole*, 732 S.W.2d 306 (Tex. 1987)

Dram Shop Actions-Social Hosts:

Yes-Limited *Graff v. Beard*, 858 S.W.2d 918 (Tex. — San Antonio 1995)<sup>5</sup>, *Smith v. Merritt*, 940 S.W.2d 602 (Tex. 1997)<sup>6</sup>,

<sup>1</sup>Selling Alcoholic Beverages to a minor with criminal negligence.

<sup>2</sup>Because of the principle of sovereign immunity, Indian tribes are not subject to civil liability under the State's dram shop law. *Holguin v. Ysleta Del Sur Pueblo*, 954 S.W.2d 843 (Tex.App. — El Paso 1997)

<sup>3</sup>I. Under §106.14 of the Alcoholic Beverage Code, actions of employees in serving alcoholic beverages to either minors or intoxicated persons are not attributable to employers if (1) the employer has required its employees to take alcoholic beverage seller training, (2) the employees have completed this training and (3) the employer has not encouraged employees to sell alcoholic beverages to either minors or intoxicated persons. See "The Safe Harbor Defense" in *Perseus, Inc. v. Canody*, 995 S.W.2d 202 (Tex.App. — San Antonio 1999), and *Cianci v. M. Till, Inc.*, 34 S.W.3d 327 (Tex.App. — Eastland 2000) II. A licensee may not be liable for the damages resulting from the death of person caused by the criminal acts of an intoxicated patron. Such act may be a superseding cause which negates any dram shop cause of action. *Phan Son Vau v. Pena*, 990 S.W.2d 751 (Tex. 1999)

<sup>4</sup>Parents brought a wrongful death negligence action against a licensee for the death of their son caused by the criminal conduct of an intoxicated patron. Since the criminal act was not foreseeable, the licensee was not liable for such death. *Boggs v. Bottomless Pit Cooking Team*, 25 S.W.3d 818 (Tex.App. — Houston [14th Dist.] 2000)

<sup>5</sup>The *Graff* case concerned a situation where a social host served alcoholic beverages directly to a guest (an adult) 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. However, in *Ryan v. Friesenhahn*, 911 S.W.2d 113 (Tex.App. — San Antonio 1995) (affirmed on procedural grounds by the State supreme court. *Friesenhahn v. Ryan*, 960 S.W. 2d 656 (Tex. 1995)), a social host was found liable for the death of a minor guest (a person <21 yrs old per Alcoholic Beverage Code §106.01) who had consumed alcoholic beverages at a party given by the host.

<sup>6</sup>In the *Smith* case, the court held that a social host owed no common law duty of care to avoid serving alcoholic beverages to a minor and thus there was no liable under general common law for injuries caused by such a minor. Likewise, the court held that there was no negligence per se cause of action against a social host for damages resulting from a violation of the alcoholic beverage control law which prohibits the service of alcoholic beverages to persons <21 yrs old. Note: This decision by the Texas Supreme Court reversed, in part, one by the Texas Court of Appeals. *Smith v. Merritt*, 929 S.W.2d 456 (Tex.App. — Tyler 1995)

Other State Laws Related To Alcohol Use: (continued)

Other:

*Kovar v. Krampitz*, 941 S.W.2d 249 (Tex.App. — Houston [14 Dist.] 1996)<sup>1</sup>, & *Dorris v. Price*, 22 S.W.3d 42 (Tex.App. — Eastland 2000)<sup>1</sup>

Under the Dram Shop Law, a licensee may be held liable for the injuries sustained by an intoxicated patron. *Smith v. Sewell*, 858 S.W.2d 350 (Tex. 1993)

Under common law negligence, an employer may be liable for the injuries sustained by an intoxicated employee where such intoxication occurred at an "after work hours" event sponsored by the employer. The extent of the employer's control over the employee will determine whether there is a duty of care to protect the employee from harm. *Spruiell v. Schlumberger Ltd.*, 809 S.W.2d 935 (Tex.App. — Texarkana 1991) (possible liability), & *Whitney Corp. v. George Distributors*, 950 S.W.2d 82 (Tex.App. — Amarillo 1997) (no liability)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd Alcoholic Beverage Code §101.63

1st off-Not more than **1 yr**; 2nd off-Not more than **1 yr** Alcoholic Beverage Code §§101.63(b) & 101.63(c)

1st off-Not less than **\$100 nor more than \$500**; Subsequent off-Not less than **\$500 nor more than \$1,000** See **Incarceration Costs** on p. 3-461.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes<sup>2</sup>

**Suspended** for not more than **60 dys**, revoked or cancelled Alcoholic Beverage Code §§11.61, 32.17 and 61.71

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Misd<sup>3</sup>

Not more than **1 yr**<sup>4</sup> Alcoholic Beverage Code §§106.01 & 106.03

<sup>1</sup>In *Kovar*, the court held that, since a social host did not provide alcoholic beverages to a minor guest, they were not liable for the minor's death resulting from intoxication. The minor was killed in an automobile accident while driving in an intoxicated condition. See also *Daniel v. Reeder*, 16 S.W.3d 491 (Tex.App. — Beaumont 2000), where the court held that social hosts, who serve alcoholic beverages to minor guests in violation of Alcoholic Beverage Code §106.06, could be held liable for the injuries sustained by such minors via a negligence as "as a matter of law".

In *Dorris*, the court held that a social host could not be held liable, under either common law negligence or negligence per se, for the injuries caused to third parties by the host's intoxicated minor guests.

<sup>2</sup>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.

<sup>3</sup>Alcoholic Beverage Code §11.621 The sale to a minor must be with criminal negligence. §106.03(a) of the Alcoholic Beverage Code

<sup>4</sup>Applies to both a 1st and sub off.

TEXAS

Other State Laws Related To Alcohol Use: (continued)

Fine (\$ Range):

1st off-Not less than \$100 nor more than \$500; Subsequent offense-\$500 to \$1,000 Alcoholic Beverage Code §106.03 See **Incarceration Costs** on p. 3-461.

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

**Yes**<sup>1</sup> Alcoholic Beverage Code §§106.13 & 61.71(a)(5)  
1st off-cancel or suspend for not more than **90 dys**; 2nd off-cancel or suspend for not more than **6 mos**; 3rd off (within 36 mos)-cancel or suspend 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):

Anti-Consumption Law (Yes/No):

**Yes**<sup>2</sup> Penal Code §49.031 See Footnote No. 2 on p. 3-457.  
**No**<sup>2&3</sup>

<sup>1</sup>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.

<sup>2</sup>Under separate provisions, the law prohibits the possession of an open container of or the consumption of an alcoholic beverage on a street, alley or sidewalk within 1,000 feet of a public, private or parochial school that provides education from pre-kindergarten through 12th grade. Alcoholic Beverage Code §101.75(a)

<sup>3</sup>**Historical Note:** The anti-consumption law, that applied only to drivers, was repealed. Penal Code §49.03 repealed by §10 of Ch. 969 (2001)

STATE:  
General Reference:

**UTAH**  
Utah Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:  
Illegal Per Se Law (BAC/BrAC):  
  
Presumption (BAC):  
Types of Drugs/Drugs and Alcohol:  
  
Other:

Under the influence of alcohol §41-6-44(2)(a)(ii)  
≥ **0.08**<sup>1&2</sup> §41-6-44(2)(a)(i)  
**Any Measurable Controlled Substance in the Body**<sup>3</sup> §41-6-44.6  
**None**  
Under the influence of (1) **Any Drug** or (2) a Combination of Any Drug and Alcohol §41-6-44(2)(a)(ii)  
For Commercial Motor Vehicle Operators, see p. 3-471.  
See **No Alcohol Condition License** under Miscellaneous Sanctions on p. 3-472.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:  
Implied Consent Law:  
Arrest Required (Yes/No):  
Implied Consent Law Applies to  
Drugs (Yes/No):  
Refusal to Submit to Chemical Test  
Admitted into Evidence:  
Other Information:

**No**  
**Yes** §41-6-44.10(2)  
**Yes** §41-6-44.10(1)  
**Yes** (Criminal & Civil Cases) §41-6-44.10(8)  
It may be possible to obtain a blood sample without the driver's consent. Both the DWI law's evidence admissibility provisions and the automobile homicide law provide that "[e]vidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by Rules of Evidence or the constitution." §§41-6-44.5(b) & 76-5-207(6)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:  
Urine:  
Other:

**Yes** §41-6-44.10  
**Yes** §41-6-44.10  
**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):  
  
Anti-Plea Bargaining Statute (Yes/No):  
  
  
Pre-Sentencing Investigation Law (PSI)  
(Yes/No):

**No** Note: A Magistrate may not grant diversion in a DWI case. §77-2-9  
**No** Note: If the defendant pleads guilty or *nolo contendere* to reckless driving as a substitute for a DWI charge, the prosecution must state for the record whether alcohol or drugs were related to the pleaded off. §41-6-44(10)  
**Yes** Substance abuse assessment is required. §§41-6-44(1)(c), (4)(c)(i), (5)(c)(i), (6)(c) & (8)(a) and 53-3-231(10)(a)

<sup>1</sup>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.

<sup>2</sup>Alcohol concentration is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §41-6-44(2)(c)

<sup>3</sup>Unless the driver was using the controlled substance via a valid prescription.

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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:  
Criminal Sanctions (Fine/Jail): N/A  
Administrative Licensing Action (Susp/Rev): N/A

Refusal to Take Implied Consent Chemical Test:  
Criminal Sanction (Fine/Jail): None  
Administrative Licensing Action (Susp/Rev):

**Rev 18 mos<sup>1</sup>** (mand) If the driver has had a previous refusal, admin. per se action or DWI offense conviction which occurred after 7/1/93-  
**Rev 24 mos<sup>1</sup>** (mand) §41-6-44.10(2)(c), (f) & (h)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment:  
Term (Day, Month, Years, etc.):

See Footnote No. 2, Double Jeopardy and Felony below.  
See **Serious Bodily Injury DWI Offenses** on p. 3-472.

1st and 2nd off (w/n 6 yrs)-Class B misd-not more than **6 mos**; 3rd Degree Felony Offenses<sup>3</sup> (See the Special Note below.)-not more than **5 yrs** §41-6-44(3), (6) & (7)

1st or 2nd DWI off-where there (1) is an injury related to negligent action, (2) is a passenger under 16 yrs old (**child endangerment**) or (3) is driver ≥21 yrs old driving w/ a passenger <18 yrs old-Class A misd-not more than **1 yr** §§41-6-44, 76-3-203(3) & 76-3-204

Any Measurable Controlled Substance in the Body-Class B misd-not more than **6 mos** §§41-6-44.6 & 76-3-204 See the Comment below.

<sup>1</sup>This sanction also applies to persons under 21 years old who refuse to submit to a chemical test to determine if they have violated §53-3-231(1). Sec. 53-3-231 provides for administrative (licensing) actions against such persons who drive a vehicle with any amount of alcohol in their body.

<sup>2</sup>A vehicle homicide offense is to be considered a prior DWI offense. §41-6-44(1)(a)(iv)

<sup>3</sup>**3rd Felony Offenses.** A person commits a 3rd Degree Felony if they commit either (1) a 3rd drunk driving offense w/n 10 yrs or (2) any drunk driving offense AFTER having been convicted of vehicle homicide (§76-5-207) or any felony offense under §41-6-44. §41-6-44(6)(a) **Special Note:** I. In 3rd Degree Felony Offense situations, if the court suspends the execution of sentence and places the defendant on probation, it **must** (1) impose a fine of not less than \$1,500, (2) impose a jail sentence of not less than 1,500 hrs and (3) order the person to participate in an alcohol or drug dependency program which provides for intensive care, inpatient treatment and long-term care. §41-6-66(6)(b) & (c) and (7) As an additional sanction, the court may require a person to participate in the electronic home monitoring program which could include an alcohol use restriction. §41-6-66(6)(d) & (13) II. If a 3rd Degree Felony offender is not placed on probation, they are eligible for a parole hearing after they have served a minimum of 90 dys of incarceration. Utah Admin. Code R671-201-1

**Comment:** The Utah Code establishes two distinct drunk driving offenses. The standard categories of drunk driving offenses are contained in §41-6-44. However, the offense of driving with any measurable controlled substance in the body is contained in §41-6-44.6. A conviction under §41-6-44.6 is considered a prior offense for sanction enhancement purposes following a conviction under §41-6-44. However, there is no reciprocal provision in §41-6-44.6 concerning the use of convictions under §41-6-44 as prior offenses for sanction enhancement purposes.

**Double Jeopardy:** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Arbon*, 909 P.2d 1270 (UtahApp. 1996), & *City of Odem v. Crandall*, 760 P.2d 920 (UtahApp. 1988)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Mandatory Minimum Term:	<u>1st off-48 cons hrs</u> <sup>1</sup> ; <u>2nd off (w/n 6 yrs)-240 cons hrs</u> <sup>1</sup> ; <u>3rd Felony Offenses-See the Special Note on p. 3-468. Important. See Community Service and Electronic Home Monitoring below.</u> <u>Any Measurable Controlled Substance in the Body-None</u>
Fine: Amount (\$ Range):	<u>1st and 2nd off (w/n 6 yrs) off-Class B misd-not more than \$1,000; 3rd Felony Offenses-(See the Special Not on p. 3-468.)-not more than \$5,000</u> §76-3-301 See Footnote Nos. 3 & 4. <u>A 1st or 2nd DWI off-where there (1) is an injury related to negligent action, (2) is a passenger under 16 yrs old (child endangerment) or (3) is driver ≥21 yrs old driving w/ a passenger &lt;18 yrs old-Class A misd-not more than \$2,500</u> <sup>2</sup> §§41-6-44 & 76-3-301 <u>Any Measurable Controlled Substance in the Body-Class B misd-not more than \$1,000</u> §§41-6-44.6 & 76-3-301
Mandatory Min. Fine (\$):	<u>1st off-\$700</u> <sup>3</sup> ; <u>2nd off (w/n 10 yrs)-\$800</u> <sup>3</sup> ; <u>3rd Degree Felony Offense-See the Special Note on p. 3-468. See Footnote Nos. 1 &amp; 3</u> <u>Any Measurable Controlled Substance in the Body-None</u>
Other Penalties: Community Service:	<u>1st off-Not less than 24 hrs in lieu of imprisonment (24 hrs mandatory)</u> <sup>4</sup> ; <u>2nd off (w/n 10 yrs)-Not less than 240 hrs in lieu of imprisonment (240 hrs are mandatory)</u> <sup>4</sup> ; <u>3rd Felony Offense-None</u> §41-6-44(4), (5) & (6)
Restitution (eg Victim's Fund):	<u>Yes</u> Either via a Victims' Compensation Fund (§63-63-1 et. seq.) or via direct payment by the defendant to the victim (§76-3-201)
Other:	<b>Ignition Interlock.</b> I. In addition to any other sanctions that may be imposed for a drunk driving <u>alcohol</u> offense, an offender may required, as a condition of probation, only to operate motor vehicles that are equipped with ignition interlock devices. <sup>5</sup> This requirement is <u>mandatory</u> if the offender is under 21 yrs old. §41-6-44.7(2)(a) & (b) II. The court <b>must</b> require a person, who has been convicted of a <u>subsequent</u> drunk driving <u>alcohol</u> offense (a §41-6-44 offense) (w/n 10 yrs), to install an ignition interlock device on <u>all</u> of the vehicles registered in their name and/or operated by them for 3 yrs from the date of conviction. §41-6-44.7(2)(c) III. There is an exemption from ignition interlock usage for employer owned vehicles. §41-6-44.7(8)

<sup>1</sup>These minimum mand sanctions apply also to DWI offenses related to injury and child endangerment.

<sup>2</sup>The provisions of the drunk driving law may have limited this fine to \$1,000. §41-6-44

<sup>3</sup>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

<sup>4</sup>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) In addition, a mand "traffic mitigation surcharge" of \$10 is imposed on all offenders. §63-63b-101

<sup>5</sup>The court must give reasons on the record if this sanction is not imposed/ordered and the offender had a BAC ≥ 0.16. §41-6-44

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Other: (continued)

**Electronic Home Monitoring.**<sup>1</sup> As an alternative to either imprisonment or community service for either a 1st or subsequent offense, a person may be allowed to participate in a home confinement electronic monitoring program. The court may impose a restriction on the consumption of alcoholic beverages by the offender as part of this program. §41-6-44(4)(b)(ii), (5)(b)(ii), 6(b)(ii)(A)(ii) & (13)(d)(ii)

Administrative Licensing Actions:  
Pre-DWI Conviction Licensing Action:  
Administrative Per Se Law:

See Double Jeopardy on p. 3-468.

**Yes<sup>2</sup> I. (1) BAC/BrAC  $\geq$  0.08** (For standards, see Footnote No. 2 on p. 3-467.), (2) **Any Measurable Amount of a Controlled Substance in the Body** or (3) Based on reasonable grounds that a person has violated the DWI law (§41-6-44) (e.g., driving while under the influence of alcohol or drugs) 1st admin. action-Susp for 90 dys; 2nd and subsequent admin. actions-Susp for 1 yr Note: These license susp appear to be mandatory. §§53-3-222 & 53-3-223

II. Admin. Actions-Persons Under 21 Years Old. A person under 21 years old, who operates a vehicle with **any measurable or detectable amount** of alcohol in their body, is subject to the following admin. licensing actions. 1st violation-"Denial"-90 dys; 2nd or sub. violation (w/n 3 yrs)-susp-1 yr These denial or susp actions appear to be mand. §53-3-231

III. For the admin. per se actions in I and II above, a person's license cannot be reinstated until they have completed any required alcohol or drug education or treatment program. §§41-6-44(8)(b) & 53-3-231(11)(b)(i) See Footnote No. 1 on p. 3-471.

Other:

Under §53-3-221(1)(a) & (8)(a), a person's license may be susp for not more than 1 yr if they have "committed" an off that usually requires license rev (e.g., 2nd or sub. DWI). Such action may be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:  
Type of Licensing Action

See the Special Note below.

See **Serious Bodily Injury DWI Offenses** under Miscellaneous Sanctions on p. 3-472.

(Susp/Rev):

1st off (for either injury or non-injury related offs)-Susp; subsequent off (w/n 10 yrs) (for either injury or non-injury related offs)-Rev §§41-6-44(11), 53-3-220 and 53-3-221

Any Measurable Controlled Substance in the Body-1st off-Susp; subsequent DWI off (w/n 6 yrs)-Rev §41-6-44.6(6)

<sup>1</sup>The court must give reasons on the record if this sanction is not imposed/ordered and the offender had a BAC > 0.16. §41-6-44(14)

<sup>2</sup>The admin. per se law appears to also cover situations where a person was operating a motor vehicle with a measurable amount of a controlled substance in their body.

**Special Note:** The licensing actions listed under Post DWI Conviction are those which are taken by the licensing agency. In addition to these actions, the court is authorized (but is not required) to either suspend or revoke a DWI offender's license for either 90 dys, 180 dys or 1 yr. The court may take this action in order to "remove from the highways those persons who have shown they are safety hazards." §41-6-44(12)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Term of License Withdrawal  (Days, Months, Years, etc.):	See Court Ordered Lic. Action under Misc. Sanctions on p. 3-472.  1st off (for either injury or non-injury related offs)-90 dys <sup>1</sup> ; subsequent off <sup>2</sup> (w/n 10 yrs) (for either injury or non-injury related offs)-1 yr <sup>1</sup> §41-6-44(11)(a) Any Measurable Controlled Substance in the Body-1st off-90 dys <sup>1</sup> ; subsequent off <sup>2</sup> (w/n 6 yrs)-1 yr <sup>1</sup> §41-6-44.6(6)
Mandatory Minimum Term of Withdrawal:	1st off (for either injury or non-injury related offs)-90 dys <sup>1</sup> ; subsequent off <sup>2</sup> (w/n 10 yrs) (either injury or non-injury related offs)-1 yr <sup>1</sup> §41-6-44(11)(a) No hardship license may be issued. §53-3-220(4)(a)(ii) Any Measurable Controlled Substance in the Body-1st off-90 dys; subsequent off <sup>2</sup> (w/n 6 yrs)-1 yr §41-6-44.6(6) No hardship license may be issued. §53-3-220(4)(a)(ii)
Other: Rehabilitation: Alcohol Education:	See the Special Note below. Yes <sup>3</sup> For a 1st or 2nd off, a judge <b>must</b> order a defendant to attend an alcohol or drug education program in lieu of treatment. §41-6-44(4)(c)(ii) & (5)(C)(ii)
Alcohol Treatment:	Yes <sup>3&amp;4</sup> For a 1st or 2nd off, the court may order a defendant to obtain alcohol or drug treatment. And, for 3rd Degree Felony Offenses, the court <b>must</b> order a defendant to obtain alcohol or drug treatment. §41-6-44(4)(d), (5)(d) & (6)(c) Note: The above programs are also required for persons who have been conviction of driving with "any measurable controlled substance in the body" under §41-6-44.6. §41-6-44(8)(a)(i) & (ii)

<sup>1</sup>The suspension or revocation period for a drunk driving conviction under either §41-6-44 or §41-6-44.6 is reduced by any suspension period received under the administrative per se law. §§41-6-44(11)(b) & 41-6-44.6(6)(c)

<sup>2</sup>See the Comment on p. 3-468.

<sup>3</sup>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. §53-3-231(11)

<sup>4</sup>The court must give reasons on the record if this sanction is not imposed/ordered and the offender had a BAC ≥ 0.16. §41-6-44

**Special Note:** An offender's driving privileges cannot be restored until they have (1) satisfactorily completed alcohol or drug assessment, education, treatment or rehabilitation program that has been ordered and (2) paid any fines or fees, including restitution fees, and rehabilitation costs. §§41-6-44(7)(b) & 41-6-44.6(7)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥ 0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of either alcohol, drugs or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. (Note: The CMV implied consent provision, §41-2-717(2), applies to the testing of both alcohol and drugs; however, the disqualification provision, §41-2-715(1)(e), applies only to a refusal to submit to a test for an alcohol concentration.) For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§53-3-102(5)(a), 53-3-102(9), 53-3-402(2), 53-3-402(5), 53-3-402(10), 53-3-402(11), 53-3-402(14), 53-3-414, 53-3-417 & 53-3-418

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

None

A vehicle used in a drunk driving offense may be temporarily impounded if its owner is the offender. §41-6-44.30

Miscellaneous Sanctions

Not Included Elsewhere:

**Assessments for Treatment.** Following a conviction under either §§41-6-44 or 41-6-44.6, the court may assess a defendant an amount sufficient to "fully compensate agencies" for the cost of any treatment provided to such offender. §§62A-8-302 & 62A-8-303

**Court Ordered Licensing Action.** In order to remove from the highways those individuals who have shown they are safety hazards, the court may suspend or revoke a person's license for 90 dys, 180 dys or 1 yr following a conviction under §41-6-44. §41-6-44(12)

**No Alcohol Condition License.** A person, who has been convicted of any drunk driving offense (including a violation of the no alcohol driving condition) or who has refused to submit to chemical test under the implied consent law, can only have their license reinstated with a "no alcohol condition". This condition prohibits such a person from driving with **any amount of alcohol** in their body. For a 1st violation, this condition lasts for **2 yrs**. And, for a 2nd or subsequent violation, such condition lasts for **6 yrs**. A person, who violates this condition commits a Cl B Misd (jail for not more than **6 mos** and/or a fine of not more than **\$1,000**) and is subject to a mand license revocation of **1 yr**. §§53-3-220(1)(a)(xiv), 53-3-225(1)(a), 53-3-232, 76-3-204(2) & 76-3-301(1)(d)

**Serious Bodily Injury DWI Offenses.** A person commits a 3rd Degree felony (See the Special Note on p. 3-468.) if they cause serious bodily injury<sup>1</sup> related to a DWI offense. The sanctions for this offense are an imprisonment term of not more than **5 yrs** and/or a fine of not more than **\$5,000**. If the court suspends sentence and grants probation, it must, nevertheless, impose the following mandatory sanctions: Jail for 1,500 hrs; a fine of \$1,500; and, alcohol or drug treatment (w/substance abuse screening). §§41-6-44(3)(b) & (6)(c), 76-3-203(3) and 76-3-301(1)(b) Note: The licensing sanctions for this offense are the same as for a regular DWI offense. §41-6-44(2), (3)(b) & (11)

**Probation w/ BAC ≥ 0.16.** If an offender had a BAC ≥ **0.16**, they must be placed on probation. §41-6-44(e)(II)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

**Yes Automobile Homicide Two Types "Simple" Negligent Homicide:**

Death caused by operating a motor vehicle in a negligent

<sup>1</sup>A "serious bodily injury" is defined as a "bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death." §41-6-44(1)(b)

Other Criminal Actions Related to DWI: (continued)

	manner while DWI or with an alcohol concentration >0.08-3rd degree felony §76-5-207(1) & (3)
	"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 an alcohol concentration ≥0.08-2nd degree felony §76-5-207(2) & (3)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	<u>Simple Negligent Homicide-Not more than 5 yrs</u> §76-3-203(3) <u>Criminally Negligent Homicide-1 to 15 yrs</u> §76-3-203(2)
Mandatory Minimum Term:	<b>None</b>
Fine (\$ Range):	<u>Simple Negligent Homicide-Not more than \$5,000</u> §76-3-301(1)(b) <u>Criminal Negligent Homicide-Not more than \$10,000</u> §76-3-301(1)(a)
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	<u>For both offs-Rev</u> §53-3-220(1)(a)
Length of Term of Licensing Withdrawal:	<u>For both offs-1 yr</u> §53-3-225
Mandatory Action--Minimum Length of License Withdrawal:	<u>For both offs-1 yr</u> No hardship license may be issued. §53-3-220(4)(a)(i)
Other:	<b>None</b>
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:</u>	See Footnote No. 1.
Sanction:	
Criminal:	
Imprisonment (Term):	<b>Cl B Misd not more than 6 mos</b> §§41-6-44, 53-3-227(3)(a) & 76-3-204(2)
Mandatory Minimum Term of Imprisonment:	<b>None</b>
Fine (\$ Range):	<b>Not more than \$1,000</b> §76-3-301(1)(d)
Mandatory Minimum Fine:	<b>\$750<sup>2</sup></b>

<sup>1</sup>It is a Cl B misd to operate CMV during a CDL disqualification which was based either (1) on driving such a vehicle while either under the influence of alcohol or drugs or with an alcohol concentration ≥0.04 or (2) on a refusal to submit to a chemical test. The sanctions for this offense are an imprisonment term of not more than 6 mos and/or a fine of not more than \$1,000 (with mand minimum of \$750). It is a Cl C misd to operate a CMV during either a CDL disqualification which is not DWI related or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 90 dys and/or a fine of not more than \$750. In addition, the following licensing actions apply. If the offender was driving a CMV while disqualified, the disqualification period is extend for a like period. If an offender was driving a CMV while under a CDL out-of-service order, they are subject to the following CDL disqualification periods: (1) For a 1st violation, 90 dys to 1 yr; (2) for a 2nd violation (w/n 10 yrs), 1 to 5 yrs; and, (3) for a 3rd or subsequent violation (w/n 10 yrs), 3 to 5 yrs. If the out-of-service order violation involved the either (1) the transportation of hazardous materials or (2) the operation of a vehicle designed to carry 16 or more passengers, the offender is subject to the following disqualification periods: (1) For a 1st violation, 180 dys to 2 yrs; and, (2) for a 2nd or subsequent violation (w/n 10 yrs), 3 to 5 yrs. The minimum periods of disqualification appear to be mandatory. §§53-1-116, 53-3-220(2)(a), 53-3-227(1), (2) & (3), 53-3-404, 53-3-414(7), 76-3-204(2) & (3) and 76-3-301(1)(d) & (e)

<sup>2</sup>The fine shall be in an amount not less than the maximum fine for a Class C misdemeanor. §§53-3-227(3)(b) & 76-3-301(1)(e)

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

For driving while suspended - **Susp**; For driving while revoked - **Rev**  
§53-3-220(2)

Length of Term of License

Withdrawal Action:

An additional like period of susp or rev §53-3-220(2)

Mandatory Term of License

Withdrawal Action:

The above licensing action is mandatory (i.e., no "limited" employment lic. can be issued) if the original rev/susp was for a DWI offense or for vehicle homicide. §53-3-220(4)(a)(iii)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

**No**

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

**Yes** §26-1-30(17)

BAC Chemical Test Is Given to the

the Following Persons:

Driver:

**Yes**

Vehicle Passengers:

**No**

Pedestrian:

**Yes** (Adults only)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

**21** §§32A-12-203(1) & 32A-12-209 (Year Eff: 1935)

Minimum Age (Years) Possession:

**21** §32A-12-209

Minimum Age (Years) Consumption:

**21** §32A-12-209

Other State Laws Related to Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

**Yes** §32A-14a-102(1)(a)<sup>1&2</sup> Damages are limited to \$500,000 per person and \$1,000,000 per occurrence<sup>3</sup>. §32A-14a-102(6)

**Important.** The Dram Shop Law does not apply to either general food stores or other businesses that are licensed to sell "beer" at retail for off-premises consumption. §32A-14a-102(9)

"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 *Adkins v. Uncle Bart's Club*, 1 P.3d 528 (Utah 2000)<sup>3</sup>

Dram Shop Actions-Social Hosts:

**Yes (Limited)** under the Dram Shop Law<sup>4</sup> §32A-14a-102(2)(b)<sup>1</sup> Also, possible under common law.<sup>5</sup>

Other:

**None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Class B **Misd** §§32A-4-106(10), 32A-12-104, 32A-12-204, 76-3-204(2), 76-3-301(1)(d) & 76-3-302(3)

Term of Imprisonment:

Not more than **6 mos**

Fine (\$ Range):

Not more than **\$1,000** for individuals and not more than **\$5,000** for either corporations, associations, partnerships or governmental instrumentalities.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes<sup>6</sup> Suspension or Revocation** §32A-1-119

<sup>1</sup>**Historical Note:** The Dram Shop Law was substantially revised in 1997 and amended and re-codified in 2000. Chapter 94, Session Laws of 1997 & Chapter 197, Session Laws of 2000

<sup>2</sup>Liability under the Dram Shop Act is subject to the principles of comparative fault under §§78-27-37 et seq. *Red Flame, Inc. v. Martinez*, 996 P.2d 540 (Utah 2000)

<sup>3</sup>In *Adkins*, the court held that the dram shop law (1) was the "exclusive remedy" for damages, (2) did not provide for punitive damages and (3) damage limitation provisions were constitutional. Note: This case was decided under the dram shop law prior to its re-codification in 2000. However, a third party, who has been injured by an intoxicated person <21 yrs old, may have a common law negligence action against the licensee who illegally sold alcoholic beverages to such minor. *Mackay v. 7-Eleven Sales Corp.*, 995 P.2d 1233 (Utah 2000) In *Mackay*, the alcoholic beverage was beer which was sold to the minor for off-premises consumption. The court noted (Footnote No. 1, 995 P.2d at 1234) that a cause of action for injuries resulting from this type of sale is not allowed under the Dram Shop Act (§32-14-101(10) now §32A-14a-101(9)) but that statutory preemption was not raised as an issue.

