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Digest of Impaired Driving and Selected Beverage Control Laws

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INTRODUCTION

PURPOSE

This digest reports the status of State laws that are concerned with impaired driving offenses and alcoholic beverage control. Unless otherwise indicated, the status of the laws reported is January 1, 2006.

STRUCTURE OF DIGEST

The Digest of Impaired Driving and Selected Alcohol Beverage Control Laws is designed to be an easily accessible reference to all States' current laws on alcohol and other issues of impaired driving. The digest contains a selection of the most utilized laws for each State, compiled in a consistent format to make research simpler. Each State entry includes: Basis for a DWI Offense; Chemical Breath Tests for Alcohol Concentration; Adjudication of DWI charges; Sanctions; Administrative Licensing Actions; DWI offenses and Commercial Motor Vehicles; Other Criminal Actions Related to DWI; Minimum Age Alcohol Laws, Dram Shop Laws and Related Actions, and others.

This compilation is extensively footnoted and contains comprehensive information on critical impaired driving laws for all 50 States and the District of Columbia. This volume is available in CD-ROM format, in print version, and on the Web site of the National Committee on Uniform Traffic Laws and Ordinances (NCUTLO.org)

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 blood 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 an impaired 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 impaired driving offense purposes, most States define a "commercial motor vehicle" (CMV) as one that (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, and Impaired Driving Offense: These are generally "nonlegal" 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.

Vehicular Homicide: "Vehicular homicide" 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 (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 gives implied consent to submit to a test for either an alcohol or drug content in his/her body if he/she is arrested or otherwise detained for a DWI offense. If the person refuses to submit to such a test, the law usually provides that his/her 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 impaired driving offense. Nevertheless, such term usually refers to all types alcoholic beverages (i.e., beer, wine and distilled spirits). See the definitions of "alcoholic liquor," "intoxicating liquor" and "liquor" in Black's Law Dictionary, Sixth Edition, West Publishing Company.

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

Preliminary Breath Test. A "preliminary breath test" (PBT) refers to a breath test given by a law enforcement officer to a suspected impaired driver prior to an arrest for an impaired 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 such an 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 an impaired driving offense undergo an evaluation to determine if he/she has either an alcohol or drug abuse problem.

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

Comments and 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 blood 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 listed 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 also may 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 his/her 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 age, from consuming alcoholic beverages.

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

LEGISLATIVE SUBJECT AREAS

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

CHEMICAL TESTS OF OTHER SUBSTANCES FOR ALCOHOL/DRUGS UNDER THE IMPLIED CONSENT LAW

Adjudication of Alcohol Driving Offenses
- Pre-Sentence Investigation
- Mandatory Adjudication
- Anti-Plea-Bargaining Statutes

Sanctions for Refusal to Submit to a Chemical Test
Sanctions Following a Conviction for an Alcohol Driving Offense
Homicide by Vehicle
Driving While License Suspended or Revoked Where the Basis Was an Alcohol Driving Offense
Habitual Offender Laws
BAC Tests Required for Persons Killed as a Result of a Traffic Crash
Laws Establishing Minimum Ages Concerning the Use of Alcohol Beverages
Dram Shop Laws and Related Legal Actions
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
Laws Prohibiting "Happy Hours"
Laws Prohibiting the Possession of Open Containers of Alcoholic Beverages in the Passenger Compartment of a Motor Vehicle
Laws Prohibiting the Consumption of Alcoholic Beverages in Motor Vehicles

ABBREVIATIONS and SYMBOLS

BAC = blood alcohol concentration
BrAC = breath alcohol concentration
CDL = Commercial Driver's License
CMV = Commercial Motor Vehicle
EMS = Emergency Medical Services
mand = mandatory
N/A = not applicable
n.a. = not available
UrAC = urine alcohol concentration
UVC = Uniform Vehicle Code
> = greater than
< = less than
≥ = equal to or greater than
≤ = equal to or less than

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

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

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol[1] §32-5A-191(a)(2)
Illegal Per Se Law (BAC/BrAC):	**≥.08** 32-5A-191 (a)(1) **≥.02**[2] School Bus and Day Care Vehicle Operators §32-5A- 191 (c) Persons Under 21 Years Old ≥ **.02** §32-5A-191(b)
Presumption (BAC/BrAC):	**≥.08** 32-5A-194 (b)(3) **≥.02** Presumption of driving under the influence of alcohol for School Bus Drivers and Day Care Vehicle Operators. §32-5A-194 (b)(3) **≥.02** Presumption of driving under the influence of alcohol for persons under 21. §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) and (5)
Other:	

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** 32-5-192
Implied Consent Law Applies to Drugs (Yes/No):	**No**
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and 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 are 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

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

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

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 <.08 (for persons under 21, <.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**

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(g)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	First Refusal – **Suspension – 90 days** (mand); second Alcohol Or Drug-Related Enforcement Contact[3] (within 5 years) – **Suspension – 1 year** (mand); third or fourth Alcohol Or Drug-Related Enforcement Contact (within 5 years) – **Suspension – 3 years** (mand); fifth or subsequent Alcohol Or Drug-Related Enforcement Contact (within 5 years) – **Suspension – 5 years** (mand). §§32-5A-300, 32-5A-304 and 32-5A-305.
Other:	**Refusing to Submit to a Test Under the Accident Related Implied Consent Law–**

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

suspension – 2 years. §32-5A-192.1(a) This suspension appears to be mandatory.[4]

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment/Fine:	First offense – Not more than **1 year, $600 to $2,100**[5]; second offense (within 5 years) – Not more than **1 year, $1,100 to $5,100**; third offense (within 5 years) – **60 days to 1 year, $2,100 to $10,100**; fourth or subsequent offense (within 5 years) (Class C felony) **1 year and 1 day to 10 years, $4,100 to $10,100** §32-5A-191(e), (f), (g) and (h) Serious Bodily Injury related to a DWI Offense (assault in the first degree– Class B felony): **2 to 20 years**[6], not more than **$10,000. §**§13A-5-6(a)(2), 13A-5-11(a)(2) and 13A-6-20(a)(5) and (b)
Mandatory Minimum Term:	For non-injury DWI offenses: second offense – **5 days**[7]; third offense – **60 days**; fourth or subsequent offense – **10 days in county jail**[8]
Mandatory Minimum Fine ($):	**First** offense – $600; second offense (within 5 years) – $1,100; third offense; – $2,100; fourth or subsequent offense – $4,100.
Other Penalties:	
Community Service:	Second offense (within 5 years) – Not less **than 30 days** §32-5A-191(c) and (d)
Restitution (e.g., Victim's Fund)	**Yes** – Victims' Compensation Fund. §15-23-1 et seq. **Special Note:** Under 15-18-65 et seq., a defendant may be required to pay restitution to a victim (or a victim's representative) as a result of damages caused by the defendant's criminal behavior.
Other:	**Court Authorized Licensing Action:** In addition to any other sanction for a criminal violation of the traffic laws, the court may

[4] 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)

[5] The jail and fine sanctions do not apply to first offenders who are under 21. §32-5A-191(b)
Murder: If a person causes the death of another while operating a motor vehicle while intoxicated and in an erratic manner with excessive speed, he/she may be prosecuted for murder.
Tims v. State, 711 So. 2d 1118 (Ala. Crim. App. 1997)

[6] These sanctions apply to first offense convictions for assault in the first degree. To determine the sanctions for a 2d or subsequent offense of this type, see §13A-5-9.

[7] The 30 day community service sanction may be used as an alternative to the 5 day imprisonment.

[8] After this sanction, a person may be placed on probation on the condition that he/she 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).

issue an order "forbidding" an offender from operating a motor vehicle for either a specified period of time or perpetually. §32-5-316
Special Note: A Class C felony conviction for a fourth drunk driving offense is not to be considered a felony for purposes of the State's Habitual Felony Offender Law. §32-5A-191(h)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **Yes[9] ≥.08**. First Admin Per Se Violation– suspension **– 90 days** (mand); second Alcohol Or Drug-Related Contact (within 5 years) – **Suspension – 1 year** (mand); third or fourth Alcohol Or Drug-Related Contact (within 5 years) – **Suspension – 3 years** (mand); fifth or subsequent Alcohol Or Drug-Related Contact (within 5 years) – **Suspension – 5 years** (mand). §§32-5A-300, 32-5A- 304 and 32-5A-305. See the Special Note below.

Other: Under §32-5A-195(k)(1) and (m), a person's license may be suspended without a preliminary hearing, for not more than 1 year if he/she has "committed" an offense that usually requires license revocation (e.g., DWI). **Comment:** Such action could occur prior to conviction.

Post DWI Conviction

Licensing Action: See the Special Note below.

Type of Licensing Action (Susp/Rev) and Term of Withdrawal: First offense – **Suspension 90 days[10]** (First offense for School Bus and Day Care Vehicle Operators– suspension **– 1 year mandatory** and Persons under 21– suspension **– 30 days mandatory**); second offense – **Revocation 1 year**; third offense – **Revocation 3 years**; fourth or subsequent offenses – Revocation **5 years** §§32-5A-191(e), (f), (g) and (h)

[9] 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)
[10] Revocation is also possible via a court order. §32-5A-195(j)(2)

Mandatory Minimum Term of Withdrawal:	First offense – **90 days**[11,12]; second offense – 1 year; third offense – **3 years**; fourth or subsequent offenses – Revocation **5 years**
Other:	
Rehabilitation:	
Alcohol Education:	First offense – **Yes**[13]. §32-5A-191(b)
Alcohol Treatment:	First offense – **Yes** §32-5A-191(b)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**Impoundment.** For a subsequent offense within 5 years, 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)
Terms Upon Which Vehicle Will Be Released:	N/A
Miscellaneous Sanctions Not Included Elsewhere:	**Child Endangerment.** The minimum sentence is double the usual sanction if an offender ≥ 21 years old was operating a vehicle while transporting a passenger <14 years old at the time of the DWI offense. §32-5A-191(n)

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* 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 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person(1) has a BAC/BrAC/UrAC ≥.04 (Standards: 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.), (2) is under the influence of alcohol or a controlled substance or (3) refuses to submit to a chemical test for an alcohol concentration, and commits a misdemeanor punishable by ≤30 days in jail and/or a fine of $25 – $2,000. 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 years mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in the system must be placed "out-of-service" for 24 hours. §§32-6-49.3(2) and (3), 32-6-49.11, 32-6-49.12, 32-6-49.13, 32-9A-2 and32-9A-4.

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[11] It may be possible to "modify" this suspension period. §32-5A-195(l)
[12] 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 his/her driving privileges suspended for 6 months. §§13A-12-290 and 13A-12-291
[13] 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(g)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Two types of offenses (1) "Homicide by Vehicle"-Felony[14] §32-5A-192 (2) "Criminally Negligent Homicide" while DWI– Class C felony §13A-6-4(a)and(c)
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	(1) "Homicide by Vehicle" – Not less than **1 year** nor more than **5 years** §32-5A-192 (2) "Criminally Negligent Homicide" while DWI – 1 year **and 1 day to 10 years** §13A-5-6(a)(3)
Mandatory Minimum Term:	**None**
Fine ($ Range):	(1) "Homicide by Vehicle" – Not less than **$500** nor more than **$2,000** §32-5A-192 (2) "Criminally Negligent Homicide" while DWI – Not more than **$5,000** §13A-5-11(a)(3)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Revocation**[15] §32-5A-195(j)(l)
Length of Term of Licensing Withdrawal:	Revocation period is not specified in the statute.[16]
Mandatory Action--Minimum Length of License Withdrawal:	**None**
Other:	See Court Authorized Licensing Action.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote No.[17].

Sanction:

Criminal:	
Imprisonment (Term):	**Misdemeanor** – Not more than **180 days** §32-6-19
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not less than **$100** nor more than **$500** §32-6-19

[14] §13A-1-2(4)
[15] Applies only to "Homicide by Vehicle" or vehicle manslaughter offenses. For DWI criminally negligent homicide offenses, licensing action would be via the regular DWI offense provisions.
[16] However, a license or privilege to drive cannot be suspended for more than 1 year. §32-5A-195(m)
[17] Neither the CMV law nor the general code provisions concerned with driving while suspended or revoked provide specific sanctions for operating a CMV while either disqualified or under an out-of-service order.
*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.

Mandatory Minimum Fine:	**None**, but there is an additional penalty of $50 used to fund safety and training funds. This penalty appears to be mandatory. §32-6-19
Length of Term of License Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Revocation** (discretionary) §32-6-19(a)
Withdrawal Action:	An **additional period** of **6 months** §32-6-19(a)
Mandatory Term of License Withdrawal Action:	**None**
Other:	A vehicle may be forfeited to the State, if it is operated while a license is revoked or suspended for DWI, §32-5A-203, or the vehicle may be impounded. §32-6-19.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ 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,** but the implied consent law applies to dead persons. *Lankford v. Redwing Carriers, Inc.,* 344 So.2d 515 (Ala., 1977).
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** §§28-1-5 and 28-3A-25(a)(19)
Minimum Age (Years) Possession:	**21.** There is an employment exemption. §28-3A-25(a)(19)
Minimum Age (Years) Consumption:	**21** §28-3A-25(a)(19)

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §6-5-71[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** *Buchanan v. Merger Enterprises, Inc.,* 463 So.2d 121 (1984)
Dram Shop Actions-Social Hosts:	**Yes Limited** A social host can be held liable for the actions of intoxicated minors. *Martin v. Watts,* 508 So.2d 1136 (Ala. 1987)[19], *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)[20] The *Deloach* and *Beeson* cases involved "business" social host situations. See also *Runyans v. Littrell* 2002 Ala. LEXIS 240 (Ala.2002), citing *Williams* and *Martin.*
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	See Double Jeopardy.
Type of Criminal Action:	See Regulation 20-X-6-.02 which prohibits the sale of alcoholic beverages to persons "acting in a manner as to appear to be intoxicated."[21] It is a **misdemeanor** to violate a regulation §28-3-20.
Imprisonment:	Not more than **6 months** §28-3-20[22]
Fine ($ Range):	Not more than **$500** §28-3-20[22]

[18] **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) It would seen likely this court would apply this same interpretation to §6-5-71

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

[20] 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); *Runyans v. Littrell,* 2002 Ala. LEXIS 240 (Ala. 2002)

[21] The legislature repealed the law, §28-3-260(2), that prohibited the sale of alcoholic beverages to visibly intoxicated persons. Reg. 20-X-6-.02 was promulgated as a substitute for this repealed law.

[22] §28-3-19 also makes it a misdemeanor to violate 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.

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension/Revocation** §§28-3A-24 and 28-3A-26
Length of Term of License Withdrawal:	First offense – suspension for not more than **1 year** or revocation for **1 year**; second or sub. offense – revocation for **1 year** (This revocation appears to be mandatory; however, see §28-3A-24(c) which authorizes a fine up to $1,000 in lieu of revocation.) §§28-3A-24 and 28-3A-26
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	First offense – **Misdemeanor**; second offense – **Misdemeanor**; third and subsequent offense – **Misdemeanor** §28-3A-25(a)(3)
Term of Imprisonment:	First offense – Not more than **6 months**; second offense – **3 to 6 months**; third and subsequent offense **6 to 12 months** §28-3A-25(b)(1)
Fine ($ Range):	First offense – $**100 to $1,000**; second offense – $**100 to $1,000**; third and subsequent offense – **$100 to $1,000** **§**28-3A-25(b)(1)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes– suspension/Revocation** 28-3A-24 and 28-3A-26
Length of Term License Withdrawal:	First offense – **Suspension – Not more than 1 year; revocation – 1 year**; second and subsequent offense – **Revocation – 1 year** (This revocation appears to be mandatory under §28-3A-26; however, see §28-3A-24(c) which authorizes a fine up to $1,000 in lieu of revocation.) §§28-3A-24(d) and 28-3A-26. See Special Note below.
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:	**Yes-** Regulation 20-X-6-.14

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

Special Note: If a licensee has been certified as a "responsible vendor," they may be exempt from either license suspension or revocation 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.
Double Jeopardy: Under certain circumstances, 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 ABC Board,* 678 So. 2d 133 (Ala. Civ. App. 1995) (cert denied 678 So. 2d. 140 (Ala. 1995)).

STATE:	**ALASKA**
General Reference:	Alaska Statutes
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of an alcoholic beverage §28.35.030(a)(l)
Illegal Per Se Law (BAC/BrAC):	**≥.08** [23,24and25] §28.35.030(a)(2)
Presumption (BAC/BrAC):	**≥.08** §28.35.033(a)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) any controlled substance or (2) an alcohol beverage, intoxicating liquor, an inhalant, and a controlled substance §28.35.030(a)(l) and (3)
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
Implied Consent Law Applies to Drugs (Yes/No):	**No** Except as noted in "Other Information" below.
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) §§28.35.032(e) and 28.35.285(c)
Other Information:	A "chemical test" for either alcohol or a controlled substance may be administered to a person (or a CMV operator) without consent if he/she has

[23] The law defines the drunk driving offense as the crime of "driving while intoxicated which includes driving while under the influence of an alcoholic beverage, inhalant or any intoxicating liquor/controlled substance or illegal per se at an alcohol concentration ≥.08 grams per deciliter. §28.35.030. An inhalant is defined as "hazardous volatile material or substance" §28.35.030(o).

[24] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 g/dL or more.

[25] Alcohol concentration is based upon either "percent by weight" of alcohol in the blood, in grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §28.35.030(a)(2) Under §28.35.033(b), "percent by weight of alcohol" 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 his/her breath or blood for alcohol content or (2) of his/her blood or urine for a controlled substance if there is "probable cause to believe the person was operating or driving a motor vehicle in this State 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 (Alaska App. 2000)

	been arrested for a DWI offense where there has been an accident involving death or physical injury to another person. §§28.35.035(a), 28.33.031(b) and *Municipality of Anchorage v. Ray,* 854 P.2d 740 (Alaska App. 1993) A warrantless arrest must be supported by probable cause or the arrest and subsequent fruits are illegal. *Schoenthaler v. State*, 2000 Alas. App.LEXIS96 (2000), 12.25.033
Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:	
Blood:	**No** Except as per the Special Note above.
Urine:	**No** Except as per the Special Note above.
Other:	**None**
Adjudication of DWI Charges:	
Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** §§28.35.030(h) and 28.35.032(1)
Sanctions for Refusal to Submit to a Chemical Test:	
Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**Infraction** (noncriminal offense) – Not more than $300 §§28.35.031(e) and 28.4.050(c) and (d)
Administrative Licensing Action (Susp/Rev):	**None**
Other:	Refusal §28.35.031(c) Also applies to CMV operators. §28.33.031(d) Refusal to submit to a PBT may be admitted into evidence at either a criminal or civil proceeding. It is a Class B misdemeanor for a CMV operator to refuse to submit to a PBT. §28.33.031(f) The sanctions for this offense are as follows: Jail – not more than **90 days**; fine – not more than **$1,000**. §§12.55.035(b)(4) and 12.55.135(b)
Refusal to Take Implied Consent Chemical Test:	

Criminal Sanction (Fine/Jail):	Class A misdemeanor – Not more than **1 year** imprisonment/not more than **$5,000** fine:[26] Class C felony – if third or subsequent refusal within 10 years – Not more than **5 years**/not more than **$50,000** fine §§12.55.035, 12.55.125. 12.55.135 and 28.35.032(f) and (q) The jail and fine sanctions (including minimum mandatory sanctions), confinement in a community residential center, cost of incarceration (where applicable) for first and subsequent refusal offenses[27] are the same as for DWI offenses. These sanctions run concurrently with any other sanctions. §28.35.032(f) and (g)(4) [28.]
Administrative Licensing Action (Susp/Rev):	**Revocation** §§28.15.165(a)(l) and 28.15.181(a)(8) First Refusal – **90 days** (mand) License revocation periods, including the minimum mandatory periods, vehicle forfeiture for second and subsequent refusals are the same as for first and subsequent revocations for DWI offense convictions. §§28.15.165(d)
Other:	**State Forfeiture** of the vehicle used in subsequent refusal offenses. This action is not mandatory. §28.35.036
Sanctions Following a Conviction for a DWI Offense:	See Footnote No. [29] and Electronic Monitoring.
Criminal Sanctions:	
Imprisonment/Fine:	I. Class A Misdemeanor – Not more than **1 year**/not more than **$10,000**

[26] If the person successfully completes a court-ordered treatment program, the court may suspend up to 75 percent of the mandatory minimum sentence and up to 75 percent of the minimum fines required. § 28.35.030(p)

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

[28] **Persons Under 21 Years Old**. A person > 14 but < 21 years old commits an "infraction" by refusing 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: first revocation – 90 days; second revocation – 1 year; and, third revocation-3 years. §28.15.183(d)

[29] For either DWI offense convictions or for convictions for refusal to submit to a chemical test, a previous offense is considered to be either a previous chemical test refusal or a previous DWI conviction. §§28. 35.030(k)(4), 28.35.032(o) and 28.35.036(b).

	II. Class C felony if third or subsequent offense within 10 years – Not more than **5 years**/not more than **$50,000** §§12.55.035, 12.55.125, 12.55.135 and 28.35.030
Mandatory Minimum Term:	I. Class A Misdemeanor offenses:[30] first offense – **72 consecutive hours**[31]; second offense – **20 days**; Third offense – **60 days;** fourth offense – **120 days**; fifth offense – **240 days**; 6th and subsequent offense – **360 days**[32] II. Class C felony offenses: third offense – **120 days**; fourth offense – **240 days**; fifth and subsequent offense – **360 days** §§28.35.030(b) and (n) and 28.35.032(g) and (p)
Mandatory Minimum Fine ($):	I. Class A Misdemeanor offenses: first offense – $**1500**; second offense – $**3000**; third offense – $**4000**; fourth offense – $**5000**; fifth offense – $**6000**; 6th and subsequent offense – $**7000** II. Class C felony offenses (third or subsequent off within 10 years) – **$10,000**

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

[31] If possible, this incarceration sentence is to be served in a community residential center. §§28. 35. 030(k) and 28.35.032(p)

[32] If a person successfully completes a certain court-ordered treatment program, the court may suspend up to 75 percent of the mandatory min sentence and up to 50 percent of the mandatory fine §28.35.030(q)

Persons Under 21 Years Old. A person ≥14 but <21 years old commits an "infraction" (1) by operating a motor vehicle after having consumed any quantity of alcohol or (2) by operating a motor vehicle within 24 hours 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) and (d) and 28.35.290(a) *and* (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: first revocation-30 days (mand); second revocation – 60 days (mand); third revocation – 90 days (60 days mandatory with limited driving privileges after this period); and, fourth or subsequent revocation – 1 year (60 days mandatory with limited driving privileges after this period). §28.15.183(d) and (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).

Other Penalties:	
Community Service:	**Yes**[33] first offense – At least **24 hours**; second offense – At least **160 hours** §§28.35.030(k) and 28.35.032(o) Discretionary for subsequent offenses. §12.55.055
Restitution: (e.g., Victim's Fund)	**Yes** The court may order a defendant to pay direct compensation to a victim(s). §12.55.045
Other:	**Ignition Interlock**. As a condition of probation, if granted, the court may order a defendant to only operate motor vehicles equipped with "ignition interlock" devices. However, mandatory licensing sanctions 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 $2000. §§28.35.030(k) and 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 **Court Ordered Drug Therapy**. A court may order a defendant, while incarcerated, on parole, or probation to "take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage. §28.35.030(b)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. Zerkel,* 900 P.2d744 (Alaska App. 1995) 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 (Alaska App. 1996)
Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action

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

Administrative Per Se Law:	**Yes ≥ .08** (BAC/BrAC) §28.15.165(a)(l) and (d) Licensing revocation periods, including the minimum mandatory periods, for first and subsequent administrative actions are the same as for first and subsequent revocations for DWI offense convictions.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	**Revocation** §28.15.181(a)(5)and(c)
Term of License Withdrawal (Days, Months, Years, etc.):	First offense – Not less than **90 days**; second offense (within 10 years) – Not less than **1 year**; third offense(within 10 years) permanent subject to restoration under certain circumstances §28.35.030(77)(3); 28.35.030(p)
Mandatory Minimum Term of Withdrawal:	First offense – **90 days** or **30 days** followed by a limited occupational license for 60 days with participation in an alcohol education and treatment program §28 (within 10 years) – **3 years**; fourth and subsequent offense (within 10 years) – **5 years**
Other:	
Rehabilitation:	
Alcohol Education:	**Yes**[34] §28.35.030(c)
Alcohol Treatment:	**Yes** §28.35.030(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 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV that person (1) has either a percent by weight of alcohol in the blood ≥.04, a blood alcohol concentration ≥40 milligrams of alcohol per 100 milliliters of blood, or a breath alcohol concentration of ≥.04 grams of alcohol per 210 liters of breath, (2) is under the influence of intoxicating liquor or any controlled substance or (3) refuses 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 years 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 ≥.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, including all mandatory sanctions. In addition, a CMV operator who has any "measurable" or detectable" amount of alcohol in the system must be

[34] For any DWI or refusal conviction, before the license is restored, a defendant may be required to complete either an alcohol education or treatment program the court feels is appropriate for that defendant. §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) and 28.35.032(m)

placed "out-of-service" for 24 hours. 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 "probable cause to believe that the driver was operating a CMV while under the influence of an alcoholic beverage, inhalant, or controlled substance if 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." But a similar provision in the regular implied consent law, §28.35.031(g), was declared unconstitutional by the Alaska-Court of Appeals. §§28.15.165, 28.15.219, 28.33.030, 28.33.031(a)(l) and (2), 28.33.130, 28.33.140 and 28.35.032(f)

Vehicle Impoundment/Confiscation:	**Yes-**mandatory for Class C felonies §28.35.030(n)(5)
Authorized by Specific Statutory Authority:	**Yes State Forfeiture** of the vehicle used in DWI offenses. §28.35.036; 28.35.030(n)(5)
Terms Upon Which Vehicle Will Be Released:	N/A
Other:	**Local Forfeiture**. Under §28.01.015, municipalities may enact ordinances to impound/forfeit motor vehicles for violations of local DWI/chemical test refusal laws. §28.01.015
Miscellaneous Sanctions Not Included Elsewhere:	**None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** for manslaughter and conduct resulting in the conviction involved driving while under the influence Class A felony; not more than 20 years[35]
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	
Mandatory Minimum Term:	**7 years**
Fine ($ Range):	
Mandatory Minimum Fine:	
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	License revocation for a conviction of manslaughter resulting from the operation of a motor vehicle. §28.15.181 (a)(l) and (b).
Length of Term of Licensing Withdrawal:	
Mandatory Action--Minimum Length of License	

[35] In some circumstances, a DWI related death may be considered second degree murder. *Puzewicz* v. *State,* 856 P.2d 1178 (Alaska App. 1993); *Foxglove v. State*, 939 P.2d 669 (Alaska App. 1997).

Withdrawal:	
Other:	
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. [36].
Sanction:	
Criminal:	
Imprisonment (Term):	Class A Misdemeanor – Not more than **1 year** §§12.55.135(a) and 28.15.291
Mandatory Minimum Term of Imprisonment:	**10 days** Also a mandatory period of 80 hrs of community service. §28.15.291(b)(1)(C) and (b)(3).
Fine ($ Range):	Not more than **$5,000** §§12.55.035(b)(3)
Mandatory Minimum Fine:	**$500** §28.15.291(b)(1)(C)and(b)(3).
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Revocation** §28.15.291(b)(4)
Length of Term of License Withdrawal Action:	Original revocation **extended not less than 90 days**
Mandatory Term of License Withdrawal Action:	Original revocation **extended not less than 90 days**
Forfeiture:	The court may order forfeiture. §28.15.291(b)(5)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of	

[36] It is Class A misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail terms ≤1 year or a fine ≤$5,000. The following mandatory sanctions are imposed: first offense, jail for 20 days (10 days suspended) plus not less than 80 hours of community service; and, a subsequent offense (within l0 years), a 60 day jail term and a fine of $1,000. And, for both first and subsequent offenders, driving privileges cannot be restored for an additional 90 days. §§12.55.035, 12.55.135 and 28.33.150(a)(4), (a)(5), (b)(4) and (c).

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:	**No**
State Has Such a Law (Yes/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** §§04.16.051, .052 and .060
Minimum Age (Years) Possession:	**21** There are exemptions for parents or physicians furnishing alcoholic beverages to minors. §§04.16.050, .051 and .052
Minimum Age (Years) Consumption:	**21** There are exemptions for parents or physicians furnishing alcoholic beverages to minors. §§04.16.050. .051 and .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) and 04.21.080(a)(l)[37and38] II. Alcoholic Beverage Law Violators-Persons, who serve alcoholic beverages to individuals without obtaining the appropriate licensees, are "strictly liable" for any resulting injuries sustained by such individuals. §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	

[37] *Kavorkian v. Tommy's Elbow Room, Inc.,* 694 P.2d 160 (Alaska 1985) (rehearing, 711 P.2d 521 (Alaska 1985)).
[38] The dram shop law, §04.21.020(a), has been held constitutional. *Gonzales v. Safeway Stores, Inc.,* 882 P.2d 389 (Alaska 1994)

(Case Citation):	**No** 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**[39] §04.16.020 and *Mulvihill v. Union Oil Co.,* 859 P.2d 1310 (Alaska 1993)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Class A misdemeanor §§04.16.030 and 04.16.180
Term of Imprisonment:	Not more than **1 year** §12.55.135(a)
Fine ($ Range):	Not more than **$10,000** §12.55.035(b)(3) For organizations – not more than $200,000 for offenses not resulting in death; for offenses resulting in death – not more than $1 million. §12. 55. 035(c)(l)(B)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** §04.16.180
Length of Term of License Withdrawal:	First conviction-**45-day suspension**; second conviction-**90-day suspension**; third and/or subsequent convictions- No time limit specified in statute. {The suspensions and revocations are not mandatory.} §04.16.180
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	Class A Misdemeanor §§04.16.052 and 04.16.180
Term of Imprisonment:	Not more than **1 year** §12.55. 135(a)
Fine ($ Range):	Not more than **$10,000** §12.55.035(b)(3) For organizations – not more than $200,000. §I2.55.035(c)(l)(B)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	

[39] 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).

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** §04.16.180
Length of Term License Withdrawal:	First conviction-**45-day suspension**; second convictions-**90-day suspension**; third and/or subsequent convictions – no time limit specified in statute.
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 Beverage in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** Drivers only §28.35.029
Anti-Consumption Law (Yes/No):	**Yes** Drivers only 13 Alaska Administrative Code 02.545(a)

STATE:	**ARIZONA**
General Reference:	Arizona Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §28-1381(A)(1)
Illegal Per Se Law (BAC/BrAC):	I. **≥.08**[40and41] and **any drug listed in §13-3401 or its metabolite in a Person's Body**[42and43] §28-1381(A)(2) and (3) II. **≥.15**[44] §28-1382(A) Persons Under 21 Years Old. Operating a motor vehicle with any "Spirituous Liquor" in the body. §§4-244(33) and 4-246(B)
Presumption (BAC/BrAC):	**≥.08** §28-1381(G)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug, a vapor releasing substance containing a toxic substance or (2) a combination of liquor, drugs or toxic vapor releasing substance if the person is impaired to the slightest degree. §28-1381(A)(1)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §28-1322 Based on reasonable suspicion of a DWI offense.
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[45] §28-1321(A)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §28-1321(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) §28-1388(D)
Other Information:	I. Persons (e.g., medical facility personnel), who collect blood, urine or other bodily substances from drivers, may be requested by law enforcement

Chemical Breath Tests for Alcohol Concentration:

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[75] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

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

[77] A person is not guilty of violating the drug per se statute, §28-1381(A)(3), while using a drug prescribed by a medical practitioner. §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)

[78] 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), and *State v. Hammonds,* 968 P.2d 601 (Ariz. App. 1998) (Review denied by the Arizona Supreme Court, 1998 Ariz. LEXIS 615); cf. *State v. Boyd,* 31 P. 3d 130 (Ariz. App. 2001).

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

[80] 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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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:	**Yes** §28-1321
Urine:	**Yes** §28-1321
Other:	**"Other bodily substances"** §28-1321

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**Yes** §28-1387(H)[46]
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 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):	First refusal – **12-month suspension** (mand); subsequent refusal (within 60 months) – **2-year suspension** (mand) §28-1321(G)(3) and (L) [47]
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 the body) is subject to the implied consent law. §28-1321(A)(1)

[81] "Except for another violation of 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)

[47] Effective February 1, 2006, after completing not less than ninety consecutive days of the period of suspension and serving the minimum period of incarceration, a person whose driving privileges have been suspended for refusal to submit (implied consent) to a BAC test or revoked for extreme and aggravated DUI may apply to MVD for a special ignition interlock (IID) restricted driver license that allows a person to operate a motor vehicle with an IID during the period of suspension or revocation, under the following circumstances:

a. between the person's residence and employment during specified periods of time while at employment.
b. between the person's residence, employment and secondary or postsecondary school according to the person's work and school schedule.
c. between the person's residence and a treatment or screening facility for scheduled appointments.
d. between the person's residence and the office of the person's probation officer for scheduled appointments.
e. between the person's residence and the office of a physician or other health care professional.
f. between the person's residence and a certified IID service facility. § § 28-1401, 28-1402, 28-1321P

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment/Fine/Term:	I. First offense – Class 1 misdemeanor – **Not more than 6 months** (with 10 con days), **Not more than $2,500,** plus additional $500 mandatory assessment; second offense[48](within 60 months) – Class 1 misdemeanor – Not **more than 6 months** (with 90 days), **not more than $2,500,** plus additional $1,250 mandatory assessment. II. .15 Offense – first offense – Class 1 misdemeanor – Not **more than 6 months** (with 30 con days), **Not more than $2,500**, plus additional $1,000 mandatory assessment; second offense (within 60 months) – Class 1 misdemeanor – Not **more than 6 months** (with 120 days), **not more than $2,500**, plus additional $1,250 mandatory assessment. III. **Aggravated DWI***– Class 4 felony-**2½ to 12 years[49], not more than $150,000.** §§13-604, 13-701, 13-707, 13-801, 13-802, 28-1381, 28-1382 and 28-1383 Persons Under 21 Years Old: Operating a motor vehicle with any "Spirituous Liquor" in the body. Class 1 misdemeanor – Not **more than 6 months/not more than $2,500.** §§4-244(33) and 4-246(B), 13-701, 13-707, 13-801 and 13-802
Mandatory Minimum Term:	I. First offense – **24 consecutive hours[50]** §28-1381(J) Second offense[51] (within 60 months) – **30 consecutive days** §28-1381(L) II. .15 Offense – first offense – **10 consecutive days** §28-1382(E); second offense (within 60 months) – **60 consecutive days** §28-1382(G) III. Aggravated DWI*-third offense (within 60 months) – **4 months[52]** §28-1383(D); fourth and subsequent offense (within 60 months) – **8 months** §28-1383(E)

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[83] For sentence enhancement purposes, a prior offense includes any previous drunk driving offense.
Child Endangerment: A person commits a Class 6 felony (Aggravated DWI), if he/she violates the drunk driving laws while transporting a passenger who is <15 years old. Sanctions: Imprisonment – first Offense – 1 year; with one prior felony conviction – 1 to 2.5 years; with two or more prior felony convictions-3 to 4.5 years; fine – $150,000. Minimum Sanctions : For first and second offenses the minimum sanctions for drunk driving offenses apply, plus additional $1,500 mandatory assessment. The minimum applicable sanction will depend on whether the offender was convicted under §28-1381 or §13-1382 (.15 offense); and, for third or subsequent offenses, the minimum sanctions are the same as for multiple offenses under the Aggravated DWI law. §§13-604(A), (C) and (U)(1)(a), 13-701(C), 13-801, and 28-1383(A)(3), (F), (G) and (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), and *Snow v. Superior Court of Arizona,* 903 P.2d 628 (Ariz. App. 1995), see also *Martzolf v. Superior Court,* 913 P. 2d 1373 (Ariz. App. 1995)

[84] Imprisonment sanctions for Class 4 felony: first Off – 2½ to 3 years; with one prior felony conviction – 3 to 6 years; with two or more prior felony convictions – 8 to 12 years. §§13-604(A), (C) and (U)(1)(a)

[85] Provided the defendant completes an alcohol/drug screening, counseling, education/treatment program.

[86] For sentence enhancement purposes, a prior offense includes any previous drunk driving offense.

[87] A limited furlough may be granted. §31-233(B)

Persons Under 21 Years Old: Operating a motor vehicle with any "Spirituous Liquor" in the body.
None

Mandatory Minimum Fine ($): I. First offense – Class 1 misdemeanor – $**250**; second offense – Class1 misdemeanor (within 60 months) – **$500**;
II. .15 Offense – Class1 misdemeanor – $**250** (and a $250 assessment); second offense – Class 1 misdemeanor (within 60 months) – **$500** (and a $250 assessment)
III. Aggravated DWI*- Class 4 felony – No**ne**
Persons Under 21 Years Old. Operating a motor vehicle with any "Spirituous Liquor" in the body.
None

Other Penalties:

Community Service: First and second offenses (including .15 offenses) – **Yes**[53] Discretionary with the court. The number of hours is not specified in the law. §§28-1381(I)(3) and (K)(3) and 28-1382(D)(4) and (F)(4); third and subsequent offense – Community service cannot be assigned. §11-459(R)

Restitution (e.g., Victim's Fund): **Yes** A victims' compensation fund §41-2407
Where there was an economic loss to a victim, the Court may order that all or any portion of the fine be allocated as restitution. §13-804

Other: **Driver Training Course.** A person may be required to attend and successfully complete a driver-training course. §28-3306. This requirement is mandatory for first time offenders under the age of 18. §28-3321
Probation (Discretionary). First or second offense (including .15 offenses) – Not more than 5 years; Aggravated DWI Offenses* – Not more than 10 years §13-902(B). Probation may be extended if a condition of probation, such as restitution, is not met. §13-902(c)
Assessments: Under §§12-116.01 and 12-116.02, the court is to levy respectively penalty assessments of 47 percent,7 percent,3 percent, and 13 percent of the fine imposed. These assessments may be waived if they would work a hardship on the offender or their family.
Reimbursement: The court shall order misdemeanants sentenced to a jail term to reimburse for costs, §13-804.01, and the court may require reimbursement for any public costs incurred pursuant to defendant's case. §13-809.

Administrative Licensing Actions:

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[88] first offenders are eligible for community service after having served 24 consecutive hours in jail. Second offenders are eligible for community service after they have served 15 consecutive days in jail. §§9-499.07(N) and 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 [.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 of this section …" §28-1383(A)(2)

Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes. ≥.08 (≥.04** for Commercial motor Vehicle Operators) **Suspension – Not less than 90 consecutive days** (30 cons days mand)[54] §28-1385(A) and (E) The procedures of the admin. per se law also apply to persons under 21 years old who have been arrested for a violation of §4-244(33) (driving with any amount of "spirituous liquor" in the body). The admin per se law does not appear to actually authorize a license suspension for a violation of §4-244(33). It may well be that the legislature intended to impose admin. per se license suspensions 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 suspend/revoke a person's license for not more than 1 year if he/she has "committed" an offense that usually requires license revocation (e.g., a second DWI offense). 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) and Term of License Withdrawal:	I. Except as noted in II, first offense (including .15 offenses) – **Suspension – not less than 90 consecutive days nor more than 1 year**[55]; second offense (including .15 offenses) – **Revocation – 1 year**; Aggravated DWI offenses* – Revocation**-3 years** II. Driving under the influence of a controlled substance or with any amount of a controlled substance in the body: first offense or second offense (within 60 months) – **Revocation – 1 year**; Aggravated DWI offenses* – Revocation**-3 years** §§28-1381(K)(4), 28-1382(F)(5), 28-1383(J)(1), 28-1387(D), 28-3304(A)(2), (8) and (9) and 28-3315 Persons Under 18 Years Old: A person <18 years old convicted of either a DWI offense (under §28-1381 or §28-1382 [.15 offense]) or driving with any "spirituous liquor in the body" (under §4-244(33)) is subject to a **suspension for 2 years**. However, if he/she is convicted of an Aggravated DWI offense (§28-1383), he/she is subject to a **suspension for 3 years**. This licensing action is in addition to any other sanctions

[89] For an admin. per se violation where there has not been (1) serious physical injury, (2) a prior drunk driving offense conviction within 60 months or (3) a refusal to submit to a chemical test within 60 months, the license suspension period is not less than 30 consecutive days (mandatory) and a restricted license for not less than 60 consecutive days. §§28-1385(F) and 28-1387(E)

[90] This licensing action does not apply to first and second 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.

that may be imposed. This action is not mandatory. Restricted driving privileges are available. §28-3320

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

Mandatory Minimum Term of Withdrawal: ALL OFFENSES: first offense – **90 consecutive days**[56and57] Second offense – 1 year Third and subsequent offense – **3 years**

Other:

Rehabilitation:

Alcohol Education: First or second offense – **Yes.**[58] §28-1387(B), mandatory for Aggravated DWI cases. §28-1383H

Alcohol Treatment: First, second, third or sub. offenses – **Yes.** §28-1387(B)

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **Forfeiture (Mandatory):** The vehicle used in the offense and owned by the offender is forfeited for (1) a third or subsequent DWI offense, (2) a DWI offense while transporting a child <15 years old or (3) a DWI offense while the license is still suspended or revoked for a prior DWI offense. §28-1384(A)

Terms Upon Which Vehicle Will Be Released: **N/A**

Miscellaneous Sanctions Not Included Elsewhere: **Home Detention (Work Release):** Only first and second DWI offenders (including .15 offenders) are eligible for the "home detention" (or work release) program. However, before starting this program first offenders must complete 24 consecutive hours in jail and second offenders must complete 15 consecutive days in jail. §§9-499.07(N) and 11-459(M) and (R)
Ignition Interlock: The court **SHALL** require persons who are convicted of the following offenses to equip vehicles operated with "ignition interlock" devices for **1 year** at the conclusion of the license suspension/revocation period or on the date of conviction whichever is later: (1) A second drunk driving offense under §28-1381; (2) a third or

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[91] For a drunk driving offense conviction, where there has not been (1) serious physical injury, (2) a prior drunk driving offense conviction within 60 months or (3) a refusal to submit to a chemical test within 60 months of the DWI offense, the license suspension period is not less than 30 consecutive days (mandatory) and a restricted license for not less than 60 consecutive days. §§28-1385(F) and 28-1387(E)

[92] This suspension does not apply to first or second offenders who have been suspended pursuant to either the implied consent or admin. per se laws. §28-1387(D)

[93] If a defendant has been ordered to participate in either an alcohol education or treatment program, his/her license cannot be restored until they prove that he/she has completed such program. §28-3319(C)

subsequent drunk driving offense under §28-1383 (Aggravated DWI); (3) a drunk driving offense where the offender is driving on a suspended or revoked license for a prior DWI offense or a prior admin. per se violation(Aggravated DWI); (4) a first or second .15 offense; and, (5) a drunk driving **child endangerment** offense. §§28-1381(K)(4),28-1382 (D)(5)and(F)(5),28-1383(J)(1), and 28-3319 (D)and(E).

Incarceration Costs: All drunk driving law offenders must be assessed the costs of their incarceration. The costs charged are based on the offender's financial capabilities. §§28-1444 and 13-804.01.
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, liability not to exceed $1,000 per accident. §28-1386(A) and (B).
Prison Furlough: Available for third and subsequent offenders §31-233**) Under 18 Years Old:** first offense – Incarceration for **24 consecutive hours**; subsequent offense (within 60 months) – Incarceration for **30 consecutive days** in a juvenile detention center or in the dept of juvenile corrections. In addition, first or subsequent offenders are subject to a fine of **$100 to $500** plus at least 80 hours 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. §8-343(A), (B) and (D)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **No**[59]
Sanctions:
Criminal Sanction:
Imprisonment (Term):
Mandatory Minimum Term:
Fine ($ Range):
Mandatory Minimum Fine:

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 mandatory year (3 years if transporting hazardous materials) if while driving a CMV that person: (1) has a BAC/BrAC ≥.04; or (2) is under the influence of intoxicating liquor or a controlled substance. For a subsequent violation, the "disqualification" is for life; however, for a second violation, the period may be reduced to 10 years. A CMV operator is subject to the

[94] 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, license suspension, community service, and must complete a Traffic Survival School. §28-672(C) and (D) II. It is an "aggravating circumstance" for sentencing purposes for a person to commit either aggravated assault, negligent homicide, manslaughter or second degree murder while driving with a BAC≥.15 §13-702.

normal DWI sanctions. Under the regular DWI law, it is illegal per se for a person to drive a CMV with a BAC/BrAC ≥.04. Also, a CMV operator is subject to the sanctions and procedures of the admin. per se law if operating a CMV with a BAC/BrAC ≥.04. §§28-101(2), 28-101(7), 28-1301, 28-1381(A)(4), 28-1385(A)(2)(b), 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 operating a CMV with any measurable or detectable amount of alcohol in the system. 49 CFR 383.51 and 392.5

Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Note: License revocation for 180 days pursuant to a civil penalty. §28-672
Length of Term of Licensing Withdrawal:	
Mandatory Action--Minimum Length of License Withdrawal:	
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote No. [60].
Sanction:	
Criminal:	
Imprisonment (Term):	Class 1 Misdemeanor – Not **more than 6 months** Class 4 felony-Any DWI offense and driving on a suspended/revoked license for a previous DWI conviction[61] (Aggravated DWI) – **2½ to 12 years**[62] §§13-701, 13-707, 13-801, 13-802, 28-1716, 28-1383 and 28-3473(B)
Mandatory Minimum Term of Imprisonment:	Class 1 Misdemeanor offense – **48 consecutive hours** §28-3473(B) Class 4 felony offense – **4 months** §28-1383(D)

[95] 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) and (F) In addition, a person is subject to the following CDL disqualification periods: first violation – 90 days (mand); second violation (within 10 years) – 1 year (mand); and, third or subsequent violation (within 10 years) – 3 years (mand). If the violation involved the transportation of hazardous materials, the disqualification periods are as follows: first violation-180 days (mand); and, second or subsequent violation (within 10 years) – 2 years (mand). §28-3312(B) and (C)

[96] See "Forfeiture" under Vehicle Impoundment/Confiscation.