<sup>4</sup>A social host, 21 years old or older, who serves alcoholic beverages to a person under 21 years old to the extent that such person becomes intoxicated, may be liable for any injuries caused by such person. §32A-14a-102(2)(b)

<sup>5</sup>**Comment:** A social host may be liable to a third party, who has been injured by an intoxicated guest, if it can be shown that a special relationship existed that required the social host to protect such third party from injury. This relationship may be difficult to establish especially in cases where the guest is an adult. E.g., consider the following factual situation. A 19 year old, a legal adult, was left alone at his parents home with instructions not to consume alcoholic beverages but did so nevertheless and became intoxicated and injured another minor. The Utah Court of Appeals held that the parents were not liable for the injuries sustained by the third party minor because the parents could not be accountable for the actions of their adult child who was not subject to their control. *Drysdale on Behalf of Stong v. Rogers*, 869 P.2d 1 (Utah App. 1994)

<sup>6</sup>See Footnote No. 1 on p. 3-476.

UTAH

Other State Laws Related To Alcohol Use: (continued)

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)

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(1)(c), & 76-3-302(2)

Not more than 1 yr

Term of Imprisonment:

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 Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

**Yes! Suspension or Revocation** §32A-1-119

**Suspension:** Time period not specified in the statute; **Revocation:** At least 3 yrs §32A-1-119(5)(e)

**Administrative Fine.** An administrative fine of not more than \$25,000 may be imposed in lieu of or in addition to a license suspension. §32A-1-107(5)(a)

Anti-Happy Hour Laws/Regulations:

**Limited** (1) Liquor may not be sold except at prices established by the State and (2) mixed drinks and wine cannot be sold at discount prices. §32A-4-106(11)(a) & (b) The law also provides that a patron cannot have more than one alcoholic beverage at a time. A single beverage is restricted to either 1 ounce primary liquor, 5 ounces of wine or 1 liter of heavy beer.<sup>2</sup> §32A-4-106(2)(c), (2)(d), (12) & (13)

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

**Yes** §41-6-44.20(2)

Anti-Consumption Law (Yes/No):

**Yes** Driver and passengers §41-6-44.20(1)

<sup>1</sup>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.

<sup>2</sup>"Heavy beer" is defined as a fermented alcoholic beverage containing more than 4% alcohol by volume. §32A-1-105(19)

STATE:

General Reference:

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Vermont Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:  
Illegal Per Se Law (BAC/BrAC):

Under the influence of intoxicating liquor<sup>1</sup> 23 §1201(a)(2)  
> **0.08** (**≥0.02 if operating a school bus**)<sup>2a3</sup> 23 §1201(a)(1)  
Persons Under 21 Years Old-≥0.02<sup>3</sup>-A Civil Traffic Violation 23 §1216(a)

Presumption (BAC/BrAC):

≥ **0.02**<sup>3</sup> w/n 2 hrs of incident is a "rebuttable presumption" that a person <21 yrs old committed a Civil Traffic Violation. 23 §1216(e)

Types or Drugs/Drugs and Alcohol:

Under the influence of (1) **Any "Regulated" Drug**<sup>4</sup> or (2) a Combination of Any "Regulated" Drug and Alcohol 23 §1201(a)(3)

Other:

(1) A BAC/BrAC ≥ **0.08**<sup>3</sup> is a "permissive inference" of a DWI offense. 23 §1204(a)(2)

(2) A BAC/BrAC ≥ **0.10**<sup>3</sup> w/n 2 hrs of a DWI incident is "permissive inference" of such offense. 23 §1204(a)(3)

For Commercial Motor Vehicle Operators, see p. 3-478.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Yes** 23 §1203(f)

Implied Consent Law:

Arrest Required (Yes/No):

**No**<sup>5</sup> 23 §1202(a)

Implied Consent Law Applies to

Drugs (Yes/No):

**Yes**<sup>6</sup> 23 §1202(a)

Refusal to Submit to Chemical Test

Admitted into Evidence:

**Yes** (Criminal Cases) 23 §1202(b) Refusal to submit to a Horizontal Gaze Nystagmus test can also be admitted into evidence. *State v. Blouin*, 716 A.2d 826 (Vt. 1998) **Comment:** This case could also apply to refusal to submit to other field sobriety tests.

Other Information:

I. A driver, who is involved in a fatal "incident or collision" where there is reasonable grounds to believe that they had either alcohol or "other drug" in their system, is subject to the implied law. I.e., they are required to submit to a chemical test of their breath or blood chemical for alcoholic content and, if they refuse to submit to such a test, their driver's license is suspended or revoked. 23 §1202(a)

II. A driver, who is involved in an accident that resulted in either a bodily injury or death to another and who refuses to submit to a blood or breath chemical test under the implied consent law, may be compelled to submit to a blood test via a search warrant.<sup>7</sup> 23 §1202(f)

<sup>1</sup>Includes all alcoholic beverages. 23 §1200(4)

<sup>2</sup>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 (0.02 if operating a school bus) or more.

<sup>3</sup>Alcohol concentration is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 23 §1200(1)

<sup>4</sup>"Drug" means regulated drugs as defined in 18 §4201. 23 §1200(2)

<sup>5</sup>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

<sup>6</sup>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)

<sup>7</sup>**Comment:** The legislature apparently via 23 §1202(f) indirectly abrogated a decision of the State supreme court that prohibited the taking of a blood sample by force. Since the implied consent law allowed a person to refuse all testing, the court held that the State could not use involuntary means (force) to obtain a blood sample for chemical testing for alcoholic content, I.e., the State must persuade a driver to voluntarily submit to a test or face certain licensing sanctions. *State v. Beyor*, 641 A.2d 344 (Vt. 1993)

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood: Yes See Footnote No. 6 on p. 3-477.  
Urine: No  
Other: None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): No  
Anti-Plea Bargaining Statute (Yes/No): No  
Pre-Sentencing Investigation Law (PSI) (Yes/No): Yes Alcohol assessment screening is mand for 2nd or subsequent offenders. 23 §§4(49), 1209a(a) & (c) and 1210(a)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:  
Criminal Sanctions (Fine/Jail): None  
Administrative Licensing Action (Susp/Rev): None  
Other: A person under 21, who has refused to submit to a breath test via a preliminary breath test screening device for the purpose of determining if they have a BAC/BrAC  $\geq 0.02$ , is subject the licensing action for a Civil Traffic Violation on p. 3-480. 23 §1216(d)

Refusal to Take Implied Consent Chemical Test:  
Criminal Sanction (Fine/Jail): See Criminal Refusal below.  
Administrative Licensing Action (Susp/Rev): None  
Other: 1st refusal-Susp 6 mos (mand)<sup>1</sup>; 2nd refusal-18 mos susp (mand)<sup>1</sup>; 3rd or subsequent refusal-Susp for life (3 yrs mand)<sup>1</sup> 23 §1205(a) & (m)

<sup>1</sup>See Rehabilitation on p. 3-480.

**Criminal Refusal.** A vehicle operator commits "Criminal Refusal" if they refuse to submit to either a blood or breath evidentiary test under the following circumstances: Either (1) the person has had a previous drunk driving offense violation and there is reasonable grounds to believe that they violated the drunk driving laws or (2) the person is involved in an accident that resulted in either a bodily injury or death and there is reasonable grounds to believe that they had alcohol in their system. 23 §1201(b) & (c) Sanctions: The sanctions for "Criminal Refusal" are the same as for a drunk driving offense. However, for a 1st criminal refusal, the license suspension is for **6 mos** with appropriate rehabilitation (see Rehabilitation on p. 3-480). 23 §§1206, 1208 & 1210

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC  $\geq 0.04$  (See Footnote No. 3 on p. 3-477.), (2) are under the influence of either "intoxicating liquor" or drugs (or under the combined influence of alcohol and any drug) or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand). If a CMV out-of-state operator holds a CDL from a State that does not have a reciprocal disqualification agreement with Vermont, their CDL privileges in Vermont are "suspended" as above for operating a CMV either with a BAC/BrAC  $\geq 0.04$  or while under the influence of alcohol/drugs. In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. 23 §§4(59), 1218, 1219, 4103(5) & (12), 4116 and 4116A

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy and the Special Note below.
Imprisonment: Term (Day, Month, Years, Etc.):	<u>1st off (Misd)</u> -Not more than <b>2 yrs</b> ; <u>2nd off (Misd)</u> -Not more than <b>2 yrs</b> ; <u>3rd and sub. off (felony)</u> -Not more than <b>5 yrs</b> ; <u>Serious injury related DWI off (felony)</u> - <b>1 to 15 yrs</b> 13 §1 & 23 §1210
Mandatory Minimum Term:	<u>2nd DWI off-60 cons hrs</u> ; <u>3rd or sub DWI off-100 cons hrs</u> 23 §1210(c) & (d) See Community Service below.
Fine: Amount (\$ Range):	<u>1st off</u> -Not more than <b>\$750</b> ; <u>2nd off</u> -Not more than <b>\$1,500</b> ; <u>3rd and sub. off</u> -Not more than <b>\$2,500</b> ; <u>Serious injury related DWI off</u> -Not more than <b>\$5,000</b> 23 §1210.
Mandatory Min. Fine (\$):	<b>None</b>
Other Penalties:	
Community Service:	<u>1st DWI off-Possible</u> 13 §7030; <u>2nd DWI off</u> -at least <b>200 hrs</b> (mand) in lieu of imprisonment; <u>3rd or sub DWI off</u> -at least <b>400 hrs</b> (mand) in lieu of imprisonment 23 §1210(c) & (d)
Restitution (eg Victim's Fund):	<b>Yes</b> The court may order a defendant to pay restitution to a victim. 13 §7043
Other:	<b>Surcharges.</b> In addition of any fine, an offender must pay the following surcharges. A surcharge of <b>\$60</b> which is used to fund the Health Department's Laboratory Services Special Fund. A surcharge of <b>\$50</b> which is used to fund public defenders special fund. And, a surcharge of <b>\$50</b> which is used to fund drunk driving law enforcement. 23 §1210(h), (i) & (j)
Administrative Licensing Actions:	
<u>Pre-DWI Conviction</u> Licensing Action:	See Double Jeopardy below.
Administrative Per Se Law:	<b>Yes</b> $\geq 0.08$ BAC/BrAC See Footnote No. 3 on p. 3-477 and Rebuttable Resumption below. <u>1st action-Susp 90 dys</u> (mandatory) <sup>1</sup> ; <u>2nd action-Susp 18 mos</u> (mandatory) <sup>1</sup> ; <u>3rd or sub. action-Susp for life</u> (3 yrs mandatory) <sup>1</sup> See Footnote Nos. 2 & 3. 23 §1205
Other:	<b>None</b>

<sup>1</sup>See Rehabilitation on p. 3-480.<sup>2</sup>Under 23 §1205(o), suspensions for admin. per se actions and for DWI convictions are to run concurrently.<sup>3</sup>Title 23 §1205(m) creates a rebuttable presumption that a persons's alcohol concentration was  $\geq 0.08$  at the time of operating a motor vehicle if such was w/n two (2) hours after such operation.

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Strong*, 605 A.2d 510 (Vt. 1991), *State v. O'Brien*, 609 A.2d 981 (Vt. 1992), & *State v. Becker*, 669 A.2d 548 (Vt. 1995)

**Special Note:** A person under 21 years old, who is charged with a Civil Traffic Violation for operating a motor vehicle with a BAC/BrAC  $\geq 0.02$ , cannot be assessed either a fine or points. 23 §1216(f)

**Rebuttable Presumption.** If a person's alcohol concentration w/n 2 yrs of driving is  $\geq 0.08$ , there is rebuttable presumption that the person was operating a motor vehicle at or above this level. 23 §1205(n)

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action  
(Susp/Rev):

1st off-Susp; 2nd off-Susp; 3rd or subsequent offs-Rev 23 §§1206 & 1208 See Footnote No. 2 on p. 3-479.

Term of License Withdrawal  
(Days, Months, Years, etc.):

1st off-90 dys; 2nd off-18 mos; 3rd or subsequent off-Life

Mandatory Minimum Term of  
Withdrawal:

1st off-90 dys; 2nd off-18 mos; 3rd or sub offs-3 yrs See Rehabilitation below.

Persons Under 21 Years Old (Civil Traffic Violation-BAC/BrAC >0.02): 1st violation-Susp-6 mos (mand) plus an alcohol and alcohol program. Following this, person must complete alcohol screening and any needed treatment program; 2nd or sub. violation-Susp 1 yr or until the person reaches age 21 whichever is longer (1 yr mand). The person must also be making substantial progress in completing a therapy program. Any education, treatment or therapy programs must be completed prior to license reinstatement. 23 §§1209a & 1216(a)(1) & (2)

Other:

Rehabilitation:  
Alcohol Education:

**Yes**

**Special Note No. 1:** For a 1st license suspension based on a refusal, an admin. per se action or a DWI conviction, a defendant must complete an alcohol and driver education program. After this program, the person must submit to an assessment to determine if additional therapy is needed. The defendant must complete any required education or therapy prior to license reinstatement. 23 §§1205, 1206, 1208 & 1209a(a)(1)

**Special Note No. 2:** For a 2nd suspension based on refusals, admin. per se actions or DWI off convictions, a defendant has to successfully complete an alcohol and driving rehabilitation program and has to completed or show that they are making substantial progress in completing a therapy program prior to license reinstatement. 23 §§1205, 1206, 1208 & 1209a(a)(2)

**Special Note No. 3:** For a 3rd or subsequent suspension based on refusals, admin. per se actions or DWI off convictions, a defendant has to completed or show that they are making substantial progress in completing a therapy program prior to license reinstatement. 23 §§1205, 1206, 1208 & 1209a(a)(3)

**Special Note No. 4:** If a person has had their license suspended/revoked (1) for at least 3 yrs or (2) for life as a result of a refusal, admin. per se action, a DWI conviction or, for driving with a BAC/BrAC  $\geq 0.02$  if they were <21 yrs old, they may have their license reinstated provided they have abstained from the consumption of alcohol for respectively 2 or 3 yrs. The abstinence period does not include any period of time the person was incarcerated in a correctional facility. In the case of a lifetime suspension, a person is eligible for license reinstatement only once.

23 §§1205, 1206, 1208 and 1209a(b)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Alcohol Treatment:	<b>Yes</b> See the Special Notes on p. 3-480.
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	<b>Immobilization.</b> <u>2nd or subsequent off</u> -The vehicle operated by the offender may be immobilized for 18 mos or when they obtain a valid license whichever comes first. This action is discretionary not mandatory. 23 §1213a <b>Forfeiture.</b> <u>3rd or subsequent off</u> -The vehicle operated by the offender may be forfeited. This action is discretionary not mandatory. 23 §1213b
Terms Upon Which Vehicle Will Be Released: Other:	<b>None</b>
Miscellaneous Sanctions Not Included Elsewhere:	<b>Special Assessment.</b> A defendant is assessed a mandatory <b>\$17.50</b> 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:	<b>Yes</b> 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):	<b>1 to 15 yrs</b> <b>Special Note:</b> These penalties do not foreclose the option of tougher penalties for manslaughter (homicide) convictions. 13 §1 and 23 §§1091(c) & 1210(e)
Mandatory Minimum Term: Fine (\$ Range): Mandatory Minimum Fine:	<b>None</b> Not more than <b>\$10,000</b> <b>None</b>
Administrative Licensing Action: Licensing Authorized and Type of Action:	If death is DWI related, a 23 §1210(e) conviction - <b>Susp</b> <sup>1</sup> ; If death is not DWI related, a 23 §1091(c) conviction - <b>Susp</b> 23 §§1206(b), 1210(e) & 1091(c)
Length of Term of Licensing Withdrawal:	If death is DWI related - <b>1 yr</b> ; If death is not DWI related - <b>1 yr</b> plus any other susp period required under the point system. See 23 §§2505 & 2506

<sup>1</sup>Before a defendant's license is reinstated, they must complete an alcohol and driver education program. 23 §§1206(b) and 1209(a)

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Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum  
Length of License  
Withdrawal:

If death is DWI related - **1 yr**; If death is not DWI related - **1 yr** plus  
any other susp period required under the point system 23 §§2505 &  
2506

Other:

None

Driving While License Suspended or Revoked  
Where the Basis Was a DWI Offense:

See the Special Note below.

See Community Service, Immobilization and Forfeiture under Other on  
p. 3-483.

Sanction:

Criminal:

Imprisonment (Term):  
Mandatory Minimum Term  
Imprisonment:

Misd-Not more than **2 yrs**<sup>1</sup> 13 §1 & 23 §674(b) See Footnote No. 2.

1st off - 48 hrs<sup>1</sup> (Note: This mand sanction does not apply if (1) the lic  
susp has "run" and (2) the offender has completed alc. education or  
treatment or other requirements under 21 §1209a. See the Special  
Notes under Rehabilitation on p. 3-480.); 2nd off - 96 hrs<sup>1</sup>; 3rd off - 8  
con dys<sup>1</sup>; 4th and sub off - 16 con dys<sup>1</sup> 23 §674(b) There can be no  
community service in lieu of these minimum jail terms. *State v. Baker*,  
579 A.2d 479 (Vt. 1990)

Fine (\$ Range):

Not more than **\$5,000** 23 §674(b)

**Surcharge.** In addition to any fine sanction, there is a surcharge of  
**\$50** which is used to fund drunk driving law enforcement. 23 §674(g)  
None

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action  
(Susp/Rev):  
Length of Term of License  
Withdrawal Action:

**Susp** 23 §2506

(1) 1st off - 30 dys<sup>1</sup>; 2nd off - 90 dys<sup>1</sup>; 3rd and 4th offs - 6 mos<sup>1</sup> (2) Or  
susp under the point system whichever is greater. 23 §2506

Mandatory Term of License

Withdrawal Action:

None

<sup>1</sup>Under 23 §674(d), if a person is convicted of both a violation of 23 §674 and DWI (23 §1201), any penalty or susp/rev for these offenses shall be consecutive (not concurrent).

<sup>2</sup>A person commits only a traffic violation, with a fine of not more than \$175, if they drive while suspended or revoked but where the period of suspension or revocation has expired. I.e., the offender is eligible for a license but has not applied for reinstatement. 23 §§676(b) & 2302(c)

**Special Note:** There are several statutory schemes concerned with operating a CMV during either a CDL disqualification or a CDL out-of-service order. I. Under 23 §§674(a) and 677, a person who operates a CMV while disqualified commits a misd and is subject to an imprisonment of not more than 2 yrs and/or a fine of not more than \$5,000. II. Under 23 §§4107(b) and 2302(a)(5) & (c), it is a civil traffic violation, with a fine of not more than \$175, to operate a CMV while either disqualified or under an out-of-service order. III. Under 23 §4120, notwithstanding any other provision of law, a person, who violates CDL out-of-service order is subject to a penalty of \$1,000. IV. Under 23 §4119, a person, who is convicted of violating a CDL out-of-service order is subject to the following CDL disqualification periods: 1st off-90 dys (mand); 2nd off (w/n 10 yrs)-1 yr (mand); and, 3rd or sub off (w/n 10 yrs)-3 yrs (mand). However, the following disqualification periods apply if the out-of-service order conviction was the result of driving a CMV which was either transporting hazardous materials or 15 or more persons: 1st off-180 dys (mand); and, 2nd or sub off (w/n 10 yrs)-3 yrs (mand).

Other Criminal Actions Related to DWI: (continued)

Other:

- I. **Community Service:** 1st off - **40 hrs**; 2nd off - **80 hrs**; 3rd off - **120 hrs** These sanctions are in addition to incarceration. 23 §674(b)
- II. **Immobilization.** 2nd or subsequent off-The vehicle operated by the offender may be immobilized for 18 mos or when they obtain a valid license whichever comes first. This action is discretionary not mandatory. 23 §674(h)
- III. **Forfeiture.** 3rd or subsequent off-The vehicle operated by the offender may be forfeited This action is discretionary not mandatory. 23 §674(h)

Habitual Traffic Offender Law:  
 State Has Such a Law (Yes/No):  
 Grounds for Being Declared an  
 Habitual Offender:

**Yes** 23 §673a

**8 or more convictions based on moving violations (with 6 points or more assessed) and DWI offs within 5-yr period**

Term of License Rev While  
 Under Habitual Offender Status:

**2 yrs** 23 §673a

Type of Criminal Offense if  
 Convicted on Charges of  
 Driving While on Habitual  
 Offender Status:

**None**

Sanctions Following a Conviction of  
 Driving While on Habitual Offender  
 Status:

- Imprisonment (Term):
- Mandatory Minimum Term of  
 Imprisonment:
- Fine (\$ Range):
- Mandatory Minimum Fine (\$):
- Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on  
 Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):  
 BAC Chemical Test Is Given to the  
 the Following Persons:

**No**

- Driver:
- Vehicle Passengers:
- Pedestrian:

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Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21<sup>1</sup> (Year Eff: 1986) 7 §§2(26), 238, 656, 657 & 658

Minimum Age (Years) Possession:

21<sup>1</sup> 7 §§2(26), 656 & 657 There is an employment exemption.

Minimum Age (Years) Consumption:

21<sup>1</sup> 7 §§2(26), 656 & 657

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes 7 §501<sup>2</sup>

"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 I. A social host may be held liable for the actions of an intoxicated minor if the host "knowingly furnishes" intoxicating beverages to such minor. 7 §501(g)(2)<sup>3</sup>

II. Also, via common law negligence, a social host, who furnishes alcoholic beverages to a visibly intoxicated guest, may be liable to a third person for injuries caused by such guests.<sup>3&4</sup> *Langle v. Kurkul*, 510 A.2d 1301 (Vt. 1986)

Other:

I. A licensee may be liable for the injuries sustained by an intoxicated patron. *Estate of Kelly v. Moguls, Inc.*, 632 A.2d 360 (Vt. 1993)

II. However, a social host is not liable for the injuries sustained by an intoxicated guest. *Langle v. Kurkul*, 510 A.2d 1301 (Vt. 1986)

**Comment:** Language by the court in this case seems to indicate that a social host may be liable for the injuries sustained by a minor guest.

<sup>1</sup>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

<sup>2</sup>I. Individuals, living with a person who was killed in an automobile accident after becoming intoxicated at two bars, have a cause of action against such bars under the Dram Shop Act for damages (loss of support). *Thompson v. Dewey's South Royalton, Inc.*, 733 A.2d 65 (Vt. 1999)

II. A franchisor may or may not be liable under the dram shop law for the actions of a franchisee. The extent of any liability will depend upon the control exercised by the franchisor over the franchisee. *Carrick v. Franchise Associates, Inc.*, 671 A.2d 1243 (Vt. 1995)

<sup>3</sup>Title 7, §501(g)(1) provides that, except for certain liability for the actions of minors under subsection (g)(2), nothing in the dram shop law shall create a "statutory" cause of action against a social host. However, subsection (g)(1) does provide that it "shall not be construed to limit or otherwise affect the liability of a social host for negligence at common law."

<sup>4</sup>A minor passenger was killed in motor vehicle accident while riding with an intoxicated minor driver. The driver became intoxicated after consuming alcoholic beverages on property owned by the defendants but where such defendants were neither present at the time of nor any way participate in the serving of such beverages to the driver. The court held, that under these circumstances, the defendant land owners could not be held liable in negligence for the death of the passenger. *Knight v. Rower*, 742 A.2d 1237 (Vt. 1999)

Other State Laws Related To Alcohol Use: (continued)Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

**None** Note: The Vermont Supreme Court has stated that this State "... has no ... statute making it a crime for any person ... to sell or furnish alcoholic beverages to an adult who is visibly intoxicated." *Lange v. Kurkul*, 510 A.2d 1301, 1304 (Vt. 1986)

Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

No<sup>1</sup>

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**<sup>2&3</sup> 7 §658 & 13 See Footnote No. 4 for an exception.

Term of Imprisonment:

2 yrs 7 §658

Fine (\$ Range):

\$500 to \$2,000 7 §658

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes**<sup>5</sup> **Susp/Rev** 7 §236(a)

Length of Term License Withdrawal:

**Indeterminate** 7 §236(a)

<sup>1</sup>However, an establishment's liquor license can be revoked if they violate State regulations that either (1) prohibit intoxicated persons from loitering on a premises or (2) require that a licensee maintain control of patrons. *In Re Con-Elec. Corp.*, 716 A.2d 822 (Vt. 1998)

<sup>2</sup>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).

<sup>3</sup>A person commits a felony if they sell or furnish alcoholic beverages to a minor, who, as a result of such illegal action, causes either a death or serious bodily injury. Such death or injury can be to either the minor or another person. The sanctions for this offense are incarceration for not more than 5 yrs and/or a fine of not more than \$10,000. 7 §658(d) & 13 §1

<sup>4</sup>**Exception.** A 2nd Class licensee employee, who violates this requirement during a law enforcement "compliance check," is subject to the following sanctions: For a 1st offense, a civil penalty of not more than \$100; and, for a 2nd offense (more than 1 yr after the 1st offense), a civil penalty of \$100 to \$500. For either a 2nd offense (w/n 1 yr) or a 3rd or subsequent offense (w/n 3 yrs), an employee is subject to the criminal sanctions noted. 7 §658(c)

<sup>5</sup>An "administrative penalty" of not more than \$2,500 may be imposed on a licensee in lieu of susp/rev. 7 §236(b)

**VERMONT**

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** Drivers only 23 §1134

STATE:

VIRGINIA

General Reference:

Code of Virginia Annotated and Virginia Admin. Code (VAC)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcohol §18.2-266

Illegal Per Se Law (BAC/BrAC):

≥ 0.08<sup>1&2</sup> §18.2-266

Presumption (BAC/BrAC):

Persons Under 21 Years Old: > 0.02 but < 0.08<sup>2&3</sup> §18.2-266.1(A)

Types of Drugs/Drugs and Alcohol:

≥ 0.08<sup>2</sup> §18.2-269(A)(3)  
Under the influence of (1) **Any Drug**, (2) Any Narcotic Drug, (3) any Self-Administered Intoxicant or Drug of Whatsoever Nature or (4) a Combined Influence of Alcohol and any Drug or Drugs §18.2-266

Other:

For Commercial Motor Vehicle Operators, see p. 3-490.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Yes** §18.2-267(a) For CMV operators, see §46.2-341.25.