[97] Imprisonment sanctions for Class 4 felony: first Off-2½ to 3 years; with one prior felony conviction-3 to 6 years; with two or more prior felony convictions-8 to 12 years. §§13-604(A), (C) and (U)(1)(a) **Temporary Impoundment.** An offender's vehicle may be immediately impounded for 30 days if he/she has been arrested for either (1) driving while revoked, revocation for any reason; (2) driving while suspended where the suspension was based on driving under the influence; (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. §28-3511. However, the vehicle may be released prior to the end of the 30-day period if either the offender's driving privileges have been reinstated or the offender's spouse enters into a 5- year agreement with the State not to allow an "unlicensed driver" to operate the vehicle. §28-3512.

Fine ($ Range):	Class 1 Misdemeanor offense – Not **more than $2,500.** §13-802 Class 4 felony offense – **Not more than $150,000.** §13-801 **Assessments.** An offender is also subject to assessments which can be ≤60 percent of the fine imposed. §§12-116.01 and 12-116.02
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Class 1 Misdemeanor offense – For driving while suspended– suspension**.** For driving while revoked – Revocation §28-3473(D) Class 4 felony – Revocation §28-1383(I)
Length of Term of License Withdrawal Action:	Class 1 Misdemeanor offense – **Suspension** equal to original suspension period not to exceed one year from the date of reinstatement. **Revocation** for one additional year of revocation. §28-3473(D) Class 4 felony-**3 years** §28-1383(I)
Mandatory Term of License Withdrawal Action:	Class 1 Misdemeanor offense – **Suspension** equal to original suspension period. Other not to exceed one year from the date of reinstatement. **Revocation** for one additional year §28-3473(D) Class 4 felony-**3 years** §28-1283(I)
Habitual Traffic Offender Law:	
State Has Such Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ 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** §28-668

BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** §28-668
Vehicle Passengers:	**No**
Pedestrian:	**No**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** §§4-101(16) and 4-244(9) and (16)
Minimum Age (Years) Possession:	**21** There is an exemption for religious services or ceremonies. §§4-101(16), 4-244(9) and 4-249
Minimum Age (Years) Consumption:	**21** There is an exemption for religious services or ceremonies, or for a bona fide medicinal purpose. §§4-101(16), 4-226, 4-244(40) and 4-249
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §4-311. See Footnotes [63], [64] and [65]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Ontiveros v. Borak,* et al., 667 P.2d 200 (Ariz. 1983), and *Brannigan et al. v. Raybuck,* 667 P.2d 213 (Ariz. 1983)
Dram Shop Actions-Social Hosts:	**Yes (Limited)** Liability is limited to the actions of intoxicated minors. §§4-301, 4-312(B), *Estate of Hernandez v. Board of Regents,* 866 P.2d 1330 (Ariz. 1994)*, *Petolicchio v. Sanata Cruz County Fair,* 866 P.2d 1342 (Ariz. 1994), *Knoell v. Cerkvenik-Anderson Travel, Inc.,* 891 P.2d 861 (Ariz. App. 1994)**, *Bruce v. Chas Roberts Air Conditioning, Inc.,* 801 P.2d 456 (Ariz. App. 1990), and *Keckonen v. Robles,* 705 P.2d 945 (Ariz. App. 1985), and *Andrews, Ex Rel. Woodward v. Eddie's Place,* 16 P. 3d 801 (Ariz. App. Div 2, 2000).

[98] 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."

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

[100] 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 *Onitveros* decision. Thus, a person may bring a cause of action for damages either under the dram shop law or via common law negligence.

Other: **None. See Footnote [66].**

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

Type of Criminal Action: **Class 1 Misdemeanor** §§4-244(14) and 4-246(B)
Term of Imprisonment: Not more than **6 months** §13-707(A)
Fine ($ Range): Not more than **$2,500** for individuals §13-802(A); not more than **$20,000** for businesses §13-803
Assessments. An offender is also subject to assessments which can be ≤60 percent of the fine imposed. §§12-116.01 and 12-116.02

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes. Suspension or revocation[67]** §4-210(A)(9)
Length of Term of License Withdrawal: Length of term not fixed

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

Type of Criminal Action: **Class 1 Misdemeanor[68]** §§4-244(9) and 4-246(B)
Term of Imprisonment: Not more than **6 months** §13-707(A)
Fine ($ Range): Not more than **$2,500** for individuals §13-802(A); not more than **$20,000** for businesses §13-803
Assessments. An offender is also subject to assessments which can be ≤60 percent of the fine imposed. §§12-116.01 and 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): **Yes. Suspension or revocation** §4-210(A)(9)
Length of Term License Withdrawal: Length of term not fixed

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[101] 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)
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. §4-21.01
*See remanded case on appeal to the State supreme court for the second time, *Estate of Hernandez v. Flavio,* 930 P.2d 1309 (Ariz. 1997).
** The Arizona Supreme Court reversed and vacated the Court of Appeals decision and reinstated the alcohol-related counts in *Knoell v. Cerkvenik-Anderson Travael, Inc.,* 917 P. 2d 689 (Ariz. 1996).
[102] 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. §4-21.01
[103] 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 months and/or a fine of not more than $750. §§4-244(16), 4-246(A), 13-707(A) and 13-802(B)

Anti-Happy Hour Laws/Regulations:	**Yes**[69] §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):	**Yes** §4-251(A)(2) Violations of the open container/anti-consumption law are Class 2 misdemeanors.
Anti-Consumption Law (Yes/No):	**Yes**. Driver and passengers §4-251(A)(1)

[104] 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:	**ARKANSAS**
General Reference:	Arkansas Code Annotated
Basis for a DWI Charge:	
Standard DWI Offense:	Intoxicated[70] §§5-65-102(1) and 5-65-103(a) For Persons Under 21 Years Old-Under the Influence §5-65-303(a)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[71] §§5-65-103(b) and 5-65-204(a) For Persons Under 21 Years Old-≥**.02 but <.08**[72] §5-65-303(b)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	**Any Intoxicant**[73] or **Controlled Substance** §§5-65-102(1) and 5-65-103(a)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[74] §§5-65-202 and 5-65-309(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §5-65-202
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *Weaver v. City of Fort Smith,* 777 S.W.2d 867 (Ark. App. 1989), *Spicer v. State,* 799 S.W.2d 562 (Ark. App. 1990), and *Medlock v. State,* 964 S.W.2d 196 (Ark. 1998)
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

(continued)

[70] 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). The term "controlled substance" means a drug, substance, or immediate precursor in Schedules I-IV. 35-65-102(2)

[71] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .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) and 5-65-204(a)(1)

[72] Under §5-65-31l(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 he/she has a BAC > .04 but < .08.

[73] 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)

[74] 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 ≥ .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 ≥ .02 but < .08, (2) if the underage person has been involved in an accident or (3) if a law enforcement officer has stopped the under age person based upon "reasonable cause to believe" that the underage person has been driving while under the influence or with a BAC ≥ .02 but < .08. §5-65-309(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**[75]
Urine:	**Yes**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**Yes**[76]
Anti-Plea-Bargaining Statute (Yes/No):	**Yes**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** §5-65-109 The report must include the offender's driving record, an alcohol problem assessment, and a victim impact statement (if applicable).[77]

Sanction for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	Persons Under 21 Years Old.[78] first offense **– $100 to $500** (and possible community service); second offense – $**200 to $1,000** and not less than 30 days (mand) community service; third or subsequent offense **– $500 to $2,000** and not less than 60 days (mand) community service §§5-65-305(a), 5-65-306 {The minimum fines appear to be mandatory.}
Administrative Licensing Action (Susp/Rev):	First refusal – Suspension – **180 days (mand) or 90 days (mand) followed by 90 days of restricted**

[75] 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) and 5-65-309(a)

[76] Persons charged with a DWI offense must be tried on such charges or plead to such charges and no such charges shall be reduced. §5-65-107 For persons who are either convicted of or who have either pleaded guilty to or *non-contendere* to a first 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 first offence of "driving while under the influence" or with a BAC of "≥ .02 but < .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

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

[78] The fine is **doubled** if the offense is committed in a **Highway Work Zone**. §27-50-4

driving privileges[79] **with the use of an ignition interlock device**; second refusal[80] (within 5 years) – Suspension – **2 years** (mand); third refusal (within 5 years) – Revocation-**3 years** (mand); fourth or subsequent refusal (within 5 years) – revocation-**For Life** (mand) §§5-65-104, 5-65-118, 5-65-205(a) and 5-65-402

For Persons Under 21 Years Old. Licensing action for refusing to submit to a chemical test under §5-65-310 {The special implied consent law applies only to persons under 21 years old. 08(b)(1)(A)} First refusal – Suspension – **90 days**; second refusal – Suspension – 1 year **(mand)**; third or subsequent refusal – **Revocation until the person reaches 21 or for 3 years whichever is longer (mand)** §§5-65-120(b), 5-65-310(b) and 5-65-402

Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment
Term/Fine: First offense – **24 hours to 1 year/$150 to $1,000**; second offense (within 5 years) – **7 days – 1 year/$400 to $3,000**; third offense (within 5 years) – **90 days to 1 year/$900 to $5,000**; fourth offense (within 5 years)(felony) – **l to 6 years/$900 to $5,000**; fifth and subsequent offenses (within 5 years)(felony) – **2 to 10 years/$900 to $5,000** §§5-65-111 and 5-65-112

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): I. A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥ .04, (2) is intoxicated, or (3) refuses to submit to a chemical test for an alcohol concentration. (The CMV implied consent provision, §27-23-115(a), applies to a test for both an blood 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 years mand). II. It is a Class B Misdemeanor to operate a CMV while intoxicated or with a BAC/BrAC ≥.04; sanctions: Jail – not more than 90 days; fine – not more than $500 (§§5-4-201(b)(2) and 5-4-401(b)(2)). For a second offense, mandatory community service for not less than 30 days in lieu of jail and for a third of subsequent offense, mandatory community service for not less than 60 days 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) in. III. In addition, persons who have 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 and 27-23-115

[79] A person is eligible for a restricted license based upon extreme and unusual hardship that the person must use a vehicle (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)

[80] However, §5-65-205(d) provides that the Office of Driver Services consider DWI conviction as well as refusal to submit to a chemical test as countable previous offenses in determining length of suspension or revocation.

Under separate provisions of law, persons may have their CDL suspended for 1 year if they are convicted of operating a CMV while under the influence of a controlled substance. §§27-16-915(a) and (b) and 27-23-112(a)

	For Persons Under 21 Years Old who are convicted of "driving while under the influence" or with a BAC of ≥.02 but < .08 under §5-65-303: first offense – **$100 to $500**; second offense[81] – **$200 to $1,000**; third or subsequent offense – **$500 to $2,000** §5-65-305(a)
Mandatory Minimum Term:	First offense – **24 hours**; second offense (within 5 years) – **7 days**; third offense (within 5 years) – **90 days**: fourth and subsequent offense (within 5 years) – **1 year** §5-65-111
Mandatory Min. Fine ($):	First offense – $**150**: second offense (within 3 years) – **$400**; third and subsequent offense (within 3 years**) – $900** §5-65-112 See Footnote No. [82]. For Persons Under 21 Years Old who are convicted of "driving while under the influence" or with a BAC of "≥ .02 but < .08" under §5-65-303: first offense **– $100; second** offense – $**200; third** or subsequent offense – $**500** §5-65-305(a) These minimum fines appear to be mandatory. The sanctions may be applied against a person under 21 years old who is convicted of "driving while under the influence" or with a BAC of "≥ .02 but < .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, treatment and community service	Any person whose license is suspended or revoked shall be required to complete an alcohol education program.{ Fee: up to $125.} § 5-65-104(b) I. First offense – In lieu of imprisonment (the law does not specify the length of time a person must do community service.); second offense – (within 5 years) – not less than 30 mandatory days in lieu of jail; third offense (within 5 years) – Not less than **90 days (mand)** in lieu of jail; fourth offense (within 5 years) – Not less than **1 year (mand)** in lieu of jail; fifth or subsequent offense (within 5 years) – Not less than **2 years (mand)** in lieu of jail §5-65-111(a) and (b)

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

[82] Certain minimum sanctions for DWI offenses under §§5-4-104(e)(l)(A)(iv), 5-4-301(a)(1)(D), 5-65-111 and 5-65-112 are mandatory. §§5-65-108 and 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,* 745S.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.

DWI Offenses Involving Motor Vehicles Used in Commerce and Regulated Under the State's Motor Carrier Act. A person commits a misdemeanor if he/she operates a motor vehicle regulated under this act while possessing, using, or 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: first offense – Jail – None, Fine – $200 to $1,000; second 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. If a person is unable to pay a fine, he/she may be given community service as an alternative sanction. §5-65-114

(continued)	II. Persons unable to pay a fine 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 ≥ .02 but <.08 under §5-65-303 the court shall order public service work. First offense – Time period is not specified; second offense – For not less than **30 days (mand)**; third or subsequent offense – For not less than **60 days (mand)** §5-65-306
Restitution (e.g., Victim's Fund)	**Yes** By the defendant (§§5-4-104(d)(4) and 5-4 205) and via crime victims' compensation funds (§§16-90-307 and 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) except for catastrophic injuries {maximum amount capped at $25,000}. §16-90-716(a)(2)
Other:	A defendant may have to pay the following assessments or fees. (1) 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. (2) A fee of $50 to offset cost of alcohol education program or $25 to offset costs of alcohol treatment program reporting requirements. §5-65-115(2)
Administrative Licensing Actions:	
Pre-DWI Conviction. Licensing Action:	
Administrative Per Se Law:	**Yes**[83] **BAC/BrAC ≥ .08** first violation (BAC/BrAC ≥ .08 but < .15) – **Suspension – 120 days**[84]; first violation (driving while intoxicated by a controlled substance) – **Suspension – 6 months**; first violation (BAC/BrAC < .15) – **Suspension – 180 days (mand) or 30 days (mand) followed by restricted driving privileges for 150 days with ignition interlock use**; second violation (BAC/BrAC ≥ .08)

[83] 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)

[84] 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

(within 5 years) – **Suspension – 24 months (mand) or 1 year (mand) followed by 12 months of restricted driving privileges with ignition interlock use**; third violation (BAC/BrAC ≥ .08) (within 5 years) – **Revocation-30 months (mand) or 1 year (mand) followed by 18 months of restricted driving privileges with ignition interlock use**; fourth or subsequent violation (BAC/BrAC ≥ .08) (within 5 years) – **Revocation- 4 years (mand)** §§5-65 104, 5-65-118, 5-65-120(b) *and* 5-65-402

For Persons Under 21 Years Old. "Driving while under the influence" or driving with a BAC/BrAC of ".02 but < .08" under §5-65-303: first offense – **Suspension 90 days**; second offense – **Suspension 1 year (mand)**; third or subsequent offenses – Revocation **until the person reaches 21 or for 3 years whichever is longer (mand)** §§5-65-120(b), 5-65-304(a) *and* (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. [85] and [86]
	No specific licensing following a conviction under either §5-65-102 (regular drunk driving offenses) or §5-65-303 (.02 offense for persons < 21 years old). Licensing action is done via the administrative per se laws.
Mandatory Minimum Term of Withdrawal:	**N/A**
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** §§5-65-104(h) and 5-65-115(a)[87] Persons under 21 Years Old, who either (1) are convicted of "driving while under the influence" or with a BAC ≥ .02 but < .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) and (e)(1)
Alcohol Treatment:	**Yes** §5-65-115(a)

[85] Via a separate law, a person convicted of driving while under the influence of a controlled substance must have his/her driving privileges suspended for 6 months. For extreme hardships, restricted driving privileges may be granted, §27-16-915(b)(1)(a).

[86] 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 his/her 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 and 27-16-914

[87] An alcohol education/treatment program must be completed before a suspended/revoked license can be reinstated. §5-65-115(b) In addition a reinstatement fee of $100 must be paid. §27-16-508

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 fourth DWI offense (within 3 years), a court may order the defendant's motor vehicle forfeited. §5-65-117(a)

Terms Upon Which Vehicle Will Be Released:

N/A

Other:

I. **License Plate Impoundment**. License plates shall be impounded for **90 days** if a driver has been arrested for driving while suspended/revoked where such suspension/revocation was based on an alcohol offense conviction.[88] §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 year whichever is longer.[89] §§5-65-401(3) and 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 first or second offense and (2) **must**, for a third or subsequent offense, if the offender can afford it, require only operating a motor vehicle equipped with an ignition interlock device. This requirement continues for up to 1 year after the person's license is no longer suspended or revoked. However, if 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 for at least the remaining time period of the original suspension" period. §5-65-118

Highway Work Zone[90] The fine is **doubled** if the offense is committed in a Highway Work Zone. §27-50-408(b)(l)(A)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

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[88] 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.

[89] If either a family member or a co-owner of a vehicle 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(j)

[90] 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)(l)(A) and (e)

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[91] §27-50-307 II. Death caused by driving while intoxicated or with a BAC ≥.08 (negligent homicide) – Class C felony §5-10-105(a)[92]
Sanctions:	
Criminal Sanction: Imprisonment (Term):	Class A Misdemeanor – Not more than **1 year** §5-4-401 (b)(l) Class C felony – **3 to 10 years** §5-4-40l(a)(4)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Class A Misdemeanor – Not more than **$1,000** §5-4-201(b)(l) Class C felony – Not more than **$10,000** §5-4-20 l(a)(2)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Revocation** (mandatory) §§27-16-905(1) and 27-50-307(b)
Length of Term of Licensing Withdrawal:	**1 year** §27-16-912
Mandatory Action-Minimum Length of License Withdrawal:	**l year** §§27-16-905(1) and 27-16-912
Other:	
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*</u>:	§5-65-105; §27-16-303(a)(1) See Footnote No. [93].
Sanction:	
Criminal:	

[91] 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)).

[92] The negligent homicide statute does not preclude a prosecutor from charging a homicide by vehicle as manslaughter. §5-10-105 expressly allows for murder or manslaughter charges to arise from a homicide involving the operation of an automobile. *Simmerson v. State* 25 S.W.3d 439 (2000).

[93] I. It is Class C misdemeanor 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 days or a fine ≤$100. §§5-4-201(a)(3), 5-4-401(b)(3) and 27-23-107(b) and (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: first off – 90 days (mand) to 1 year; second off (within 10 years) – l (mand) to 5 years; third or subsequent off (within 10 years) – 3 (mand) to 5 years. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or more than 15 persons: first off-180 days (mand) to 2 years; second or subsequent off (within 10 years) – 3 (mand) to 5 years. §27-23-112(g)

*The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked, unless otherwise noted.

Imprisonment (Term):	**Misdemeanor- 2 days to 6 months**. §237-16-303.
Mandatory Minimum Term of Imprisonment:	**10 days** if suspension or revocation is based on a DWI charge. §5-65-105
Fine ($ Range):	Not more than **$500** §27-16-303 Not more than **$1,000** if suspension or revocation 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 suspension – Suspension. If based on revocation – **Revocation.** §27-16-303
Length of Term of License Withdrawal Action:	Original suspension period is extended a like period. Original period of revocation is extended 1 year. §27-16-303 In addition, the court may order issuance of an ignition interlock restricted license for 1 year prior to reinstatement eligibility when license has been suspended or revoked for DUI-based violation. §5-65-104(5)(B)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	No

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §5-65-208(a); §5-65-202(b)
BAC Chemical Test Is Given to the Following Persons:	
Driver:	**Yes**[94]
Vehicle Passengers:	Possible
Pedestrian:	Possible
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[95] Fine: $100 to $500; in addition, suspension §§3-3-202 and 3-3-203 of driver's license: first offense: 60 days; second offense: 120 days; third/subsequent offense: 1 year.[96]

[94] 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 his/her blood, breath or urine for alcohol or drug presence and concentration. §5-65-280(a); §5-65-309(b); §5-65-202(b)

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

[96] In addition, the trial judge or magistrate may impose the following penalty or penalties or any combination thereof:
(1) Requiring persons under the age of twenty-one (21) years to write themes or essays on intoxicating liquors, wine, or beer; or
(2) Placement of a person under the age of twenty-one (21) years under probationary conditions as determined by the court in its reasonable discretion designed as a reasonable and suitable preventive and educational safeguard to prevent future violations of this section by the person

Minimum Age (Years) Possession:	**21** §§3-3-203 There is an employment exemption for persons over 18. §3-3-204
Minimum Age (Years) Consumption:	**None**. Under §3-3-203(a)(2), "intoxicating liquor, wine or beer in the body of a minor shall not be deemed to be in his possession."
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes, limited.** The Arkansas Legislature has modified the holdings in the *Shannon* and *Jackson* cases noted below and has declared that, except regarding sales of alcohol to a minor or to someone who is clearly intoxicated, 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 and 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**[97and98] *Shannon v. Wilson,* 947 S.W.2d 349 (Ark. 1997), and *Jackson v. Cadillac Cowboy, Inc.,* 986 S.W.2d 410 (Ark. 1999)
Dram Shop Actions-Social Hosts:	**No** Social host liability is prohibited via statute. §16-126-106[99]
Other:	A licensee is liable for the injuries sustain 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:	**Misdemeanor** for all offenses See Footnote No. [100] for citations.

[97] 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

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

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

[100] Citations: §§3-3-102, 3-3-103, 3-3-201, 3-3-202, 3-3-206 to 3-3-209, 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, 3-9-301, 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) and (5).

Term of Imprisonment:	Package Sales: (1) All alcoholic beverages except those noted below-first offense – **none**; second and subsequent offenses – **6 months to l year**; (2) Beer and wine not in excess of 5 percent alcohol by weight-**none**. On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below – not **more than 6 months**; (2) beer (all types) – **none**; (3) wine not exceeding 14 percent-**10 to 30 days**
Fine ($ Range):	Package Sales: (1) All alcoholic beverages except those noted below – first offense **– $100 to $250**; second and subsequent offense **– $250 to and500**; (2) Beer and wine not in excess of 5 percent alcohol by weight – No**ne**. On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below – Not **more than** **$1,000**; (2) beer (all types) – **None**; (3) wine not exceeding 14 **percent – $100 to $500**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Under certain conditions.
Length of Term of License Withdrawal:	Package Sales: (1) All alcoholic beverages except those noted below-for two or more convictions – Revocation[101and102] (and a possible administrative fine); (2) Beer and wine not in excess of 5 *percent* alcohol by weight-**none**. On-Premises Consumption Sales: *(*1) All alcoholic beverages except those noted below- **Suspension/Revocation**; (2) beer (all types) – **Suspension/Revocation**; (3) wine not exceeding 14 percent– suspension/**Revocation**
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:	**Misdemeanor** for all offenses. (except as noted) Term of Imprisonment: Package Sales: (1) All alcoholic beverages except those noted below – (a) where "knowledge" is a factor[103 – first] offense (Class D felony) – **not more than 6 years**; second offense (within 5 years) (Class C felony) – **3 to 10 years**; (b) where "knowledge" is not a factor – first offense – **none; second** and subsequent offense – not **more**

[101] Length of Revocation/Suspension is not specified in the statute.
[102] The following administrative fines may be imposed on retailers (Class B Permit holders) for a violation of the Alcoholic Beverage Control Laws: first offense – $200 to $500; second offense (within 12 months) – $400 to $1,000; third offense (within 12 months) – $600 to $1,500 §§3-4-401, 3-4-402(a)(2) and (b) and 3-4-404(11) and (18)
[103] *State v. Jarvis,* 427 S.W.2d 531 (Ark. 1968)

	than l year; (2) beer and wine not in excess of 5 percent alcohol by weight – not **more than l year** On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below – not **more than 6 months**; (2) beer and wine not in excess of 5 percent alcohol by weight – not **more than 1 year**; (3) wine not in excess of 14 percent-**10 to 30 days**
Fine ($ Range):	Package Sales: (1) All alcoholic beverages except those noted below-(a) where "knowledge" is a factor-first offense – not **more than $10,000**; second offense(within 5 years) – **not more than $10,000**; (b) where "knowledge" is not a factor – first offense – $**200 to $500**; second and subsequent offense – $**500 to $1,000**; (2) beer and wine not in excess of 5 percent alcohol by weight – 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 percent alcohol by weight – not **more than $500**; (3) wine not in excess of 14 percent – $**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):	**Yes** Under certain conditions
Length of Term License Withdrawal:	Package Sales: (1) All alcoholic beverages except those noted below – for two or more convictions – Revocation[104]; (2) beer and wine not in excess of 5 percent alcohol by weight.-**l year Revocation/Suspension** Qn-Premises Consumption Sales: (1) All alcoholic beverages except those noted below – Revocation/**Suspension**; (2) beer and wine not in excess of 5 percent alcohol by weight – 1 year **Revocation/Suspension**; (3) wine not in excess of 14 percent – Revocation/**Suspension**
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** 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

[104] Length of Revocation/Suspension is not specified in the statute.

coach, streetcar or in or upon any vehicle commonly used for the transportation of passengers…." §5-71-212(c)

STATE:	**CALIFORNIA**
General Reference:	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 Vehicle Code §§23152and 23153
Illegal Per Se Law (BAC/BrAC):	≥ **.08**[105 106 107] Vehicle Code §§23152(b) and 23153(b); ≥ .01 for persons under 21 §23136
Presumption (BAC/BrAC):	≥ **.08** Vehicle 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[108] Vehicle Code §§23152 and 23153
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** Vehicle Code §236l2(h)[109] Persons under 21 years old who have been detained for operating a motor vehicle with a blood alcohol concentration ≥.0l. Vehicle Code §§13388 and 23136(c)
Implied Consent Law: Arrest Required (Yes/No):	**Yes** Vehicle Code §23612; detention with reasonable cause for persons under 21 Vehicle Code §23136(c)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** Vehicle Code §236l2(a)(l)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) Vehicle 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); *People v. Sugarman* 116 Cal Reporter 2d 689 (Cal. App. 2002)

[105] **Persons Under 21 Years Old**. See Juvenile Offenses Involving Alcohol and admin. licensing actions.
[106] "Percent by weight" 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. Vehicle Code §§23152(b) The provision of the vehicle code related to DWI injury offenses, Vehicle Code §23153, only refers alcohol concentration in terms of "percent by weight."
[107] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more. *People* v. *Bransford,* 884 P.2d 70 (Cal. 1994)
[108] 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
[109] A PBT may be conducted without legislative authority. A.G. Opinion 88-1102, Oct. 26, 1989

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

Blood:	**Yes** Vehicle Code §23612
Urine:	**Yes (Limited)**[110] Vehicle Code §23612

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**Yes** Plea bargaining is prohibited in serious felony and DWI cases unless (1) there is insufficient evidence of the offense, (2) testimony of a material witness cannot be obtained, or (3) the reduction or dismissal of charges would not result in substantial change in sentence. Penal Code §1192.7 and *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.Under Vehicle Code §23635, the court must give the reasons a DWI charge was reduced to a lesser offense, changed to reckless driving, or was dismissed.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes**[111] (Mand for subsequent offs) Vehicle. 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):	**None**
Administrative Licensing Action (Susp/Rev):	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 ≥.01. First Refusal – **Suspension 1 year** (mand); second Refusal[112] (within 7 years) – **Revocation 2 years** (mand); third and subsequent Refusal[113] – Revocation **3 years** (mand) Veh. Code §§13353.1(a), 13353.8, 13388 and 23136(c)
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**No**

[110] 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. Vehicle Code §§21200(a) and 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. Vehicle Code §§21200.5 and 21221.5 In addition, a bicycle rider ≥ 13 but < 21 years old who violates Vehicle Code §21200.5 is subject to license suspension under Vehicle Code §§13202.5 and 21200.5

[111] Each county must develop a PSI alcohol assessment program Vehicle Code §23646 et seq.

[112] Or a refusal where within 7 years of a DWI/Vehicle Homicide conviction, refusal to submit to a test under the implied consent law, or a prior admin. per se license suspension of any type.

[113] Or a refusal where within 7 years a person has two or more separate DWI/Vehicle Homicide convictions, refusals to submit to a test under the implied consent law, or prior admin. per se license suspensions of any type.

Administrative Licensing Action (Susp/Rev):	First Refusal – **Suspension – l year** (mand); second Refusal (within 7 years) – **Revocation – 2 years**[114] (mand); third Refusal (within 7 years) **Revocation-3 years**[115] (mand) These sanctions also apply to persons under 21 years old, who are arrested for a violation of Vehicle Code §23140 (driving with a BAC ≥.05) and who refuse to submit to a test under the implied consent law. Vehicle Code §§13353, 13353.4(a) and 23612
Sanctions Following a Conviction for a DWI Offense:	
Criminal Sanctions:	Non-Injury DWI Offenses are misdemeanors. Vehicle Code §§23152 and 40000.15 **Citations**: Sanctions for violating the drunk driving laws are codified under §23536 et seq.
Imprisonment/Fine:	Non-Injury DWI Offense (with no previous DWI offs[116]**-96 hours** (at least 48 hrs shall be continuous) **to 6 months**, **$390 to $1,000** Non-Injury DWI Offense (with one previous DWI offense within 7 years) – **90 days to l year, $390 to $1,000** Non-Injury DWI Offense (with two previous DWI offenses within 7 years) – **120 days to 1 year, $390 to $1,000** Non-Injury DWI Offense (with three previous DWI offenses within 7 years) – **180 days to l year**[117]**, $390 to $1,000** Injury Related DWI Offense (with no previous DWI offenses) – **90 days to 1 year, $390 to $1,000** Injury Related DWI Offense[118] (with one previous DWI offense within 7 years) – **120 days to 1 year**, **$390 to $5,000**;

[114] Or within 7 years, a person has (1) been previously convicted of a DWI/Vehicle Homicide offense or (2) had his/her license previously suspended/revoked for an admin. per se violation as of the date of refusal.

[115] Or within 7 years, a person has (1) been convicted of two or more DWI/Vehicle Homicide offenses or (2) had his/her license suspended/revoked two or more times for an admin. per se violation as of the date of refusal. Priors include vehicular homicide convictions in any other state, district or territory. §13353(a)(3)(D)

[116] A previous offense includes Vehicle Code §§23152 and 23153 (non-injury or injury DWI offs). A guilty or nolo contendere plea to reckless driving (Vehicle Code §23103), instead of a DWI charge, also considered a previous DWI offense. Vehicle Code §23103.5(c) An out-of-state conviction, of what would amount to vehicular manslaughter in Calif., considered as a prior conviction CA51852 Vehicle §23_ also Vehicle. Code §13353(a)(3)(D) including Juvenile findings. Vehicle Code §23521

[117] Or 16 months, 2 or 3 years in the State prison. See also Penal Code §18.

[118] If more than one individual has been injured, an enhanced prison term of one year is added for each victim. The maximum number of such enhancements is three. Vehicle Code §23558

Mandatory Minimum Term:	Injury Related DWI Offense[119] (with two or more previous DWI offenses within 7 years) – State prison **2, 3 or 4 years, $1,015 to $5,000** Vehicle Code §§23536 *et seq.* And, if there has been a DWI offense with Great Bodily Injury where there have been 4 or more previous DWI offenses within 7 years, an **additional consecutive** sentence of **3 years** in the State prison. Vehicle Code §23566(c) Non-Injury DWI offense (with no previous DWI offenses) – **None**[120] Non-Injury DWI offense (with one previous DWI offense within 7 years) – **96 hours (w/2 continuous periods of 48 hrs)** [121]

[119] Also includes DWI offenses where there has been great bodily injury and there were 2 or more previous DWI offenses (injury/non-injury) within 7 years. Vehicle 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 Ca1.Rptr.2d 205 (Cal. App. 1 Dist. 1996)

Prior Drunk Driving Felony Offenses. A person (1) who has been convicted either of a drunk driving offense (injury or non-injury offense) with a prior conviction within 10 years 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 year (or incarceration in the county jail from 180 days to 1 year if probation is granted) (either 48 con hours or 10 days 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 years (24 months mandatory with restricted driving after this period provided the offender participates in either a 18-or 30-month alcohol rehabilitation program). Vehicle Code §§13352(a)(7), 23550.5, 23552, 23580 and 23600.

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

[120] **Child Endangerment**. For non-injury offenses, where a minor under 14 years old was a passenger, the following mandatory jail sanctions are imposed: first offense – 48 continuous hours; second offense – l0 days; third offense – 30 days; fourth offense – 90 days. 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. Vehicle Code §23572

[121] The legislature has authorized a pilot program in Sacramento County providing for the impoundment of a person's vehicle for a DUI offense that is undertaken in combination with an intervention and a referral of the person to a driving-under-the-influence program, as specified, if the person has one or more prior DUI convictions within the past 10 years. § 22651.10. But the program will be implemented only if funds from private or federal sources are available to fund the program and only if the Board of Supervisors of Sacramento County enacts an ordinance or resolution authorizing the implementation of the pilot program in the county.

Special Note I: 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 year for each additional injured individual. The maximum number of one-year enhancements which may be imposed is three. Veh. Code §23558

II: A person is subject to a mandatory 60 consecutive days of imprisonment if they operate a vehicle under the following three 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 or 20 or more MPH above the posted speed limit on any other highway or street. Vehicle Code §23582

III: The Department shall grant a driver's license restriction instead of suspension to a person who (1) has been convicted of a second violation of a DUI provision that occurred on or before July 1, 1999; (2) was granted probation under a specified provision for that conviction; (3) is no longer subject to that probation; (4) has not completed the licensed driving-under-the-influence program requirements in existing law for reinstatement of the driving privilege; and (5) has no violations in the driving record that would preclude issuance of a restricted driver's license. Vehicle Code § 13352.5

Non-Injury DWI offense (with two previous DWI offenses within 7 years) – **30 days** Non-Injury DWI offense (with three or more previous DWI offenses within 7 years) – **180 days**
Injury related DWI offense(with no previous DWI offenses) – **5 days**
Injury related DWI offense (with one previous DWI offense within 7 years) – **30 days**
Injury related DWI offense (with two or more previous DWI offenses within 7 years) – **30 days**
See Special Note below and **Home Detention**.

Mandatory Min. Fine ($): Non-Injury DWI offense (with no previous DWI offenses) – **$390**
Non-Injury DWI offense (with one previous DWI offense within 7 years) – **$390**
Non-Injury DWI offense (with two previous DWI offenses within 7 years**) – $390**
Non-Injury DWI offense (with three or more previous DWI offenses within 7 years) – **$390**
Injury related DWI offense (with no previous DWI offenses) – **$390**
Injury related DWI offense (with one previous DWI offense within 7 years) – **$390**
Injury related DWI offense (with two or more previous DWI offenses within 7 years) – **$390**

Other Penalties: **Yes**
Community Service: **Yes** Penal 1203.1
Restitution (e.g., Victim's Fund) **Yes** Injury related DWI offenses Gov't. Code §13950 et seq. (Victims' Assistance Fund)
The court may also order direct compensation by the defendant to the victim(s). Penal Code §1203.1

Other: **Test Fee**. The counties are authorized to impose on defendants a fee of not more $50 for conducting an alcohol chemical test. Penal Code §1463.14
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. Penal Code §1203.1L 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. Vehicle Code §23645(a) II. A fee of not more than $100 may be assessed against a person convicted of a DWI offense in counties participating in an alcohol and drug assessment program. Vehicle Code §23649 III. An assessment not to exceed $100 may be imposed for PSI alcohol/drug evaluation. Vehicle 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.[122] Penal Code §§1463(l)(2) and 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 Gov't. Code §76000 and Penal Code §§1463(l)(2)

As a condition of probation the court may require the defendant to pay costs of probation investigation (§1203.16) incarceration (1203.1c) and provision of parole supervision (12031e).

Ignition Interlock. I. The court may order a first offender (injury or non-injury related) to operate only motor vehicles equipped with "ignition interlock" devices for not more than 3 years. Heightened consideration is to be given to first offenders with a BAC ≥.15 or to first offenders who refused to take a chemical test, including {to grant probation} participation for at least 9 months or longer in a licensed alcohol and other drug education program that consists of at least 60 hours of program activities.{normally 3-month programs are required of first-time offenders.} Vehicle Code § §23556, 23575(a)(l)

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

Drunk Driver Visitation Program (Persons Under 21 Years Old). For a first DWI non-injury offense or a violation of Vehicle Code §23140 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. Vehicle Code In order to participate in this program, persons under 21 must agree not to drink alcoholic beverages until they are 21. Vehicle 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 Vehicle Code §23580 (48 con hrs or 10 days of community service) apply nevertheless. Penal Code §1203.016 and *People* v. *Superior Court*

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

(Hubbard), 281 Cal. Reporter 309 (Cal. App. 2 Dist. 1991).

Juvenile Offenses Involving Alcohol. I. Under Vehicle Code §§23140, it is unlawful for a person under 21 years old to operate a motor vehicle if he/she has a BAC ≥.01. 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 ≥ 18 years old must complete a driving-under-the-influence program and are subject to license suspension until they complete such a program. However, first offenders ≥ 18 years old only have to complete the education component of such program. Health and Safety Code§§11836 and 11837(c)(1) and Vehicle Code §§13352.6 and 23502 **Licensing Action**: ALL persons <21 years old are subject to administrative license suspension if they operate a motor vehicle with a BAC ≥.01; but may receive restricted license instead of suspension with a showing of a 'critical need to drive and no prior DUI convictions, and the person's driving privilege has not been suspended or revoked under DUI provisions, § 13353.8 A person under 21 years old who violates the regular DWI laws must also participate in either an alcohol education or rehabilitation program. Vehicle Code §23520 Also, if such person fails to complete such programs, their license may be either suspended or revoked until either the person shows proof of completion or reaches 21 years old. 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 offenses: first offense, if probation is granted, the court must use the following sentence structure: Jail-48 hours (mandatory) up to 6 months; fine – $390 (mandatory) up to $1,000; and license Suspension – 6 months; second offense – 96 hours in jail (mandatory); third offense – 10 days in jail (mandatory); fourth and subsequent offenses.-18 days in jail (mandatory) DWI injury offenses first offense – 48 continuous hours in jail (mandatory); second offense – 96 hours in jail (mandatory) Vehicle Code §23577
DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is prohibited from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if 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 transporting hazardous materials, the suspension is for 3 years (mand). A CMV operator must be placed "out-of-service" for 24 hours if that person has a BAC ≥.01 A CMV operator commits a DWI offense by operating a CMV with a BAC/BrAC ≥.04; a conviction for this offense subjects the offender to the same sanctions as would a conviction for any other DWI offense. Vehicle Code §§13353(a), 15210(b) and (d), 15300, 15302, 23152(d), 23153(d) and 34501.15(a) 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)

Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes** Persons 21 Years Old and Above-**BAC ≥.08**[123] or Persons Under 21 Years Old-**BAC ≥.05/.01** first violation– suspension **6 months** (mand for persons under 21 years old) A person 21 years old and above, who participates in an alcohol education or treatment program, is subject to a mandatory license suspension for 30 days followed by restricted driving privileges, except as noted, for 60 days for the purpose of either participating in the program or going to and from a place of employment. Following

[123] Based upon a person driving either (1) with a blood alcohol concentration ≥.05 based on "percent by weight" of alcohol in the blood or (2) with an alcohol concentration of .01 based on either a preliminary breath test or "other chemical test." Vehicle Code §13353.2(a)

successfully completion of the program, "unrestricted" driving privileges may be granted after the 60-day 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 months. Vehicle Code §13353.7 Second and subsequent violations[124and125] (within 7 years) – **Suspension 1 year** (mand) Vehicle Code §§13353.2, 13353.3, 13353.4(a), and 133822 See Footnotes No. [126], [127], [128] and [129]

Other: **Under Separate Provisions of Law**, Persons Under 21 Years Old are subject to a **suspension for not less than 1 year** (30 days mand) if a "preliminary breath test" or "other chemical test" result indicates a blood alcohol concentration ≥.01. After the mandatory suspension period, restricted driving privileges are available based upon a critical need to drive. Vehicle Code §§13353.3(b)(3), 13353.8, 13390 and 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 **≥.01**. See Vehicle Code §§13352.2 and 23136.

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): Non-Injury DWI Offense (with no previous DWI offenses) – **Suspension** Vehicle Code §§13352(a)(1) and 23536

Non-Injury DWI Offense (with one previous DWI offense within 7 years) – **Suspension** Vehicle Code §§13352(a)(3) and 23540

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

[125] Under Vehicle Code §13353.7(d), the 1-year mandatory suspension remains if effect only so long as such suspension is required for subsequent violations per 23 USC §§408 and 410.

[126] 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. Vehicle Code §13353.2(e) But "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), and *Helmandollar v. Director, DMV*, 9 Cal.Rptr.2d 155 (Cal. App. 3 Dist. 1992)

[127] Admin. per se suspensions and DWI suspensions/revocations are to run concurrently. The total period of license suspension/revocation shall not exceed the longer of the two periods. Vehicle Code §13353.3(c)

[128] Administrative suspensions are "independent" of licensing actions taken via convictions for DWI offenses. e.g., a mandatory suspension of 1 year for a second admin. per se violation will apply notwithstanding a court order allowing restricted driving privileges for a second DWI (non-injury) offense conviction. *Robertson* v. *Dept. of Motor Vehicles,* 9 Cal.Rptr.2d 319 A CDL driver who is found subject to the admin. per se law for first violation while not operating a CMV would have CDL privileges suspended for a mandatory period of 30 days followed by restricted driving privileges for 5 months. Vehicle Code §13353.6 *and Murphy* v. *Pierce,* 2 Cal.Rptr.2d 18 (Cal. App. 6 Dist. 1991)

[129] (Cal. App. 1 Dist. 1992) 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)

Non-Injury DWI Offense (with two previous DWI offenses within 7 years) – **Revocation** Vehicle Code §§13352(a)(5) and 23546(a)
Non-Injury DWI Offense (with three or more previous DWI offenses within 7 years) – **Revocation** Vehicle Code §§13352(a)(7) and 23550
Injury Related DWI Offense (with no previous DWI offenses) – **Suspension** Vehicle Code §§13352(a)(2) and 23554
Injury Related DWI Offense (with one previous DWI offense within 7 years) – **Revocation** Vehicle Code §§13352(a)(4) and 23560
Injury Related DWI Offense(with two or more previous DWI offenses within 7 years) – **Revocation** Vehicle Code §§13352(a)(6) and 23566
See Footnote No. [130] and [131] and the Special Note below.
Additional Citations: Vehicle Code §§23538, 23542, 23548, 23552, 23556, 23562 and 23568
Postponement of Licensing Action. If an offender is sentenced to serve either 1 year in the county jail or more than 1 year in prison, the court may postpone the imposition of either a suspension or revocation until the offender is release from incarceration. Vehicle Code §23665

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

Non-Injury DWI Offense (with no previous DWI offenses) – **6 months**;
Non-Injury DWI Offense (with one previous DWI offense within 7 years) – **2 years**;
Non-Injury DWI Offense (with two previous DWI offenses within 7 years) – **3 years[132];**

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[130] 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. 533) Subsequent cases have upheld admission of breath tests where (1) the testing device was in proper working order (2) the test was properly administered, and (3) the operator was competent and qualified. *People v. Williams* 28 Cal. 4th 408, 49 P.3d 203 (2002); *People v. Bury* 49 Cal.Rptr.2d 107 (Cal. App. Dist. 1996)

[131] If a person is involved in an accident and has a BAC ≥.08 and has been convicted of a DWI related vehicle homicide (within 5 years), the 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 within 5 years. This revocation period is cumulative with any other DWI imposed restrictions, suspension or revocation, if there have been two or more previous DWI convictions within 5 years. Vehicle Code §13954
There are two provisions of the California Vehicle Code that provide for special licensing sanctions against minors who violate the DWI laws. I. Under Vehicle Code §13352.3, a person who is < 18 years old and who is convicted of an alcohol driving offense is subject to a license revocation (1) until 18, (2) for 1 year or (3) per Vehicle Code §13352 whichever period is longer. II. Under Vehicle Code §13202.5, a person who is ≥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 year. However, such person may be eligible for restricted driving privileges based on "a showing of a critical need to drive" (Vehicle Code §13202.5(c)).