Implied Consent Law:

**Yes** §18.2-268.2

Arrest Required (Yes/No):

Implied Consent Law Applies to

**Yes** §18.2-268.2

Drugs (Yes/No):

Refusal to Submit to Chemical Test

**Yes** Evidence of an "unreasonable refusal" may be admitted to explain the absence of a chemical test result but not as evidence of guilt.<sup>4</sup> §18.2-268.10(C)

Admitted into Evidence:

Other Information:

**None**

Chemical Tests of Other Substances for Alcohol Concentration 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**<sup>5</sup>

Anti-Plea Bargaining Statute (Yes/No):

**No**

Pre-Sentencing Investigation Law (PSI)

**Yes** An alcohol/drug screening/assessment appears mandatory via the Alcohol Safety Action Program prior to any treatment. §18.2-271.1(A) & 19.2-299.2(A)

(Yes/No):

<sup>1</sup>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.

<sup>2</sup>Standards: For blood, percent by weight by volume; for breath, grams of alcohol per 210 liters of breath. §§18.2-266, 18.2-266.1(A), 18.2-269(A)(3) & 46.2-391.2

<sup>3</sup>The law makes it an offense for a person under 21 years old to operate a motor vehicle after "illegally consuming alcohol" and provides that, if such a person has a BAC/BrAC ≥0.02 but <0.08 while driving, they have committed such an offense. §18.2-266.1(A)

<sup>4</sup>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)

<sup>5</sup>A person, who has been charged with either a 1st or 2nd drunk driving offense, may enter an Alcohol Safety Action Program prior to trial. §18.2-271.1(A) **Comment:** The law is not specific as to whether this acts as probation before judgement where the completion of the probation requirements leads to dismissal of the criminal charge.

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Tench v. Com.*, 462 S.E.2d 922 (Va.App. 1995), and *Jones v. City of Lynchburg*, 474 S.E.2d 863 (Va.App. 1996)

**VIRGINIA**

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	1st or subsequent refusal-Susp-1 yr <sup>1</sup> (This susp appears to be mandatory.) §18.2-268.4 <b>Special Note:</b> There is also a mandatory 7 dy susp under §46.2-391.2.
Other:	See "persons under 18 years old" in Post DWI Conviction Licensing Action on p. 3-489.

Sanctions Following a Conviction for a DWI Offense:

	<b>Important.</b> See DWI Injury Offenses & DWI While Suspended or Revoked below.
Criminal Sanctions:	Double Jeopardy on p. 3-487.
Imprisonment:	
Term (Day, Month, Years, Etc.):	1st off (Cl 1 Misd)-Not more than <b>12 mos</b> <sup>2</sup> ; 2nd off (w/n 10 yrs) (Cl 1 Misd)- <b>1 mo to 1 yr</b> <sup>2</sup> ; 3rd and sub off (w/n 10 yrs) (Cl 6 Felony)- <b>1 5 yrs imprisonment or not more than 12 mos in jail</b> <sup>2</sup> §§18.2-10(f), 18.2-11(a) & 18.2-270
Mandatory Minimum Term:	Offense for Persons Under 21 Years (≥0.02 but <0.08): <b>None</b> 1st off-None <sup>3</sup> ; 2nd off (w/n 5 yrs)- <b>5 dys</b> <sup>2&amp;3</sup> ; 3rd off (w/n 5 yrs)- <b>30 dys</b> <sup>2</sup> ; 3rd off (w/n 10 yrs)- <b>10 dys</b> <sup>2</sup> ; 4th and sub off (w/n 10 yrs)- <b>1 yr</b> <sup>2</sup>
Fine:	
Amount (\$ Range):	1st off-Not more than <b>\$2,500</b> <sup>4</sup> ; 2nd off (w/n 10 yrs)- <b>\$200 to \$2,500</b> <sup>4</sup> ; 3rd and sub off (w/n 10 yrs)-Not more than <b>\$2,500</b> <sup>4</sup> Offense for Persons Under 21 Years (≥0.02 but <0.08): Not more than <b>\$500</b> §18.2-266.1(B)

<sup>1</sup>The court may dismiss a refusal susp action if the defendant pleads guilty to a DWI offense. §18.2-268.4  
<sup>2</sup>**Special Note:** It may be possible for the court to place a defendant on probation and allow them to serve any period of imprisonment via **electronic home monitoring**. §53.1-131.2  
<sup>3</sup>I. 1st off: (1) BAC ≥0.20 but <0.25-mand jail for 5 dys; (2) BAC >0.25-mand jail for 10 dys II. 2nd off (w/n 10 yrs): (1) BAC ≥0.20 but <0.25-mand jail for additional 10 dys; (2) BAC >0.25-mand jail for an additional 20 dys §18.2-270(A) & (B)(3)  
<sup>4</sup>If a person is required to enter the Virginia Alcohol Safety Action Program under §18.2-271.1, they must pay a fee of not less than \$250 but not more than \$300. §18.2-271.1(a1) See Footnote No. 4 on p. 3-490.

**DWI Injury Offenses.** It is a Cl 6 felony to unintentionally cause serious bodily injury while in violation of the drunk driving laws where there is evidence of reckless disregard for human life. §18.2-51.4(A) Criminal Sanctions: Imprisonment from **1 to 5 yrs** and/or a fine of not more than **\$2,500**. §18.2-10(f) Licensing Sanctions: **10 yr Rev** However, after 3 yrs, a restricted license for employment purposes may be issued. The offender is required to undergo evaluation via the Va. Alcohol Safety Action Program and may be required to only operate motor vehicles that are equipped with **ignition interlock** devices. And, after 5 yrs upon a showing of "good cause", the offender may obtain "full" driving privileges. §§18.2-51.4(A) and 46.2-391(B) & (C)

**DWI While Suspended or Revoked.** Driving while DWI and while license is susp/rev for a DWI offense is a felony. The sanction for this offense is either 1 to 5 yrs imprisonment or 12 mos in jail. Mandatory confinement for 1 yr except for a 1st offense where driving was necessary to save life or limb. §46.2-391(D) & (E) Note: No fine is specified for this offense.

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Mandatory Min. Fine (\$):	None
Other Penalties: Community Service: Restitution (eg Victim's Fund):	None  Yes Compensation may be obtained from two sources: (1) A victims' compensation (§19.2-368.1 et seq.); (2) direct compensation by a defendant to a victim. §19.2-305 <b>Laboratory Fee.</b> A DWI offender is required to pay a \$100 fee for any forensic laboratory analysis that was performed by the State in connection with the prosecution of the DWI offense. §18.2-264.1 <b>Child Endangerment.<sup>1</sup></b> A person convicted of a DWI offense, while carrying a person 17 years old or younger, is subject to the following <u>additional sanctions</u> : <u>1st off</u> -fine of \$500 (mand) to \$1,000 and community service of 40 hrs (mand) benefiting children; <u>sub. off</u> -fine of \$500 (mand) to \$1,000 and community service of 80 hrs (mand) benefiting children. §18.2-270(D) <b>EMS/Enforcement Costs.</b> Counties, cities and towns may enact ordinances that make an offender liable in a civil action for the expenses of responding to <u>any</u> DWI offense. Liability is limited to \$1,000. §15.2-1716
Administrative Licensing Actions: <u>Pre-DWI Conviction</u> Licensing Action: Administrative Per Se Law:	See Double Jeopardy on p. 3-487. Yes $\geq 0.08$ BAC/BrAC For Standards, see Footnote No. 2 on p. 3-487. <b>Susp-7 dys</b> (mand) §46.2-391.2 None
Other:	None
<u>Post DWI Conviction</u> Licensing Action: Type of Licensing Action (Susp/Rev):	See Footnote No. 2 below and <b>Manifest Injustice</b> on p. 3-490.  1st off-Privilege to operate any motor veh is " <b>deprived</b> " (or revoked); <b>2nd off</b> (w/n 10 yrs)- <b>Rev</b> ; <b>3rd or sub off</b> <b>Rev</b> §§18.2-271, 46.2-389 & 46.2-391 <b>Offense for Persons Under 21 Years (<math>\geq 0.02</math> but <math>&lt; 0.08</math>):</b> <b>Susp</b> §18.2-266.1(B)
Term of License Withdrawal (Days, Months, Years, etc.):	<b>1st off-1 yr</b> ; <b>2nd off</b> (w/n 10 yrs)- <b>3 yrs</b> ; <b>3rd or sub off</b> (w/n 10 yrs)- <b>10 yrs</b> <b>Offense for Persons Under 21 Years (<math>\geq 0.02</math> but <math>&lt; 0.08</math>):</b> <b>6 mos</b> (A restricted license may be issued.) §18.2-266.1(B) <b>Persons under 18 years old<sup>2</sup>:</b> If a DWI charge is deferred, the following licensing action must be taken- <b>1st off-1 yr denial</b> or until the person reaches 17 whichever is the longer susp. period (90 dys mand); <b>2nd and sub. off-1 yr denial</b> until the person reaches 18 whichever is the longer susp period (1 yr is mand). A restricted hardship lic may be issued to a 1st offender after 90 dys. §16.1-278.9

<sup>1</sup>A drunk driving law offender, who operates a motor vehicle while transporting child < 18 yrs old, may be subject to prosecution for child abuse and neglect under §18.2-371.1. See *dicta* in *Com. v. Carter*, 462 S.E.2d 582 (Va.App. 1995).

<sup>2</sup>For either a 1st off or 2nd off (w/n 10 yrs), a person's license cannot be reinstated until they complete an Alcohol Safety Action Program. §§46.2-389(B) & 46.2-391(A)

<sup>3</sup>These actions also applies to persons under 18 years old who have refused to submit to a chemical test under the implied consent law.

## VIRGINIA

### Sanctions Following a Conviction for a DWI Offense:(continued)

Mandatory Minimum Term of Withdrawal:	<u>1st off</u> - See Footnote No. 1; <u>2nd off</u> (w/n 5 yrs)-1 yr <sup>2</sup> ; <u>2nd off</u> (w/n 10 yrs)-4 mos <sup>2</sup> ; <u>3rd or sub off</u> (w/n 10 yrs)-3 yrs <sup>3</sup> <u>Offense for Persons Under 21 Years (≥0.02 but &lt;0.08): None</u>
Other:	
Rehabilitation:	See Footnote No. 3 below.
Alcohol Education:	<u>1st off-Yes<sup>4</sup></u> ; <u>2nd off</u> (w/n 10 yrs)- <u>Yes<sup>4</sup></u> ; <u>3rd and sub off</u> - Not eligible to participate in VASAP <sup>4</sup> under §18.2-271.1(A). §18.2-271(C)
Alcohol Treatment:	<u>1st off-Yes<sup>4</sup></u> ; <u>2nd off</u> (w/n 10 yrs)- <u>Yes<sup>4</sup></u> ; <u>3rd and sub off</u> - Not eligible to participate in VASAP <sup>4</sup> under §18.2-271.1(A). §18.2-271(C) <u>Offense for Persons Under 21 Years (≥0.02 but &lt;0.08): An offender is eligible to participate in the Va Alc Safety Action Program (VASAP). §18.2-266.1(B)</u>

<sup>1</sup>A restricted lic. may be issued if the defendant participates in a rehabilitation program. §18.2-271.1(E)

<sup>2</sup>A restricted lic. may be issued after the minimum period of lic. withdrawal (1 yr or 4 mo revocation) has passed and a defendant has participated in a rehabilitation program. §18.2-271.1(E), *Turner v. Com.*, 408 S.E.2d 586 (Va.App. 1991) & *Com. v. Meadows*, 440 S.E.2d 154 (Va.App. 1994) **Important:** See Ignition Interlock on p. 3-491.

<sup>3</sup>For a 3rd off, if a person at the time of the DWI conviction was dependent on alcohol, either (1) their license may be restored after 5 yrs or (2) a restricted license for employment purposes may be issued after 3 yrs provided they have been cured of such dependency and are not otherwise a threat to the public safety. In addition, before either a license is reinstated or a restricted employment license issued, an offender may be required to undergo an alcohol evaluation. Depending upon the recommendations contained in the alcohol evaluation, an offender may not have their driving privileges restored after 5 yrs. Instead, they only may be allowed restricted driving privileges that are not to exceed 5 yrs. Offenders are given credit for any period of license revocation that was imposed under the habitual offender law. §46.2-391(C) **Important:** See Ignition Interlock on p. 3-491.

<sup>4</sup>Unless "good cause" is shown, a 1st or 2nd offender is required, as a condition of probation, to participate in the Va Alc Safety Action Program (VASAP). This program consists of driver awareness training, alcohol and drug education and, if necessary via leave of court, referral to treatment. "Such programs serve a probation, intervention function through offender monitoring and follow-up." §§18.2-271.1 & 18.2-271.2 and 24 VAC 35-20-20 & 35-20-420 A person required to participate in VASAP must complete such program prior to license reinstatement unless the court waives such completion for good cause. §46.2-411.1(A)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** I. A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: For blood, percent by weight by volume; for breath, grams of alcohol per 210 liters of breath.), (2) are under the influence of alcohol or any narcotic drug, self-administered intoxicant or other drug or (3) refuse to submit to a chemical test for alcohol or drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mandatory). II. It is a Class 3 Misd to operate a CMV with a BAC ≥0.04; the sanction for this offense is a fine of not more than \$500. III. It is a Class 1 Misd to operate a CMV either with a BAC/BrAC ≥0.08 or while under the influence of either alcohol or drugs. The sanctions for this offense are as follows: 1st off-Jail for not more than 12 mos and/or a fine sanction of not more than \$2,500; 2nd off (w/n 10 yrs)-Jail from 1 mo to 1 yr and/or a fine of \$200 to \$2,500. If the 2nd off was w/n 5 yrs of a previous off, there is a mandatory jail sanction of 5 dys. 3rd off (w/n 10 yrs)-Jail from 2 mos to 1 yr and/or a fine of \$500 to \$2,500. A 30 dy jail sentence is mandatory if the 3rd or sub. off occurred w/n 5 yrs and a 10 dy jail sentence is mandatory if the 3rd or sub. off occurred w/n 10 but more than 5 yrs. IV. In addition, a person who operates a CMV with any alcohol in their system commits a traffic infraction (a fine of not more than \$200) and must be placed "out-of-service" for 24 hours. §§18.2-11(a) & (c), 18.2-271.1(l), 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

**Manifest Injustice.** In addition to the normal appeal procedures that are available in adverse licensing action decisions (§46.2-410), the law provides for special relief in cases of "manifest injustice" (administrative susps or revs that resulted from either an error, lack of authority/jurisdiction or a conflict with a court order). In such cases, a court, notwithstanding any other provision of law, may order the modification of the Commissioner's suspension or revocation order or issue a restricted license per §18.2-271.1. Note: This relief does not apply to CDL disqualifications. §46.2-410.1

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:  
Terms Upon Which Vehicle  
Will Be Released:  
Other:

None

N/A

**Registration Suspension.** Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked (e.g., DWI, vehicle homicide, driving while license is either suspended or revoked), shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspend such registration if the person maintains proof of financial responsibility.

Miscellaneous Sanctions  
Not Included Elsewhere:

**I. Interdiction Order.** The court may issue an order that prohibits alcoholic beverage licensees from selling such beverages to a person who has been convicted of a DWI offense. §4.1-333 Generally, such a person is also prohibited from possessing alcoholic beverages. §4.1-322

**II. See Civil Damages** on p. 3-492.

**III. Ignition Interlock.** I. For a 1st offense, the court may require and, for a 2nd offense, the court must require a DWI offender, who has been granted either restricted driving privileges or full driving on condition, to only operate motor vehicles (registered in their name) that are equipped with ignition interlock devices. This usage must last at least 6 mos. §§18.2-270.1, 18.2-270.2, 46.2-360 & 46.2-391 II. Ignition Interlock Usage with VASAP. A 2nd or subsequent offender (w/n 5 yrs), who is required to participate in either the Va Alc. Safety Action Prog (VASAP) or a treatment program (via an assessment that indicates that they have a substance abuse problem), can obtain restricted driving privileges only if they operate motor vehicles that are equipped with ignition interlock devices. This requirement shall not exceed the length of such program or for the duration of the license susp/rev period whichever is shorter. §18.2-271.3(A)

**IV. Points.** A person, who has either been convicted of a drunk driving offense or, if under 21 yrs old, found in violation of driving after "illegally consuming alcohol", has 6 points assigned to their driving record. §46.2-492(D)(1)

**V. Probation.<sup>1</sup>** Unless modified by the court, an offender must be placed on probation for the same period of time as their license suspension but, in no case, more than 3 yrs. §18.2-270 (¶1)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes** Death related DWI offense (involuntary manslaughter-death caused unintentionally via DWI) Class 5 Felony §§18.2-36 & 18.2-36.1

<sup>1</sup>**Comment:** The law is not clear but this probation requirement appears to apply to both 1st and subsequent offenders.

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Other Criminal Actions Related to DWI: (continued)

Sanctions:

Criminal Sanction:

Imprisonment (Term): 1 to 10 yrs<sup>1&2</sup> §18.2-10(e)

Mandatory Minimum Term: None<sup>2</sup>

Fine (\$ Range): None<sup>1</sup>

Mandatory Minimum Fine: N/A

Administrative Licensing Action: See Manifest Injustice on p. 3-490.

Licensing Authorized and

Type of Action: Rev §§18.2-36.1(C), 46.2-389 & 46.2-391(B)

Length of Term of

Licensing Withdrawal: 10 yrs<sup>3</sup> §§18.2-36.1(C), 46.2-389 & 46.2-391(B)

Mandatory Action--Minimum

Length of License

Withdrawal: 3 yrs<sup>3</sup> §46.2-391(C)(2)

Other:

I. See "Registration Suspension" under DWI Vehicle Impoundment/Confiscation on p. 3-491.

II. Civil Damages. Exemplary damages may be awarded in a civil action, involving either a death or injury related drunk driving offense, provided either that the defendant acted with malice towards the plaintiff or that the defendant's conduct showed a willful or wanton disregard for the rights of others.<sup>4</sup> §8.01-44.5

Driving While License Suspended or Revoked

Where the Basis Was a DWI Off\*:

See Footnote No. 5 below and the Special Note on p. 3-493.

Sanction:

Criminal:

Imprisonment (Term): I. General Provisions. 1st off (Cl 2 Misd)-Not more than 6 mos; 2nd and sub offs (Cl 1 Misd)-Not more than 12 mos §§18.2-11 & 46.2-301 See Footnote No. 6 and Special Note below.

<sup>1</sup>Alternative Sentence: Jail for not more than 12 mos and/or pay a fine of not more than \$2,500. §18.2-10(e)

<sup>2</sup>If the defendant's conduct indicated a "reckless disregard for human life", they are guilty of aggravated involuntary manslaughter and are subject to an imprisonment term of 1 yr (mand) to 20 yrs. §18.2-36.1(B)

<sup>3</sup>After 3 yrs, a restricted license for employment purposes may be issued. The offender is required to undergo evaluation via the Va. Alcohol Safety Action Program and may be required to only operate motor vehicles that are equipped with ignition interlock devices. And, after 5 yrs upon a showing of "good cause", the offender may obtain "full" driving privileges. §46.2-391(C)(1) & (2)

<sup>4</sup>Willful or wanton behavior can be shown by proving the following: Either (1) when the incident occurred, the defendant's BAC/BrAC was >0.15, they consumed alcoholic beverages knowing that they were going to operate a motor vehicle and their intoxication was the proximate cause of an injury or a death or (2) the person unreasonably refused to submit to a chemical test and the incident occurred while they were intoxicated, they knew that they were going to operate a motor vehicle and the intoxication was the proximate cause of the injury or death. §8.01-44.5

<sup>5</sup>A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. Except as noted below for out-of-service violations, the fine and imprisonment sanctions for these offenses are as given above for driving while suspended or revoked. The following fine and licensing sanctions are imposed in cases concerning out-of service order violations: (1) The fine sanction is \$1,000 to \$2,500 and (2) the licensing sanctions are, for a 1st violation, CDL disqualification for 180 dys (mand) and, for a subsequent violation (w/n 10 yrs), CDL disqualification for 3 yrs. §46.2-341.21

<sup>6</sup>Violations that authorize susp/rev for 30 dys or more.

Special Note: Under separate provisions of the State's criminal code, it is a Class 1 Misd for a person to operate a motor vehicle when their privilege to do so has been "forfeited". §18.2-272.

\*Except as noted, the sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Other Criminal Actions Related to DWI: (continued)

Sanction:

Criminal:

Imprisonment: (continued)

II. **Driving After Revocation for (1) DWI Manslaughter, (2) DWI Injury or (3) 2nd or 3rd DWI Offense.** (1) Misd-Not more than 90 dys (2) If driving endangered life, limb or property-Felony-1 to 5 yrs of imprisonment or 12 mos in jail §§18.2-36.1(F) & (G), 18.2-51.4(D) & (E) and 46.2-391(D) & (E)

Mandatory Minimum Term of Imprisonment:

I. **General Provision. None**

II. **Driving After Revocation for (1) DWI Manslaughter, (2) DWI Injury or (3) 2nd or 3rd DWI Offense.** (1) Misd-10 dys (2) If driving endangered life, limb or property-Felony-1yr/12 mos except in 1st offense situations where driving was necessary in an "apparent extreme emergency" to save life or limb.

Fine (\$ Range):

I. **General Provisions.** 1st off-Not more than \$1,000; 2nd and sub offs-Not more than \$2,500

II. **Driving After Revocation for (1) DWI Manslaughter, (2) DWI Injury or (3) 2nd or 3rd DWI Offense.** Misd-Not more than \$2,500 Felony-None Note: No fine is specified for this offense.

Mandatory Minimum Fine:  
Administrative Licensing Actions:

None

See Footnote No. 1 below and **Manifest Injustice** on p. 3-490.

Type of Licensing Action

(Susp/Rev):

**Rev or Susp** §§46.2-301, 46.2-391(B) & 46.2-394

Length of Term of License

I. 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.

Withdrawal Action:

II. 3rd offense (w/n 10 yrs)-**Rev 10 yrs**

III. 4th offense-**Rev 5 yrs**

<sup>1</sup>**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.

**Special Note:** I. Vehicles owned by an offender may be impounded or immobilized for up to 90 dys even if such vehicles were not used in the offense. §46.2-301(A)

II. The following sanction also may be imposed if the original licensing action was for either (1) a drunk driving offense, (2) an admin. per se violation, (3) a refusal to submit to a chemical test under the implied consent law or (4) driving after adjudication as an habitual offender (where such adjudication was based either in whole or in part on alcohol related offenses). Any vehicle (with the exception of rented or leased vehicles) used in the offense may be impounded or immobilized for 30 dys. The owner of the vehicle may obtain a release from this action based upon a showing that it is the only vehicle that they own and that the impoundment or immobilization of the vehicle would cause a substantial hardship. §46.2-301.1(A) Note: A person is not subjected to double jeopardy if they are prosecuted for driving on either a suspended or revoked license after the vehicle they were driving was impounded under §46.2-301.1.

*Wilson v. Com.*, 477 S.E.2d 765 (Va.App. 1996)

III. A person, who violates §46.2-301 for a second time, shall be referred to the Va. Alcohol Safety Action Program. A program representative shall inform the offender concerning the legal consequences of their action and may refer such person to a driver improvement clinic. §46.2-355.1

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Other Criminal Actions Related to DWI: (continued)

Mandatory Term of License Withdrawal Action:	I. 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. II. <u>3rd offense (w/n 10 yrs)-Rev 3 yrs<sup>1</sup></u> III. <u>4th offense-Rev 5 yrs</u>
Habitual Traffic Offender Law: State Has Such a Law (Yes/No): Grounds for Being Declared an Habitual Offender:	Yes §§46.2-351 et seq.  Either (1) any 3 or a combination of 3 of the following offs: DWI (including DWI injury offenses), manslaughter via vehicle, driving while suspended or revoked, a felony under the motor vehicle laws, failure to stop at an accident or swearing false information or (2) 12 or more violations which either require or authorize either a suspension or a revocation of 30 dys or more or includes those offenses listed in (1).
Term of License Rev While Under Habitual Offender Status:	<b>10 yrs<sup>2</sup></b> §46.2-356 See Footnote No. 3 below and <b>Manifest Injustice</b> on p. 3-490.
Type of Criminal Off if Convicted on Charges of Driving While on Habitual Offender Status:	<u>1st off: Misd</u> If driving <u>did not</u> endanger life, limb or property of another. <u>Felony</u> If driving either (1) <u>did</u> endanger life, limb or property of another or (2) takes place while the offender was in violation of the DWI laws (irrespective of whether life, limb or property was endangered).

<sup>1</sup>Restricted driving privileges are available after 3 yrs and full driving privileges may be granted after 5 yrs. Such action may be granted provided the offender is not dependent on drugs or alcohol and is no longer a threat to the public's safety. §46.2-391(C)(1) & (2)

<sup>2</sup>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 of the offenses was a DWI and the offender was addicted to alcohol, a license may be restored (with or without restrictions) after 5 yrs (or after 3 yrs, a restricted license may be issued for the purpose of driving to and from a place of employment or in the course of employment) provided the driver is no longer alcohol dependent and would not otherwise constitute a threat to the public's safety when operating a motor vehicle. In the computation of the 3 yr and 5 yr revocation periods, the offender is given credit for any period of time their license was revoked for a DWI offense. An offender may be required to undergo an alcohol evaluation before either license restoration or the issuance of restricted driving privileges. Depending upon the recommendations contained in the alcohol evaluation, an offender may not have driving privileges restored after 5 yrs. Instead, they only may be allowed restricted driving privileges that are not to exceed 5 yrs. (4) Except in situations where a DWI offense was involved, if one of the offenses concerned driving while susp or rev related to either failure to pay fines or costs, failure to furnish proof of financial responsibility or failure to satisfy a judgment, the license may be restored after 3 yrs. If DWI a offense is involved, license restoration is via (3) above. (5) If all of the offenses are related to driving while suspended or revoked based on either a failure to pay fines or costs, failure to furnish proof of financial responsibility or failure to satisfy a judgment, the license may be restored at any time after these costs, fines, judgments or failures are satisfied. §§46.2-358, 46.2-359, 46.2-360 & 46.2-361 Note: If habitual offender status is based on failure to pay uninsured motorist fees, a person's license may be restored if they any fines or other costs associated with these violations and they furnish proof of financial responsibility.

<sup>3</sup>**Registration Suspension.** Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked, shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspended such registration if the person maintains proof of financial responsibility.

Other Criminal Actions Related to DWI: (continued)

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):

2nd or sub off: **Felony** Driving irrespective of whether their was endangerment of life, limb or property of another.  
§§18.2-8 & 46.2-357

**Misd-Not more than 90 dys Felony-1 to 5 yrs** §46.2-357(B)(1) & (2)

**Misd-None Felony-1 yr<sup>1</sup>** §46.2-357(B)(2)

**Misd-Not more than \$2,500** §46.2-357(B)(1) **Felony-None**

**None**

**None**

Important. See the Special Note concerning vehicle impoundment or immobilization on p. 3-493.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

BAC Chemical Test Is Given to the the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

No

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

Minimum Age (Years) Possession:

Minimum Age (Years) Consumption:

**21** (Year Eff: 1987) §§4.1-304 & 4.1-305

**21** A special exemption to minors, for employment reasons, and at he order of a parent. §4.1-305

**None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

No

**No** For a case denying liability, see *Williamson v. Old Brogue, Inc.*, 350 S.E.2d 621 (Va. 1986), & *Robinson v. Matt Mary Moran, Inc.*, 525 S.E.2d 559 (Va. 2000)<sup>2</sup>

<sup>1</sup>A person, who has been convicted of a felony offense, may be eligible to participate in an alternative sanction program which includes probation. This alternative may include "boot camp," detention center or diversion center incarceration programs. §46.2-357(D)

<sup>2</sup>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).