[132] A license cannot be reinstated unless the defendant has completed either an 18-or 30-month alcohol treatment program. Vehicle Code §13352(a)(5) and gives proof of financial responsibility, pays all reissue fees, etc. Vehicle Code §13353.4 and §23538

Non-Injury DWI Offense (with three or more previous DWI offenses within 7 years) – **4 years;**
Injury Related DWI Offense (with no previous DWI offenses) – **l year**;
Injury Related DWI Offense (with one previous DWI offense within 7 years) – **3 years;**
Injury Related DWI Offense (with two or more previous DWI offenses within 7 years) – **5 years**
Vehicle Code §13352 and 13352.5

Mandatory Minimum Term of Withdrawal:

Non-Injury DWI Offense (with no previous DWI offenses)[133] (6 months mandatory for persons who operate certain types of heavy trucks or buses. Vehicle Code §§12804.9, 13352(a)(1), and 23536(e));
Non-Injury DWI Offense (with one previous DWI offense within 7 years) – **-**[134];
Non-Injury DWI Offense (with two previous DWI offenses within 7 years) – **18 months {12 months with ignition interlock[135]and[136];**
Non-Injury DWI Offense (with three or more previous DWI offenses within 7 years) – **24 months {12 months with ignition interlock}**;
Injury Related DWI Offense(with no previous DWI offenses) – **1 year**;
Injury Related DWI Offense (with one previous DWI off within 7 years) – **18 months {12 months with ignition interlock}[137];**
Injury Related DWI Offense (with two or more previous DWI offenses within 7 years) – **30 months 12 months with ignition interlock}**
If a DWI conviction results either in a jail sanction of 1 year in the county jail or in imprisonment of 1 year or more in the State prison, the court may postpone the suspension of driving privileges until the term of incarceration has been served. Vehicle Code §23665

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

[134] 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-month suspension if enrolled in an alcohol treatment program and have an **ignition interlock** device installed on the vehicles. Vehicle Code §13352(a)(3) and 23542(b)(3) and Health and Safety Code §11837

[135] Persons required to drive vehicles equipped with ignition interlocks who drive a vehicle without an interlock are considered to have driven without a license and may be immediately arrested, with the vehicle impounded for 30 days. §14602.6. (a) (1)

[136] 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. Vehicle Code §13352(a)(5), (6) and (7)

[137] Restricted driving privileges may be granted after 12 months provided the defendant has completed an alcohol treatment program and consents to use **ignition interlock** devices on the vehicles. Vehicle Code §§13352(a)(4) and 23562

For either non-injury or injury related DWI offenses, an offender's license (i.e., complete driving privileges) cannot be reinstated until completion of an alcohol or drug education and counseling program. Vehicle Code §§13352 and 13353.4(e)

Other:

Rehabilitation:

Alcohol Education: Conditions of probation, which normally provide for a reduced period of incarceration, usually require a defendant to participate in an alcohol education/rehab program for any DWI offense conviction.[138 and 139] Vehicle Code §§23538 et seq. and 13352 the court may also require a "driving under the influence" program for 18 or 30 months Vehicle Code §23552 A person convicted of a first DWI offense in a juvenile court must participate in and complete either an alcohol or drug education program. Vehicle Code §23538 and 23556 and Health and Safety Code §11837(a), (c) and (d)

Alcohol Treatment: **Yes**

Vehicle Impoundment/Confiscation: There are two vehicle impoundment laws:

Authorized by Specific Statutory Authority:

Impoundment I [140] A vehicle owned and driven by the offender may be impounded as follows for a DWI offense (non- injury /injury): first offense of refusing to submit or complete a chemical test (within 7 years) or second DUI offense with **.10 B.A.C** (within 7 years) –minimum **5-day** impoundment; third and subsequent offenses – minimum **15-day** impoundment. Vehicle Code §23594

Impoundment II The vehicle owned and driven by the offender may be impounded as follows for a DWI offense (non-injury/injury): first offense – Not more than **6 months**; sub. offense – Not more than **12 months** Vehicle Code §23592(a)(1)

Forfeiture. However, a defendant's vehicle may be subject to forfeiture if convicted of (1) a DWI vehicle homicide offense, (2) a non-injury related DWI offense and two or more (or combinations of) convictions within 7 years for either a vehicle homicide offense or a non-injury/injury related DWI offense or (3) a DWI serious injury offense and one

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[138] 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

[139] first offenders who have been placed on probation and at the time of the offense had either a BAC ≥0.20 or refused to submit to a chemical test must be placed in an alcohol education/counseling program for at least 6 months. Health and Safety Code 11837(c)(2). The same holds true for those who plead guilty or nolo contendere to a reckless driving charge in lieu of DWI. Vehicle. Code §23103.5

[140] 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. Vehicle Code §§23594 and 23596

or more (or combinations of) convictions within 7 years for either a vehicle homicide offense or a non-injury/injury DWI offense. Vehicle Code §23596

Terms Upon Which Vehicle Will Be Released: There are no special terms that have to be satisfied prior to releasing a vehicle. However, vehicles are impounded at the owners' expense. Vehicle 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 years old who has been issued a notice of license suspension for operating a motor vehicle with a BAC ≥.01. The vehicle may be released to the legal owner upon the payment of towing and storage charges. Vehicle 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:
(1) Placed on probation for 3 to 5 years (but not more than the maximum confinement time in State prison); (2) Agreed not to drive with any measurable amount of alcohol in the blood; (3) Agreed not to refuse to submit to an implied consent test; and (4) Agreed not to commit any criminal offense. Vehicle Code §§23600
II. For the purpose of imposing enhanced sanctions, the court shall consider whether either (1) the offender's blood alcohol level was ≥**0.20** or (2) the person refused to submit to a test under the implied consent law. Vehicle Code If the BAC was below .2, the offender must participate in a 6-month licensed program, with at least 45 hours of program participation. If the BAC was > .2 or the offender refused to take a chemical test, participation in a 9-month licensed program with 60 hours of program activities is required. §23578

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law: (Yes/No) **Yes** Vehicular Manslaughter[141] Penal Code §§17, 191.5, 192(c) and 193 *People v. Thompson* 93 Cal. Reporter 2d 803 (2000)

Sanctions:

Criminal Sanction:

[141] **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 second degree murder case against the driver. Penal Code §§22 and 188, Penal Code §191.5 (e), *People v. Watson,* 637 P.2d 279 (Cal. 1981), and *People v. Whitfield,* 868 P.2d 272 (Cal. 1994)

Imprisonment (Term):	1. Death caused by driving a motor vehicle not involving alcohol/drugs: a. with gross negligence – Either in the county jail for **not more than 1 year** or **2, 4, or 6 years** in the State prison; b. without gross negligence.- Not more than 1 year 2. Death caused by driving a motor vehicle in violation of Vehicle Code §§23140[142], 23152 or 23153: a. with gross negligence – **4, 6, or 10 years**[143and144]; b. without gross negligence – Not more than **1 year** in the county jail (or **16 months, 2 or 4 years** in the State prison).
Mandatory Minimum Term:	**None**
Fine ($ Range):	For ANY Vehicle Homicide Offense – Not more than **$10,000** Penal Code §672
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	1. Death caused by driving a motor vehicle not involving alcohol/drugs: a. with gross negligence – **Revocation – 3 years** (mand); b. without gross negligence – **Suspension** – not more than **6 months** (not mand) 2. Death caused by driving a motor vehicle in violation of Vehicle Code §§23140, 23152 or 23153: a. with gross negligence – **Revocation – 3 years** (mand); b. without gross negligence – Same license suspension/revocation action as for a DWI vehicle injury offense. Vehicle Code §§13350.5, 13351(a)(1) and (3), 13351(b), and 13361(c)
Length of Term of Licensing Withdrawal:	See above.
Mandatory Action--Minimum Length of License Withdrawal:	See above.
Other:	I. **Vehicle Forfeiture**. Vehicle Code §23596 II. Victims' Assistance Fund. Gov't. Code §13959 et seq. III. See **Special State Penalty (Fine)** and **Special County Penalty (Fine)**.

Driving While License Suspended or

[142] Vehicle Code §23140 makes it illegal for a person under 21 years old to operate a motor vehicle with a BAC ≥.05.

[143] If more than one individual has been killed, an enhanced prison term of one year is added for each victim. The maximum number of such enhancements is three. Vehicle Code §23558

[144] **Subsequent Offenses**: A defendant convicted of this offense is subject to imprisonment from **15 years to life**, if that person 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 within 7 years. 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 death or 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)

Revoked Where the Basis Was a DWI Offense:	See **Vehicle Forfeiture, Ignition Interlock,** and Footnote No. [145] below.
Sanction:	
Criminal: Imprisonment (Term):	**Misdemeanor** first offense – **10 days to 6 months**; second and subsequent offenses[146] (within 5 years) – **30 days to 1 year** Vehicle Code §14601.2
Mandatory Minimum Term of Imprisonment:	First offense – **10 days**;[147] Second and subsequent offenses (within 5 years) – **30 days**; For a second or subsequent offense (within 7 but more than 5 years) – **10 days** Vehicle Code §14601.2(g)
Fine ($ Range):	First offense **– $300 to $1,000**; second and subsequent offenses (within 5 years) – Not more than **$500 to $2,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	2 points are assigned to the driving record. Vehicle Code §12810(i)
Length of Term of License Withdrawal Action:	
Mandatory Term of License Withdrawal Action:	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. First offense: Jail – Not more than **6 months**; fine – $**300**[148] **to $1,000** Subsequent offense(within 5 years)[149]: Jail-**10 days (mand) to 1 year**; fine **– $500 to $2,000** Vehicle Code §14601.5

[145] **Impoundment**. If the vehicle used in the offense is owned by the offender, it may be impounded following a conviction as follows: first offense – 6 months impoundment; sub. offense – 12 months impoundment. Vehicle Code §§14602.5 and 23592 Any vehicle driven by an arrested person may be impounded for 30 days. Vehicle Code §14602.6(a)

[146] A previous offense includes not only a prior conviction under Vehicle Code §14601.2, but also a violation of Vehicle 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.

[147] 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. Vehicle Code §14601.4

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

[149] A previous offense includes a violation of Vehicle 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 misdemeanor 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 the "only vehicle available to the driver's immediate family." Vehicle 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 years. Vehicle 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: first offense, a fine ≤$100; second offense (within 1 yr), a fine ≤$200; and, for a subsequent offense (within 1 yr), a fine ≤$250. Vehicle Code §§15240, 15242, 40000.1

Habitual Traffic Offender Law: State Has Such a Law (Yes/No):	**Yes** Penal Code §193.7 and Vehicle Code §§13350(b), 14601.3(a), 23546(b), 23550, 23550.5, 23564(d) and 23590
Grounds for Being Declared an Habitual Offender:	A person is declared to be a "**habitual traffic offender**" for 3 years, if any one of the following occurs: (1) That person commits a DWI-related vehicle homicide (Penal Code §192(c)(3)) and has two or more previous[150] convictions or a combination of two or more prior convictions for DWI (non-injury or injury offenses) or reckless driving instead of a DWI non-injury offense. (2) Commits a DWI non-injury or injury offense and has two or more previous DWI offenses (injury or non-injury or a combination thereof). (3) Sanctioned under Vehicle Code §23550 because he/she has Prior Drunk Driving Felony Offenses. (4) Accumulates a "driving record"[151] while operating a vehicle when the license is either suspended or revoked; a declaration of "habitual offender status" on this basis "automatically" means 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:	**Misdemeanor** Penal Code §17 and Vehicle Code §14601.3(e)
Sanctions Following a Conviction of Driving While on Habitual Offender Status: Imprisonment (Term):	For "habitual traffic offender" status based on vehicle homicide or DWI offenses: **180 days** imprisonment is in the county jail and is "consecutive" to any other sanction. Vehicle Code §14601.3(e)(3) For "habitual traffic offender" status based on vehicle operation while suspension/revocation and after accumulating a "driving record": first offense – **30 days**; second and subsequent offenses (within 7 years) – **180 days** Imprisonment is in the county jail.
Mandatory Minimum Term of	

[150] Within 7 years.

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

Imprisonment:	**None**
Fine ($ Range):	For "habitual traffic offender" status based on vehicle homicide or DWI offenses: **$2,000** For "habitual traffic offender" status based on vehicle operation while suspension/revocation and after accumulating a "driving record": first offense – $**l,000**; second and subsequent offenses (within 7 years) – **$2,000**
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No):	**Yes** Govt. Code §27491.25
BAC Chemical Test Is Given to the Following Persons:	
Driver:	**Yes**
Vehicle passengers:	**Yes**
Pedestrian:	**Yes**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** Bus. and Prof. Code §§25658 and 25662
Minimum Age (Years) Possession:	**21** Possession in a public place; exception, possession under 21 is legal if the minor is acting via a parent's order. Bus. and Prof. Code §§25658 and 25662
Minimum Age (Years) Consumption:	**21** This applies only to consumption of alcohol on the premises of licensed "on sale" establishments. Bus. and Prof. Code §§25658 and 25662

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Limited**. The law is limited to the serving of alcoholic beverages to minors obviously intoxicated. Bus. and Prof. Code §§25602 and 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** See Bus. and Prof. Code §25602(c) and Via a 25602.1, Civil Code §1714 and *Cory v. Shierloh,* 629 P.2d 8, 174 Cal. Reporter 500 (1981), *Cardinal v. Santel Pita, Inc.* 286 Cal. Reporter. 275 (1991).
Dram Shop Actions-Social Hosts:	**No** Bus. and Prof. Code §25602(c) and 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. Reporter. 536 (Cal. App. 1 Dist. 1987)
Other:	A social host is generally not liable for the injuries sustained by an intoxicated guest. Civil Code §1714(c) However, a parent or legal guardian who

knowingly permits his or her child, or a person in the company of the child, or both, who are under the age of 18 years, to consume an alcoholic beverage or use a controlled substance at home; and knowingly permits that child or other underage person to drive a vehicle with a blood alcohol concentration of .05 percent or greater, or under the influence of a controlled substance, the parent or guardian is guilty of a misdemeanor if that child causes a traffic collision – Penalties: up to one year in county jail or fine not exceeding $1,000 or both. and 25658.2

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

Type of Criminal Action: **Misdemeanor** Bus. and Prof. Code §25602

Term of Imprisonment: Not more than **6 months** Bus. and Prof. Code §25617

Fine ($ Range): Not more than **$1,000** Bus. and Prof. Code §25617

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes** suspension or revocation Bus. and Prof. Code §24200

Length of Term of License Withdrawal: The length of suspension/revocation 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: See Footnote No. [152].

Type of Criminal Action: **Misdemeanor** Cal. Const. Art. 20, §22 and Bus. and Prof. Code §25658(a)

Term of Imprisonment: **None**. [153]

Fine ($ Range): **$1,000** (mand) Bus. and Prof. Code §25658(e)(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

[152] A defendant must also perform at least 24 hours of community service. Bus. and Prof. Code §256580(e)(2)

[153] Since Bus. and Prof. Code §25658 provides for a sanction, the general penalty provision for a violation of the alcoholic beverage control provisions of the Business and Professions Code (Bus. and Prof. Code §25617) would not apply. The general penalty provision provides for an imprisonment term of not more than 6 months. Per §25658(e)(3), a person guilty of selling alcohol to a minor who then consumes the alcohol and proximately causes great bodily injury or death to himself, herself, or a third person shall be imprisoned for at least 6 months and/or fined $1000, or both.

Withdrawn (Yes/No):	**Yes** suspension or revocation Bus. and Prof. Code §§24200 and 25658.1(b)
Length of Term License Withdrawal:	The length of suspension/revocation is not fixed by statute
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (l) 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 Vehicle Code §§23222, 23223, 23225 and 23226
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers Vehicle Code §§23220 and 23221

STATE:	**COLORADO**
General Reference:	Colorado Revised Statutes
Basis for a DWI Charge:	
Standard DWI Offense:	I. Under the influence of alcohol §42-4-1301(1)(a) II. Impaired by the consumption of alcohol §42-4-1301(1)(b)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[154and155] §42-4-1301(2)(a) Persons Under 21 Years Old-BrAC only **≥.02 but ≤.05** (Class A Traffic Infraction) §42-4-1301(2)(a.5)
Presumption (BAC/BrAC):	**>.05 but <.08**-Driving while impaired. **≥.08**-Driving Under the influence §42-4-1302(5)(b) and (c)
Types of Drugs/Drugs and Alcohol:	(1) Any Drug or (2) a Combination of Alcohol and Drugs[156] (applies to both driving under the influence and driving while impaired) §§42-4-1301(1)(a) and 42-4-1301(1)(b)
Other:	It is an offense for habitual drug users to operate a motor vehicle. The sanctions for this offense are the same as for driving while under the influence. §42-4-1301(1)(c) and (7)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** §42-4-1301(6)
Implied Consent Law:[157]	§42-4-1301.1.
Arrest Required (Yes/No):	**No**, But probable cause is required; §42-4-1301.1(2)(a)(I)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §42-4-1301.1(2)(a)(I)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §42-4-1301(6)(d)
Other Information:	A person's blood may be taken by force if (1) there is probable cause that the person committed an alcohol-related driving offense, (2) there is a clear indication that the blood sample will provide evidence of the level of intoxication; (3) exigent circumstances exist; and (4) the test must be reasonable and conducted in a reasonable manner. §42-4-1301.1 and *People v. Shepherd,* 906 P. 2d 607 (Colo. 1995)
Chemical Tests of Other Substances	

[154] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

[155] Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§42-2-126(2)(a)(I), 42-4-1300.3(1)(a) and (b).

[156] A "drug" is defined as (1) a substance 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. §§12-22-303(7) and (13) and 42-4-1301(1)(d)

[157] 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 either his/her blood, breath, urine, or saliva.

for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	**Yes** (Alc and Drugs) §42-4-1301.1(2)(b)(I)
Urine:	**Yes** (For Drugs only) §42-4-1301.1(2)(b)(I)
Other:	**Saliva** (For Drugs only) §42-4-1301.1(2)(b)(I)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No** Deferred prosecution or deferred sentence of drunk driving offenses is available. §§18-1.3-101 and 18-1.3-102
Anti-Plea-Bargaining Statute (Yes/No):	**Yes**[158] §42-4-1301(4)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol and Drug Evaluations required. §42-4-1301.3(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):	First refusal – **Revocation 1 year**[159]; second refusal – **Revocation 2 years**; third or sub. refusal – **Revocation 3 years** §§42-2-126(2)(a)(II), 42-2-126(6)(b)(III), (VI) and (VII) and 42-4-1301.2 Note: For a DWI offense arising our of the same incident, the license revocation or suspension periods for refusal and conviction are to run consecutively. §§42-2-126(6)(c)(II) and(III) and 42-4-1301.2.
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	See Double Jeopardy below.
Imprisonment:	
Term (Day, Months, Years Etc.):	Driving under the influence/illegal per se, first offense (misdemeanor) – **5 days to 1 year**; first offense[160]**-70 days to 1 year**; subsequent offense or BAC or BrAC ≥0.20**-90 days to**

[158] The court cannot accept 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. §42-4-1301(4).

[159] These revocation periods are mandatory unless a person participates in the "ignition interlock" program. Such a participant is eligible for probationary driving privileges after the following mandatory revocation periods: first refusal – 3 months; second refusal – 6 months; and, third or sub. refusal – 9 months. §42-2-126.1. **Double Jeopardy**: 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 without violating double jeopardy prohibitions. Deutschendorf v. People, 920 P. 2d 53 (Colo. 1996)

[160] But where there has been a conviction for a driving while impaired offense.

1 year; Driving while impaired (misdemeanor) – first offense – **2 days to 180 days**; first offense[161] – 60 days **to 1 year**; subsequent offense **-45 days to 1 year** §42-4-1301(7) Injury Related DWI Offense (Vehicle Assault) (Class 4 felony) – **2 to 6 years** §§18-1.3-401 and 18-3-205

Mandatory Minimum Term: Driving Under the Influence/Illegal per se – first offense **5 day**s; first offense[162]**-70 days (7 days)**; sub. offense or BAC or BrAC ≥ 0.20**-90 days (10 days)**; Driving While Impaired – first offense – **2 days**; first offense[163] – 60 days **(6 days)**; sub. offense – **45 days (5 days)** §42-4-1301(7); Injury Related DWI Offense (Vehicle Assault) (Class 4 felony) – **3 years**

Fine:

Amount ($ Range): Driving under the influence/illegal per se, first offense – $**300 to $1,000**; first offense – $**450 to $1,500**; subsequent offense or BAC/BrAC≥0.20 – $**500 to $1,500**; Driving while impaired, first offense – **$100 to $500**; first offense – $**450 to $1,200**; subsequent offense – $**300 to $1,000** §42-4-1301(7) Injury Related DWI Offense – Vehicle Assault (Class 4 felony) **$2,000 to $500,000**

Mandatory Minimum Fine ($): **None**

Other Penalties:

Community Service: Driving under the influence/illegal per se, first **offense – 112 hours** (56 hrs mandatory); subsequent offense or BAC/BrAC≥0.20**-60 to 120 hours** (60 hrs mandatory), Driving While Impaired, first offense – **24 to 48 hours** (24 hrs mandatory); first offense – **52 to 104 hours** (52 hrs mand); subsequent offense – **48 to 96 hours** (48 hrs mandatory) §42-4-1301(7) Persons assigned to community service must pay a fee of no more than $120. §§42-4-1301(7)(h) and 42-4-1301.4.

Restitution (e.g., Victim's Fund): **Yes** I. A victims' compensation fund. §24-4.1-119(1)(c).
II. A defendant may be ordered to pay restitution as part of the sentence. §18-1.3-601. As a condition of probation, a drunk driving defendant **shall** be required to make restitution. §42-4-1301(7)(e).

Other: **Mandatory Parole:** Persons who have been convicted of Vehicle Assault must be placed on parole for 3 years. §18-1.3-401
Child Abuse (Endangerment): Knowingly or recklessly committing an act that either kills or injures a child (<16 years old) is child abuse. If death results, it is a Class 2 felony- 8-24 years in prison and/or a fine of $5,000 – $1,000,000. If injury results, it is a

[161] But where there has been a conviction for a driving while under the influence offense/illegal per se.
[162] But where there has been a conviction for a driving while impaired offense.
[163] But where there has been a conviction for a driving while under the influence of illegal per se offense.

Class 3 felony- 4-12 years in prison and/or a fine of $3,000 – $750,000. Mandatory parole- 5 years for both felonies. §§ 18-1.3-401, 18-6-401(1), (2), (7)(a)(I) and (III); *People v. Deskins,* 927 P. 2d 368 (Colo 1996).

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **Yes ≥.08** (BAC/BrAC.) First Violation – Revocation **3 months**[164]; second and Subsequent Violations- – Revocation **1 year** §§42-2-126(2)(a)(I) and 42-2-126(6)(b)(I) and (III) If the person is also convicted of a DWI offense, the licensing actions for the admin. per se violation and for the DWI conviction shall run concurrently and the total revocation period shall not exceed the longer of the two periods. §§42-2-125(5) and 42-2-126(6)(c)(I) and (III).