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Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:	No (No Cases) <sup>1</sup>
Other:	None
 <u>Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
Type of Criminal Action:	<b>Class 1 Misd</b> §§4.1-304, 18.2-11(a) & 18.2-12
Term of Imprisonment:	No more than <b>12 mos</b>
Fine (\$ Range):	Not more than <b>\$2,500</b>
 <u>Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	<b>Yes Rev or susp<sup>2x3</sup></b> §§4.1-225(a)(k)
Length of Term of License Withdrawal:	Time period is not specified in the statute.
 <u>Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:</u>	
Type of Criminal Action:	<b>Class 1 Misd</b> §§4.1-304, 18.2-11(a) & 18.2-12
Term of Imprisonment:	Not more than <b>12 mos</b>
Fine (\$ Range):	Not more than <b>\$2,500</b>
 <u>Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	<b>Yes Rev or susp<sup>2x3</sup></b> §§4.1-225(a)(k)
Length of Term License Withdrawal:	Time period not specified in the statute.
<u>Anti-Happy Hour Laws/Regulations:</u>	<b>Yes</b> VR 125.01-5, §16 (regulation)
 <u>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:</u>	
Open Container Law (Yes/No):	No
Anti-Consumption Law (Yes/No):	<b>Yes</b> Drivers only §18.2-323.1

<sup>1</sup>In discussing the liability of commercial servers in the *Williamson* case, the court mentioned that dram shop liability of either commercial servers or social hosts was a matter that should be determined by the legislature.

<sup>2</sup>Note: In lieu of either suspending a license or any portion thereof, a civil penalty may be imposed as follows: 1st off-Not more than \$2,500; and, subsequent off-Not more than \$5,000. §4.1-227(B) Also, under separate provisions, a licensee may agree to an "offer in compromise" wherein they will not be subject to license suspension or revocation if they agree pay a sum not to exceed \$5,000. §4.1-227(C)

<sup>3</sup>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:  
General Reference:

**VIRGIN ISLANDS**  
Virgin Islands Code (Updated through May 1, 2000)

Basis for a DWI Charge:

Standard DWI Offense:  
Illegal Per Se Law (BAC):  
Presumption (BAC):  
Types of Drugs/Drugs and Alcohol:

Under the influence of an intoxicating liquor 20 §493(a)(1)  
≥ **0.08**<sup>1</sup> 20 §493(a)(2)  
**None**  
Under the influence of (1) **A Controlled Substance** or (2) a  
Combination of Intoxicating Liquor and a Controlled Substance 20  
§493(a)(1)  
A BAC ≥ **0.10**<sup>1</sup> is *prima facie* evidence that a person is under the  
influence of an intoxicating liquor 20 §493a(a)(3).

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:  
Implied Consent Law:  
Arrest Required (Yes/No):  
Implied Consent Law Applies to  
Drugs (Yes/No):  
Refusal to Submit to Chemical Test  
Admitted into Evidence:  
Other Information:

**No**  
**Yes** 20 §493c(a)  
**Yes** 20 §493c(a)  
**Yes** (Criminal Cases) 20 §493c(g)  
**None**

Chemical Tests of Other Substances for Alcohol  
Concentration Which Are Authorized Under  
the Implied Consent Law:

Blood:  
Urine:  
Other:

**Yes** 20 §493c(a)  
**Yes** 20 §493c(a)  
**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):  
Anti-Plea Bargaining Statute (Yes/No):  
Pre-Sentencing Investigation Law (PSI)  
(Yes/No):

**Yes** Alcohol Screening (Not mandatory) 20 §493(b)

Sanction for Refusal to Submit to a  
Chemical Test:

Refusal to Take a Preliminary Breath Test:  
Criminal Sanctions (Fine/Jail):  
Administrative Licensing Action  
(Suspension/Revocation):  
Other:

**N/A**  
**N/A**

<sup>1</sup>Standard: Percent by weight of alcohol in the blood. 20 §§493(a)(2) & 493a(a)(3)

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Sanction for Refusal to Submit to a Chemical Test: (continued)

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

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** See Community Service below.

Fine:

Amount (\$ Range):

1st off-Not less than **\$300** If there has been an accident-Not less than **\$500**; sub. off (w/n 10 yrs)-Not more than **\$2,000** 20 §§493(b) & 544(b)

Mandatory Min. Fine (\$):

1st off-**\$300** If there has been an accident-**\$500**; sub. off-None If there has been an accident-**\$600** 20 §493(b)

Other Penalties:

Community Service:

For a sub. off (w/n 10 yrs)-**10 dys** of community service in lieu of the **48 con hrs** of imprisonment. 20 §493(b)(2).

Restitution

(eg Victim's Fund):

**Yes<sup>2</sup>** Under 5 §3711(c)(2) & 5 §3721, a defendant may be required to pay restitution to a victim. Note: This requirement applies to persons convicted of any criminal offense.

Other:

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

**Yes<sup>3</sup>** If the court finds, at the initial appearance, by a preponderance of the evidence that a person has been driving with a BAC that constitutes *prima facie* evidence of driving while under the influence (i.e., a BAC  $\geq 0.10$ ), it suspends the driver's license for **90 days**. This suspension action appears to be mandatory. 20 §493c(e)(2)

<sup>1</sup>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; Miscellaneous-Impoundment of the vehicle used in the offense for not more than **60 dys**.

<sup>2</sup>If the court does not order restitution, it must, nevertheless, require a defendant to pay a fee (surcharge) for court administrative expenses. This fee is to equal 5 percent of the restitution amount. 5 §3721

<sup>3</sup>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:

Type of Licensing Action  
(Suspension/Revocation):  
Term of License Withdrawal  
(Days, Months, Years, etc.):  
Mandatory Minimum Term of  
Withdrawal:

See Footnote No. 1 on p. 3-498.

**Susp/Rev**<sup>1&2</sup> 20 §493(c)

1st off-6 mos; sub. off-1 to 5 yrs

1st off-30 dys<sup>3</sup>; sub. off (w/n 10 yrs)-**1 yr** (Appears to be mandatory.)

Other:

**Point System.** A person's driving privileges are suspended for not less than 6 months if they accumulate 12 or more points. This suspension appears to be mandatory. A suspension under the Point System is in addition to any other licensing action provided by law and may run concurrently with such other licensing action. A person is assessed 12 points for either a Driving Under the Influence, Illegal Per Se, or Vehicle Homicide (negligent homicide by means of motor vehicle). 20 §§801 & 803

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:

**Impoundment (Limited)** See Footnote No. 1 on p. 3-498. Note: For failure to appear in court on a DWI charge, a person's vehicle may be impounded for such time as the court thinks proper. 20 §544(c)

Terms Upon Which Vehicle  
Will Be Released:

Other:

Miscellaneous Sanctions  
Not Included Elsewhere:

**School Bus.** A person's school bus operator's license is immediately temporarily revoked if they operate a school bus after either consuming alcoholic beverages or unlawfully using, possessing or distributing a controlled substance. 20 §377(g)(1) & (2)

<sup>1</sup>Either suspension or revocation for the periods indicated.

<sup>2</sup>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.

<sup>3</sup>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)

**VIRGIN ISLANDS**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

Jurisdiction Has Such a Law:

**Yes<sup>1</sup> 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**

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

**Rev 20 §546 See Point System on p. 3-499.**

Length of Term of

Licensing Withdrawal:

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:

Sec Restitution for a DWI offense on p. 3-498.

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

Note: There is no specific offense for driving while license is either suspended or revoked. However, it is an offense to operate a motor vehicle without having a valid license. A person, who has been convicted of this offense, is subject to a jail term of not more than 6 mos, a fine of not more than \$200 and license revocation. The court can revoke a driver's license either permanently or for a temporary period as determined proper by the court. 20 §§371, 544(f) & 546

Mandatory Minimum Term

of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action

(Suspension/Revocation):

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Other:

Habitual Traffic Offender Law:

Jurisdiction Has Such a Law (Yes/No):

**No** Note: This jurisdiction does not have a per se habitual traffic offender law. However, the licensing authority may revoke or suspend a driver's license where such driver is "guilty of habitual and persistent violations" of the traffic laws. 20 §548(a)

<sup>1</sup>Negligent homicide by motor vehicle where the driver either (1) was under the influence of alcohol, (2) was affected by alcohol, (3) was affected by narcotic drugs, (4) operated a vehicle in a reckless manner or (5) operated a vehicle with disregard for the safety of others.

Other Criminal Actions Related to DWI: (continued)

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):  
 BAC Chemical Test Is Given to the  
 Following Persons:  
     Driver:

Yes (Limited) 20 §493c(m)

Yes A blood sample must be taken w/n 4 hrs of death. The information obtained from the sample may only be used for statistical purposes. Note: Statistical reports generated from this data are not public records. 20 §493c(m)

    Vehicle Passengers:  
     Pedestrian:

No  
 No

Laws Establishing the Minimum Ages  
 Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:  
 Minimum Age (Years) Possession:  
 Minimum Age (Years) Consumption:

See the Special Note below.  
 None  
 None

Dram Shop Laws and Related Legal Actions:

Jurisdiction Has A Dram Shop Law (Yes/No):  
 "Dram Shop Law" Concept Has Been  
 Adopted Via a Change to the Common  
 Law Rule by Action of the Highest  
 Court of Record in the Case (Case Citation):

No  
  
 n.a.

**Special Note:** The law prohibits persons under 18 years old from entering any night club, dance hall or bar after 9:00 p.m. where alcoholic beverages are being served unless (1) they are accompanied by adults who are legally responsible for the minors or (2) they are attending a school function where alcoholic beverages are not being sold. 14 §485 **Comment:** The general prohibition against selling alcoholic beverages (either in closed containers (packages) or by the drink) to persons under 18 years old was replaced by the present law.

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Other Laws Related To Alcohol Use: (continued)

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: **None**  
Term of Imprisonment:  
Fine (\$ Range):

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:  
License to Serve Alcoholic Beverages Withdrawn (Yes/No): **None**  
Length of Term of License Withdrawal:

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:  
Type of Criminal Action: See the Special Note below.  
Term of Imprisonment:  
Fine (\$ Range):

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:  
License to Serve Alcoholic Beverages Withdrawn (Yes/No):  
Length of Term License Withdrawal: See the Special Note below.

Anti-Happy Hour Laws/Regulations: **No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:  
Open Container Law (Yes/No): **No**  
Anti-Consumption Law (Yes/No): **No**

**Special Note:** It is a misdemeanor for a licensee to allow persons under 18 years old to enter their establishments in violation of 14 §485. See the Special Note on p. 3-501. The sanctions for this offense are a jail sentence of not more than 30 dys and/or a fine of \$25 to \$500 for each minor found on the premises. The minimum fine amount appears to be mandatory. In addition, for a 2nd or subsequent offense, the licensee is subject to having their alcoholic beverage permit suspended, revoked or denied. The law does not specify the length of such action.

STATE:  
General Reference:

**WASHINGTON**  
Revised Code of Washington Annotated

Basis for a DWI Charge:

Standard DWI Offense*:	Under the influence of or affected by intoxicating liquor <sup>1</sup> §§46.61.502(1)(b) & 46.61.504(1)(b)
Illegal Per Se Law (BAC/BrAC)*:	≥ 0.08 <sup>1,2&amp;3</sup> §§46.61.502(1)(a) & 46.61.504(1)(a) <u>Persons Under 21 Years Old</u> -≥ 0.02 but < 0.08 <sup>3</sup> §46.61.503 See the Special Note on p. 3-507.
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol*:	Under the influence of or affected by (1) <b>Any Drug</b> or (2) a Combination of Intoxicating Liquor and Any Drug <sup>1</sup> §§46.61.502(1)(b) & (c) & 46.61.504(1)(b) & (c)
Other:	For Commercial Motor Vehicle Operators, see p. 3-510. See the Special Note below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes <sup>4</sup> §46.20.308
Implied Consent Law Applies to Drugs (Yes/No):	Yes §46.20.308(1) See Footnote No. 1 on p. 3-504.
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §46.61.517 & <i>State v. Long</i> , 778 P.2d 1027 (Wash. 1989)
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

<sup>1</sup>In an Assimilative Crimes Act, 18 USC §13, case based on the State's drunk driving law for an offense committed on a Federal military reservation, a Federal appellate court has held that the State law did not apply to the operation of mopeds although it did apply to the operation of bicycles. *U.S. v. Dotson*, 34 F.3d 882 (9th Cir. 1994)

<sup>2</sup>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.

<sup>3</sup>Alc. concentration means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §46.04.015

<sup>4</sup>Under §46.20.308(1), a law enforcement officer may request a person under 21 years old to submit to an implied consent test if officer has arrested and has "reasonable grounds to believe" that the young person was operating a motor vehicle with an alcohol concentration >0.02 but <0.08 under §46.61.503.

**Special Note:** A person under 21 years old, unless in the presence of a parent or guardian, commits an offense if they occupy a motor vehicle in a public place "while exhibiting the effects of having consumed liquor." The sanctions for a 1st offense are a jail term of not more than 2 months and/or a fine of not more than \$500. The sanction for a 2nd offense is a jail term for not more than 6 months. The sanction for a 3rd or subsequent offense is a jail term for not more than 1 year. If the offender is under 18 yrs old, for a 1st offense, their driving privileges are revoked for 1 yr (90 dys mand) and, for a 2nd or subsequent offense, their driving privileges are revoked for 2 yrs (1 yr mand). §§13.40.020(14), 13.40.265, 46.20.265, 66.44.180, 66.44.270(2)(b) & 66.44.365 **Comment:** There is no licensing sanction for this offense if the offender is over 18 but under 21 yrs old. In addition, there appears to be no fine sanction for a 2nd or subsequent offense.

\*The law defines a drunk driving offense as either driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug. The law further provides that this offense is established (or proven) if a person either (1) has a BAC/BrAC ≥0.08 w/n 2 hrs of driving or being in actual physical control of a motor vehicle, (2) was under the influence of or affected by intoxicating liquor or drugs while driving or being in actual has physical control of a motor vehicle or (3) was under the combined influence of or affected by intoxicating liquor or any drug while driving or being in actual physical control of a motor vehicle. §§46.61.502(1) & 46.61.504(1) and *State v. Robbins*, 980 P.2d 725 (Wash. 1999), & *State v. Crediford*, 927 P.2d 1129 (Wash. 1996)

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Chemical Breath Tests for Alcohol Concentration:  
(continued)

Other Information:

homicide, (2) vehicle assault or (3) any DWI offense related to an accident where there was a serious bodily injury. §46.20.308(3)<sup>1</sup> & *State v. Schulze*, 804 P.2d 566 (Wash. 1991)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	Yes-Limited <sup>2</sup>
Urine:	No
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No <sup>3</sup>
Anti-Plea Bargaining Statute (Yes/No):	No <sup>3</sup>
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol evaluation is mandatory. §§46.61.5055(5) & 46.61.5056(2)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a 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/Denial 1 yr (mand) <sup>4</sup> ; 2nd or subsequent refusal <sup>5</sup> (w/n 7 yrs)-Rev/Denial 2 yrs or until the person reaches 21 yrs old whichever is longer (mand) <sup>4</sup> §§46.20.308 & 46.20.3101

<sup>1</sup>Under §46.20.308(3), a person arrested for a drunk driving offense may be compelled to submit to a test for drugs as well as alcohol if the offense involved an accident in which there was a serious bodily injury to another person.

<sup>2</sup>The implied consent law provides for a blood test only in situations where a person was been arrested for either (1) vehicle homicide, (2) vehicle assault or (3) a DWI offense and where there the offense involved an accident in which there was a serious bodily injury to another person. §46.20.308(3)

<sup>3</sup>**Deferred Prosecution.** The State has a deferred prosecution program for DWI offenses. A person is eligible for this program only once. The program provides for alcohol treatment for a two year period. Upon successful completion of the program, the court shall dismiss the charges pending against the defendant. §10.05.010 et seq. The offender's license is placed on probationary status for 5 yrs. §10.05.060 In addition, as a condition for granting deferred prosecution, the court may require an offender to only operate vehicles that are equipped with ignition interlock devices. §10.05.140 Note: A deferred prosecution is treated as a prior offense for purposed of sanction enhancement for subsequent offenses. §10.05.120

<sup>4</sup>Sec. 46.20.391, concerning the issuance of occupational driving privileges, applies only to situations where licensing action is based on traffic offense convictions. **Comment.** Such provisions may not apply to licensing actions under the implied consent law.

<sup>5</sup>Or a 1st refusal where there has been one or more previous admin. per se violations w/n 5 yrs.

Sanctions for Refusal to Submit to a Chemical Test: (continued)

Other:

In situations, involving 2nd or subsequent refusals (or a 1st refusal where there has been one or more previous admin. per se violations w/n 5 yrs) where the person has also been convicted of a drunk driving offense related to the same incident, the revocation/denial for the refusal is to run consecutively to any licensing action that may be imposed for the DWI offense. §46.20.3101

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,

Etc.):

On p. 3-507, see Negligent Driving and the Special Note for certain sanctions that apply to persons under 21 yrs old.

A DWI offense is a gross misd. §§46.61.502(5) & 46.61.504(5)

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**1 dy to 1 yr** §46.61.5055(1)(a)

II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**2 dys to 1 yr** §46.61.5055(1)(b)

III. An offense where there has been a prior offense<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**30 dys to 1 yr** §46.61.5055(2)(a)

IV. An offense where there has been a prior offense<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**45 dys to 1 yr** §46.61.5055(2)(b)

V. An offense where there has been two or more prior offenses<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**90 dys to 1 yr** §46.61.5055(3)(a)

VI. An offense where there has been two or more prior offenses<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**120 dys to 1 yr** §46.61.5055(3)(b)

Veh Assault\* (Cl B felony)-Not more than **10 yrs**<sup>3</sup> §§9A.20.021(1)(b) & 46.61.522

Important. See Mandatory Probation and Miscellaneous Sanctions on p. 3-511.

Mandatory Minimum Term:

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**24 con hrs**<sup>3</sup> or, as an alternative, not less than **15 dys of electronic home monitoring** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(1)(a) See Footnote No. 2 on p. 3-506.

<sup>1</sup>A prior offense includes any type of prior drunk driving offense. §46.61.5055(9)

<sup>2</sup>May be suspended only if jail would impose a risk to defendant's physical or mental well-being.

<sup>3</sup>Under the sentencing guidelines grid, the presumptive sentence is 3 to 84 mos. §§9.94A.310(1) & 9.94A.320

\*Either (1) reckless driving, (2) driving while under the influence of liquor or drugs or (3) driving with disregard for the safety of others and causing substantial bodily harm to another person. §46.61.522

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

II. An offense where the offender's BAC/BrAC is  $\geq 0.15$  or there was a refusal to submit to the implied consent test-**2 con dys<sup>1</sup> or, as an alternative, not less than 30 dys of electronic home monitoring<sup>2</sup>** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(1)(b)

III. An offense where there has been a prior offense<sup>3</sup> w/n 7 yrs and where the offender's BAC/BrAC is  $< 0.15$  or there was no test result (but not via a refusal to submit to a test)-**30 dys<sup>1</sup> and 60 dys of electronic home monitoring<sup>2</sup>** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(2)(a)

IV. An offense where there has been a prior offense<sup>3</sup> w/n 7 yrs and where the offender's BAC/BrAC is  $\geq 0.15$  or there was a refusal to submit to the implied consent test-**45 dys<sup>1</sup> and 90 dys of electronic home monitoring<sup>2</sup>** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(2)(b)

V. An offense where there has been two or more prior offenses<sup>3</sup> w/n 7 yrs and where the offender's BAC/BrAC is  $< 0.15$  or there was no test result (but not via a refusal to submit to a test)-**90 dys<sup>1</sup> and 120 dys of electronic home monitoring<sup>2</sup>** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(3)(a)

VI. An offense where there has been two or more prior offenses<sup>3</sup> w/n 7 yrs and where the offender's BAC/BrAC is  $\geq 0.15$  or there was a refusal to submit to the implied consent test-**120 dys<sup>1</sup> and 150 dys of electronic home monitoring<sup>2</sup>** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(3)(b)

Fine:  
Amount (\$ Range):

I. An offense where the offender's BAC/BrAC is  $< 0.15$  or there was no test result (but not via a refusal to submit to a test)-**\$350 to \$5,000** §46.61.5055(1)(a)

II. An offense where the offender's BAC/BrAC is  $\geq 0.15$  or there was a refusal to submit to the implied consent test-**\$500 to \$5,000** §46.61.5055(1)(b)

III. An offense where there has been a prior offense<sup>3</sup> w/n 7 yrs and where the offender's BAC/BrAC is  $< 0.15$  or there was no test result (but not via a refusal to submit to a test)-**\$500 to \$5,000** §46.61.5055(2)(a)

IV. An offense where there has been a prior offense<sup>3</sup> w/n 7 yrs and where the offender's BAC/BrAC is  $\geq 0.15$  or there was a refusal to submit to the implied consent test-**\$750 to \$5,000** §46.61.5055(2)(b)

<sup>1</sup>May be suspended only if jail would impose a risk to defendant's physical or mental well-being.

<sup>2</sup>**Electronic Home Monitoring.** I. The court may waive this sanction if the offender is not a State resident, does not have either a dwelling, a telephone or other items needed to operate an electronic monitoring system. §46.61.5055 II. The total time served in jail and on electronic home monitoring cannot exceed 365 dys. The jail sentence has to be served first. §46.61.5055

<sup>3</sup>A prior offense includes any type of prior drunk driving offense. §46.61.5055

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Mandatory Min. Fine (\$):

V. An offense where there has been two or more prior offenses<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**\$1,000 to \$5,000** §46.61.5055(3)(a)

VI. An offense where there has been two or more prior offenses<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**\$1,500 to \$5,000** §46.61.5055(3)(b)

Veh Assault (Cl B felony)-Not more than **\$20,000** §9A.20.021(1)(b)

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**\$350<sup>2</sup>** §46.61.5055(1)(a)

II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**\$500<sup>2</sup>** §46.61.5055(1)(b)

III. An offense where there has been a prior offense<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**\$500<sup>2</sup>** §46.61.5055(2)(a)

IV. An offense where there has been a prior offense<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**\$750<sup>2</sup>** §46.61.5055(2)(b)

V. An offense where there has been two or more prior offenses<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**\$1,000<sup>2</sup>** §46.61.5055(3)(a)

VI. An offense where there has been two or more prior offenses<sup>2</sup> w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**\$1,500<sup>2</sup>** §46.61.5055(3)(b)

Other Penalties:

Community Service:

Possible for any offense §9.94A.101 et seq.

Restitution

(eg Victim's Fund)

**Yes<sup>3</sup>** Payment via a State compensation fund. §7.68.010 et seq.

<sup>1</sup>A prior offense includes any type of prior drunk driving offense. §46.61.5055(9)

<sup>2</sup>Unless the defendant is indigent.

<sup>3</sup>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

**Negligent Driving.** A person commits 1st Degree Negligent Driving, a misdemeanor, if (1) they operate a motor vehicle in a negligent manner likely to endanger persons or property and (2) they exhibit the effects of having consumed alcohol or an illegal drug. It is a defense to this offense if the person had a valid prescription for the drug consumed. The sanctions for this offense are a jail term of not more than 90 dys and/or a fine of not more than \$1,000. In addition, there is a mandatory penalty assessment of **\$250**. §§7.68.035(1)(a) & (2) 9A.20.010(2), 9A.20.021(3), 46.61.050 and 46.61.5249

**Special Note:** A person <21 yrs old commits a misdemeanor if they operate a motor vehicle with a BAC/BrAC ≥0.02 but <0.08. §46.61.503 The sanctions for this offense are an imprisonment term of not more than 90 dys and/or a fine of not more than \$1,000. §§9A.04.040(2), 9A.20.021(3) & 46.64.050

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Other:

**Ignition Interlock.** I. For a 1st offense (BAC <0.15 and there was no refusal to submit to a chemical test) the court may, after the license suspension or revocation period, require an offender to only operate motor vehicles that are equipped with an ignition interlock device. This requirement may last for as long as the court has jurisdiction. §46.20.720(1)

II. For either (1) a 1st offense (BAC ≥0.15 or there was a refusal to submit to a chemical test) or (2) any subsequent drunk driving offense (w/n 7 yrs), the court **MUST**, after the license suspension or revocation period, require an offender to only operate motor vehicles that are equipped with an ignition interlock device. If there has been no previous ignition interlock use restrictions, the usage period is not less than 1 yr; if there has been 1 previous restriction, the usage period is not less than 5 yrs; and, if there has been 2 previous restrictions, the usage period is not less than 10 yrs. §46.20.720(2) & (3)

**Penalty Assessment.** A defendant, who convicted of drunk driving offense under §46.61.502 or 46.61.504, is required to pay an assessment of **\$500** which is used to support the victim's compensation fund. Note: There is an assessment of **\$250** for a 1st or sub misd and **\$500** for a 1st or sub gross misd or felony. For juvenile offenders, there is an assessment of **\$75** for a 1st or sub misd and **\$100** for a 1st or sub gross misd or felony. §7.68.035(1)(a) & (b) and (2)

**Laboratory Assessment Fee.** An offender is assessed a **\$125** fee which is used to fund the State's toxicology laboratory. The court may suspended this fee if the defendant does not have the ability to pay it. §46.61.5054

**Safety and Education Assessment.** A defendant must pay an assessment equal to 60 percent of the fine imposed for the purpose of funding safety and education programs. §3.62.090(1)

Administrative Licensing Actions:  
Pre-DWI Conviction Licensing Action:  
Administrative Per Se Law:

**Yes >0.08 BAC/BrAC** (See Footnote No. 3 on p. 3-503.) 1st Violation-Susp-90 dys (30 dys mand An occupational driver's license may be issued after this mand period.); 2nd or Subsequent Violation (w/n 7 yrs)-**Rev/Denial-2 yrs**<sup>1</sup> (mand) §§46.20.308, 46.20.355(2), 46.20.391(1) & 46.20.3101

**Persons Under 21 Years Old-≥0.02 but <0.08 BAC/BrAC** (See Footnote No. 3 on p. 3-503.)-1st Violation-Susp 90 dys (30 dys mand An occupational driver's license may be issued after this mand period.); 2nd or Subsequent Violation (w/n 7 yrs)-**Rev/Denial 1 yr** or until the person reaches 21 whichever is longer. This revocation appears to be mandatory. §§46.20.308, 46.20.391(1) & 46.20.3101

<sup>1</sup>Administrative licensing action may be stayed from 45 to 90 dys if the offender is participating in a deferred prosecution treatment program. §46.20.308(10)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Other: Under §§46.20.291(1)(a) & 46.20.311(1), a person's license may be susp for not more than 1 yr if they have "committed" an off that requires mandatory license rev (e.g., 2nd or sub DWI offs). The law does not specifically state that such action can be taken without a preliminary hearing. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action: See the Special Note below.

Type of Licensing Action (Susp/Rev):

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**Susp** §46.61.5055(6)(a)(i)

II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**Rev** §46.61.5055(6)(b)(i)

III. An offense where there has been a prior offense<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**Rev** §46.61.5055(6)(a)(ii)

IV. An offense where there has been a prior offense<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**Rev** §46.61.5055(6)(b)(ii)

V. An offense where there has been two or more prior offenses<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**Rev** §46.61.5055(6)(a)(iii)

VI. An offense where there has been two or more prior offenses<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**Rev** §46.61.5055(6)(b)(iii)

Veh Assault-Rev §§46.04.480 & 46.20.285

Term of License Withdrawal (Days, Months, Years, etc.):

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**90 dys** §46.61.5055(6)(a)(i)

II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**1 yr** §46.61.5055(6)(b)(i)

III. An offense where there has been a prior offense<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**2 yrs** §46.61.5055(6)(a)(ii)

IV. An offense where there has been a prior offense<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a

<sup>1</sup>A prior offense includes any type of prior drunk driving offense. §46.61.5055

<sup>2</sup>The revocation is "tolled" during any period of incarceration. §46.20.285

**Special Note:** A DWI offender's driving privileges cannot be reinstated until they have enrolled in and are participating in an approved alcoholism treatment program. §46.20.311

WASHINGTON

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Mandatory Minimum Term of  
Withdrawal:

IV. (continued) a refusal to submit to the implied consent test-**900 dys** §46.61.5055(6)(b)(ii)

V. An offense where there has been two or more prior offenses<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**3 yrs** §46.61.5055(6)(a)(iii)

VI. An offense where there has been two or more prior offenses<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**4 yrs** §46.61.5055(6)(b)(iii)

Veh Assault-1 yr<sup>2</sup> §§46.04.480 & 46.20.285

I. An offense where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**30 dys**<sup>3</sup> §§46.20.391 & 46.61.5055(6)(a)(i)

II. An offense where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**30 dys**<sup>3</sup> §§46.20.391 & 46.61.5055(6)(b)(i)

III. An offense where there has been a prior offense<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**2 yrs**<sup>4</sup> §46.61.5055(6)(a)(ii)

IV. An offense where there has been a prior offense<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**900 dys**<sup>4</sup> §46.61.5055(6)(b)(ii)

V. An offense where there has been two or more prior offenses<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is <0.15 or there was no test result (but not via a refusal to submit to a test)-**3 yrs**<sup>4</sup> §46.61.5055(6)(a)(iii)

VI. An offense where there has been two or more prior offenses<sup>1</sup> w/n 7 yrs and where the offender's BAC/BrAC is ≥0.15 or there was a refusal to submit to the implied consent test-**4 yrs**<sup>4</sup> §46.61.5055(6)(b)(iii)

Veh Assault-1 yr<sup>2</sup> §§46.04.480 & 46.20.285

<sup>1</sup>A prior offense includes any type of prior drunk driving offense. §46.61.5055

<sup>2</sup>The revocation is "tolled" during any period of incarceration. §46.20.285

<sup>3</sup>Under §46.20.391(1), a 1st offender is eligible for occupational driving privileges after 30 dys.