Other: **None**

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): Driving while under the influence and illegal per se, first offense – **Suspension/Revocation**; Driving while impaired – **Suspension/Revocation**[165and166] §§42-2-125(1)(b), (g) and (i) and 42-2-127(9)(a) Injury Related DWI Offense (Vehicle Assault) – **Revocation** §42-2-125(1)(a)

Term of License Withdrawal (Days, Months, Years, etc.): Driving while under the influence and illegal per se, First offense – **Suspension** Not less than **1 year**; impaired, first offense – 1 year[167,168and169] §§42-2-125(1)(b), (g) and (i), 42-2-127(9)(a) and 42-2-132 Injury Related DWI Offense (Vehicle Assault) – **1 year** §§42-2-125(1)(a) and 42-2-132(2)(a)

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[164] 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: first violation – **1 month**; and,second or subsequent violation – **3 months.** See Ignition Interlock program.

[165] For driving while under the influence, 12 points and, for driving while impaired conviction, eight points are placed on driver's record; generally the accumulation of either 12 points in 12 months or 18 points in 24 months results in license suspension for not more than 1 year (or for not less than 1 year for first driving while under the influence offenses) but a probationary-restricted license may be issued. §§42-2-127(1)(a), (5), (12) and (14) and 42-2-132(1)

[166] A conviction for either an impaired, under the influence, or illegal per se offense where there has been a previous alcohol driving offense conviction of any type within a 5-year period – Revocation §§42-2-125(1)(g) and 42-2-132(2) A conviction for either an impaired, under the influence of illegal per se influence or illegal per se offense where there have been two previous alcohol driving offense convictions of any type – Rev §42-2-125(1)(i))

[167] If the first offender is a minor, a person under 21 years of age (§2-4-402(b)), his/her license must be revoked for a 1-year period. §§42-2-125(g) and 42-2-132(2)

[168] A conviction for either an impaired, under the influence, or illegal per se offense where there has been a previous alcohol driving offense conviction of any type within a 5-year period – Revocation for 1 year. §§42-2-125(1)(g) and 42-2-132(2) A conviction for either an impaired, under the influence of illegal per se influence or illegal per se offense where there have been two previous alcohol driving offense convictions of any type – Revocation for an indefinite period. §42-2-125(1)(i)

[169] A person convicted of operating a vehicle while under the influence of a controlled substance must have his/her license revoked for a mandatory period of one year for a first offense. §§42-2-125(1)(b) and (2) and 42-2-132(2)

Mandatory Minimum Term of Withdrawal: Driving while under the influence and illegal per se, first offense – No**ne**[170]; Driving while impaired, first offense – No**ne** See Footnote Nos.[171] and [172]. Injury Related DWI Offense (Veh. Assault) – **1 year**

Other:

Rehabilitation:

Alcohol Education: **Yes** §42-4-1301.3 See also §§43-2-126 (7)(c)(II) and 42-2-132(2)(a)(II) (B)

Alcohol Treatment: **Yes** §42-4-1301.3 See also §§43-2-126 (7)(c)(II) and 42-2-132(2)(a)(II) (B)

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 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥.04, (2) is under the influence of a controlled substance or (3) refuses to submit to a chemical test for alcohol concentration or drug content. For a first offense of operating a CMV while under the influence of alcohol, the normal DWI license suspension sanctions apply; a person may be eligible for a probationary license for this offense. However, a person is not eligible for a probationary license where that person operated a CMV with a BAC of ≥.04 but ≤.10. For 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 years mand). In addition, a person who has any alcohol in the system is placed "out-of-service" for 24 hours. §§42-2-125(1)(b) and (2), 42-2-126(2)(a)(II) and (III), (6)(b)(III), (IV) and (V), and (7) (a)(I), 42-2-127(1)(a) and (5)(b), 42-2-402(4) and (8), 42-2-405, and42-4-1301.1(4). Persons <21 Years Old. A person under 21 who operated CMV with a BrAC only ≥.02 but<.04 is subject to the following license revocations: first offense – **3 months** (30 days mand with restricted driving privileges for the remainder of the revocation period); second offense – **6 months** (mand); and third offense – 1 year (mand). §42-2-126(2)(a)(IV) and (6)(b).
(continued)

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **None**

Terms Upon Which Vehicle Will Be Released:

Other:

Miscellaneous Sanctions

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[170] A probationary-restricted license may be issued for reasons of employment/alcohol education, et al. This license is renewable for additional 1-year periods. §42-2-127(12) and (14)

[171] If the first offender is a minor, a person under 21 years old, his/her license must be revoked for a 1-year period. §§42-2-125(1)(g) and 42-2-132(2)

[172] I. A conviction for either an impaired, under the influence, or illegal per se offense where there has been a previous alcohol driving offense conviction of any type within a 5-year period – Revocation 1 mandatory year (notwithstanding participation in an ignition interlock program). §§42-2-125(1)(g), 42-2-126.1(1) and 42-2-132(2) II. A conviction for either an impaired, under the influence of illegal per se influence or illegal per se offense where there have been two previous alcohol driving offense convictions of any type – Revocation 2 years (1 year mandatory notwithstanding participation in an ignition interlock program). §41-2-125(1)(i) and (2.3) See Ignition Interlock Program below.
Ignition Interlock Program with Restricted License (§42-2-132.5): I. For either (1) an impaired, under the influence or illegal per se offense or (2) a habitual offender offense related to one of these alcohol offenses where there has been a previous alcohol driving offense conviction of any type within a 5-year period, an offender must install ignition interlock devices on the vehicles that person drives and is required to hold a restricted license for at least 1 year prior to full license reinstatement. See also §42-2-125 (2.3) and (2.4). II. Early Reinstatement (§42-2-132.5(1.5): A person who has had his/her driving privileges revoked for more than 1 year either for (1) driving while either impaired, under the influence or illegal per se or (2) 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."

Not Included Elsewhere:

I. A DWI offender may be sentenced to attend a "victim impact panel" and assessed an attendance fee of not more than $25. §42-4-1301(7)(f)
II. A DWI offender is required to pay $75 (deposited into the Law Enforcement Assistance Fund) and $15 (deposited into the county treasury). §43-4-402(1)
III. A DWI offender is assessed the "cost" for alc/drug evaluation and supervision services and may be assessed other costs. §42-4-1301(7)(g)
IV. For misdemeanor offenses, persons are assessed a surcharge of either 37 percent of the fine imposed or $60 (Class 1) or $25 (Class 2) whichever is the greater amount. Felony offenders are assessed a surcharge of either 37 percent of the fine imposed or $125 whichever is the greater amount. §24-4.2-104(1)(a)(I)
V. **Traffic School:** A person who violates the state's traffic laws may be ordered to attend a course of instruction on traffic laws, hazardous driving situations and accident prevention. §42-4-1717.
VI. **Sanctions for Driving with BAC/BrAC ≥0.20:** If a driving under is influence charge is reduced to a driving while impaired but the Defendant's BAC/BrAC was ≥0.20, the sanctions imposed must be for the greater offense. §42-4-1301(7)(a)(II) and (a) (III) (B).
VII. **Persistent Drunk Driver Surcharge:** All drunk driving offenders must pay a surcharge or **not less than $25 nor more than $500** to fund the Persistent Drunk Driver Cash Fund. §42-4-1301(7)(d)(III).
VIII. DWI offenders must pay a fee of $25 which is deposited into the crime victims' compensation fund. §42-4.1-119(c)
IX. DWI offenders may be assessed the cost of collection and analysis of the chemical test and any other cost incurred pursuant to prosecution. §16-11-501
X. DWI offenders may be required to perform useful public service; if so, a fine of $ 120 also imposed.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Reckless Driving Vehicle Homicide **Class 4 felony** §18-3-106(1)(a) and (c)
DWI Vehicle Homicide[173] **Class 3 felony** §18-3-106(1)(b) and (c)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Class 4 felony **2 to 6 years** (4-12 years if the victim was a pregnant woman) §18-1.3-401

[173] 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." §18-1.3-501. There is a rebuttable presumption that a person was under the influence of alcohol if he/she has an alcohol concentration of .08 or more. §18-1.3-501

	Class 3 felony **4 to 12 years** (8-24 years if the victim was a pregnant woman) §18-1.3-401
Mandatory Minimum Term:	**None.** See Footnote No. [174]
Fine ($ Range):	Class 4 felony **$2,000 to $500,000** §18-1.3-401 Class 3 felony **$3,000 to $750,000** §18-1.3-401
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Revocation** §§42-2-125(a) and 42-2-128
Length of Term of Licensing Withdrawal:	**1 year** §42-2-132(2)(a)
Mandatory Action--Minimum Length of License Withdrawal:	**1 year** §42-2-132(2)(a)
Other:	Class 4 felony- Mandatory probation for 3 years §18-1.3-401 Class 3 felony- Mandatory probation for 5 years §18-1.3-401

Persons Under 21 Years Old: I. Infraction. A person < 21 who operates a motor vehicle with a BAC/BrAC ≥.02 but≤.05 commits a Class A Traffic Infraction – $50 fine. §§42-4-1302(2)(a.5) and 42-4-1701(4)(a)(I)(N). A person convicted of this offense is subject to license revocation: first offense – **3 months** (30 days mand with restricted driving privileges for remainder of period); second offense – **6 months** (mand); third or subsequent offense – 1 year (mand). §42-2-125(1)(g.5), (2.5) and (2.7). II. Administrative Action. A person <21 who operates a motor vehicle with either a BAC/BrAC>.05 but <.10 or a BAC (via breath analysis only) ≥.02 but≤.05 is subject to the same license revocation periods. III. One convicted of driving with a BAC/BrAC of ≥0.2 but≤.05 has 5 points assessed against his/her record. §42-2-127(5)(b)(IV)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:[175]

Sanction:	
Criminal:	
Imprisonment (Term):	**Misdemeanor** first offense – **30 days to 1 year**; second and subsequent offenses – **90 days to 2 years** §42-2-138(1)(d)(I)
Mandatory Minimum Term of Imprisonment:	First offense – **30 days**; second and subsequent offenses – **90 days** §42-2-138(1)(d)(I)
Fine ($ Range):	First offense – **$500 to $1,000**; second and subsequent offenses – **$500 to $3,000** §42-2-138(1)(d)(I)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	For a second or subsequent offense within 5 years, the driver is not "eligible" for driving privileges. §42-2-138(1)(e)
Length of Term of License	

[174] A vehicle homicide offender who commits such offense while fleeing from another felony ,must be sentenced at the mid-point range of the above ranges but not more than twice the maximum sentence.§18-1.3-401

[175] 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). See also sanctions provided for disqualification in §42-2138(1)(a).

Withdrawal Action:	Second and subsequent offenses – **4 years** §42-2-138(1)(e)
Mandatory Term of License Withdrawal Action:	Second and subsequent offenses – **4 years** §42-2-138(1)(e)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** §42-2-201
Grounds for Being Declared an Habitual Offender:	(1) 3 or more serious offenses in 7 years, (2) 10 or more convictions for offenses of 4 points or more within 5 years or (3) 18 or more convictions of 3 points or less within 5 years. §42-2-202
Term of License Rev While Under Habitual Offender Status:	**Revocation – 5 years**[176] §42-2-205
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Class 1 Misdemeanor**[177] §42-2-206(1)(a)(1). . **Vehicle Forfeiture:** A vehicle used in the commission of a "felony" is subject to *in rem* civil forfeiture. §§16-13-302 and16-13-303(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, the driver was subjected to criminal prosecution for such behavior. The court held that the subsequent prosecution did not constitute double jeopardy. *People v. Ferrel,* 929 P. 2d 65 (Colo. App. 1996).
Driving While on Habitual Offender Status:	
Imprisonment (Term):	**6 to 18 months** §18-1.3-501
Mandatory Minimum Term of Imprisonment:	**30 days**
Fine ($ Range):	**$500 to $5,000** §18-1.3-501
Mandatory Minimum Fine ($):	**$3,000**[178]
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §§42-4-1301.1(8) and42-4-1304

[176] See Ignition Interlock Program w/ Restricted License.

[177] Aggravated Driving: A person commits aggravated driving, a Class 6 felony, when operating a motor vehicle while the license is still revoked for being a habitual offender and committing either a drunk driving offense, reckless driving, eluding a police officer, or a violation of the accident reporting requirements. §42-2-206(1)(b)(I) and (II). Sanctions: 1 year-18 months imprisonment (mandatory probation for 1 yr) and/or $1,000 – $100,000 in fines. §18-1.3-401

[178] 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 (mandatory) -300 hours of community service. §42-2-206(1)(a)(II).

BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** (15 years of age or older)
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** §12-47-901
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 and 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 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 to such patron who was under 21, was visibly intoxicated, or was a known habitual drunkard. See Footnotes [179] and [180].
"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). 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 years old.
Other --applying to a person other than an alcoholic sales business:	Any person convicted of providing alcohol to an underage person or allowing an underage person to use an adult's identification to purchase alcohol. shall have the driver's license suspended for six months.
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Class 2 Misdemeanor** §12-47-901(1)(a) and (5)(a)(1) and 12-47-903(2)

[179] A separate dram shop law, §13-21-103, provides that persons injured in person, property, or means of support by an intoxicated person has an action against any person who, "by selling or giving away intoxicating liquors to any habitual drunkard, causes the intoxication" of that drunkard. Damages amounts are subject to the general limitations found in §13-21-102.5.

[180] Damages awards are limited to $150,000, but are adjusted each year to account for inflation. §12-47-801 (3)(c), (4)(c) and (5)(a).

Term of Imprisonment:	**3 to 12 months** §18-1.3-501
Fine ($ Range):	**$250 to $1,000** §18-1.3-501
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension or Revocation** §12-47-601(1).[181]
Length of Term of License Withdrawal:	**Suspension** – Not more than **6 months;**[182] **Revocation**-Period not specified in the statutes
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Class 2 Misdemeanor** §12-47-901(1)(a) and (5)(a)(1) and 12-47-903(2)
Term of Imprisonment:	**3 to 12 months** §18-1.3-501
Fine ($ Range):	**$250 to $1,000** §18-1.3-501
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 Suspension or Revocation** §12-47-601(1).
Length of Term License Withdrawal:	**Suspension** – Not more than **6 months. Revocation**-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):	**YES-** illegal to have an open alcoholic beverage container or to drink an alcoholic beverage in the passenger area; exceptions provided for passengers provided transportation for compensation, house coaches or trailers, and the possession of an open alcoholic beverage container in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk or in an area not normally occupied by the driver or a passenger in a motor vehicle not equipped with a trunk. § 42-4-1305

[181] Violation is punishable by a fine of up to $100, 24 hours of community service and completion of an alcohol assessment, education program or treatment program. §18-13-133(2)(b).
[182] Summary suspension is allowed for not more than 15 days. §12-47-601(2).

Anti-Consumption Law (Yes/No):	**Yes** – Driver and passengers[183] §12-47-901(1)(h) The law states "it is unlawful for any person: to consume malt, wines, or spirituous liquor in a public place." Of course, licensed premises are exempt.

[183] There is an exception for passengers at least 21 years old who are riding in a luxury limousine or a chartered bus. In lieu of license suspension, the licensee may be allowed to pay an administrative fine. The fine shall be 20 percent 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:	**CONNECTICUT**
General Reference:	Connecticut General Statutes Annotated and Regulations of Connecticut State Agencies (RCSA)
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of intoxicating liquor[184] §14-227a(a)
Illegal Per Se Law (BAC):	I. ≥**.08**[185] §14-227a(a)(2) II. Persons Under 21 Years Old. BAC >**.02**[186] §14-227g(a) and (c)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug or (2) Any Drug and Intoxicating Liquor §14-227a(a)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§14-227b and 14-227g(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §14-227b(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §14-227a(e), §14-227b(b)
Other Information:	**None**
Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:	
Blood:	**Yes** §14-227b(a)
Urine:	**Yes** §14-227b(a)
Other:	**None**
Adjudication of DWI Charges:	
Mandatory Adjudication Law (Yes/No):	**No**[187]
Anti-Plea-Bargaining Statute (Yes/No):	**No** However, the law does require the State to give to the court, in open session, the reasons why a DWI charge was reduced or dismissed. §14-227a(f)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**[188]

[184]The sanctions listed below for driving while "under the influence" apply to driving while under the influence of either intoxicating liquor (alcohol) or drugs.
[185]Standard: "Percent by weight" of alcohol in the blood. §§14-227a(a) and 14-227g(a)
[186] 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. §14-227g(c)
[187] A pre-trial diversion program is available only for first DWI offenders where death or serious injury is not involved. §§54-56g and 54-56e.
[188] 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. §54-91a

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):	First action (refusal) – **Suspension 6 months** (90 days mandatory)[189]; second action (refusal)[190]– suspension **1 year** (9 months mandatory); sub.action (refusal) – **Suspension 3 years** (2 years mandatory) §§14-227b(i) and 14-227g(c) Under§54-56g(b), a person's participation in an alcohol or treatment program does not affect the mandatory license suspension. Furthermore, for a second or subsequent refusal, the person must satisfactorily complete an alcohol treatment program before driving privileges can be reinstated. §14-227 f
Other:	

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	Under the Influence/Illegal per se: first offense (misdemeanor) – Not more than **6 months**; second offense (within 10 years) (misdemeanor) – Not more than **2 years**; third or subsequent offense (within 10 years) (felony) – Not more than **3 years** §§14-227a(g), 53a-25 and 53a-26 Vehicle Assault– Class D felony – Not more than **5 years** §§53a-35a and 53a-60d
Mandatory Minimum Term:	Under the Influence/Illegal per se: first offense – **48 con hours**; second offense – **120 con days**; third and subsequent offenses – 1 year
Fine:	
Amount ($ Range):	Under the Influence/Illegal per se: first offense (misdemeanor) **– $500 to $1,000**; second offense (within 10 years) (misdemeanor) – **$l,000 to $4,000**;

[189] After the 90-day mandatory 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

[190] 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)

	third and subsequent offense (within 10 years) (felony) – **$2,000 to $8,000** §§14-227a(g), 53a-25 and 53a-26 Vehicle Assault– Class D felony – Not more than **$5,000** §§53a-41 and 53a-60d
Mandatory Minimum Fine ($):	**None**
Other Penalties:	
Community Service:	Under the Influence/Illegal per se: first offense – **100 hours** in lieu of the 48 consecutive hours 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.[191] Second and subsequent offense (within 10 years) – **100 hours** (mand) in addition to incarceration and as part of probation §§14-227a(g) and 14-227e
Restitution (e.g., Victim's Fund)	**Yes** Criminal injuries compensation fund §§54-209 and 54-215 **Direct Restitution:** The court may order restitution be paid directly to the victim, the order of which becomes an enforceable civil judgment §53a-28(c)
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 incarceration. §18-85a
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes** ≥**.08** (BAC) or ≥**.07** (BAC) if the driver has a previous violation of §14-227a(a) For persons <21 years old-≥**.02** (BAC) §14-227b(c) and (n) first action– suspension – **90 days**[192]; first action if BAC ≥.16– suspension – **120 days**; second action[193]– suspension – **9 months** (mand); second action if BAC ≥.16– suspension – **10 months** (mand): sub. action– suspension **2 years** (mand); sub. action if BAC ≥.16– suspension – **2½ years** (mand) §§14-37a and 14-227b(b) and (i) Under §54-56g(b), a person's participation in an alcohol treatment program does not affect the mandatory license suspension. And, for a second or subsequent refusal, the person must satisfactorily complete an alcohol treatment program before driving privileges can be reinstated. §14-227f

[191] Under separate provisions of law, an offender who is sentenced to probation may be required to perform community service. §53a-28(e)

[192] 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

[193] A previous action includes prior refusal to submit to a chemical test. §14-227b(h) and a previous conviction of DWI in another jurisdiction. 2002 Ct. ALS 70 §40

Injury Related Admin. Per Se: A law enforcement officer who obtains a chemical test result of a blood sample indicating a BAC ≥.08 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 days for a first and 1 year for a sub. admin. per se violation. §14-227b(j)

Other:	Under §14-111(a), a person's license may be suspended 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 suspension.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	Under the Influence/Illegal per se: For first and second offenses – **Suspension**; third and subsequent offense – **Revocation** §14-227a(g) Vehicle Assault (DWI off) – **Suspension** §53a-60d
Term of License Withdrawal (Days, Months, Years, etc.):	Under the Influence/Illegal per se: first offense – 1 year; second offense – **3 years**; third and subsequent offense – **Permanently** Vehicle Assault (DWI off) – **1 year**
Mandatory Minimum Term of Withdrawal:	Under the Influence/lllegal per se: first and subsequent offenses – No**ne**[194and195] Vehicle Assault (DWI off) – **1 year** Persons Under 18 Years Old. Under §14-227a(h)(2), a person under 18 years old who is convicted of any DWI offense has the license suspended either until age 18 or for the normal suspension period for the offense convicted, whichever is the longer suspension period. Persons under 18 years old can also have the driver's license revoked permanently for a third conviction under §14-227a(a). §14-227a(g)
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** For all DWI criminal offenses §14-227a(i)
Alcohol Treatment:	**Yes** For all DWI criminal offenses §14-227a(i) Persons charged with a first 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 and 54-56g Furthermore, for a second or subsequent conviction, persons must satisfactorily complete an alcohol treatment program before their driving privileges can be reinstated. §14-227f

[194] The law does not specifically prohibit a court from reducing these suspension periods.

[195] Not all of these licensing actions are 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(h)(3)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's License (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while operating CMV, that person (1) has a BAC ≥ .04,(2) is convicted of driving while under the influence of intoxicating liquor or drugs or (3) refuses 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 years (mand) if certain conditions are satisfied. But a person is not eligible for a "special permit" based on hardship. §§14-1(a)(11), (16) and (18), 14-37a and 14-44k

Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**None**
Terms Upon Which Vehicle Will Be Released:	
Other:	**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 ≥.08 shall be impounded for 48 hours 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 he/she is an "at-risk driver" on the reverse side of such license. §14-227a(j)(1) **Victim Impact Panel**: The court may require a probationer to participate in a victim impact panel as a condition of probation. §14-227a(k)
Miscellaneous Sanctions Not Included Elsewhere:	**Civil Damages**. (1) Either a person injured in person or property in a drunk driving related traffic accident or (2) a plaintiff in a wrongful death action related to a drunk driving offense may be entitled to double or treble civil damages provided the defendant was operating a motor vehicle deliberately or reckless in violation of the drunk driving laws. §14-295

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** I. If DWI Related, **Class C felony** A person is guilty of manslaughter with a motor vehicle if while operating a motor vehicle under the influence of intoxicating liquor or any drug or both, that person causes the death of another person. §53a-56b II. **Class D felony** – Causing the death of another person while operating a motor vehicle with criminal negligence. §53a-57 III. **Unclassified Misdemeanor** – Causing the death of another person while operating a motor vehicle with negligence. §§53a-26 and 14-222a
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	I. Class C felony: **1 to 10 years** II. Class D felony: **1 to 5 years** III. Unclassified Misdemeanor: **Not**

	more than 6 months §§14-222a, 53a-26, 53a-35a, 53a-56b and 53a-57[196]
Mandatory Minimum Term:	**None**
Fine ($ Range):	I. Class C felony: **Not more than $10,000** II. Class D felony: **Not more than $5,000** III. Unclassified Misdemeanor: **Not more than $1,000** §§14-222a, 53a-26, 53a-41, 53a-56b, and 53a-57
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	I. Class C felony: **Suspension** §53a-56b II Class D felony: See Footnote Nos. [197] and [198].
Length of Term of Licensing Withdrawal:	I. Class C felony: **1 year** §53a-56b II. Class D felony: III. Unclassified Misdemeanor: 30 – 90 days, §14-111(b)
Mandatory Action- Minimum Length of License Withdrawal:	I. Class C felony: **1 year** §53a-56b II. Class D felony: III. Unclassified Misdemeanor: 30 days
Other:	**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 within 10 years may be incarcerated at the next higher level felony offense. §53a-40f {Class B felony- 1 to 20 years. §53a-35a.}
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	§14-215
Sanction:	
Criminal:	

[196] A person is not eligible for a "special permit" based on an occupational hardship. §14-37a
Other Information: There does not appear to be a specified licensing sanction for a violation of §53a-57. However, it may be possible to impose a license suspension for a violation of §53a-57 via §14-222a since this latter section is considered a lesser included offense of §53a-57. *State v. Klutts*, 521 A.2d 178 (Conn. App. 1987)
Civil Damages. (1) Either a person injured in person or property in a drunk driving related traffic accident or (2) a plaintiff in a wrongful death action related to a drunk driving offense may be entitled to double or treble civil damages provided the defendant was operating a motor vehicle deliberately or reckless in violation of the drunk driving laws. §14-295

[197] The Commercial Motor Vehicle Law prohibits a person from operating a CMV after being 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 and 53a-27(a)

[198] A person who operates a CMV after having been placed "out-of-service" is subject to the following CDL disqualification periods: first offense – 90 days (mand) to 1 year; second offense (within 10 years) – 1 (mand) to 5 years; third or subsequent offense (within 10 years) – 3 (mand) to 5 years. If the offender was transporting passengers or hazardous materials, the disqualification periods are as follows: first offense – 180 days (mand) to 2 years; second or subsequent offense (within 10 years) – 3 (mand) to 5 years. §14-44k(g)(1) and (2) In addition, such an offender is subject to a civil penalty of $1,000 to $2,500. §14-44k(g)(3)

Imprisonment (Term):	**Misdemeanor** Not more than **1 year**[199] §§14-215(c) and 53a-26(a)
Mandatory Minimum Term of Imprisonment:	**30 consecutive days** §14-215(c)
Fine ($ Range):	**$500 to $1,000** §14-215(c)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	First offense – **Suspension**; Subsequent offense (within 10 years) – **Suspension** §14-111(b)
Length of Term of License Withdrawal Action:	First offense – Not **less than 1 year**; Subsequent offense (within 10 years) – **Not less than 5 years** §14-111(b)
Mandatory Term of License Withdrawal Action:	Licensing action appears to be mandatory. A person is not eligible for a "special permit" based on an occupational hardship §14-37a; but the licensing agency may have authority to modify or cancel a suspension or revocation. §14-111(k) An offender who is sentenced to probation may be required to perform community service. §53a-28(e)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	

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

Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No):	**Yes** §14-227c
BAC Chemical Test Is Given to the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes**

[199] 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.

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §§30-1(12) and 30-86 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) Possession:	**21** §30-89(b) Applies only to possession in a public place.
Minimum Age (Years) Consumption:	**None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** §30-102[200]
"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 make it 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)[201]
Dram Shop Actions-Social Hosts:	**Yes** *Ely v. Murphy,* 540 A.2d 54 (Conn. 1988) Applies to the actions of intoxicated minor guests.[202and203] For wanton and reckless misconduct in the furnishing of alcoholic beverages, see the above cases.
Other:	**None**

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

Type of Criminal Action:	**Misdemeanor** §30-86
Term of Imprisonment:	Not more than **1 year** §30-113
Fine ($ Range):	Not more than **$1,000** §30-113

[200] 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)

[201] 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), *and Boehm v. Kish,* 517 A.2d 624 (Conn. 1986)

[202] In applying *Ely* case, the State Supreme Court has 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). The Appellate Court of CT has extended the principle of *Ely* and *Kowal* to support a claim of bystander emotional distress in *Craig v. Driscoll* 781 A..2d 440 (Conn. App. 2001) cert. granted 785 A.2d 228 (2001) in which a mother and brother sued for bystander emotional distress after seeing the victim moments after she was hit by a DWI driver.

[203] Parents are 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)

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension or revocation** §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:	**Misdemeanor** §30-86[204]
Term of Imprisonment:	Not more than **1 year** §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 Suspension or revocation** §30-55
Length of Term of License Withdrawal:	Not stated in the statute

Anti-Happy Hour Laws/Regulations: **No**[205]

Laws Prohibiting (l) 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**

[204] 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. A foster parent is not considered a "guardian" for purposes of this exception *State v. Springmann* 794 A.2d 1071 (Conn. App. 2002)

[205] 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:	**DELAWARE**
General Reference:	Delaware Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol 21 §4177(a)(l)
Illegal Per Se Law (BAC/BrAC):	≥**.08**[206and207] 21 §4177(a)(4)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) any Drug or (2) a Combination of Alcohol and a Drug[208] 21 §4177(a)(2) and (3) **Persons Under 21 Years Old-**Vehicle Operation While or After Consuming Alcoholic Liquor[209] 21 §4177L(a)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes**[210] 21 §2741
Implied Consent Law:	
Arrest Required (Yes/No):	**No**. Probable cause is sufficient 21 §§2740 and 2742(e)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** 21 §2740
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) 21 §2749
Other Information:	A person may be required to submit to a chemical test if there is probable cause of a DWI offense. However, if a person is informed of their statutory right to refuse to submit to a test and he/she exercises this right, a test cannot be administered by involuntary means. 21 §§2740, 2741(b) and 2742(a), *McCann v. State*, 588 A.2d 1100 (Del. 1991), and *Seth v. State*, 592 A.2d 436 (Del. 1991) A person must submit to a chemical test if there is probable cause to believe that person committed a DWI offense related to an accident in which there was a death. 21 §2740 {In death-related DWI situations, it appears that a driver cannot refuse to submit to a test. Therefore, "forced" taking of blood samples for testing purposes may now be possible under these circumstances.}

[206] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.
[207] Standard: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 21 §§4177(c)(1) and 4177L(b)
[208] 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)
[209] An alcohol concentration ≥.02 is "per se evidence" of having consumed alcoholic liquor. 21 §4177L(b)
[210] 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: first offense – a fine of $150 to $1,150; subsequent offense (within 2 years of a prior offense) – an imprisonment term of 10 to 30 days and/or a fine of $400 to $1,500. {A violation of this law is not entered on an offender's driver licensing record. 21 §4198K}.

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**[211]
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):	First Refusal – **Revocation 1 year** (6 months mand); second Refusal[212] (within 5 years) – **Revocation 18 months** (mand); third or subsequent Refusals (within 5 years) – **Revocation 24 months** (mand) 21 §§2742(b)(l) and 2743(a)

Sanctions Following a Conviction for a DWI Offense[213]:

Criminal Sanctions:	
Imprisonment:	First Offense (Unclassified Misd 11 §4202(b)) – **60 days to 6 months**; second offense[214] (within 5 years) (Unclassified Misd 11 §4202(b)) – **60 days to 18 months**; third offense (within 5 years) (Class G felony) – **1 to 2 years**; fourth and subsequent offense[215] (Class E felony) – **2 to 5 years** 21

[211] A first offender cannot substitute the probation before judgment program for the one under 21 §4177B. 11 §4218(b)(4) An offender is not eligible for the probation before judgment program if that person has participated in it within a 5- year period or has other violation "enhancements" such as elevated BAC 21 §4177B(a) 11 §4218(d)

[212] 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)

[213] In 'exceptional circumstances', the State may ask the Court in sentencing first "felony driving under the influence" offenses, to apply a lower level of penalty.

[214] For sentencing purposes, all prior drunk driving offenses are considered. 21 §4177B(e)(1)

[215] Any bail granted pursuant to a felony DWI offense shall include a no-driving condition.

Title 11, Chapter 2,1 § 2108.

Other Information: The following licensing sanctions apply to persons < 21 years old who refuse to submit to chemical test after having 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 – **Revocation – 2 months** (mandatory) II. Refusal where the person has had one previous violation of 21 §4177L(a) – **Revocation – 6 months** (mandatory) III. Refusal where the person has had two previous violations of 21 §4177L(a) – **Revocation -12 months** (mandatory) 21 §2742(b)(2)

§§4177(d) and 4177B(e)(2) Vehicle Assault – second degree– Class B misdemeanor.

Sanctions Following a Conviction for a DWI Offense:

A DWI-related injury where there has been negligent driving – Not more than **6 months.** 11 §§628 and 4206
Vehicle Assault – first degree– Class F felony-A DWI- related serious injury where there has been negligent driving – Not more than **3 years** [11] §§629 and 4205(b)(6)

Mandatory Minimum Term:

Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor – No**ne** First offense – No**ne** Imprisonment sanctions may be suspended. 21 §4177 (e) second offense (within 5 years) – **60 days**; third offense(within 5 years) – **3 consecutive months**[216]; fourth and subsequent offense – **6 consecutive months** 21 §4177(d) **"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 offense may not receive a suspended sentence.

Fine:
Amount ($ Range):

Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor- first offense – $**230 to $1,150**[217]; second offense (within 5 years) – **$575 to $2,300**; third offense(within 5 years) – **$l,000 to $3,000**; fourth and subsequent offense – $**2.000 to $6,000** 21 §4177(d); (1) Vehicle Assault – second degree– Class B misdemeanor – Not more than **$1,150** 11 §4206 (2) Vehicle Assault-first degree– Class F felony-The court may impose a fine as it deems appropriate 11 §4205 (k)

Mandatory Minimum Fine ($):

Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor – No**ne**[218] First Offense – $**230**: second offense (within 5 years**) – $575**; third offense (within 5 years) – **$l,000**; fourth and subsequent offense – $**2,000** {These fines appear to be mandatory via 21 §4177(d) which provides that a DWI offender's sentence is not to be suspended.}
Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor-**N/A**

[216] This mandatory imprisonment sanction appears to be consecutive as early release, furlough and suspended sentence are prohibited.
[217] **Child Endangerment**. A person who commits a drunk driving offense while transporting an individual < 17 years old is subject to the following sanctions which are in addition to any other sanctions authorized by law. First offense – An additional fine of $230 to $1,150 and 40 hours of community service benefiting children; subsequent offense – An additional fine of $575 to $2,300 and 80 hours of community service benefiting children. 21 §4177(d)(5) These sanctions do not apply to first offenders who are participating in the probation for judgment program. 21 §4177B
[218] If the offender does not have a license, first offense – $200; sub. offense – $400 to $1,000 21 §4177L(a)

Other Penalties:	
Community Service:	**Yes**[219] Discretionary 11 §4332A
Restitution (e.g., Victim's Fund)	**Yes** (1) The court may order the defendant to pay compensation to a victim. 11 §4204(c)(9) (2) Also, a victim of a DWI offense is eligible for compensation from the State's Violent Crime Compensation Board.11 §9002(3)(f).
Other:	**Assessment**. An additional amount equal to 18 *percent* 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 convicted of a drunk driving offense while driving in violation of an order requiring them to only operate motor vehicles equipped with ignition interlock devices is subject to additional imprisonment term of **60 days** 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)[220] first offense – **Revocation-3 months** (mand); second offense – **Revocation-l year** (mand); third or subsequent offenses – Revocation **- 18 months** (mand)[221] 21 §§2742(c)(l) and2743(b) Persons Under 21 Years Old – Vehicle Operation While or After Consuming Alcoholic Liquor[222] first offense – **Revocation-2 months** (appears mand); sub. offense – **Revocation-6 to 12 months** (6 months appears mand) 21 §2742(c)(2)
Other:	A license may be suspended for not more than 1 year if a person has "committed" an offense requiring license revocation (e.g., DWI). Such action may be taken without a preliminary hearing. 21 §§2733(a)(l) and (e)
Post DWI Conviction	
Licensing Action:	
Type of Licensing Action (Susp/Rev):	First offense – **Revocation**; second offense (within 5 years) – **Revocation**; third or subsequent offense (within 5 years) – **Revocation** 21 §4177A Vehicle Assault (first and second degrees) – **Revocation** 21 §2732(a)(2).

[219] The total number of community service hours that may be imposed cannot exceed the maximum term of incarceration for the offense, or if no incarceration is provided by law, the maximum number of community service hours shall not exceed 100. 11 §4332A(b)

[220] Under 21 §2742(f)(2) with reference only to an admin. per se violation, an alcohol concentration ≥ 0. 08 or a "positive indication of drugs" is conclusive evidence of a DWI (21 §4177) offense.

[221] 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)

[222] For persons < 21 years old, an alcohol concentration ≥ .02 is "conclusive evidence" of vehicle operation while or after consuming alcoholic liquor. 21 §2742(f)(3)

Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor – Revocation 21 §4177L(a)

Sanctions Following a Conviction for a DWI Offense:

Term of License Withdrawal (Days, Months, Years, etc.): First offense – **12 months**; second offense (within 5 years) **18 months**[223]; third or sub. offense (within 5 years) – **24 months**

Vehicle Assault (second degree) – **1 year**; Vehicle Assault (first degree) – **2 years**
Persons Under 21 Years Old-Vehicle Operation While or After Consuming Alcoholic Liquor – first offense – **2 months**; sub. offense – **6 to 12 months**

Mandatory Minimum Term of Withdrawal: First offense – **90 days**[224] A conditional license may be issued after the first 90 days of the revocation period 21 §§4177B, 4177C and 4177E Second offense **-18 months** A person may be permitted to apply for a driver's license after **18 months** provided he/she has satisfactorily completed the Subsequent Offense **Ignition Interlock** program. Third or subsequent offense – **24 months** must have elapsed and he/she must have completed the **Ignition Interlock** program. 21 §§4177C(b)(3) Vehicle Assault (second degree) – **1 year**; Vehicle Assault (first degree) – **2 years**
Persons Under 21 Years Old-Operation of Vehicle While or After the Consuming Alcoholic Liquor – first offense – **2 months**; sub. offense – **6 months** These actions appear to be mandatory.

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[223]For subsequent offenders, higher BACs will increase time of revocation. 21 §4177A(a)(2)(3).
For **persons under 18 years old**, license suspension/revocation until they are 21 (6 months 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) and (12) and 10 §§927(a)(6) and 1009(f) Also, under 21 §2707(b)(9), the licensing agency is not supposed to issue a license for 2 years 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 {i.e., the minimum period of 2 years appears to be mandatory.}

[224] **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 year. Voluntary Participation in Ignition Interlock Program. First offenders who have refused to submit to a chemical test and second or subsequent offenders are eligible for a regular Class D license 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. Persons who have been convicted for drunk driving offenses related to death or serious injury or who are under license suspension or revocation are not eligible for this voluntary program. 21 §§2702(e) and4177F Participation in the ignition interlock program is mandatory for all subsequent offenders 21 §4177G

Other:	
Rehabilitation:	
Alcohol Education:	**Yes**[225] 21 §4177(d) and 4177D
Alcohol Treatment:	**Yes** 21 §4177(d) and 4177D
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	**Impoundment of a vehicle or surrender of license plates/registration** (first offense – 90 days; subsequent offense – 1 year) is authorized if the vehicle operator was operating the vehicle while under license suspension or revocation for a DWI offense, implied consent refusal or other situations which require mandatory license revocation. 21 §2756(c)(1)
Miscellaneous Sanctions Not Included Elsewhere:	**"House arrest**" may be used as an alternative to imprisonment. 11 §§4332, 4347(j), 4391 et seq. See especially 11 §4392(c). The court may suspend any or all misdemeanor and felony sentences that have no mandatory minimum for probation 11 §4206(d), §4205(d) and (e)
Other Criminal Actions Related To DWI:	
Homicide by Vehicle:	
State Has Such a Law:	**Yes**[226] first degree (death caused by criminally negligent driving while DWI) **Class E felony** 11 §630A; second degree (death caused by (1)

[225] I. First offenders are required to complete either a DWI education or rehabilitation program. 21 §4177(d)(1)
II. First offenders, who elect to participate in probation before judgment 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 (within 2 years) are not eligible for this program. 21§4177B(a) Such persons may participate in the ignition interlock program. 21 §§4177B(g) and 4177F(d) III.

[226] 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 mandatory year (3 years f transporting hazardous materials) if, while driving a CMV, that person: (1) has a BAC/BrAC ≥ .04 (2) is under the influence of alcohol, a controlled substance or any drug or (3) refuses to submit to a chemical test for an alcohol concentration. A person is not eligible for an occupational CDL if "disqualified." 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 years mandatory). In addition, a CMV operator who has any measurable amount of alcohol (defined as having BAC/BrAC ≥ .02 but < .04) in his/her 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: first offense: 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) and (21), 2607, 2612(a), (b) and (c), 2613, 2614(a) and (b) and 2622 Separate provisions of law also make it an offense to operate a CMV with a BAC/BrAC ≥ .04 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 first 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 days and/or a fine of $57.50 to $230. However, a second offense must occur within 12 months of a first. Prosecution under this law does not preclude prosecution under other provisions of law. 21 §§4177J and 4205(a)

criminally negligent driving or (2) negligent driving while DWI) **Class F felony** 11 §630

Sanctions:
Criminal Sanction:
Imprisonment (Term): First degree – Not more man **5 years**; second degree – Not more than **3 years** 11§4205
Mandatory Minimum Term: First degree – 2 years; second degree – 1 year 11 §§630 and 630A
Fine ($ Range): First and second degrees-As deemed appropriate by the court 11 §4205(k)
Mandatory Minimum Fine: **None**
Administrative Licensing Action:
Licensing Authorized and
Type of Action: First degree – Revocation; second degree – Revocation 21 §2732

Length of Term of
Licensing Withdrawal: First degree-**4 years**; second degree-**3 years**
Mandatory Action--Minimum
Length of License
Withdrawal: First degree-**4 years**; second degree-**3 years**
Other: **None**

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense: No specific statutory provision on this subject. Sanctions given are for the general offense of operating a motor vehicle while driving privileges are suspended or revoked.

Sanction:
Criminal:
Imprisonment (Term): **Misdemeanor** (Unclassified) first offense – **30 days to 6 months**; subsequent offense (within 3 years) – **60 days to 1 year**
11 §§233(c) and 4202(b) and 21 §2756
Mandatory Minimum Term
of Imprisonment: First offense – No**ne**[227]; **subsequent offense** (within 3 years) – **60 days** 21 §2756
Fine ($ Range): First offense **– $500 to $1,000**; subsequent offense (within 3 years**) – $l,000 to $4,000** 21 §2756
Mandatory Minimum Fine: First offense **– $500**[228]; subsequent offense (within 3 years) – **$l,000** 21 §2756
Administrative Licensing Actions:
Type of Licensing Action
(Susp/Rev): **None**
Length of Term of License
Withdrawal Action:
Mandatory Term of License
Withdrawal Action:

[227] 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-day** period of imprisonment and a mandatory fine of **$2,000**.
[228] If the original revocation was based on a drunk driving offense, the minimum mandatory fine is $600. 21 §2756(a)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** 21 §2801 et seq. See Footnote No. [229] mandatory). 21 §2612(h)(1). (2) and (3)
Grounds for Being Declared an Habitual Offender:	3 or more serious violations within a 5-year period, or 10 or more minor moving violations in a 3-year period. 21 §2802
Term of License Rev While Under Habitual Offender Status:	**Revocation for 5 years** if based on serious offenses or for **3 years** if based on minor moving violations. 21§2809
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Misdemeanor** (Unclassified) 11 §§233(c) and 4202(b)

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

Imprisonment (Term): First offense – **90 days to 30 months[230]; subsequent offense – 180 days to 5 years** 21 §2810

Mandatory Minimum Term of Imprisonment: First offense – **90 days;** subsequent offense – **180 days** 21 §2810

Fine ($ Range):	First offense – not more than **$1,150**; subsequent offense – not more than **$2,300** 21 §2810
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Special Note: I. It is an unclassified misdemeanor to operate a CMV while either disqualified or under a CDL out-of-service order. For a first 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 days and/or a fine of from $500 to $5,000, 11 §§233(c) and 4202(b) and 21 §§2607(b) and 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: first violation-90 days (mandatory) to 1 year; second violation (within 10 years) – 1 to 5 years (1 year mandatory); and, third or subsequent violation (within 10 years) – 3 to 5 years (3 years mand). If the driver was either transporting hazardous materials or driving a vehicle designed to transport > 15 persons, the following disqualification periods apply: first violation – 180 days (mandatory) to 2 years; second violation (within 10 years) – 3 to 5 years (3 years mandatory); and, third or subsequent violation (within 10 years) – 3 to 5 years (3 years) .

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:	

[229] Under 21 §2814, a person who is convicted of a traffic offense that would make them a habitual offender is subject to the following additional sanctions: Jail-30 days to 12 months; fine – $115 to $1,150. No execution is taken to impose these additional sanctions until the person is finally adjudged a habitual offender.

[230] Under 21 §2810, the court cannot suspend an imprisonment term. This in effect makes the minimum period of incarceration mandatory.

Pedestrian:

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21**[231] 4 §904(a) and (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). Anyone outside of religious services or the home who provides liquor to another under 21 is fined $100 – $500 and may be ordered to complete 40 hrs. of community service and may be imprisoned for 30 days. 4 §903(c)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** For cases denying liability, see *Wright v. Moffitt,* 437 A.2d 554 (Del. 1981)[232], *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** [233]
Other:	A licensee is not liable for the injuries sustained by an intoxicated patron. *Wright* v. *Moffitt,* 437 A.2d 554 (Del. 1981). and *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:	**Misdemeanor** (Unclassified) 4 §706, 4 §708 and 11 §§233(c) and 4202(b)
Term of Imprisonment:	**No**.
Fine ($ Range):	Not more than **$100** 4 §903(4)

[231] It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to make a "false statement" about his/her age in order to obtain alcoholic beverages punishable by a fine of $100 to $1000 for a first offense, and $500 to $1000 for each subsequent offense. 4 §904(b)

[232] 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).