<sup>4</sup>An offender is not eligible for an occupational license. §46.20.391(3)(b)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of alcohol or any drug or (3) refuse to submit to a chemical test for alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). Note: The implied consent provisions for CMV operators allows testing for either alcohol or drugs; however, the "disqualification" sanctions only apply to a refusal to submit to a test for an alcohol concentration. In addition, a CMV operator must be placed "out-of-service" for 24 hours if they have any amount of alcohol in their system. A person commits a gross misdemeanor if they operate a CMV with any amount of alcohol in their system: Jail-not more than 1 yr; fine-not more than \$5,000. §§9.92.020, 46.25.010(2), (6), (8) & (15), 46.25.090, 46.25.110, 46.25.120 and 46.25.170 The CDL administrative disqualification law does not violate the constitutional principles of equal protection of the laws. *Merseal v. State Dept. of Licensing*, 994 P.2d 262 (Wash.App. Div. 3 2000)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Other:	
Rehabilitation:	
Alcohol Education:	Yes for all offs <sup>1</sup> §46.61.5056(1)
Alcohol Treatment:	Yes for all offs <sup>1</sup> §46.61.5056(1)
Vehicle Impoundment/Confiscation:	
Authorized by Specific	
Statutory Authority:	<b>Forfeiture.</b> <sup>2</sup> The vehicle used in the offense, in which a 2nd or sub DWI offender (w/n 7 yrs) has a financial interest, is subject to forfeiture. This action does not appear to be mandatory. §46.61.5058
Terms Upon Which Vehicle	
Will Be Released:	
Other:	<b>Mandatory Probation.</b> FOR ANY DRUNK DRIVING OFFENSE, If the court imposes < 1 yr in jail, it shall suspend but not defer a period of confinement ≤ 5 yrs and <u>must</u> place an offender on probation with the following minimum conditions. (1) They cannot operate a vehicle unless they have a valid license and maintain proof of financial responsibility. (2) They cannot operate a motor vehicle with BAC/BrAC ≥ 0.08. And, (3) they must submit to implied consent tests. If an offender violates (1) in combination with either (2) or (3), they are subject to a mandatory 30 dy jail term and a license suspension for 30 dys. In addition, the court may order an offender to only operate motor vehicles that are equipped with an "ignition interlock" device. §46.61.5055
	<b>Vehicle Assault-Community Placement.</b> A person, who has been convicted of Vehicle Assault, must be sentenced to "community placement" for at least 2 yrs. §9.94A.120(9)(b)
	<b>Probationary License.</b> After either the suspension or revocation period, DWI offenders' driving privileges must be placed on probationary status for 5 yrs. §§46.20.355(2) & 46.61.5055
Miscellaneous Sanctions	
Not Included Elsewhere:	<b>Home Detention.</b> 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. <b>Special Education Program.</b> 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 <b>Incarceration Costs.</b> A defendant (except an indigent) may be required to pay not more than \$50 for each day of incarceration. §10.64.130 <b>EMS Cost.</b> A defendant is liable for up to \$1,000 of the cost of an emergency response related to the DWI offense. §38.52.430

<sup>1</sup>A court ordered assessment will determine whether an offender will be required to attend either an alcohol education course or treatment. §46.61.5056

<sup>2</sup>A law enforcement officer may take custody and remove to a safe place a vehicle involved in a DWI offense. §46.55.113

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Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

**Yes** **CI A Felony** Where death is caused by the operation of a vehicle (1) while under the influence of intoxicating liquor or any drug<sup>1</sup>, (2) in a reckless manner or (3) with disregard for the safety of others. §46.61.520

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

**Life Imprisonment**<sup>2</sup> §9A.20.021(1)(a)

**None** Note: The sentencing guidelines grid would appear to require a period of incarceration.<sup>2</sup>

Fine (\$ Range):

Not more than **\$50,000** §9A.20.021(1)(a)

**A Penalty Assessment of \$500**<sup>3</sup> §7.68.035(1)(a) & (2)

**None** Note: the Penalty Assessment is mandatory.

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

**Rev** §46.20.285

Length of Term of

Licensing Withdrawal:

**2 yrs**<sup>4</sup> §46.20.285

Mandatory Action--Minimum

Length of License

Withdrawal:

**2 yrs**<sup>4</sup> No occupational license is available. §46.20.391

Other:

**I. Restitution.**(1) For felony offenses (e.g., Vehicle Homicide), the court may order a defendant to pay restitution directly to a victim. §§9.94A.120(15), 9.94A.140 & 9.94A.142 (2) Also, a victim is eligible for compensation directly from a State fund. §7.68.010 et seq. (3) A person, who has been convicted of Vehicle Homicide, must be sentenced to "community placement" for at least 2 yrs. §9.94A.120(9)(b)

**II. EMS Cost.** A defendant is liable for up to **\$1,000** of the cost of an emergency response related to a DWI vehicle homicide offense. §38.52.430

<sup>1</sup>The State does not have to prove that a defendant's intoxication caused the victim's death. However, the State must still prove that the defendant's driving was related to the accident that caused the fatality. *State v. Rivas*, 896 P.2d 57 (Wash. 1995)

<sup>2</sup>Under the sentencing guidelines grid, the presumptive sentences are as follows: Vehicle homicide related to a drunk driving offense-31 to 144 mos with 2 yrs added for each prior drunk driving offense; vehicle homicide related to reckless driving-21 to 116 mos; and, vehicle homicide related to vehicle operation with disregard for the safety of others-15 to 102 mos. §§9.94A.310(1) & (7), 9.94A.320 and 46.61.520(2)

<sup>3</sup>**Public Safety and Education Assessment.** In addition to any other fine, an offender is subject to two public safety and education assessments. The first assessment is equal to 60% of any fine imposed. The second is equal to 50% of the first. §3.62.090(1) & (2)

<sup>4</sup>The revocation is "tolled" during any period of incarceration. §46.20.285

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote Nos. 1 & 2 below.
Sanction:	
Criminal:	
Imprisonment (Term):	<b>Gross Misd</b> Not more than 1 yr §§9.92.020, 9A.20.021 & 46.20.342(1)
Mandatory Minimum Term of Imprisonment:	<b>None</b>
Fine (\$ Range):	Not more than \$5,000 §§9.92.020 & 9A.20.021 See <b>Public Safety and Education Assessment</b> (Footnote No. 3) on p. 3-512. <b>None</b>
Mandatory Minimum Fine:	
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	<b>Susp or Rev</b> §46.20.342(2)
Length of Term of License Withdrawal Action:	An additional susp/rev period of 1 yr. §46.20.342(2)(b)
Mandatory Term of License Withdrawal Action:	The susp/rev shall not be extended if the court recommends against such extension and the driver has already obtained a valid license. §46.20.342(2)(c)
Habitual Traffic Offender Law: State Has Such a Law (Yes/No):	<b>Yes</b> §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:	<b>7 yrs</b> <sup>3</sup> Note: There is a special stay of rev if based on DWI offs and person is attending an alcohol treatment program. Also, after 4 yrs a license may be issued upon "good and sufficient showing". §§46.65.060, 46.65.070 & 46.65.080
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	<b>Gross Misd</b> §46.20.341(1)(a)

<sup>1</sup>It is a gross misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 1 yr and/or a fine of not more than \$5,000. §§9.92.020, 46.20.342(1) & 46.25.050(2) If a person operates a CMV while under an out-of-service order, they are subject to the following disqualification periods: 1st violation-90 dys (mand) to 1 yr; 2nd violation (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. If the CMV operator was driving a CDL either containing hazardous materials or designed to carry 16 or more persons, the CDL disqualification periods are as follows: 1st violation-180 dys (mand) to 2 yrs; and, sub violation (w/n 10 yrs)-3 yrs (mand) to 5 yrs. §46.25.90(6)

<sup>2</sup>Note: The vehicle used in this offense may be impounded as follows: 1st offense-Not more than **30 dys**; 2nd offense (w/n 5 yrs)-Not more than **60 dys**; and, 3rd and subsequent offense-Not more than **90 dys**. If the registered owner of the vehicle was the violator, the vehicle cannot be released until all penalties, fines or forfeitures have been satisfied. §46.55.120(a)(2) & (b)

<sup>3</sup>After this 7 yr period, the revocation remains in effect until the offender petitions and receives a new license from the State licensing agency. §46.65.100

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Other Criminal Actions Related to DWI: (continued)

Sanctions Following a Conviction of Driving While on Habitual Offender Status:

Imprisonment (Term):

1st off-10 dys to 1 yr; 2nd off-90 dys to 1 yr; 3rd & sub. off-Not less than 1 yr §§9.92.020, 9A.20.021 & 46.20.342(1)(a)

Mandatory Minimum Term of Imprisonment:

1st off-10 dys (if the offender has also committed a DWI off-90 dys); 2nd off-90 dys; 3rd & sub. off-180 dys §46.20.342(1)(a) Not more than **\$5,000** §§9.92.020 & 9A.20.021 See **Public Safety and Education Assessment** (Footnote No. 3) on p. 3-512. **None**

Fine (\$ Range):

Mandatory Minimum Fine (\$):  
Licensing Actions (Specify):

The original revocation for being an habitual violator is extended for an additional period of 1 yr. The court may recommend against such an extension. §46.20.342(2)(a) & (c)

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):  
BAC Chemical Test Is Given to the Following Persons:

**Yes** §§46.20.308(1) & 46.52.065

Driver:  
Vehicle Passengers:  
Pedestrian:

**Yes**  
**No**  
**Yes**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:  
Minimum Age (Years) Possession:

**21** (Year Eff: 1934) §§66.44.270(1) & 66.44.290  
**21** §66.44.270(2) Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons and for religious services.

Minimum Age (Years) Consumption:

**21** §66.44.270(2) Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons and for religious services.

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):  
"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 Law repealed in 1955. Ch. 372, Laws of 1955

**Yes** *Purchase v. Meyer*, 737 P.2d 661 (Wash. 1987)<sup>1</sup>

<sup>1</sup>I. Applies to the actions of either (1) an obviously intoxicated patron or (2) a minor patron. See Footnote No. 10 of the *Purchase* case for other decisions (737 P.2d at 664), *Christen v. Lee*, 780 P.2d 1307 (Wash. 1989), and *Cox v. The Keg Restaurants U.S., Inc.*, 935 P.2d 1377 (Wash.App. 1997). II. A licensee, who sells alcohol beverages illegally to a minor, is liable for the injuries sustained by another intoxicated minor (not a purchaser) after they consumed such beverages. *Crowe v. Gaston*, 951 P.2d 1118 (Wash. 1998), & *Schooly v. Pinch's Deli Market, Inc.*, 951 P.2d 749 (Wash. 1998) In addition, a third party, who is injured by an intoxicated minor, was able to bring a cause of action against a licensee who provided alcoholic beverages to an under age person who in turn provide such beverages to the injury causing minor. *Rinks v. Bearss*, 921 P.2d 558 (Wash.App. Div. 1 1996)

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts:

**No** *Reynolds v. Hicks*, 951 P.2d 761 (Wash. 1998)<sup>1</sup> **Comment:** This case concerned social host liability resulting from injuries caused by a minor guest to a third party. The court did not address the issue of social host liability resulting from injuries caused an adult guest to a third party.

Other:

A licensee is not liable for the injuries sustained by an intoxicated (adult) patron. *Estate of Kelly by and Through Kelly v. Falin*, 896 P.2d 1245 (Wash. 1995) See the *Hansen* case in Footnote No. 1. 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**<sup>2</sup>; 2nd and sub off-None For corporations: 1st off - Not more than **\$5,000**<sup>2</sup>; 2nd and subsequent offs - Not more than **\$10,000**<sup>2</sup> (and/or forfeiture of its corporate license.) See **Public Safety and Education Assessment** (Footnote No. 3) on p. 3-512.

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

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** §66.44.270(1)

Term of Imprisonment:

Not more than **1 yr** §9A.20.021(2)

Fine (\$ Range):

Not more than **\$5,000**<sup>2</sup> §9A.20.021(2) See **Public Safety and Education Assessment** (Footnote No. 3) on p. 3-512.

<sup>1</sup>Notwithstanding the *Reynolds* decision, an adult social host was held liable for the death of an intoxicated minor guest. *Hansen v. Friend*, 824 P.2d 483 (Wash. 1992) **Comment:** Given the language in the *Hansen* case, it appears that a commercial server of alcoholic beverage can be held liable for the injuries (or death) of an intoxicated minor patron. And, in another case, an employer was held liable for the injuries caused by an intoxicated employee to a third party. The employee became intoxicated at a company sponsored banquet. *Fairbanks v. J.B. McLoughlin Co. Inc.*, 929 P.2d 433 (Wash. 1997)

<sup>2</sup>There is an assessment of **\$250** for a 1st or sub misd and **\$500** for a 1st or sub gross misd. For juvenile offenders, there is an assessment of **\$75** for a 1st or sub misd and **\$100** for a 1st or sub gross misd. §7.68.035(1)(a) & (b)

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Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:  
License to Serve Alcoholic Beverages Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes Susp/Cancel (Rev)**

Not specified in the statute §§66.24.010, 66.44.180, 66.44.320 & 66.44.325

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**Yes §46.61.519(2)<sup>1&2</sup>**

**Yes Driver and Passengers<sup>2</sup> §46.61.519(1)<sup>1</sup>**

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).

<sup>1</sup>A violation is a traffic infraction.

<sup>2</sup>Does not apply to passengers in commercially chartered vehicles or in the living quarters of a motor home or camper.

STATE  
General Reference:

**WEST VIRGINIA**  
West Virginia Code

Basis for a DWI Charge:

Standard DWI Offense:  
Illegal Per Se Law (BAC/BrAC):  
  
Presumption (BAC/BrAC):  
Types of Drugs/Drugs and Alcohol:  
  
Other:

Under the influence of alcohol §17C-5-2  
≥**0.10**<sup>1</sup> §17C-5-2  
Persons Under 21 Years Old ≥**0.02** but <**0.10**<sup>1</sup> §17C-5-2(h)  
≥**0.10**<sup>1</sup> §17C-5-8  
Under the influence of (1) **Any Drug**, (2) Controlled Substance or (3) a  
Combination of Alcohol and Any Other Controlled Substance or Any  
Other Drug §17C-5-2 Habitual users of narcotic drugs, amphetamine or  
any derivative thereof §17C-5-2  
An alcohol concentration ≥**0.10**<sup>1</sup> is also *prima facie* evidence of driving  
under the influence of alcohol. §17C-5-8  
An alcohol concentration > **0.05** but < **0.10**<sup>1</sup> is "relevant evidence" (but  
not *prima facie* evidence) of driving while under the influence of alc.  
§17C-5-8  
For Commercial Motor Vehicle Operators, see p. 3-518.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:  
Implied Consent Law:  
Arrest Required (Yes/No):  
Implied Consent Law Applies to  
Drugs (Yes/No):  
Refusal to Submit to Chemical Test  
Admitted into Evidence:  
Other Information:

**Yes** §§17C-5-4 (¶1), 17C-5-5 & 17C-5-6a(a)  
**Yes** §§17C-5-4 & 17C-5-6a(b)  
**No**  
**Yes** (Criminal Cases) *State v. Cozart*, 352 S.E.2d 152 (W.Va. 1986)  
**None**

Chemical Tests of Other Substances for Alcohol  
Concentration Which Are Authorized Under  
the Implied Consent Law:

Blood:  
Urine:  
Other:

**Yes** §§17C-5-4 & 17C-5-6a(c)  
**Yes** §§17C-5-4 & 17C-5-6a(c)  
**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):  
Anti-Plea Bargaining Statute (Yes/No):  
Pre-Sentencing Investigation Law (PSI)  
(Yes/No):

**No**  
**No**  
**No**

<sup>1</sup>The standard for alcohol concentration is percent by weight of alcohol in the blood. §§17C-5-2, 17C-5-8 & 17C-5A-1 However, this standard is based upon a formula of (1) grams of alcohol per one hundred cubic centimeters of blood, (2) grams of alcohol per 210 liters of breath and (3) grams of alcohol per 67 milliliter of urine. §17C-5-8

WEST VIRGINIA

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take <u>Implied Consent</u> Chemical Test:	
Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	

Other:

1st Refusal-Rev-1 yr (mand<sup>1</sup> *Kimes v. Bechtold*, 342 S.E.2d 147 (W.Va. 1986)); 2nd Refusal<sup>2</sup>-Rev-10 yrs (5 yrs mand<sup>3</sup>); 3rd Refusal<sup>2</sup>-Rev-life (10 yrs mand<sup>3</sup>) §§17C-5-4 & 17C-5-7 These revocations are to run concurrently with any other susp/rev resulting from the same incident. §17C-5-7(a) See Footnote No. 1 on p. 3-522. **Special Note:** A refusal to submit to chemical test based on a blood sample does not result in license revocation. §§17C-5-4 & 17C-5-6a(c) **Note:** Under §17C-5-6a(c), a child (a person under 18 yrs old §§49-1-3 & 49-5-8) may be taken into custody if a law enforcement officer has reasonable grounds to believe that they have been operating a motor vehicle with any amount of alcohol in their body. The law requires that the child be warned that, if they refuse to submit to the implied consent test, their license could be suspended from 30 dys to life.<sup>4</sup>

<sup>1</sup>Thirty (30) dys mandatory if the person participates in the ignition interlock program (see p. 3-522)) §17C-5A-3a(c)(2)

<sup>2</sup>A previous admin. per se violation is also considered a prior refusal for licensing sanction enhancement purposes. §17C-5-7(b)

<sup>3</sup>Eighteen (18) mos mandatory rev if the person participates in the ignition interlock program. §17C-5A-3a(c)(4) & (e)(3) **Comment:** For a 2nd refusal, the law appears to require a mand rev period of 18 mos before a person is eligible to participate in the ignition interlock program. However, the regulations (which have also been enacted into law via §64-8-1(b)) that implement this program seem to indicate that only a 9 mo mand revocation is required prior to participation. §91-9-3.4.3 (regulation) **Note:** Certain subsequent violators are not eligible for this program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program" on p. 3-522.

<sup>4</sup>**Comment:** The licensing sanctions provisions of the implied consent law, §17C-5-7, do not provide for a 30 dy license suspension for such a refusal by these persons.

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 yr (mand) (not less than 3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥0.04 (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 67 milliliters of urine.), (2) are under the influence of either alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. (Note: The CMV implied consent provision, §17E-1-15(a), applies to the testing of both alcohol and drugs; however, the disqualification provision, §17E-1-13(a)(5), applies only to refusal to submit to a test for an alcohol concentration.) For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who either (1) refuses to take a PBT or (2) has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. Unless the law provides for another sanction, it is a misdemeanor to violate any of the provisions of the CMV/CDL law: Jail-not more than 6 months; fine-\$100 to \$1,000. However, there are special criminal sanctions in two circumstances. (1) A person, who operates a CMV with any measurable amount of alcohol in their system is subject to the following sanctions: 1st off-jail-none; fine not more than \$100; 2nd off-jail-not more than 30 dys; fine-\$100 to \$300; 3rd and sub. off-jail-24 hrs to 30 dys; fine-\$500 to \$1,000 and (2) a person, who operates a CMV with any a BAC/BrAC/UrAC ≥0.04 is subject to the following sanctions: 1st off-jail-24 hrs to 6 mos; fine-\$100 to \$500; 2nd and sub. off (misd)-jail-6 mos to 1 yr; fine-\$1,000 to \$3,000. §§17E-1-3, 17E-1-13, 17E-1-14, 17E-1-15 & 17E-1-25

Sanctions Following a Conviction for a DWI Offense:

<p>Criminal Sanctions:                  Imprisonment:                  Term (Day, Month, Years,                  Etc.):</p>	<p>See Child Endangerment and Persons Under 21 Years Old below.                  See Footnote No. 3.</p>
<p>Mandatory Minimum Term:                  Fine:                  Amount (\$ Range):</p>	<p>DWI not related to death or bodily injury, <u>1st off-1 dy<sup>1</sup> to 6 mos</u>; <u>2nd off-6 mos to 1 yr</u>; <u>3rd and Sub offs<sup>2</sup>-1 to 3 yrs</u>; DWI resulting in death where there is reckless disregard of the safety of others<sup>2</sup>-<u>1 to 10 yrs</u>; DWI resulting in death where there is an illegal act or a failure to perform a legal duty, <u>1st off-90 dys to 1 yr</u>; <u>2nd off-6 mos to 1 yr</u>; <u>3rd and Sub offs<sup>2</sup>-1 to 3 yrs</u>; DWI resulting from bodily injury where there is an illegal act or a failure to perform a legal duty, <u>1st off-1 dy<sup>1</sup> to 1 yr</u>; <u>2nd off-6 mos to 1 yr</u>; <u>3rd and Sub offs<sup>2</sup>-1 to 3 yrs</u> §17C-5-2                  See Footnote No. 4 below and Home Confinement on p. 3-520.                  See Footnote No. 3.                  DWI not related to death or bodily injury, <u>1st off-\$100 to \$500</u>; <u>2nd off-\$1,000 to \$3,000</u>; <u>3rd and Sub offs<sup>2</sup>-\$3,000 to \$5,000</u>; DWI resulting in death where there is reckless disregard of the safety of others<sup>2</sup>-<u>\$1,000 to \$3,000</u>; DWI resulting in death where there is an illegal act or a failure to perform a legal duty, <u>1st off-\$500 to \$1,000</u>; <u>2nd off-\$1,000 to \$3,000</u>; <u>3rd and Sub offs<sup>2</sup>-\$3,000 to \$5,000</u>; DWI resulting from bodily injury where there is an illegal act or a failure to perform a legal duty, <u>1st off-\$200 to \$1,000</u>; <u>2nd off-\$1,000 to \$3,000</u>; <u>3rd and Sub offs<sup>2</sup>-\$3,000 to \$5,000</u> §17C-5-2</p>
<p>Mandatory Min. Fine (\$):</p>	<p>The minimum fine sentences are mandatory. §17C-5-2(p)</p>
<p>Other Penalties:                  Community Service:</p>	<p>Yes<sup>4</sup> §62-11A-1a See and Alternative Sentences below.</p>

<sup>1</sup>Actual confinement of not less than 24 hrs.

<sup>2</sup>Felony

<sup>3</sup>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. §17C-5-2(c)

<sup>4</sup>Sec. 17C-5-2(p) provides that the DWI sanctions are mandatory and are not subject to either susp or probation. I.e., the minimum imprisonment sanction, it appears, must be served. However, this section does provide that, for jail sentences of one (1) yr or less (misdemeanors), the provisions of either §62-11A-1 et. seq. or §62-11B-1 et seq. may be applied by the court. In brief, §62-11A-1 et seq. provide for a defendant's temporary release from confinement for employment, educational, medical, or family needs or reasons. *State v. Kerns*, 394 S.E.2d 532 (W.Va. 1990) And, §§17C-5-2(p) and 62-11B-1 et seq. provide for electronically monitored "home incarceration" for certain drunk driving law offenders in lieu of confinement in either a jail or the State penitentiary. *State v. York*, 504 S.E.2d 158 (W.Va. 1998) Likewise, §§17C-5-2(p) and 62-11C-1 et seq. provide for participation in a "community corrections program" for certain drunk driving law offenders in lieu of confinement in either a jail or the State penitentiary.

**Child Endangerment.** A person, who violates the drunk driving law while transporting a child <16 yrs old, commits a misd and is subject to a jail term of 2 dys to 12 mos (with 48 hrs of actual confinement mand) and/or a fine of \$200 (mand) to \$1,000. §17C-5-2(i)  
**Persons Under 21 Years Old.** Persons under 21 years old, who operate a motor vehicle with an alcohol concentration ≥0.02 but <0.10, are subject to the following sanctions: 1st off (misd)-Jail-None; fine-**\$25 (mand) to \$100** A first offender may have the charges dismissed and their record expunged if the successfully compete an alcohol safety/treatment and interlock program. Sub off (misd)-Jail-**24 hrs (mand)**; fine-**\$100 (mand) to \$500** A person charged with a regular DWI offense cannot be charged with this offense for the same occurrence. §17C-5-2(h)

**Alternative Sentences.** In lieu of either a fine or incarceration sanction (except mandatory incarceration via statute), a court may impose one of the following sentences: Either (1) a weekend jail program where the offender spends weekends or "other days normally off from work" in confinement; (2) first one or two days in confinement followed by work assignments either within the jail or on other public works projects outside of the jail; or, (3) a community service program with either government entities, charitable or other non-profit organizations which have been approved by the court. §62-11A-1a(a) & (c)(1)

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Restitution

(eg Victim's Fund):

**Yes** Victims' Compensation Fund. §14-1-1 et seq. & §14-2A-3 et seq. Direct compensation by the defendant to the victim via court order is also possible. §14-2A-3(b)(1)

Other:

**Home Confinement.** Under §62-11B-4 et seq., the court has the authority to order the use "electronically monitored home confinement" in lieu of incarceration for a drunk driving off. *State v. Kerns*, 394 S.E.2d 532 (W.Va. 1990), & *State v. York*, 504 S.E.2d 158 (W.Va. 1998)

**Assessments.** A fee of 20% of the fine imposed is assessed against each DWI offender. Felony offenders are also assessed a fee of \$50. These assessments are deposited into the Crime Victims Compensation Fund. §§14-2A-4 & 62-5-10

**Alternative Sentences.** See Alternative Sentences on p. 3-519.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:  
Administrative Per Se Law:

See Child Endangerment and Persons Under 21 Years Old on p. 3-521. **Yes**  $\geq 0.10$  (BAC/BrAC/UrAC See Footnote No. 1 on p. 3-517.) or **Driving While Under the Influence of Alcohol<sup>1</sup>, 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 mand<sup>2</sup>); 2nd action<sup>4</sup>-10 yrs rev (5 yrs mand<sup>3</sup>); Sub action<sup>4</sup>-Rev for life (10 yrs mand<sup>3</sup>). Admin. actions where there is a death and the driver has also acted in reckless disregard for the safety of others 1st action-10 yrs rev (5 yrs mand), Sub action<sup>4</sup>-Rev for life (10 yrs mand). Admin actions where there is a death of a person but no recklessness on the part of the driver: 1st action-5 yrs rev (2 1/2 yrs mand); Sub action<sup>4</sup>-Rev for life (10 yrs mand). Admin actions where there is bodily injury: 1st action-2 yrs rev (1 yr mand); 2nd action<sup>4</sup>-10 yrs rev (5 yrs mand) Sub action<sup>4</sup>-Rev for life (10 yrs mand) §§17C-5A-1, 17C-5A-2 & 17C-5A-3. See Special Note Nos. 1 & 2 on p. 3-521. The admin. per se law appears to apply to both residents and nonresidents. §17B-3-2

<sup>1</sup>An alcohol concentration  $>0.05$  but  $<0.10$  is "relevant evidence" of driving while under the influence of alcohol. §17C-5-8 Note: The State can revoke a person's license administratively for driving while under the influence of alcohol without the necessity of establishing an alcohol concentration. Constitutional principles of due process of law do not require that a person be administered a test for blood alcohol concentration before their driving privileges can be withdrawn administratively for driving while under the influence of alcohol. *Albrecht v. State*, 314 S.E.2d 859 (W.Va. 1984), & *Dean v. W.Va. Dept. of Motor Vehicles*, 464 S.E.2d 589 (W.Va. 1995)

<sup>2</sup>Thirty (30) dys mandatory if the person participates in the **ignition interlock** program. §17C-5A-3a(c)(1) & (e) For more details, see "Ignition Interlock Program" on p. 3-522.

<sup>3</sup>Nine (9) mos mandatory if the person participates in the **ignition interlock** program. §17C-5A-3a(c)(3) However, certain subsequent offenders are not eligible for this program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program" on p. 3-522.

<sup>4</sup>w/n 10 yrs A prior action includes any suspension or revocation under the admin. per se law.

<sup>5</sup>Eighteen (18) mos mandatory if the person participates in the **ignition interlock** program. §17C-5A-3a(c)(4) **Comment:** Although the ignition interlock law does not provide for it, the regulations that implement the ignition interlock program provide that, if a person has had more than 3 admin per se or drunk driving offense related revocations, their license must be revoked for an additional 6 mos "for each offense greater than three" before they are eligible to participate in this program. §91-9-3.4.5 (regulation) Note: Certain subsequent offenders are not eligible for this program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program" on p. 3-522.

Sanctions Following a Conviction for a DWI Offense:  
(continued)

**Special Note No 1:** I. Vehicle operation by an habitual user of a narcotic drug, an amphetamine or any derivative thereof: 1st action-Rev 6 mos; 2nd action-Rev 10 yrs; Sub action-Rev for life. See Footnote No. 4 on p. 3-520. §17C-5A-2(i)

II. A previous implied consent refusal is also considered a prior admin. per se action for licensing sanction enhancement purposes. §17C-5A-2(j)

III. For an admin. per se action based on driving while under the influence of alcohol where there was no alc. concentration evidence, see *W. Va. Div. of Motor Vehicles v. Cline*, 423 S.E.2d 882 (W.Va. 1992).

IV. For cases upholding mand admin. per se action revocations, see *Wagoner v. Sidropolis*, 399 S.E.2d 183 (W.Va. 1990), and *Dept. of Motor Vehicles v. Sanders*, 399 S.E.2d 455 (W.Va. 1990).

**Special Note No 2:** I. The minimum mandatory license revocation periods above apply only if the person is participating in an alcohol/drug treatment program. Otherwise, the person has to have their driving privileges revoked for the entire revocation period. §17C-5A-3

II. A person, under 18 years old, who has violated the admin. per se law, must have their license revoked until they are 18 or for the applicable statutory period whichever is longer. §17C-5A-2(r) However, there is a only 1 yr mand. revocation if the person under 21 years old participates in the ignition interlock program. §17C-5A-3a(c)(3) & §91-9-3.4.5 (Regulation 91 CSR 9)

Under §§17B-3-6 & 17B-3-8, license susp for not more than 1 yr if a person has "committed" an off that requires mandatory license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

**Comment:** Such action could occur prior to a conviction.

**Persons Under 21 Years Old.** Admin. per se actions taken against persons under 21 years old, who operate a vehicle with an alcohol concentration  $\geq 0.02$  but  $< 0.10$  (BAC/BrAC/UrAC See Footnote No. 1 on p. 3-517.): 1st action-60 dys susp (mand) 30 dys (mand) if the person participates in the ignition interlock program. For persons under 18 yrs old, susp for 60 dys (mand) or until they reach their 18th birthday whichever is the longer susp period. Sub action-1 yr rev (mand) or rev until the person's 21st birthday whichever is the longer rev period. Admin. actions where there is a death and the driver has also acted in reckless disregard for the safety of others: 1st action-10 yrs rev (5 yrs mand); sub action<sup>1</sup>-Rev for life (10 yrs mand). Admin actions where there is a death of a person but no recklessness on the part of the driver: 1st action-5 yrs rev (2 1/2 yrs mand); sub action<sup>1</sup>-Rev for life (10 yrs mand). Admin actions where there is bodily injury: 1st action-2 yrs rev (1 yr mand); 2nd action<sup>1</sup>-10 yrs rev (5 yrs mand); sub action<sup>1</sup>-Rev for life (10 yrs mand) §§17C-5-2(h), 17C-5A-1, 17C-5A-2 & 17C-5A-3.

Other:

<sup>1</sup>w/n 10 yrs A Prior action includes any suspension or revocation under the admin. per se law.

**Child Endangerment.** A person, who violates the admin. per se law while transporting a child <16 yrs old, is subject to a 1 yr revocation (mand). If the person has had a previous admin. per se license suspension or revocation (w/n 10 yrs), the revocation period is 10 yrs (mand). And, if the person has more than one previous admin. per se license suspension or revocation (w/n 10 yrs), the revocation period is for life (mand). §17C-5A-2(m)

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):	The same licensing sanctions as for an admin per se violation. §17C-5A-1a
Term of License Withdrawal (Days, Months, Years, etc.):	
Mandatory Minimum Term of Withdrawal:	
Other:	
Rehabilitation:	
Alcohol Education:	<b>Yes<sup>1</sup></b> After (1) the period of mandatory rev has elapsed and (2) the driver has successfully completed an approved program of either alcohol/drug education or alcohol/drug treatment, a defendant's license may be reissued with or without conditions. §17C-5A-3 Also, a person who participates in the "Ignition Interlock Program" must complete a safety and treatment program. §17C-5A-3a(b)(1)
Alcohol Treatment:	<b>Yes</b> See above.
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	<b>No</b>
Terms Upon Which Vehicle Will Be Released:	
Other:	<b>None</b>
Miscellaneous Sanctions Not Included Elsewhere:	<b>None</b>

<sup>1</sup>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

**Ignition Interlock Program (Available Only to Persons ≥ 18 Years Old).** The driver licensing agency may reduce the mandatory and regular revocation periods of certain implied consent, admin. per se and DWI law offenders, if they agree to operate motor vehicles equipped with ignition interlock devices. A person must either be participating in or have successfully completed a safety and treatment program to be eligible to participate in the ignition interlock program. However, a person is not eligible for this program if (1) they have been involved in either death related admin. per se or DWI law violation (**Comment:** The law provides that only offenders, who have committed a death related drunk driving offense are ineligible for this program. However, under the regulations that implement the program, offenders who have committed an injury related admin per se or drunk driving offense are also excluded from the program. §91-3-3.6 (regulation)), (2) they have been involved in a violation of the implied consent, admin. per se or DWI laws while participating in the program, or (3) they have previously been in the program. 1st admin. per se violation/DWI off: The ignition interlock must be used for 5 mos. 1st refusal: The ignition interlock must be used for 9 mos. 2nd admin. per se violation or DWI off: The ignition interlock must be used for 18 mos. Sub admin. per se violation or DWI off and 2nd or sub refusal: The ignition interlock must be used for 2 yrs. **Comment:** Although the ignition interlock law does not provided for it, the regulations that implement the ignition interlock program provide that, if a person has had more than 3 admin per se, refusal, or drunk driving offense related revocations, they must use an ignition interlock for an additional 1 yr "for each offense greater than three." §91-9-3.4.5 (regulation) Persons < 21 yrs old-vehicle operation with an alcohol concentration ≥ 0.02 but < 0.10: The law appears to require that the ignition interlock be used for 6 mos. First time participants have their driver licensing records expunged. §17C-5A-3a(c),(e) & (f) and §91-9-3 (Regulation 91 CSR 9) The regulations were adopted via legislation; see §64-8-1(b).

Other Criminal Actions Related to DWI:

<u>Homicide by Vehicle:</u> State Has Such a Law:	<b>Yes Misd<sup>1</sup></b> Negligent homicide §17C-5-1 Note: For the details on deaths related to DWI, see DWI sanctions on pp. 3-519 & 3-520.
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than <b>1 yr</b> §17C-5-1(b)
Mandatory Minimum Term:	<b>None</b>
Fine (\$ Range):	<b>\$100 to \$1,000</b> §17C-5-1(b)
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	<b>Rev</b> §§17B-1-1(q), 17B-3-5 & 17C-5-1(c)
Length of Term of Licensing Withdrawal:	<b>1 yr</b>
Mandatory Action--Minimum Length of License Withdrawal:	<b>1 yr</b>
Other:	See Alternative Sentences on p. 3-519.

Driving While License Suspended or Revoked  
Where the Basis Was a DWI Offense:

See Footnote No. 2 and the Special Note below.  
See Alternative Sentences on p. 3-519.

Sanction:	
Criminal:	
Imprisonment (Term):	<u>1st off (misd)-6 mos<sup>3</sup>; 2nd off (misd)-1 yr<sup>3</sup>; 3rd and subsequent offs (felony)-1 to 3 yrs<sup>3</sup> (penitentiary) §17B-4-3(b)</u>
Mandatory Minimum Term of Imprisonment:	<u>1st off-6 mos<sup>3</sup>; 2nd off-1 yr<sup>3</sup>; 3rd and sub offs-1 yr<sup>3</sup></u>
Fine (\$ Range):	<u>1st off-\$100 to \$500; 2nd off-\$1,000 to \$3,000; 3rd and sub offs-\$3,000 to \$5,000 §17B-4-3(b)</u>
Mandatory Minimum Fine:	<u>1st off-\$100; 2nd off-\$1,000; 3rd and sub offs-\$3,000</u>

<sup>1</sup>This offense is a misdemeanor via §17C-18-1(a).

<sup>2</sup>I. It is a misd to operate a CMV during either a CDL disqualification or a CDL out-of-service order. For a 1st offense, a person is subject to an imprisonment term for not more than 6 mos and/or a fine of \$100 to \$1,000. For a 2nd offense, a person is subject to an imprisonment term of 6 to 9 mos and/or a fine of \$500 to \$2,000. And, for a 3rd or subsequent offense, a person is subject to an imprisonment term of 9 mos to 1 yr and/or a fine of \$1,000 to \$2,500. §§17E-1-7(b) & 17E-1-25 II. A person, who violates an out-of-service order, is subject to the following mandatory CDL disqualifications: (1) 1st offense-90 dys; 2nd offense (w/n 10 yrs)-1 yr; and, 3rd or subsequent offense (w/n 10 yrs)-3 yrs. The following mandatory CDL disqualifications apply if the CMV operator was driving on an out-of-service order while transporting hazardous materials or operating a vehicle designed to carry 16 or more persons including the driver: 1st offense-180 dys; and, 2nd or subsequent offense-3 yrs. §7E-1-13(f)

<sup>3</sup>Home detention may be used as an alternative to incarceration. §17B-4-3(e)

**Special Note:** A person under 21 years old, who operates a vehicle after their license has been either suspended or revoked for driving with an alcohol concentration >0.02 but <0.10, commits a misdemeanor and is subject to a jail term of **24 hrs (mand)** and/or a fine of **\$50 (mand) to \$500** §17B-4-3-(d) **Comment:** There appears to be no additional licensing action (suspension or revocation) for this offense.

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Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	<b>Susp/Rev</b>
Length of Term of License Withdrawal Action:	<b>1 yr extension of the original licensing action §17B-4-3(c)</b>
Mandatory Term of License Withdrawal Action:	<b>Same as above.</b>
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	<b>No</b>
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):	<b>Yes §17C-5B-1</b>
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	<b>Yes</b>
Vehicle Passengers:	<b>No</b>
Pedestrian:	<b>Yes (Adult pedestrians)</b>

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	<b>21 (Year Eff: 1986)<sup>1</sup></b>
Minimum Age (Years) Possession:	<b>21 §§11-16-19(a), 60-3A-24(A) &amp; 60-8-20a(a)</b>
Minimum Age (Years) Consumption:	<b>21 §§11-16-19(a), 60-3A-24(A) &amp; 60-8-20a(a)</b>

<sup>1</sup>§§11-16-18(a)(3), -16-19(a) and 60-3-12(3), -3-22(1), -3-22a, -3A-24(A), -6-8(4), -7-12(a)(3), -7-12a, -8-20(c) & -8-20a

Other State Law Related to Alcohol Use: (continued)Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **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), & *Walker v. Griffith*, 626 F.Supp. 350 (W.D. Va. 1986)

Dram Shop Actions-Social Hosts:  
 Other:

**No\*** *Overbaugh v. McCutcheon*, 396 S.E.2d 153 (W.Va. 1990)  
 A licensee may be liable for the injuries sustained by an intoxicated patron (adult or minor). *Bailey v. Black*, 394 S.E.2d 58 (W.Va. 1990), & *Anderson v. Moulder*, 394 S.E.2d 61 (W.Va. 1990)

Criminal Action Against Owners or Employees  
 of Establishments that Serve Alcoholic  
 Beverages to Intoxicated Patrons:

Type of Criminal Action:  
 Term of Imprisonment:

**Misd** For all offenses See Alternative Sentences on p. 3-519.

Alcoholic Liquor<sup>1a6</sup>: Private Pkg Retail Sales<sup>3</sup>-**30 dys to 1 yr**; Special Licensees<sup>3</sup>-**30 dys to 1 yr**; Private Clubs<sup>4</sup>-**not more than 1 yr**; Wines<sup>5</sup>-**30 dys to 6 mos.** Nonintoxicating Beer<sup>1a7</sup>: Class A & B Licensees-**30 dys to 6 mos.** Footnotes are on p. 3-526.

Fine (\$ Range):

Alcoholic Liquor<sup>1a6</sup>: Private Pkg Retail Sales<sup>2</sup>-**\$100-\$5,000**; Special Licensees<sup>3</sup>-**\$50 to \$500**; Private Clubs<sup>4</sup>-**\$100 to \$500**; Wines<sup>5</sup>-**\$25 to \$500.** Nonintoxicating Beer<sup>1a7</sup>: Class A & B Licensees-**\$25 to \$500.** Footnotes are on p. 3-526.

Administrative Actions Against Owners of  
 Establishments that Serve Alcoholic  
 Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages  
 Withdrawn (Yes/No):  
 Length of Term of License Withdrawal:

**Yes Discontinued, suspended or revoked**

Alcoholic Liquor<sup>1a6</sup>: Private Pkg Retail Sales<sup>2</sup> (also, a civil penalty of not more than \$1,000); Special Licensees<sup>3</sup>-Rev time period is not specified but normal licensing period is **one (1) year**; Private Clubs<sup>4</sup>-**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<sup>5</sup>-Rev/susp time period is not specified in the statute. Nonintoxicating Beer<sup>1a7</sup>: Class A & B Licensees-**Rev/susp**-If the license is revoked, no new license shall be issued for **two (2) years**; the statute does not state a specific time period for a suspension. There is also, a monetary penalty of not more than \$1,000. Footnotes are on p. 3-526.

**\*Comment:** Generally, social hosts are not liable for the actions of their intoxicated guests. This is especially true in cases where the guests serve alcoholic beverages to themselves. However, there may be extenuating circumstances where liability could result. In *Price v. Halstead*, 355 S.E.2d 380 (W.Va. 1987), 64 ALR4th 255, the court held that a passenger, who was riding in a vehicle driven by a drunken driver, could be held liable for the injuries sustained by a third party as a result of the driver's actions provided "the passenger's conduct substantially encouraged or assisted the driver's alcohol or drug impairment." 355 S.E.2d at 389, 64 ALR4th at 271.

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Other State Law Related to Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:  
Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Misd** For all offenses See Alternative Sentences on p. 3-519.

Alcoholic Liquor<sup>1&6</sup>: Private Pkg Retail Sales<sup>2</sup>-**30 dys to 1 yr**; Special Licensees<sup>3</sup>-**30 dys to 1 yr**; Private Clubs<sup>4</sup>-**not more than 1 yr**; Wines<sup>5</sup>-**30 dys to 6 mos.** Nonintoxicating Beer<sup>1&7</sup>: Class A & B Licensees-**30 dys to 6 mos.**

Alcoholic Liquor<sup>1&6</sup>: Private Pkg Retail Sales<sup>2</sup>-**\$100 to \$5,000**; Special Licensees<sup>3</sup>-**\$50 to \$500**; Private Clubs<sup>4</sup>-**\$100 to \$500**; Wines<sup>5</sup>-**\$25 to \$500.** Nonintoxicating Beer<sup>1&7</sup>: Class A & B Licensees-**\$25 to \$500.**

**Yes Discontinued, suspended or revoked**

Alcoholic Liquor<sup>1&6</sup>: Private Pkg Retail Sales<sup>2</sup>; Special Licensees<sup>3</sup> (also a civil penalty of not more than \$1,000)-Rev time period is not specified but normal licensing period is **one (1) year**; Private Clubs<sup>4</sup>-**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<sup>5</sup>-Rev/susp time period is not specified in the statute. Nonintoxicating Beer<sup>1&7</sup>: 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.

<sup>1</sup>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.

<sup>2</sup>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.

<sup>3</sup>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.

<sup>4</sup>Private Clubs, which are not open to the public, may be licensed to sell alcoholic liquor by the drink. §60-7-1 et seq.

<sup>5</sup>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.

<sup>6</sup>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

<sup>7</sup>Nonintoxicating Beer-citations: §§11-16-9, 11-16-18, 11-16-23 & 11-16-25 **Special Note:** Class A Licenses ("on and off premises" sales) are issued (1) to retail businesses (profit) and (2) to social, fraternal, private clubs, etc. (non-profit); Class B Licenses ("off premises" sales only) are issued to retail food stores.

Other State Law Related to Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of  
Open Containers of Alcoholic Beverages  
and (2) the Consumption of Alcoholic  
Beverages in the Passenger Compartment  
of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes Driver and passengers<sup>1</sup> §60-6-9(a)(3)

<sup>1</sup>The law does not apply to the consumption of non-intoxicating beer.

WEST VIRGINIA



STATE:  
General Reference:

WISCONSIN  
Wisconsin Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:  
Illegal Per Se Law (BAC/BrAC):

Under the influence of an intoxicant §346.63(1)(a) & (2)(a)  
I. If a person has had one or no prior DWI offense convictions or implied consent test refusals, it is illegal for them to operate a vehicle with a "prohibited alcohol concentration"  $\geq 0.10$ .<sup>1</sup>  
II. If a person has had two DWI offense convictions or implied consent test refusals, it is illegal for them to operate a vehicle with a "prohibited alcohol concentration"  $\geq 0.08$ .<sup>1</sup>  
III. If a person has had three or more DWI offense convictions or implied consent test refusals, it is illegal for them to operate a vehicle with a "prohibited alcohol concentration"  $\geq 0.02$ .<sup>1</sup>  
§§340.01(46m), 343.307(1), 346.63(1)(b) & (2)(a)(2) and 940.25  
Persons Under 21 Years Old. Alcohol Concentration  $>0.00$  but  $<0.10$ <sup>1</sup> §346.63(2m)

Presumption (BAC):  
Types of Drugs/Drugs and Alcohol:

**None**  
Under the influence of (1) **Any Drug**, (2) an Intoxicant, (3) a Controlled Substance, (4) a Combination of an Intoxicant and a Controlled Substance or (5) a Combination of an Intoxicant and Any Other Drug §§346.63(1)(a) & (2)(a)(1), 450.01(1) (definition of the term "drug") and 885.235(5)(b) & (c)

Other:

I. 1st or 2nd off-An alcohol concentration  $>0.10$ <sup>1</sup> is *prima facie* evidence of driving either (1) while under the influence of an intoxicant or (2) with an alcohol concentration  $\geq 0.10$ <sup>1</sup> §885.235(1)(c)  
II. 3rd or subsequent off-An alcohol concentration  $\geq 0.08$ <sup>1</sup> is *prima facie* evidence of driving either (1) while under the influence of an intoxicant or with an alcohol concentration  $\geq 0.08$ <sup>1</sup> §885.235(1)(cd)  
Persons Under 21 Years Old. Under §885.235(1)(1m), an alcohol concentration  $>0.00$  but  $<0.10$ <sup>1</sup> is *prima facie* evidence of such concentration.  
For Commercial Motor Vehicle Operators, see p. 3-534.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:  
Implied Consent Law:  
Arrest Required (Yes/No):  
Implied Consent Law Applies to  
Drugs (Yes/No): **Yes** §343.305(2)  
Refusal to Submit to Chemical Test  
Admitted into Evidence:

**Yes** §§343.303 & 343.305(3)(am) (CMV operators)  
**Yes** §343.305(3)

Other Information:

**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)  
In a case concerned with the of testing a blood sample for alcohol concentration, the State supreme court has held that a blood sample may be obtained via force if done in a constitutional manner.<sup>2</sup> *State v. Bolthing*, 494 N.W.2d 399 (Wis. 1993)

<sup>1</sup>"Prohibited alcohol concentration" or "alcohol concentration" is based either on percent by weight of alcohol in the blood or on "grams of alcohol in 210 liters of breath". §§340.01(46m) & 346.63(2m) These standards also apply to the administrative per se law.

<sup>2</sup>Note: The implied consent law, §343.305, does not specifically prohibit or authorize the taking of a blood sample by force. Under §343.305(3)(c), a law enforcement officer has the right to obtain evidence "by any lawful means."

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood: Yes  
Urine: Yes  
Other: None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): No<sup>1</sup>  
Anti-Plea Bargaining Statute (Yes/No): No Note: However, the court must approve dismissals of or amendments to DWI charges. §967.055  
Pre-Sentencing Investigation Law (PSI) (Yes/No): Yes (Limited) Alcohol Assessment I. Discretionary alcohol assessment for two (2) or more DWI offenses w/n 1 year. II. Mandatory alcohol assessment where there has been an injury related DWI offense. III. The licensing agency may require an applicant for a driver's license to submit to an alcohol assessment. §§343.16(5)(a) & 343.30(1q)(c)1

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:  
Criminal Sanctions (Fine/Jail): None  
Administrative Licensing Action (Susp/Rev): None  
Other: None

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): None  
Administrative Licensing Action (Susp/Rev):  
1st refusal<sup>2</sup> - 1 yr rev, after 30 dys of the rev period, the driver is eligible for an occupational license; 2nd refusal (w/n 10 yrs)<sup>2</sup> - 2 yr rev, after 90 dys/1 yr<sup>3</sup> of the rev period, the driver is eligible for occupational license; 3rd and subsequent refusal<sup>2</sup> - 3 yr rev, after 120 dys/1 yr<sup>3</sup> of rev period, the driver is eligible for an occupational license;  
Note: Previous DWI convictions and admin. per se actions are considered to be prior refusals. §§343.10, 343.305(9) & (10) and 343.307(2)  
Other: I. If a person, under 21 years old has been arrested for a violation of §346.63(2m), driving with an alcohol concentration >0.00 but <0.10, refuses to submit to a chemical test, their license is revoked for six (6) months (**Child Endangerment**: 12 mo revocation if the driver was transporting a person <16 yrs old). After the first 15 days of this revocation period have passed, an occupational license can be issued.

<sup>1</sup>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

<sup>2</sup>**Child Endangerment.** If the driver was transporting a person <16 yrs old at the time of the drunk driving arrest and refusal, the minimum and maximum license revocation periods are double. §343.305(10)(b)(4m)

<sup>3</sup>The mand waiting period is 1 yr if the prior refusal was w/n 5 yrs of the present one.

Sanctions for Refusal to Submit to a Chemical Test: (continued)

Other: (continued)

A refusal based only on this offense is not considered a prior refusal for enhanced sanctioning purposes for either DWI convictions or other chemical test refusals. §§343.305(10)(em) & 346.63(2m)

II. (1) For a 2nd or subsequent refusal (w/n 5 yrs), a person's vehicle must be immobilized or equipped with an ignition interlock device. These actions are for not less than 1 yr nor more than the maximum period of license revocation. Immobilization begins on the day the revocation starts whereas ignition interlock usage starts 1 yr after the revocation period. Note: Immobilization is prohibited in hardship situations. (2) For a 3rd or subsequent refusal, as an alternative to immobilization or ignition interlock usage, an offender's vehicle may be subject to **forfeiture**. However, such action is prohibited in hardship situations. §§343.301(1) & (2), 343.305(10m) and 346.65(6) See Footnote No. 1 on p. 3-535

III. A person is required to submit to an alcohol assessment and comply with a driver safety plan. §343.305(10)(d) See Alcohol Education on p. 3-534.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,  
Etc.):

See Double Jeopardy below and Child Endangerment on p. 3-535.

Non-injury related DWI off: 1st off-None<sup>1</sup>; 2nd off-5 dys to 6 mos; 3rd off-30 dys to 1 yr; 4th off-60 dys to 1 yr; 5th and sub offs-6 mos to 5 yrs; Injury related DWI offs, Without great bodily harm-30 dys to 1 yr; With great bodily harm (including great bodily harm to an unborn child) (Cl D felony)-Not more than 10 yrs<sup>2</sup> (Not more than 20 yrs if transporting a person < 16 yrs old or an unborn child) See "Other" on p. 3-534. §§346.63(1) & (2), 346.65(2), 346.65(3m), 939.50 & 940.25  
Non-injury related DWI off: 1st off-None; 2nd off-5 dys<sup>3</sup>; 3rd off-30 dys<sup>3</sup>; 4th off-60 dys<sup>3</sup>; 5th and sub offs-6 mos<sup>3</sup>; Injury Related DWI off (without great bodily harm)-30 dys<sup>3</sup> See Footnote No. 4.

Mandatory Minimum Term:

<sup>1</sup>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) & *U.S. v. Devenport*, 131 F.3d 604 (7th Cir. 1997) (an Assimilative Crimes Act, 18 USC §13, case)

<sup>2</sup>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)

<sup>3</sup>See §346.65(2g)(d), *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. **Important.** See Home Detention under "Other" on p. 3-532.

<sup>4</sup>I. Community service may be imposed (1) in lieu of part or all of a forfeiture or (2) in situations where an offender is unable to pay a fine or where the fine has been reduced. §346.65(2g)(a) & (ag)

II. 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) Note: The law is not clear as to whether the defendant is able to serve community service in place of any minimum mandatory period of confinement (jail).

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. McMaster*, 543 N.W.2d 499 (Wisc.App. 1995)

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Fine: Amount (\$ Range):	<b>Important.</b> See <b>Increased Fines</b> under "Other" below. <u>Non-injury related DWI offs:</u> 1st off-\$150 to \$300 (See Footnote No. 1 on p. 3-531.); 2nd DWI off-\$350 to \$1,100; 3rd off-\$600 to \$2,000; 4th off-\$600 to \$2,000; 5th and sub offs-\$600 to \$2,000; <u>Injury related DWI offs,</u> Without great bodily harm-\$300 to \$2,000; <u>With great bodily harm</u> (CI D felony)-Not more than \$10,000 (Not more than \$20,000 if transporting a person <16 yrs old or an unborn child) <u>Persons Under 21 Years Old.</u> Sec. 346.63(2m) prohibits any person under 19 years old from operating a motor vehicle with a BAC/BrAC >0.00 but <0.10. There is a forfeiture of \$10 for a violation of this provision. ( <b>Child Endangerment:</b> The forfeiture is \$20 if the driver was transporting a child <16 yrs old.) §346.65(2q)
Mandatory Min. Fine (\$):	<u>Non-injury related DWI off:</u> 1st off-\$150; 2nd off-\$350; 3rd off-\$600; 4th off-\$600; 5th and sub. offs-\$600; <u>Injury Related DWI off</u> (without great bodily harm)-\$300 See the Comment in Footnote No. 3 on p. 3-531.
Other Penalties: Community Service:	<b>Yes!</b> §346.65(2g) Note: For a 2nd off, not less than 30 dys in lieu of imprisonment. §346.65(2g)(d) See Footnote No. 4 on p. 3-531.
Restitution (eg Victim's Fund):	<b>Yes</b> 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) <b>Special Note:</b> An adult passenger may not receive an award from this fund if they knew the driver they were riding with was intoxicated or had an illegal per se level. §949.08(2)(e)
Other:	<b>Increased Fines.</b> I. If an offender's alcohol concentration was 0.17 to 0.199, the minimum and maximum fines are doubled. II. If an offender's alcohol concentration was 0.20 to 0.249, the minimum and maximum fines are tripled. III. If an offender's alcohol concentration was 0.25 or above, the minimum and maximum fines are quadrupled. §346.65(2)(g) <b>Surcharges.</b> Drunk driving offenders must pay a driver improvement surcharge of \$355 in addition to any other fine, forfeiture or assessment. §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. <b>Home Detention.</b> In lieu of imprisonment in the county jail, a defendant may be sentenced to "home detention". This detention is to be monitored by an electronic device worn by the defendant. §973.03(4)(a) Note: An appellate court has held that the law provides that home detention may be served in lieu of a minimum mandatory sentence. The court stated that it was not addressing the issue of whether home detention could be less than the mandatory minimum sentence but did "observe" that such a minimum was probably intended by the legislature. The law only states that home detention cannot exceed the maximum incarceration period. <i>State v. Shipter</i> , 630 N.W.2d 275 (Wis.App. 2001)

<sup>1</sup>If the defendant was transporting a person <16 yrs old, community service may consist of service benefitting children or demonstrations concerning the adverse effects that drunk driving offenses have on children. §346.65(2g)(c)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Other: (continued)

**Traffic Safety School.** A defendant may be required to attend a "traffic safety school". §345.60(3)

**Visitation Program.** Offenders, who have been convicted of an injury related drunk driving offense under §346.63(2), may be required to visit places that are concerned with the care and treatment of persons who have a substance abuse problem or who are being treated for drunk driving related injuries (e.g., alcoholism treatment facilities, hospital emergency rooms, etc.). This requirement may be in lieu of all or part of a forfeiture or in addition to any other sanction. §346.65(2i)

**Costs.** An offender may be required to pay the costs associated their arrest and trial. Such "costs" may also include payments to non-profit crime prevention and law enforcement organizations. §973.06(1)

Administrative Licensing Actions:  
Pre-DWI Conviction Licensing Action:  
Administrative Per Se Law:

See Footnote No. 1 on p. 3-529 and Double Jeopardy on p. 3-531.

**Yes I.** If the person has had one or no prior DWI offense convictions or refusals, the admin. action is based on a "prohibited alcohol concentration"  $\geq 0.10$ . **Susp 6 mos** (not mand)<sup>1</sup>

**II.** If the person has had two previous DWI offense convictions or refusals, the admin. action is based on a "prohibited alcohol concentration"  $\geq 0.08$ . **Susp 6 mos** (not mand)<sup>1</sup>

**III.** If the person has had three or more previous DWI offense convictions or refusals, the admin. action is based on a "prohibited alcohol concentration"  $\geq 0.02$ . **Susp 6 mos** (not mand)<sup>1</sup>

§§340.01(46m) & 343.305(7) & (8)

Other:

A person is referred to the licensing agency after two or more DWI arrests. §343.16(2)

Post DWI Conviction Licensing Action:  
Type of Licensing Action  
(Susp/Rev):

See Child Endangerment on p. 3-535.

1st off-Rev; 2nd and sub. offs-Rev; DWI injury related offs, with or without great bodily harm-Rev §§343.10, 343.30 & 343.31  
Persons Under 21 Years Old. BAC/BrAC  $>0.00$  but  $<0.10$ -**Susp** §§343.30(1q) & 346.63(2m)

Term of License Withdrawal  
(Days, Months, Years, etc.):

Non-injury related DWI offs; 1st off-Rev **6 to 9 mos;** 2nd off (w/n 10 yrs)-Rev **1 yr-18 mos;** sub off-Rev **2 to 3 yrs** Note: A previous conviction includes refusals. Injury related DWI offs Without great bodily harm - Rev 1 to 2 yrs; With great bodily harm - Rev **2 yrs (Child Endangerment/Unborn Child: Rev for 4 yrs if the driver was transporting a person  $<16$  yrs old or an unborn child. §343.31(3)(f)) Persons Under 21 Years Old. BAC/BrAC  $>0.00$  but  $<0.10$ -**Susp-3 mos (Child Endangerment: Susp for 6 mos if the driver was transporting a person  $<16$  yrs old.)** §§343.30(1q) & 346.63(2m)**

<sup>1</sup>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

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Mandatory Minimum Term of  
Withdrawal:

Non-injury related DWI offs; 1st off -None (See Footnote No. 1 on p. 3-533.); 2nd off (w/n 10 yrs)- 60 dys<sup>1</sup>; 2nd off (w/n 5 yrs)-1 yr<sup>1</sup>; sub off-90 dys<sup>1</sup>; sub off (w/n 5 yrs)-1 yr<sup>1</sup> Injury related DWI offs Without great bodily harm -60 dys; With great bodily harm -120 dys Persons Under 21 Years Old. BAC/BrAC >0.00 but <0.10-None (An occupational license is available.) §346.63(2m)

Other:  
Rehabilitation:  
Alcohol Education:

**Yes** Persons who are either convicted of a DWI related injury offense (without great bodily harm) or refuse to submit to a chemical test under the implied consent law must submit to an alcohol assessment and comply with a driver safety plan. This plan may include a component concerning the effect that DWI offenses have had on either victim or a victim's family. License suspension if a person does not comply with an alcohol/drug assessment (DWI screening), education or treatment program. §§343.30(1q)(c) & (d) and 343.305(10)(d)

Alcohol Treatment:

**Yes** See above.

<sup>1</sup>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)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for 1 yr (mand) (3 yrs (mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration  $\geq 0.04$  (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.), (2) are under the influence of an intoxicant (an alcohol concentration, based on percent by wgt. of alc. in the blood and grams of alc. per 210 liters of breath,  $\geq 0.04$  is *prima facie* evidence), any drug, a controlled substance or any combination of them, (3) under the influence of any drug which render them incapable of driving safely or (4) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has an alcohol concentration  $> 0.0$  must be placed "out-of-service" for 24 hours and pay a forfeiture of \$10. Any person who operates a CMV with an alcohol concentration of between 0.04 and 0.10 (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.) is subject to the following criminal sanctions. For non-injury offs: 1st off-forfeiture of \$150 to \$300; 2nd off (w/n 10 yrs)-jail 5 dys to 6 mos, fine-\$300 to \$1,000; 3rd or sub off-jail 30 dys to 1 yr, fine-\$600 to \$2,000. (**Child Endangerment:** If the CMV operator was transporting persons  $< 16$  yrs old, the minimum and maximum incarceration, forfeiture and fine sanctions for non injury offenses are **doubled**. §346.65(2j)(d)) For an injury off: Jail-30 dys to 1 yr; fine-\$300 to \$2,000. For an off where there has been "great bodily" injury (Class D felony): Jail-not more than 10 yrs; fine-not more than \$10,000 (**Child Endangerment/Unborn Child:** The maximum jail and fine sanctions are double if the offender was transporting either a person  $< 16$  yr old or an unborn child.) Note: The minimum jail and fine sanctions may be mandatory. See Footnote No. 3 on p. 3-531. §§340.01(1v), 340.01(8), 340.01(13m), 340.01(9r)(intro.), 343.305(2), 343.305(3)(a), 343.305(4), 343.305(7)(b), 343.31, 343.315, 346.63(5)(a), 346.63(6)(a), 346.63(7)(a), 346.65(2j), 346.65(3m), 346.65(2u)(a), 885.235(1)(d) & (5)(a), 939.50(3)(d) and 940.25

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

**Forfeiture.** For a 3rd or subsequent drunk driving offense, a person's vehicle may be forfeited. However, such action is prohibited in hardship situations. §§343.305(10m) & 346.65(6)<sup>1</sup>

Terms Upon Which Vehicle  
Will Be Released:

See **Immobilization** below.

Other:

Miscellaneous Sanctions  
Not Included Elsewhere:

**Ignition Interlock/Immobilization.** For a 2nd or subsequent offense (w/n 5 yrs), a person's vehicle must be immobilized or equipped with an ignition interlock device. These actions are for not less than 1 yr nor more than the maximum period of license revocation. Immobilization begins on the day the revocation starts whereas ignition interlock usage starts 1 yr after the revocation period. Note: Immobilization is prohibited in hardship situations. §§343.301(1) & (2) and 343.305(10m)

**Child Endangerment. I.** For either non-injury or injury (without great bodily harm) drunk driving offenses, the maximum and minimum imprisonment, forfeiture and fine sanctions are **doubled**. §346.65(2)(f) & (3) **II.** For a drunk driving offenses related to great bodily injury, the maximum, imprisonment and fine sanctions are **doubled**. §§940.25(1b) **III.** For either non-injury or injury (without great bodily harm) drunk driving offenses, the maximum and minimum license revocation periods are **doubled**. §§343.30(1q)(b)(4m) & 343.31(3)(e)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes C I E felony** Where a death, including a death to an unborn child, is caused by operating a veh with negligence; **C I B felony** Where a death, including a death to an unborn child, is caused by operating a veh while under the influence of an intoxicant or with illegal per se levels (including operating a CMV ≥0.04). §§343.10, 343.31(1)(a), (3)(a) & (c), (3m)(a), 939.50, 940.09 and 940.10

Sanctions:  
Criminal Sanction:  
Imprisonment (Term):

**C I E felony**-Not more than **5 yrs**; **C I B felony**-Not more than **60 yrs**  
§§343.10, 343.31, 939.50, 940.09 & 940.10

Mandatory Minimum Term:

**None**

<sup>1</sup>The forfeiture law, §346.65(6), has been held constitutional on both double jeopardy and due process of law grounds. *State v. Konrath*, 577 N.W.2d 601 (Wis. 1998) In this case, the court emphasized that its decision was limited to vehicles that were used in the offense. 577 N.W.2d at 614

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Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range):	<u>CI E felony</u> - Not more than <b>\$10,000</b> ; <u>CI B felony</u> -None
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Action:	
Licensing Authorized and	
Type of Action:	For <u>CI E &amp; B felonies</u> - Rev §§343.10 & 343.31
Length of Term of	
Licensing Withdrawal:	<u>CI E felony</u> - <b>1 yr</b> ; <u>CI B felony</u> - <b>5 yrs</b> <sup>1</sup> §§343.10 & 343.31
Mandatory Action--Minimum	
Length of License	
Withdrawal:	<u>CI E felony</u> - <b>15 dys</b> ; <u>CI B felony</u> - <b>120 dys</b> A restricted occupational license may be issued after these periods. §§343.10 & 343.31
Other:	<b>Special Note:</b> 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)

I. CI B felony off. For an offense where there has been two prior refusals or drunk driving offenses (any type) w/n 10 yrs, a person's vehicle may be immobilized, forfeited or equipped with an ignition interlock device. However, a vehicle is not to be immobilized or equipped with an ignition interlock device if it would cause undue hardship, extreme inconvenience or endanger the health or safety of a person. §§343.305(10m), 346.65(6) & 940.09(1d) See Footnote No. 1 on p. 3-535. See **Prospective Law** on p. 3-534.

II. CI B felony off. For a 4th or sub. offense (a prior offense includes refusals and DWI offenses (any type) (w/n 10 yrs), a person's vehicle shall be forfeited. §§343.305(10m), 346.65(6) & 940.09(1d) See Footnote No. 1 on p. 3-534.

III. **Child Endangerment/Unborn Child:** If the driver was transporting a person <16 yrs old or an unborn child, the maximum imprisonment and fine sanctions are doubled and the revocation period is 10 yrs. §§343.31(3)(c) & 940.09(1b)

Driving While License Suspended or Revoked  
Where the Basis Was a DWI Offense\*:

Sanction:	See Footnote No. 1.
Criminal:	
Imprisonment (Term):	Operating While Suspended-None
	Operating While Revoked-Not more than <b>1 yr</b> §343.44(2)(b)
Mandatory Minimum Term	
of Imprisonment:	<b>None</b>
Fine (\$ Range):	Operating While Suspended- <b>\$50 to \$200</b> (forfeiture) §343.44(2)(a)
	Operating While Revoked-Not more than <b>\$2,500</b> §343.44(2)(b)
Mandatory Minimum Fine:	<b>None</b>

<sup>1</sup>The criminal sanctions that apply for driving while revoked also apply to operating a CMV either after a CDL disqualification or after the issuance of a CDL out-of-service order. §343.44(1)(c), (1) (d) & (2)(b)

\*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked. **Historical Note:** The law concerning driving while suspended or revoked was revised in 1998. As part of this revision, the provision, that provided for special sanctions for driving while suspended or revoked based on a drunk driving offense conviction, was repealed. §§67 through 72 of 1997 Wisconsin Act 84 (enacted in 1998)

Other Criminal Actions Related to DWI: (continued)

## Administrative Licensing Actions:

Type of Licensing Action  
(Susp/Rev):**Susp/Rev<sup>1</sup>** §343.30(1g)

Length of Term of License

1st, 2nd or 3rd offense-Not more than **6 mos** (Rev or Susp)

Withdrawal Action:

4th or subsequent offense-**6 mos** (Rev)

Mandatory Term of License

Withdrawal Action:

**None<sup>2</sup>**

Other:

**Impoundment.** An offender's vehicle may be impounded. The length of such impoundment is determined by the court. §344.44(4)Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

**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<sup>3</sup> 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<sup>4</sup>** §351.08

Mandatory Minimum Term of

Imprisonment:

See Footnote No 5.

Fine (\$ Range):

Not more than **\$5,000<sup>4</sup>** §351.08

Mandatory Minimum Fine (\$):

See Footnote No 5.

Licensing Actions (Specify):

**None**

<sup>1</sup>These licensing actions only apply in situations where a person was driving while suspended, revoked or in violation of a CDL disqualification. §343.30(1q)(a) & (b) Out-of-Service Order. A person, who drives a CMV after they have received an out-of-service order, is subject to the following CDL disqualifications: 1st violation-90 dys; 2nd violation (w/n 10 yrs)-1 yr; and, 3rd or subsequent violation (w/n 10 yrs)-3 yrs. If the violation occurred while either transporting hazardous materials or driving a vehicle designed to carry 16 or more persons including the driver, the offender is subject to the following disqualifications: 1st violation-180 dys; and, 2nd or subsequent violations (w/n 10 yrs)-3 yrs. Note: These disqualifications appear to be mandatory. §343.315(2)(h) & (i)

<sup>2</sup>For either a 1st, 2nd or 3rd offense, licensing action is discretionary with the court. However, even for a 4th or subsequent offense, the court may order a period of revocation of less than 6 mos provided it "places its reasons for ordering the lesser period of revocation on the record." §343.30(1q)(a) & (b)

<sup>3</sup>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

<sup>4</sup>These sanctions are in addition to any other sanction that may be imposed for driving while license is suspended or revoked under §343.44. See also §351.11.

<sup>5</sup>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

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Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):	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)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1986) §§125.02(8m), 125.07(1) & 125.07(4)
Minimum Age (Years) Possession:	21 Applies to either possession or consumption in public places unless accompanied by a parent or guardian §§125.07(1) & 125.07(4)
Minimum Age (Years) Consumption:	21 Applies to either possession or consumption in public places unless accompanied by a parent or guardian §125.07(4)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	Yes (Limited) §125.035 <sup>1&amp;2</sup> Under this law, only a person, who provides alcoholic beverages to minors, is liable for the injuries caused by these minors to third parties. The case law noted below may have been abrogated in part. <sup>3,4&amp;5</sup>
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"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) The holding in this case applied only to the actions of intoxicated minors.

Dram Shop Actions-Social Hosts:

Yes §125.035<sup>1&2</sup> As noted above, under this law, only a person, who provides alcoholic beverages to minors, is liable for the injuries caused by these minors to third parties. See also, *Koback v. Crook*, 366 N.W.2d 859 (Wis. 1985), which also limited liability to the actions of intoxicated minors.

Other:

None

<sup>1</sup>The Wisconsin Supreme Court has held that §125.035 does not violate the equal protection clauses of either the Federal or State constitutions. *Doering v. Wea Insurance Group*, 532 N.W.2d 432 (Wis. 1995)

<sup>2</sup>Under §125.035, a person (an adult in the case considered by the court), who gives alcoholic beverages to an adult, is not liable for the injuries caused by the person, who received and consumed such beverages, while intoxicated. *Greene by Schoone v. Farnsworth*, 525 N.W.2d 107 (Wis.App. 1994)

<sup>3</sup>Under the dram shop law, a person, even a minor, can be held liable for the damages caused by another minor while in an intoxicated condition, if they provide money for the purchase alcoholic beverages which were given to the injury causing minor. The act of providing money for the purchase of alcoholic beverages for a minor is considered an act of procuring such beverages for such minor. *Miller v. Thomack*, 563 N.W.2d 891 (Wis. 1997)

<sup>4</sup>Under §125.035, a minor, who was injured after consuming alcoholic beverages, has no cause of action against the provider of such beverages. *Kwiatkowski v. Capitol Indem. Corp.*, 461 N.W.2d 150 (Wis.App. 1990)

<sup>5</sup>A person, who has been injured by an intoxicated minor, cannot maintain a dram shop action against a license (who sold alcoholic beverages to the minor) as a 3rd party if such person was also involved in procuring alcoholic beverages for the minor. *Meier Ex Rel Meier v. Champ's Sport Bar*, 623 N.W.2d 94 (Wis. 2001)

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** §§125.07(2)(a) & (b) and 939.60  
 Term of Imprisonment: **Not more than 60 dys**  
 Fine (\$ Range): **\$100 to \$500**

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Susp/Rev** §125.12  
 Length of Term of License Withdrawal: **Susp-Not more than 90 dys; Rev-at least 12 mos**

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: **Civil Forfeiture/Misd<sup>1</sup>** §§125.07(1)(a) & (b) and 939.60  
 Term of Imprisonment: **1st off** (Forfeiture)-**None**; **2nd off** (w/n 30 mos) (Misd)-**Not more than 30 dys**; **3rd off** (w/n 30 mos) (Misd)-**Not more than 90 dys**; **sub off** (w/n 30 mos) (Misd)-**Not more than 9 mos**  
 Fine (\$ Range): **1st off** (Forfeiture)-**Not more than \$500**; **2nd off** (w/n 30 mos) (Misd)-**Not more than \$500**; **3rd off** (w/n 30 mos) (Misd)-**Not more than \$1,000**; **sub off** (w/n 30 mos) (Misd)-**Not more than \$10,000**

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 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** (alcohol or nitrous oxide) §346.935(2) & (3)  
 Anti-Consumption Law (Yes/No): **Yes** Driver and passengers §346.935(1) Note: Does not apply to a motor bus.

<sup>1</sup>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

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20th Edition

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STATE:

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General Reference:

Wyoming Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcohol §31-5-233(b)(ii)(A)

Illegal Per Se Law (BAC/BrAC):

≥ 0.10<sup>1(a2)</sup> §31-5-233(b)(i)

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) a **Controlled Substance**<sup>3</sup> 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. 3-545.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

No<sup>4</sup>

Implied Consent Law:

Arrest Required (Yes/No):

Yes §§31-6-102(a)(i) & 31-6-108(a) (Implied consent to test for alcohol. concentration for persons under 21 yrs old where there is probable cause that they are driving with a BAC/BrAC/UrAC ≥ 0.02.)

Implied Consent Law Applies to

Yes §31-6-102(a)(i)

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal and Civil Cases) §§31-6-105(f) & 31-6-108(k)

Other Information:

For any DWI offense, a test may be required in cases where serious bodily injury or death has resulted. §31-6-102(d)

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:

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

<sup>1</sup>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 or more. §31-5-233(a) & (b)(i)

<sup>2</sup>Alcohol concentration is defined as either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 75 milliliters of urine. §§31-5-233(a)(i) & 31-6-101(a)(i)

<sup>3</sup>Includes glue, aerosol or other toxic vapor. §§31-5-233(a)(ii) & 31-6-101(a)(ii)

<sup>4</sup>Preliminary breath test (PBT) devices are being used by State law enforcement officers even though there is no statutory authorization for such use. The State supreme court has noted the use of PBT devices by the police but the issue of whether their use requires statutory authorization has not been presented to the court for a decision. *Nellis v. Wyoming Dept. of Transportation*, 932 P.2d 741 (Wyo. 1997)

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Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:  
Criminal Sanctions (Fine/Jail):  
Administrative Licensing Action  
(Susp/Rev):  
Other:

N/A  
N/A  
N/A

Refusal to Take Implied Consent  
Chemical Test:

Criminal Sanction (Fine/Jail):  
Administrative Licensing Action  
(Susp/Rev):

None

1st Refusal-Susp 6 mos (Mandatory); 2nd or Sub. Refusal<sup>1</sup>-Susp 1 yr & 6 mos (18 mos) (Mandatory) §§31-6-102(c), 31-6-107(a) & 31-7-105(d)(iv)(D)

**Special Note:** If a person refuses to submit to chemical test but, nevertheless, pleads guilty to a DWI offense w/n 10 dys of arraignment, the susp. for refusal shall not take effect. §31-6-107(a)(iii)

Other:

**Persons Under 21 Years Old.** A person under 21 yrs old, who is arrested for driving with an alcohol concentration  $\geq 0.02$  under §31-5-234 and who refuses to submit to a chemical test under §31-6-108 is subject to a **mand license susp of 45 dys.** §31-6-108(n)(i) Limited driving privileges based on "undue hardship" are not available. §31-7-105(f)(v)(H)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment:  
Term (Day, Month, Years,  
Etc.):

See Double Jeopardy below.

Mandatory Minimum Term:

1st off Misd - Not more than 6 mos; 2nd off (w/n 5 yrs) Misd - 7 dys to 6 mos<sup>2</sup>; 3rd or subsequent off (w/n 5 yrs) Misd - 30 dys to 6 mos; Serious bodily injury off: 1st off Misd - 6 mos to 1 yr; Subsequent offs Felony - Not more than 20 yrs §§6-10-101 and 31-5-233(e), (h) & (g) 2nd off (w/n 5 yrs) - 7 dys; 3rd or subsequent off (w/n 5 yrs) - 30 dys or 15 dys if the offender completes an impatient treatment program §31-5-233(e)

**Special Note:** Under §31-5-233(g), a defendant may be allowed out of jail long enough to complete actual hrs of employment or education and a reasonable time to travel to and from his place of employment or school (i.e., work/school release program).

<sup>1</sup>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)  
<sup>2</sup>The discretionary portion of a jail sentence may be suspended if the defendant agrees to pursue and complete an alcohol education and treatment program. §31-5-233(e)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Glasrud v. City of Laramie*, 934 P.2d 1242 (Wyo. 1997)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

<p>Fine: Amount (\$ Range):</p>	<p><u>1st off</u> - Not more than <b>\$750</b>; <u>2nd off</u> - <b>\$200 to \$750</b>; <u>3rd or subsequent off</u> - <b>\$750 to \$3,000</b>; <u>Serious bodily injury DWI off</u> - <u>1st off</u> - <b>\$2,000 to \$5,000</b>; <u>subsequent off</u> - not more than <b>\$10,000</b> §§6-10-101 &amp; 6-10-102 Note: A surcharge of \$100 is assessed against convicted DWI offenders. This surcharge is used to help finance the Victims' Compensation fund. §1-40-119(a)(ii)</p>
<p>Mandatory Min. Fine (\$):</p>	<p><b>None</b></p>
<p>Other Penalties: Community Service:</p>	<p><b>Possible</b> Community service may be required as a condition of probation. §7-13-304</p>
<p>Restitution (eg Victim's Fund)</p>	<p><b>Yes</b> (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.</p>
<p>Other:</p>	<p><b>Cost of Incarceration.</b> A DWI offender, who has been sentenced to confinement, may be required to pay the local government for the cost of their incarceration. This requirement does not apply if the offender does not have the ability to pay for such cost. §7-13-109</p>
<p>Administrative Licensing Actions: Pre-DWI Conviction Licensing Action: Administrative Per Se Law:</p>	<p>See Double Jeopardy on p. 3-542. <b>Yes</b> <math>\geq 0.10</math> <b>BAC/BrAC/UrAC</b> (For standards, see Footnote No. 2 on p. 3-541.) <b>Susp 90 dys</b><sup>1&amp;2</sup> (For a subsequent action w/n 5 yrs, this susp is mandatory.) §§31-5-1205(k), 31-6-101(a)(i), 31-6-102(e), 31-6-103(b), 31-7-105(d) &amp; 31-7-138 <b>Special Note:</b> There appears to be a conflict between §§31-6-103(b) and 31-7-105(d). Section 31-6-103(b) (See the last sentence.) seems to grant the licensing agency (hearing examiner) the authority to provide for limited driving privileges in hardship situations to persons who have submitted to an implied consent test and who are found to be in violation of the admin. per se provisions (§31-6-102(e)). However, §31-7-105(f)(iv)(D) clearly states that no such limited privileges are to be granted to a person who has had their driver's license suspended under §31-6-102.</p>
<p>Other:</p>	<p><b>Persons Under 21 Years Old.</b> A person, who is under 21 years old, is subject to administrative suspension of their driver's license, if they operate a motor vehicle with an alcohol concentration <math>\geq 0.02</math>. (See Footnote No. 2 on p. 3-541.) §31-5-234 <u>1st violation-30 dy susp</u>; <u>2nd violation</u><sup>3</sup> (w/n 3 yrs)-<u>60 dy susp</u>; <u>3rd or subsequent violation</u><sup>3</sup> (w/n 3 yrs)-<u>90 dy susp</u> §31-7-128(h) An offender is eligible for hardship driving privileges. However, such privileges can only be granted once w/n a 5 yr period. §31-7-105(f) Nevertheless, such privileges cannot be granted if the offender refused to submit to a chemical test under §31-6-108. §31-7-105(f)(v)(H)</p>

<sup>1</sup>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)

<sup>2</sup>See Footnote No. 1 on p. 3-544.

<sup>3</sup>For purposes of license sanction enhancement, a previous violation includes a drunk driving conviction. §31-7-128(h)

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action  
(Susp/Rev):

1st off-Susp; 2nd off (w/n 5 yrs)-Susp; 3rd & Sub. offs (w/n 5 yrs)-Rev; DWI Serious bodily Injury offs-Rev §§31-7-105(d), 31-7-127(a)(ii) & 31-7-128(b)

Term of License Withdrawal  
(Days, Months, Years, etc.):

1st off - 90 dys<sup>1</sup>; 2nd off (w/n 5 yrs) - 1 yr<sup>1</sup>; 3rd & subsequent offs - 3 yrs<sup>1</sup>; DWI Serious bodily injury offs - See the comment below.

Mandatory Minimum Term of  
Withdrawal:

1st off - Hardship driving privileges are available<sup>2</sup>; see Rehabilitation; 2nd off (w/n 5 yrs) - 1 yr<sup>2</sup>; 3rd & subsequent offs (w/n 5 yrs) - 3 yrs<sup>2</sup>; DWI Serious bodily injury offs - See the Comment below.

**Comment on DWI Serious Bodily Injury Offenses:** A conviction for a DWI serious bodily injury offense results in mandatory license revocation action. §31-5-233(h)(iii) However, Wyoming law does not provide specific guidance as to the revocation periods for either first or subsequent offenses.

I. For a first offense, the law establishes no clear period of mandatory license revocation. The mandatory one (1) year license revocation provisions of §31-7-127(a)(i) & (b) would not apply to a first conviction for a DWI serious bodily injury offense as such offenses are not felonies. This section provides for a one (1) year mandatory license revocation for any felony conviction related to the operation of a motor vehicle. However, a felony is defined as any offense for which a person may be sentenced to serve more than one (1) year in prison. §6-10-101 But, a first DWI serious bodily injury offense conviction, the maximum prison term is only one (1) year. §31-5-233(h)(i) Thus, this offense is not a felony. Of course, the three (3) year mandatory license revocation for DWI convictions (§31-5-233 convictions) under §31-7-127(a)(ii) would only occur if this is a third or subsequent offense committed within a five (5) year period. See II below. As a result, the law does not appear to provide for a specific license revocation period for a first DWI serious bodily injury offense.

<sup>1</sup>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)

<sup>2</sup>**Limited Driving Privileges.** A person, who has had their license suspended, may be granted limited driving privileges based on "undue hardship". Such privileges can only be granted once in a 5 yr period. In addition, such privileges cannot be granted to anyone either who has been convicted of a drunk driving offense w/n a 5 yr period or who has had their driving privileges revoked. For drunk driving law violators, these privileges can only be granted on the condition that the offender agrees to pursue and complete either an alcohol education or treatment program. §31-7-105(f)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

**Comment** (continued):

II. As far as mandatory license revocations for subsequent offenses are concerned, the issue is whether a conviction for such an offense will result in either a one (1) year or a three (3) year period of revocation. Subsequent convictions for DWI serious bodily injury offenses are felony convictions since a defendant may be sentenced to serve up to 20 years in prison. §§6-1-101 & 31-5-233(h)(ii) Consequently, a license would be revoked for at least one (1) year as noted above under §31-7-127(a)(i) & (b). However, as also noted above, if three (3) or more subsequent DWI convictions occur within a five (5) year period, a license could, it appears, be revoked for three (3) years. Note: Section 31-7-127(a)(ii) does not distinguish between subsequent "regular" and subsequent serious bodily injury DWI offenses for license revocation purposes. As such, it appears that the three (3) year license revocation period applies to both types of offenses.

Other:  
Rehabilitation:  
Alcohol Education:

**Yes** 1. The court may suspend part or all of the discretionary portion of an imprisonment sentence under §31-5-233(e) if the defendant agrees to pursue and completes an alcohol education or treatment program as prescribed by the court.  
2. The mandatory incarceration sanction for a 3rd or subsequent DWI offender may be reduced from 30 dys to 15 dys if they complete an inpatient treatment program. §31-5-233(e)  
3. In order to obtain hardship driving privileges, the defendant must agree to pursue and complete an alcohol education and treatment program as the driver licensing agency prescribes. §31-7-105(d)  
**Yes** See Alcohol Education above.

Alcohol Treatment:

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration  $\geq 0.04$  (Standards: Grams of alc. per 100 milliliters of blood, grams of alc. per 210 liters of breath or grams of alc. per 75 milliliters of urine.), (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration. Note: The disqualification provision (§31-17-111) applies only to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent provision (§31-17-113) applies to refusals to submit to chemical tests for both an alcohol concentration and the presence of controlled drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). In addition, a CMV operator who has any alcohol in their system must be placed "out-of-service" for 24 hours. Note: It appears to be a misdemeanor offense for a person to operate a CMV while having any alcohol in their system. The sanctions for this offense would seem to be an imprisonment term of not more than 90 dys and/or a fine of not more than \$750 for a 1st offense and an imprisonment term of not more than 6 mos and/or a fine of not more than \$750 for a subsequent one. §§31-7-102(a)(ii), (vi), (viii), (xiii) & (xxxii), 31-7-136, 31-7-305, 3-7-306 and 31-7-307

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority: 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. §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 vch in violation of the motor vehs laws regulating traffic control  
**Misd** 2.) Aggravated vch 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 See Limited Driving Privileges under Footnote No. 2 on p. 3-544.  
Other: **Surcharge.** An offender is assessed a surcharge of **\$100**. This  
surcharge is in addition to any other sanction. §1-40-119(a)(i)

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

See Footnote No. 1.

Sanction:

Criminal:

Imprisonment (Term):

**Misd** - Not less than **7 dys** not more than **6 mos** §31-7-134(c)

Mandatory Minimum Term  
of Imprisonment:

**7 dys**<sup>2</sup> §31-7-134(c)

Fine (\$ Range):

Not less than **\$200** nor more than **\$750** §31-7-134(c)

Mandatory Minimum Fine:

**\$200** §31-7-134(c) Note: The minimum fine appears to be mandatory.

Administrative Licensing Actions:

Type of Licensing Action

**Susp or rev**

(Susp/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.**<sup>3</sup> §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):

<sup>1</sup>There appears to be no specific statutory provision that prohibits a person from operating a CMV during either a CDL disqualification or a CDL out-of-service order. However, the general statutory prohibition (§31-7-134) against driving while license is suspended or revoked may apply. Notwithstanding, a person, who has been convicted of violating a CDL out-of-service order, is subject to the following disqualification periods: 1st off-90 dys (mand) to 1 yr; 2nd off (w/n 10 yrs)-1 yr (mand) to 5 yrs; and, 3rd or sub off (w/n 10 yrs)-3 yrs (mand) to 5 yrs. However, the following disqualification periods apply if the violation occurred while operating a CMV which is transporting hazardous materials or which is designed to carry > 15 persons: 1st off-180 dys (mand) to 2 yrs; 2nd or sub off (w/n 10 yrs)-3 yrs (mand) to 5 yrs. §31-7-305(g)

<sup>2</sup>If the offender is under 21 yrs old and their alcohol concentration for the drunk driving offense was between 0.02 and 0.10, they are not subject to the mand 7 dy jail term but, are instead subject to a mand administrative license susp for 30 dys. §31-7-134(c)

<sup>3</sup>**Comment:** A person, who has had their suspension period extended, may be eligible for hardship driving privileges. See Limited Driving Privileges under Footnote No. 2 on p. 3-544.

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Privileges under Footnote No. 2 on p. 3-544.

### 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 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**<sup>1&2</sup> §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):

Dram Shop Actions-Social Hosts:

**No** Note: Case law, *McClellan v. Tottenhoff*, 666 P.2d. 408 (Wyo. 1983), was apparently indirectly abrogated by §12-8-301<sup>1</sup>

**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)<sup>1</sup>  
A licensee is not liable for the injuries sustained by a patron who has been legally served alcoholic beverages. §12-8-301(a) and *Daley v. Wenzel*, 30 P.3d 547 (Wyo. 2001)

Other:

#### Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action: **Misd Limited Application**<sup>3</sup> 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**

<sup>1</sup>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.

<sup>2</sup>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.

<sup>3</sup>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):

Length of Term of License Withdrawal:

**Yes** §12-7-101 **Limited Application**<sup>1</sup> See §12-5-301(a)(v) and the statement above under criminal sanctions.

A susp is not to exceed the balance of the term for which the license was issued; as for rev, no time period is specified in the statute. §12-7-102

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:  
Term of Imprisonment:  
Fine (\$ Range):

**Misd** §§12-5-301, 12-6-101 and 12-8-101  
**Not more than 6 mos**  
**Not more than \$750**

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes Susp** or rev where there is gross violation of the law  
A susp is not to exceed the balance of the term for which the license was issued; as for rev, no time period is specified in the statute. §12-7-102

Anti-Happy Hour Laws/Regulations:

**No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):  
Anti-Consumption Law (Yes/No):

**Yes** (applies only to drivers) §31-5-235(b)  
**Yes** (applies only to drivers) §31-5-235(b)

<sup>1</sup>See Footnote No. 3 on p. 3-548.

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Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Provision:

Blood: Yes §11-904(a)  
Urine: Yes §11-904(a)  
Other: Other Bodily Substances §11-904(a)

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. §11-908

Pre-Sentencing Investigation Provision (PSI) (Yes/No): Yes Alcohol & Drug Screening Required §11-902(e)  
Special Note: Prior to sentencing, either an oral or a written victim's impact statement may be made to the court. §11-1502(d)

Sanctions for Refusal to Submit to a BAC Chemical Test:

Refusal to Take a Preliminary Breath Test:  
Criminal Sanctions (Fine/Jail): None  
Administrative Licensing Action (Suspension/Revocation): None  
Other: None

Refusal to Take Implied Consent Chemical Test:  
Criminal Sanction (Fine/Jail): None  
Administrative Licensing Action (Suspension/Revocation): Susp 1 yr §11-904(e)(1)  
Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
Imprisonment:  
Term (Day, Month, Years, Etc.):  
I. Under the Influence of Alcohol/Drugs & Illegal Per Se BAC ≥0.08 (Misd): 1st off-10 dys to 1 yr; 2nd & sub. off (w/n 5 yrs)-90 dys to 1 yr §§11-902(c) & 17-101(a)  
II. Illegal Per Se BAC ≥0.16 (Misd): 1st off-30 dys to 1 yr; 2nd & sub. off (w/n 5 yrs)-120 dys to 1 yr §§11-902(d) & 17-101(a)  
Note: For any drunk driving offense, incarceration may be served under home detention. §11-902(h)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Mandatory Minimum Term:	I. Under the Influence of Alcohol/Drugs & Illegal Per Se BAC ≥ 0.08: <b>None</b> <sup>1</sup> §11-902(c) II. Illegal Per Se BAC ≥ 0.16: <u>1st off-30 dys; 2nd &amp; sub. off</u> (w/n 5 yrs)- <b>60 dys</b> §11-902(d)
Fine: Amount (\$ Range):	I. Under the Influence of Alcohol/Drugs & Illegal Per Se BAC > 0.08: <u>1st off-\$250 to \$1,000; 2nd &amp; sub. off</u> (w/n 5 yrs)- <b>\$500 to \$1,000</b> §11-902(c) II. Illegal Per Se BAC ≥ 0.16: <u>1st off-\$500 to \$1,000; 2nd &amp; sub. off</u> (w/n 5 yrs)- <b>\$1,000 to \$2,000</b> §11-902(d)
Mandatory Min. Fine (\$):	<b>None</b> <sup>1</sup>
Other Penalties:	
Community Service:	<b>Yes</b> The court may order ANY drunk driving law offender to perform community service. §11-902(i))
Restitution (eg Victim's Fund):	<b>Yes</b> Paid by the defendant to a victim via a court order. §11-902(i)
Other:	<b>Costs of Incarceration/Home Detention.</b> Any drunk driving law offender may be required to pay the costs associated with their incarceration or home detention. §11-902(i)
Administrative Licensing Actions:	
Pre-DWI <u>Conviction</u> Licensing Action: Administrative Per Se Provision:	<b>Yes</b> I. <b>(1) BAC/BrAC &gt; 0.08</b> (For alcohol concentration standards, see Footnote No. 3 on p. A-1.) or <b>(2) the Driver was Arrested for Driving Under the Influence of either Alcohol, Drugs or Controlled Substances-Susp 180dys</b> <sup>3&amp;4</sup> §11-904(e)(2) & (3) II. <u>Persons Under 21 Years Old. BAC/BrAC &gt; 0.02</u> (For alcohol concentration standards, see Footnote No. 3 on p. A-1.)- <b>Susp-180 dys</b> §11-905(a)
Other:	Under §§6-207(a)(1) & 6-212(a), a person's license may be <b>suspended for not more than 1 yr</b> if they have "committed" an off that requires mandatory license revocation (e.g. DWI). <b>Comment:</b> Such action could occur prior to a conviction.
<u>Post DWI Conviction</u> Licensing Action:	
Type of Licensing Action (Suspension/Revocation):	<b>Susp/Rev</b> §11-902(c) & (d)

<sup>1</sup>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.

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Sanctions Following a Conviction for a DWI Offense:  
(continued)

Term of License Withdrawal  
(Days, Months, Years, etc.):

I. Under the Influence of Alcohol/Drugs & Illegal Per Se BAC  $\geq$ 0.08:  
1st off-Susp-180 dys; 2nd & sub. off (w/n 5 yrs)-**Rev-1 yr** §11-902(c)  
II. Illegal Per Se BAC  $\geq$ 0.16: 1st off-Rev-1 yr; 2nd & sub. off (w/n 5 yrs)-**Rev-2 yrs** §11-902(d)

Mandatory Minimum Term of  
Withdrawal:

I. Under the Influence of Alcohol/Drugs & Illegal Per Se BAC  $\geq$ 0.08:  
1st off-Susp-180 dys; 2nd & sub. off (w/n 5 yrs)-**Rev-1 yr** §11-902(c)  
II. Illegal Per Se BAC  $\geq$ 0.16: 1st off-Rev-1 yr; 2nd & sub. off (w/n 5 yrs)-**Rev-2 yrs** §11-902(d)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific

Provisions:

Terms Upon Which Vehicle

Will Be Released:

Other:

**Yes** for ANY Drunk Driving Offense §11-902((e)(2)

**No**

**Vehicle Registration Suspension.** Following a conviction for driving under the influence of alcohol or any drug, the registrations of the vehicle or vehicles registered in the name of such person may be suspended. The UVC does not recommend a suspension period. §17-301

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. §6-210(b)

**Ignition Interlock.** The court may order any drunk driving offender, after the restoration of their driving privileges, to only operate motor vehicles that are equipped with ignition interlock devices. §11-902(f)

Other Criminal Actions Related to DWI:

<u>Homicide by Vehicle:</u>	
UVC Has Such a Provision:	Yes Misd or Felony <sup>1&amp;2</sup> §11-910(a)
Criminal Sanction:	
Imprisonment (Term):	<b>3 mos to 1 yr</b> in the county jail or not less than <b>1 yr</b> nor more than <b>5 yrs</b> in the penitentiary §11-910(b)
Mandatory Minimum Term:	<b>None</b> <sup>3</sup>
Fine (\$ Range):	<b>\$500 to \$2,000</b> §11-910(b) Note: The fine sanction does not apply if the penitentiary imprisonment sanction is imposed.
Mandatory Minimum Fine:	<b>None</b> <sup>3</sup>
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	<b>Rev</b> §6-206(1)
Length of Term of Licensing Withdrawal:	<b>1 yr</b> §6-210(a)
Mandatory Action--Minimum Length of License Withdrawal:	<b>1 yr</b> §§6-206(1) & 6-210(a)
Other	<b>Vehicle Registration Suspension.</b> Following a conviction for vehicle homicide, the registrations of the vehicle or vehicles registered in the name of such person may be suspended. The UVC does not recommend a suspension period. §17-301

<sup>1</sup>The UVC defines the offense of Homicide by Vehicle as follows. "Whoever shall unlawfully and unintentionally cause of death of another person, while engaged in the violation of any state law or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic, shall be guilty of homicide when such violation is the proximate cause of that death." §11-910(a)

<sup>2</sup>**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 §11-910 is silent as to such classification. However, if certain general principles of criminal law as well as other UVC provisions are applied, UVC vehicle homicide could be classified as either a misdemeanor or a felony depending upon how long and where a defendant is to be incarcerated. In brief, using these general principles, a crime is classified as a misdemeanor if an incarceration sanction does not exceed one year and/or such is to be served in a county (or local) jail. A crime is classified as a felony if an incarceration sanction is greater than one year and/or such must be served in a State penitentiary. Thus, under these principles, it is possible that an offense, such as UVC vehicle homicide, could have a dual classification (misdemeanor or felony) depending upon the type of incarceration sanction imposed by the court. See 21 Am Jur 2d, Criminal Law, §29 and the definitions of misdemeanor and felony in Black's Law Dictionary, Sixth Edition, 1990. Further support for dual classification comes from the UVC itself. Under §17-201, the UVC's general felony penalty provision, a person convicted of a felony is to be sentenced to a term of imprisonment of not less than 1 yr nor more than 5 yrs. This sanction is identical to one of the sanctioning options under §11-910(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.

<sup>3</sup>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.

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Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked  
Where the Basis Was a DWI Offense\*:

Sanctions:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term

of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action

(Suspension/Revocation):

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Other:

See Footnote No. 1.

**Misd 2 dys to 6 mos** §6-303(a)

**None**<sup>2</sup>

Not more than **\$500** §6-303(a)

**None**<sup>2</sup>

**Susp/Rev** §6-303(b)

**1 yr** from and after the date the period of suspension or revocation would otherwise have terminated. §6-303(b)

**None** The additional period of suspension or revocation is discretionary. §6-303(b)

**Vehicle Registration Suspension.** Following a conviction for driving while either suspended or revoked, the registrations of the vehicle or vehicles registered in the name of such person may be suspended. The UVC does not recommend a suspension period. §17-301

**Vehicle Immobilization.** The licensing agency is authorized to take possession of or other wise immobilize a vehicle for respectively 30 dys or 60 dys if such vehicle has been driven by a person whose license is still revoked for a 1st or 2nd drunk driving offense conviction. However, the vehicle may be release if it is the only vehicle available to a household and such vehicle is equipped with an **ignition interlock**. §11-1601

Habitual Traffic Offender Provision:

UVC Has Such a Provision (Yes/No):

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

No

<sup>1</sup>I. The UVC appears to make it a misd to operate a CMV either following CDL disqualification or while under a CDL out-of-service order. However, the UVC makes no recommendations as to either the types of or the severity of the sanctions that should be imposed for this offense. §§6-508(b) & 17-101 II. A person, who has been convicted of violating an out-of-service order, is subject to (1) a civil penalty of \$1,000 and (2) the following CDL disqualifications: 1st violation-90 dys (mand); 2nd violation (w/n 10 yrs)-1 yr (mand); and, 3rd or sub violation (w/n 10 yrs)-3 yrs (mand). However, if a person was transporting hazardous materials or 16 or more passengers including the driver, the following disqualification periods apply: 1st violation-180 dys (mand); and, 2nd or sub violation (w/n 10 yrs)-2 yrs (mand). §§6-514(f) & (g) and 5-521(a)

<sup>2</sup>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.

\*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)

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):  
 BAC Chemical Test Is Given to the  
 the Following Persons:

Yes §10-116

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:

Criminal Action Against Owner or Employees  
 of Establishments that Serve Alcoholic  
 Beverages to Intoxicated Patrons:

See Footnote No. 1.

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

<sup>1</sup>This area of the law is not normally covered by UVC.

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Other UVC Provisions 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):

See Footnote No. 1.

Length of Term of License Withdrawal:

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

See Footnote No. 1.

Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

See Footnote No. 1.

Length of Term License Withdrawal:

Anti-Happy Hour Provisions:

See Footnote No. 1.

Provisions Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Provision (Yes/No):

Yes §11-901(b)

Anti-Consumption Provision (Yes/No):

Yes §11-901(a)

<sup>1</sup>This area of the law is not normally covered by UVC

APPENDIX B

ITEM:  
Reference:

MILLENNIUM DUI PREVENTION ACT\*

A model drunk driving law developed by the National Committee on Uniform Traffic Laws and Ordinances

Basis for a DWI Charge:

Standard DWI Offense:  
Illegal Per Se Provision (BAC/BrAC):

Under the influence of alcohol §102(a)(3)

I.  $\geq 0.08^{1&2}$  §102(a)(1) & (2)

II. Under the Extreme Influence of Alcohol- $\geq 0.16^{1&2}$  §102(b)(1) & (2)  
**None**

Presumption (BAC/BrAC):  
Types of Drugs/Drugs and Alcohol:

Under the influence of (1) **Any Drug**<sup>3</sup>, (2) a Combination of Drugs<sup>3</sup> or (3) a Combination of Alcohol and Drugs<sup>3</sup> §102(a)(3) & (4)

Other:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Provision:  
Implied Consent Provision:  
Arrest Required (Yes/No):

**Yes** §109

**No** A formal arrest is not required in all drunk driving situations. A request for a chemical test under the implied consent provisions may be made under the following conditions: (1) An arrest for a drunk driving offense; (2) where there is probable cause to believe that a person operated a vehicle under the influence of alcohol, drugs or controlled substances; or (3) where there is probable cause that a person under 21 years old has operated a vehicle with any amount of alcohol in their system. §107(a)

Implied Consent Provision Applies to Drugs (Yes/No):  
Refusal to Submit to Chemical Test Admitted into Evidence:  
Other Information:

**Yes** §107(a)

**Yes** (Criminal & Civil Cases) §103(c)

A driver may be compelled to submit to a chemical test if they are involved in an accident resulting in either death or serious personal injury to another person and there is reason to believe that the driver was under the influence of alcohol or drugs. §110

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Provision:

Blood:  
Urine:  
Other:

**Yes** §107(a)

**Yes** Only for the Presence of Drugs §107(a)

**"Other Bodily Substances"** Only for the Presence of Drugs §107(a)

<sup>1</sup>The Millennium DUI Prevention Act's illegal per se provisions also make it an offense to operate a motor vehicle with a breath alcohol concentration of either 0.08 or more or, in cases where drivers are "under the extreme influence of alcohol," 0.16 or more.

<sup>2</sup>Under §212(c), "alcohol concentration" means "either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath."

<sup>3</sup>Which renders such a person incapable of safely driving.

\*In this appendix, the terms DUI and DWI are generic interchangeable terms that refer to all types of drunk driving offenses.

**MILLENNIUM DUI PREVENTION ACT**

Adjudication of DWI Charges:

Mandatory Adjudication Provision (Yes/No): **No**  
Anti-Plea Bargaining Provision (Yes/No): **No**  
Pre-Sentencing Investigation Provision (PSI) (Yes/No): **Yes Alcohol & Drug Screening Required §102(e)(1)**

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): **Susp-1 yr (mand) §107(e)(1)**  
Other: **None**

Sanctions Following a Conviction for a DWI Offense<sup>1</sup>:

Criminal Sanctions:  
Imprisonment<sup>2</sup>:  
Term (Day, Month, Years, Etc.):  
**I. 1st off-10 dys to 1 yr; 2nd & sub. off (w/n 5 yrs)-90 dys to 1 yr §102(c)(1) & (2)**  
**II. Under the Extreme Influence of Alcohol (Illegal per se BAC ≥0.16)-1st off-30 dys to 1 yr; 2nd & sub. off (w/n 5 yrs)-120 dys to 1 yr §102(d)(1) & (2)**  
**Under the Extreme Influence of Alcohol (Illegal per se BAC ≥0.16)-1st off-30 con dys; 2nd & sub. off (w/n 5 yrs)-60 con dys §102(d)(1) & (2)**

Mandatory Minimum Term: **Under the Extreme Influence of Alcohol (Illegal per se BAC ≥0.16)-1st off-30 con dys; 2nd & sub. off (w/n 5 yrs)-60 con dys §102(d)(1) & (2)**

Fine:  
Amount (\$ Range):  
**I. 1st off-\$250 to \$1,000; 2nd & sub. off (w/n 5 yrs)-\$500 to \$1,000 §102(c)(1) & (2)**  
**II. Under the Extreme Influence of Alcohol (Illegal per se BAC ≥0.16)-1st off-\$500 to \$1,000; 2nd & sub. off (w/n 5 yrs)-\$1,000 to \$2,000 §102(d)(1) & (2)**

Mandatory Min. Fine (\$): **None**

Other Penalties:  
Community Service: **The court may order an offender to perform community service §102(i)**

<sup>1</sup>The Millennium DUI Prevention Act does not classify drunk driving offenses. Under most State laws these offenses would be considered misdemeanors since the incarceration sanction does not exceed one year.

<sup>2</sup>A person sentenced to a term of incarceration may be allowed to serve such sentence under a home detention program, inpatient rehabilitation (treatment) center, minimum-security facility or other facility provided the offender is under confinement. §§102(h) & 212(i)

Sanctions Following a Conviction for a DWI Offense:  
(continued)

<p>Restitution (eg Victim's Fund):</p>	<p><b>Yes</b> The court may order an offender to pay restitution to victims. §102(i)</p>
<p>Other:</p>	<p>The court may order an offender to pay the costs associated with either (1) incarceration, (2) home detention, (3) alcohol-drug evaluation or (4) an alcohol-drug treatment program. §102(i)</p>
<p>Administrative Licensing Actions:</p>	
<p><u>Pre-DWI Conviction</u> Licensing Action: Administrative Per Se Provision:</p>	<p><b>Yes</b> (1) BAC/BrAC <math>\geq</math> <b>0.08</b> (For standards, see Footnote No. 2 on p. A-9.) or (2) Probable Cause of Driving Under the Influence of Alcohol, Drugs or Controlled Substances-<b>Susp-180 dys</b> (mand) §107(d) and (e)(2) &amp; (3) <u>Persons Under 21 Years Old.</u> BAC/BrAC <math>\geq</math> <b>0.02</b><sup>1</sup> (For standards, see Footnote No. 2 on p. B-1.)-<b>Susp-180 dys</b> (mand) §108(a) &amp; (f)(2)</p>
<p>Other:</p>	
<p><u>Post-DWI Conviction</u> Licensing Action: Type of Licensing Action (Suspension/Revocation):</p>	<p>I. <u>1st off-Susp</u>; <u>2nd &amp; sub. off</u> (w/n 5 yrs)-<b>Rev</b> §102(c)(1) &amp; (2) II. <u>Under the Extreme Influence of Alcohol</u> (Illegal per se BAC <math>\geq</math> 0.16)-<u>1st off-Rev</u>; <u>2nd &amp; sub. off</u> (w/n 5 yrs)-<b>Rev</b> §102(d)(1) &amp; (2)</p>
<p>Term of License Withdrawal (Days, Months, Years, etc.):</p>	<p>I. <u>1st off-180 dys</u>; <u>2nd &amp; sub. off</u> (w/n 5 yrs)-<b>1 yr</b> §102(c)(1) &amp; (2) II. <u>Under the Extreme Influence of Alcohol</u> (Illegal per se BAC <math>\geq</math> 0.16)-<u>1st off-1 yr</u>; <u>2nd &amp; sub. off</u> (w/n 5 yrs)-<b>2 yrs</b> §102(d)(1) &amp; (2)</p>
<p>Mandatory Minimum Term of Withdrawal:</p>	<p>I. <u>1st off-180 dys</u>; <u>2nd &amp; sub. off</u> (w/n 5 yrs)-<b>1 yr</b> §102(c)(1) &amp; (2) II. <u>Under the Extreme Influence of Alcohol</u> (Illegal per se BAC <math>\geq</math> 0.16)-<u>1st off-1 yr</u>; <u>2nd &amp; sub. off</u> (w/n 5 yrs)-<b>2 yrs</b> §102(d)(1) &amp; (2)</p>
<p>Other:</p>	
<p>Rehabilitation: Alcohol Education: Alcohol Treatment:</p>	<p><b>Yes</b><sup>2</sup> (all offenses) This may include inpatient treatment at an appropriate facility or institution. §102(e)(2)</p>
<p>Vehicle Impoundment/Confiscation: Authorized by Specific Provisions:</p>	<p><b>No</b></p>
<p>Terms Upon Which Vehicle Will Be Released:</p>	
<p>Other:</p>	<p><b>Ignition Interlock.</b> For any drunk driving offense, the court may order an offender to only operate motor vehicles that are equipped with ignition interlock devices. §102(f)</p>

<sup>1</sup>As measured by either a preliminary alcohol screening test or a test under the implied consent law (§103). §108(a)

<sup>2</sup>Reinstatement of an offender's driving privileges, as well as any restrictions that may be imposed thereon, may be based on the person's progress in a rehabilitation program. §102(e)(5)

**MILLENNIUM DUI PREVENTION ACT**

Sanctions Following a Conviction for a DWI Offense:  
(continued)

Miscellaneous Sanctions  
Not Included Elsewhere: **None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle: This area of the law is not covered by the provisions of the Millennium  
DUI Prevention Act.

Criminal Sanction:  
Imprisonment (Term):  
Mandatory Minimum Term:  
Fine (\$ Range):  
Mandatory Minimum Fine:  
Fine (\$ Range):  
Mandatory Minimum Fine:  
Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:  
Length of Term of  
Licensing Withdrawal:  
Mandatory Action--Minimum  
Length of License  
Withdrawal:  
Other

Driving While License Suspended or Revoked  
Where the Basis Was a DWI Offense: This area of the law is not covered by the provisions of the Millennium  
DUI Prevention Act.

Sanctions:  
Criminal:  
Imprisonment (Term):  
Mandatory Minimum Term  
of Imprisonment:  
Fine (\$ Range):  
Mandatory Minimum Fine:  
Administrative Licensing Actions:  
Type of Licensing Action  
(Suspension/Revocation):  
Withdrawal Action:  
Mandatory Term of License  
Withdrawal Action:  
Other:

Habitual Traffic Offender Provision: This area of the law is not covered by the provisions of the Millennium  
DUI Prevention Act.

Grounds for Being Declared an  
Habitual Offender:  
Term of License Revocation While  
Under Habitual Offender Status:  
Type of Criminal Offense if

Other Criminal Actions Related to DWI: (continued)

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 Provisions Related To Alcohol Use:

Provisions Requiring BAC Chemical Tests on  
Persons Killed in Traffic  
Accidents:

The Millennium Act Has  
Such a Provision (Yes/No): No  
BAC Chemical Test Is Given to the  
the Following Persons:  
Driver:  
Vehicle Passengers:  
Pedestrian:

Provisions Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:  
Minimum Age (Years) Possession:  
Minimum Age (Years) Consumption:  
This area of the law is not covered by the provisions of the Millennium  
DUI Prevention Act.

Dram Shop Provisions and Related Legal  
Actions:

Dram Shop Provision (Yes/No): This area of the law is not covered by the provisions of the Millennium  
DUI Prevention Act.

"Dram Shop Law" Concept Has Been  
Adopted Via a Change to the Common  
Law Rule by Action of the Highest  
Court of Record in the Case (Case  
Citation): N/A  
Dram Shop Actions-Social Hosts:  
Other:

Criminal Action Against Owner or Employees  
of Establishments that Serve Alcoholic  
Beverages to Intoxicated Patrons:

Type of Criminal Action: This area of the law is not covered by the provisions of the Millennium  
DUI Prevention Act.  
Term of Imprisonment:  
Fine (\$ Range):

**MILLENNIUM DUI PREVENTION ACT**

Other Provisions 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):

This area of the law is not covered by the provisions of the Millennium DUI Prevention Act.

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:

This area of the law is not covered by the provisions of the Millennium DUI Prevention Act.

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):

This area of the law is not covered by the provisions of the Millennium DUI Prevention Act.

Length of Term License Withdrawal:

Anti-Happy Hour Provisions:

This area of the law is not covered by the provisions of the Millennium DUI Prevention Act.

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):  
Anti-Consumption Provision (Yes/No):

Yes<sup>1&2</sup> §211(b)  
Yes<sup>1&3</sup> §211(a)

<sup>1</sup>The sanctions for violating this prohibition are an imprisonment term for not more than 30 dys and/or a fine of not more than \$500. §211(e) Note: This offense would be classified as a misdemeanor under most State laws since the incarceration sanction does not exceed one year.

<sup>2</sup>"This prohibition does not apply to a motor vehicle being used primarily for the transportation of persons for compensation or to the living quarters of a house coach, house trailer, or recreational vehicle nor does it apply to a vehicle operated by a chauffeur in his or her for-hire capacity." §211(b)

<sup>3</sup>This provision only prohibits the consumption of alcoholic beverages while operating a motor vehicle on a "public highway". §211(a)