[233] 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)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension** 4§561(b)(1)
Length of Term of License Withdrawal:	Not specified by statute
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misdemeanor** (Unclassified) 4 §§708(a)(1) and 904(a) and 11 §§233(c) and 4202(b)
Term of Imprisonment:	**No**[234]
Fine ($ Range):	Not less than **$250** or more than **$500**[235] 4 §904(a)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension** 4 §561(b)(1)
Length of Term License Withdrawal:	Not specified by statute
Anti-Happy Hour Laws/Regulations:	**No**[236]
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Applies only to drivers[237] 21 §4177J

[234] A person may be imprisoned for 30 days for failure to pay the fine. 4 §§903 and 904(a)

[235] 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.

[236] "No more than 1 alcoholic beverage may be sold to a person less than fifteen minutes prior to closing...." 4 §727

[237] 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 percent 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:	**DISTRICT OF COLUMBIA**
General References:	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[238] §50-2201.05(b)(1) II. Impaired by the consumption of intoxicating liquor §50-2201.05(b)(2)
Illegal Per Se Law (BAC/BrAC):	≥**.08**[239and240] §50-2201.05(b)(1) For Persons Under 21 Years Old-Operating a Vehicle with Any Measurable Amount of Alcohol in the Blood, Breath or Urine[241] §50-2201.05(b)(1)
Types of Drugs/Drugs and Alcohol:	Driving under the influence of (1) Any Drug or (2) a Combination of Any Drug and Alcohol §50 2201.05(b)(1)
Presumption (BAC):	No presumption resulting from defendant's blood containing less than .**03 percent**, by weight of alcohol, or defendant's urine contained less than **.04 percent**, by weight of alcohol, or that at the time of the test less than .14 micrograms of alcohol were contained in 1 milliliter of his or her breath – but may be considered with other competent evidence in determining whether the defendant was under the influence of intoxicating liquor. § 50-2205.02 (1) A BAC ≥ **.05**, a UrAC of ≥ .06 grams per deciliter 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 §50-2205.02(2)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes**[242] §50-2201.05(b-1)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §50-1902
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §50-1902(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) §50-1905(c)
Other Information:	A person is required to submit to a chemical test if involved in an accident (regardless of whether there has been an injury) and arrested for any DWI

[238] 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.
[239] 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 .10 or more ("percent by weight").
[240] The BAC standard is "percent by weight" of alcohol in the blood. §§50-2201.05(b)(1) and 50-2205.02
[241] 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 the system are the same as for the offenses of illegal per se and driving while under the influence.
[242] 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 the blood, breath or urine.

offense. §50-1902(b) and *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** §50-1902
Urine:	**Yes** §50-1902
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** Subsequent offenders of ANY drunk driving must complete an alcohol/drug abuse assessment. §50-2201.05(b)(6)

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):	**Suspension – 12 months** §50-1905(a) (Mandatory – No occupational hardship license shall be issued. CDCR 18-310.7(a))

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	I. Illegal per se/Under the Influence: first offense – Not more than **90 days**; second Offense within 15 years)[243] – Not more than **1 year**; third and subsequent offenses within 15 years[244] – Not more than **1 year** II. Impaired: first offense – Not more than **30 days**; second Offense[245](within 15 years) – Not more than **1 year**; third or sub. offense[246] (within 15 years) – Not more than **l year** §50-2201.05(b)(1) and (2)
Mandatory Minimum Term:	I. Illegal per se/Under the Influence: first offense – If BAC ≥0.20 but < 0.25-**5 days**; if BAC > 0.25-**10 days**; second Offense –(within 15 years) – **5 days**; if BAC ≥0.20 but < 0.25-**10 days**; if BAC >0.25-**20 days**; third and subsequent offenses (within 15 years) – **10 days**; if BAC ≥ 0.20 but < 0.25-**15 days**; if BAC > 0.25-**25 days**

[243] or a first offense where there has been a previous impaired offense within 15 years.
[244] or a second offense where there has been a previous impaired offense within 15 years.
[245] or a first offense where there has been previous illegal per se/under the influence offense within 15 years.
[246] or a second offense where there has been previous illegal per se/under the influence offense within 15 years.

	II. Impaired: first offense – No**ne**; second Offense (within 15 years) – **5 days**; third or subsequent offense (within 15 years) – **10 days**
Fine:	§50-2201.05(b)(l) and (2)
Amount ($ Range):	I. Illegal per se/Under the Influence: first Offense – $**300**; second Offense (within 15 years) – **$1000 to $5,000**; third and subsequent offenses (within 15 years) – **$2,000 to $10,000** II. Impaired: first offense – $**200 to $300**; second Offense (within 15 years) – **$300 to $500**; third or sub. offense (within 15 years) – **$l,000 to $5,000**
Mandatory Minimum Fine ($):	**None**
Other Penalties:	
Community Service:	I. Illegal per se/Under the Influence: first offense – No**ne**; second Offense – (within 15 years) – at least **30 days**; third and subsequent offenses (within 15 years) – at least **60 days** II. Impaired: first offense – No**ne**; second Offense (within 15 years) – at least **30 days**; third or sub. offense (within 15 years) – at least **60 days** §50-2201.05
Restitution (e.g., Victim's Fund)	**Yes** I. A Victim's Compensation Fund §4-501 et seq. Awards are limited to a maximum amount of $25,000. §4-507 II. A defendant may be required to pay restitution to a victim. §16-711 Other: **Assessments**. Offenders are required to pay the following assessments which are used to finance the Crime Victim's Compensation Fund: (1) Violations of §50-2201.05 (drunk driving offenses) – **$100 (mand)**; serious traffic and misdemeanor offenses – $**50 (mand) to $250**; and, felony offense – $**100 (mand) to $5,000** §4-516(a) *Parrish v. District of Columbia,* 718 A.2d 133 (D.C. 1998) **Child Endangerment**. For any drunk driving offense conviction where there was a passenger ≤ 17 years old, the driver is subject to an additional fine of $500 to $1,000 and 48 hrs (80 hrs if a subsequent off) of community service benefiting children. §50-2201.05(b)(1)(D) **Ignition Interlock**. The District of Columbia Government is authorized to establish an "ignition interlock" program for persons who have been convicted of any subsequent drunk driving offense. §50-2201.05a
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Under the Influence of Intoxicating Liquor or Drugs**[247] first violation– suspension **2 to 90 days** or **Revocation for 6 months**; sub. yiolation–

[247] Either (1) a blood alcohol concentration > .05 "percent by weight" of alcohol in the blood, (2) a urine alcohol concentration of ≥ .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 §50-2205.02 and CDCR 18-1034.3

	suspension **from 2 to 90 days** or **revocation** where the time period is discretionary but must be for definitive period of time.[248] At the discretion of the licensing agency, the suspension may be from 2 to 90 days "based upon the seriousness of the case." CDCR 18-302.5, 18-306.1 *and* 18-306.4
Post DWI Conviction Licensing Action: Type of Licensing Action (Susp/Rev):	I. Driving under the influence/illegal per se: **Revocation** for all offenses §§50-1403.01(a) and 50.1403.02, 50-2201.05(d)(l) and CDCR 18-301.1 II. Driving while impaired: Either **suspension or revocation** at the discretion of D.C. officials §50-1403.01 12 points are assigned to a person's driving record for a violation of either I or II above. CDCR 18-303.2(n).
Term of License Withdrawal (Days, Months, Years, etc.):	I. Driving under the influence/illegal per se[249]: first offense – **6 months**; second offense – 1 year; third and subsequent offenses – 2 years §§50-1403.01 and 50-2201.05(d) and CDCR 18-301.1 and 18-306.5 II. Driving while impaired: first offense – **Suspension** from **2 to 90 days**[250] or **Revocation for 6 months**; sub. offense – **Suspension** from **2 to 90 days**[251] or **Revocation** where the time period is discretionary but must be for definitive period of time §50-1403.01 and CDCR 18-306.1 and 18-306.4
Mandatory Minimum Term of Withdrawal:	I. Driving under the influence/illegal per se): first offense – **6 months**; second offense – **1 year**; third and subsequent offenses – **2 years** No occupational hardship licenses shall be issued. CDCR 18-310.7(a) II. Driving while impaired: **None** Either a limited license (CDCR 18-309.1 et seq.) or a limited occupational hardship license (CDCR 18-310.1 et seq.) may be issued.
Other:	

[248] These licensing actions are not mandatory. A person is eligible for either limited or occupational driving privileges. CDCR 18-309.1 et seq. and 18-310

[249] Sec. 50-2201-05(d) authorizes license revocation for driving while under the influence/illegal per se offenses. However, this section does not authorize such action against persons under 21 years old who are convicted of operating a motor vehicle with any measurable amount of alcohol in the body. Nevertheless, via legislation, CDCR 18-301.1 was amended to authorize such action against young persons. §7 D.C. Act 10-214 of 1994

[250] At the discretion of the licensing agency, the suspension may be from 2 to 90 days "based upon the seriousness of the case." CDCR 18-3-306.1

[251] 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: first violation – $500; second violation (within 2 years) – $l,000; third or subsequent violation (within 2 years) – $l,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)

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Rehabilitation:
Alcohol Education:
Alcohol Treatment:
Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **Yes**, limited. §50-2201.05(c-1)
Terms Upon Which Vehicle
Will Be Released:

Other: **Limited Impoundment**. Under §50-2205.01(c-l), 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. §§50-1301.37 and 50-1301.38

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year if 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 ≥ .04. For a second violation, the "disqualification" is from 10 years to life. For a third violation, the "disqualification" is for life (mand). A CMV operator must be placed out-of-service for 24 hours if 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. §§50-401(3) and (4), and 50-406 and CDCR 18-1306.1(a), 18-1306.5 and 18-1322.1 and 18-1322.2 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 alcohol per 100 milliliters of blood or grams of alcohol 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 18-1306.12(a) with CDCR 18-1399.1 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: first violation – $500; second violation (within 2 years) – $l,000; third or subsequent violation (within 2 years) – $l ,500. CDCR 18-1408.2(a)

Other Criminal Actions Related to DWI:
Homicide by Vehicle:
Jurisdiction Has Such a Law: **Yes –** felony Negligent Homicide §50-2203.01
Sanctions:
Criminal Sanction:
Imprisonment (Term): Not more than **5 years**
Mandatory Minimum Term: **None**
Fine ($ Range): Not more than **$5,000**

Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	
Length of Term of Licensing Withdrawal:	First offense – **6 months**; second offense – **1 year**; third and subsequent offenses – **2 years**
Mandatory Action--Minimum Length of License Withdrawal:	
Other:	

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

Sanction:	
Criminal:	
Imprisonment (Term):	Not more than **1 year** §50-1403.01(e)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$5,000** §50-1403.01(e)
Mandatory Minimum Fine:	**None**.
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Revocation/Suspension**
Length of Term of License Withdrawal Action:	Extend the period of suspension or revocation for an additional period of time that is equal to the length of the original suspension or revocation period. CDCR 18-305.1 and 18-305.5
Mandatory Term of License Withdrawal Action:	Licensing action is mandatory; no occupational license can be granted. CDCR 18-310.7(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):	

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 Beverage:

Minimum Age (Years) Sale/Purchase:	**21** §25-1002(a)
Minimum Age (Years) Possession:	**21** §25-1002(a)
Minimum Age (Years) Consumption:	**21** §25-1002(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), *and Marusa v. D.C.,* 484 F.2d 828 (D.C.Cir.1973)
Dram Shop Actions-Social Hosts:	**No** (No appellate court cases[252])
Other:	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 misdemeanor.
Term of Imprisonment:	Not more than **1 year**
Fine ($ Range):	Not more than **$1,000** §§25-781, 25-831 See **Assessments**.

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension or revocation** §25-823
Length of Term of License Withdrawal:	For revocation, no new license shall be issued for **1 year**.

[252] However, the U.S. District Court for the District of Columbia has noted that the District of Columbia does not recognize social host liability. *Cartwright v. Hyatt Corp.,* 460 F. Supp. 80 (1978) and *Wadley v. Aspillogn* 163 F. Supp. 1 (D.D.C. 2001)

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 misdemeanor.[253] §§25-121 and25-132
Term of Imprisonment:	**180 days – 1 year**
Fine ($ Range):	**$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 Suspension or revocation** §25-823
Length of Term License Withdrawal:	For revocation, no new license shall be issued for **1 year**.

Anti-Happy Hour Laws/Regulations: **No**

Laws Prohibiting (l) 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 §25-1001(a) and CDCR 18-2224
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers. §25-1001(a)

[253] Anyone who offers, gives, provides or otherwise makes available alcoholic beverages to a person under 21 years old and the person under 21 is subject not only to the criminal penalties noted but also to the following administrative sanctions: (1) a fine of from $100 to $300 and (2) suspension of the driving privilege (first offense – 90 consecutive days; second offense – 180 days; third and subsequent offense – 1 year). §25-785 and 25-1002

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

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic beverages[254] §316.193(l)(a)
Illegal Per Se Law (BAC/BrAC):	**≥.08** [255] §§316.193(1)(b) and (c); Persons under 21 ≥.02 §322.2616(i)(a)3
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of a **Controlled Substance or Chemical Substance** listed respectively in chapter 893 and §877.111
Other	§§316.193(1)(a) A BAC/BrAC ≥**.08**[256] is *prima facie* evidence of driving under the influence.[257] §316.1934(2)(c) See the Special Note below. A DWI offender cannot be released from custody until (1) he/she is no longer under the influence of alcohol or other chemical substance, (2) their BAC/BrAC is <.05 or (3) eight hours 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) and 322.2616(17)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§316.1932(1)(a) and 322.2616(1)(b)[258] Under§316.1932(1)(c), an arrest is not a prerequisite to the taking of a blood sample if the driver is taken to a medical facility for treatment as a result of an accident. *Kenson v. State,* 577 So.2d 694 (Fla. App. 3 Dist. 1991)

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) and see *Register v. State* 582 So.2d 762 (Fla. App. 1 Dist. 1991) and *Cardenas v. State* 816 So.2d 724 (Fla. App. 1 Dist. 2002) that held that a similar instruction merely created a permission inference that the jury was free to accept or reject. It appears that the law on this subject remains in conflict. 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

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[254] 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 .08 or more. §316.193(1)(a) and (b) and *State* v. *Rolle,* 560 So.2d 1154 (Fla. 1990)

[255] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

[256] Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liter of breath. §§316.193(1)(b) and (c), 316.1932(b)1 and 316.1934(2)(c)

[257] 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)

[258] Under §322.2616(1)(b), a person under 21 years 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.

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)

Chemical Breath Tests for Alcohol Concentration: (con't)

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:	
Other Information:	**Yes**[259] (Criminal Cases) §§316.1932(1)(a) and 316.1932(1)(b) A driver may be compelled to provide a blood sample for testing only if he/she has been involved in an accident resulting in either death or serious bodily injury to another. §316.1933(l)[260], or there is reasonable cause to believe a DUI occurred, the driver is at a hospital for treatment and a breath or urine test is impractical or the person is unconscious or otherwise unable to refuse. 316.1932 (1)(c) and *State v. Kliphouse* 771 So.2d 16 (2000) (Fla. App. 1 Dist. 2002).

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

Blood:	**Yes, Limited** A blood test, for the purposes of implied consent, may be may be taken only if the driver appears for treatment at a medical facility and the administration of a breath/urine test is impractical or impossible. §316.1932(1)(b)
Urine:	**Yes, Limited** Under §316.1932(1)(a), there is an implied consent to submit to a urine test for the purpose of detecting the presence of controlled substances.
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**Yes** Applies to (1) DWI, (2) manslaughter resulting from the operation of a motor vehicle and (3) vehicle homicide offenses. §316.656(1)
Anti-Plea-Bargaining Statute (Yes/No):	**Yes** Applies to (1) DWI where the alcohol concentration is 0.20 or more, (2) to DWI where there has been property damage, (3) to manslaughter related to the operation of a motor vehicle and (4) to vehicle homicide. §316.656(2)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No** However, all drunk driving offenders must undergo a "psychosocial evaluation". §316.193(5)

[259] 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), and *State* v. *Burns,* 661 So.2d 842 (Fla. App. 5 Dist. 1995)

[260] *State v. Slaney,* 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), *and State v. Perez,* 531 So.2d 961 (Fla. 1988)

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): First refusal – Suspension for **1 year** (90 days mand. A hardship license is available after this mandatory period.); Subsequent refusals– suspension for **18 months** (Mandatory)[261] §§316.1932(a)(1), 322.2615(8)(a) and (10) and 322.271(2)(a)
Persons Under 21 Years Old. First refusal – Suspension for **1 year** (30 days mand)[262;] Subsequent refusals– suspension for **18 months** (30 days mand) §322.2616(2), (9) and (11)

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. [263] and [264].

Imprisonment: First offense (misdemeanor) – **Not more than 6 months**; second offense (misdemeanor) – **Not more than 9 months**; third offense within 10 years (third degree felony) third offense >10 years (misdemeanor) – **Not more than 12 months**; fourth or sub. offense (third degree felony) – **Not more than 5 years** §§316.193 and 775.08(2)
second offense – **10 days (w/48 con hrs)** if second offense was within 5 years of a previous DWI conviction §316. 193(6); third or sub. offense – **30 days (w/48 con hrs)** if third or sub. offense was within 10 years of a previous DWI offense. 316.193(6)

Fine:

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[261] The "actual" suspension period appears to be only 17 months. The law provides that a person be issued a 30-day temporary license at the time of arrest. However, the law now provides that the suspension "commences" at the time of arrest or issuance of the notice of suspension, "whichever is later" the person may be only denied driving privileges for 17 months. §322.2615(b)(la), (2) *and* (4) Unlike the mandatory suspension associated with a first refusal, the law does not provide that the mandatory suspension period start after the expiration of the 30-day temporary license.

[262] 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-day mandatory period begins after the temporary permit, issued at the time of the stop, expires. A hardship license is available after this mandatory period. §322.2616(9) and (11)

[263] For "under the influence" offenses involving: (1) Property damage or personal injury-Misdemeanor of the first degree – Not more than **1 year** in jail, a fine of not more than **$1,000**; (2) serious bodily injury-third degree felony – Not more than **5 years** 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**): first offense – Not more than **9 months** in jail, a fine of **$500 to $1,000**; second offense – Not more than **12 months** in jail, a fine of **$1,000 to $2,000**; third offense – Not more than **12 months** in jail, a fine of **$2,000 to $5,000** The minimum mandatory sanctions for "regular" DWI offense convictions also apply to these offenses. §§316.193(3) and (4), 775.082, 775.083 and 775.084

[264] 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)

Amount ($ Range):	First offense – $**250 to $500**; second offense – $**500 to $1,000**; third offense >10 years **– $1,000 to $2,500**; fourth or sub. offense (third degree felony) – **$l,000 to $5,000**
Mandatory Minimum Fine ($):	First offense – **$250**; second offense – $**500**; third or subsequent offense – $**1,000**
Other Penalties:	Anyone suspended for DUI must obtain a 6-month vehicle registration as a condition of reinstating the license, subject to renewal during the 3-year period that financial responsibility requirements apply. § 32.055(b) In addition, that person shall maintain non-cancelable liability coverage for each motor vehicle registered for 3 years. § 324.131
Community Service:	First offense – **50 hours** or if the court thinks it in the best interests of the State, a **$10 fine** for each hour of community work otherwise required notwithstanding other sanctions. This sanction for first offenders is part of mandatory probation which is not to exceed **1 year**. §316.193(6)(a) Also, under §775.091, the court may order a defendant (a first or sub. offender) to perform specified public service.
Restitution (e.g., Victim's Fund)	(1) The court may order a defendant to pay restitution to a victim. §775.089. (2) In addition, the State has a victim's compensation fund. A victim of DWI offense is eligible to receive payments from this fund. §96.01 et seq.
Other:	**Mandatory Probation**. First offenders must be placed on probation for l year. §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 percent** 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**. {This fine is contingent on the offender's ability to pay.} §§960.25, 775.0835(1) and 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 and 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 Highway Safety Operating Trust Fund. §322.12(2) 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: **Yes ≥.08 BAC/BrAC** §§316.193 and 322.2615(1)(a) A violation– suspension **6 months** (30 days mand. A restricted hardship license may be issued after this mandatory period.) A violation where there has been two or more DWI offenses – **Suspension 1 year** (mand)[265] §§316.193, 322.2615(1)(a), (1)(b), (8)(b) and (10) and 322.271(2)(a) Persons Under 21 Years Old. ≥**.02 BAC/BrAC** first violation– suspension **6 months** (30 days mand); Subsequent violations– suspension **1 year** (30 days mand) If BAC/BrAC is ≥.05, the suspension remains in effect until the driver completes a substance abuse course. §322.2616(1)(a), (2), (9) and (11)
Under §§322.27(a)(1) and 322.28(1), a person's license may be suspended for not more than l year if he/she has "committed" an offense that usually requires license revocation (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): First offense[266]and[267] – Revocation**; second** offense (within 5 years) – **Revocation**; third offense (within 10 years) – **Revocation**; fourth offense – **Revocation** §322.28
Revocation is permanent if there is an alcohol offense in connection with a vehicle manslaughter/homicide offense. §§322.26 and 322.28(2)(e)

Term of License Withdrawal (Days, Months, Years, etc.): First offense – **180 days – 1 year**; second offense (within 5 years) – Not less than **5 years**; third offense (within 10 years) – Not less than **10 years**; and fourth offense – **Permanent** §322.28

Mandatory Minimum Term of Withdrawal: First offense – **180 days**; second offense (within 5 years) – **5 years**[268and269] Third offense (within 10 years) – **10 years;** fourth offense – **Permanent** §§322.271(2)(b) and 322.28

Other:

Rehabilitation:

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[265] The "actual" suspension period appears to be only 11months. The law provides that a person be issued a 30-day temporary license at the time of arrest. However, since the law also provides that the suspension "commences" at the time of arrest or issuance of the notice, "whichever is later" the person may only be denied driving privileges for 11 months. §322.2615(b)(l.b), (2) and (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 provide that the mandatory suspension period start after the expiration of the 30 day temporary license.

[266] Under §316.655(2), a court can suspend/revoke 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.

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

[268] 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)

[269] After this period of time, a restricted occupational license may be issued. Before such restricted driving privileges are granted, the person must demonstrate that he/she has been drug-free for 12 months. §322.271(2)(b)

Alcohol Education:	**Yes** A substance abuse course/alcohol treatment program is required for a defendant convicted of any DWI off. §§316.193(5) and 322.291 Such a course must be successfully completed by defendants who have been convicted of either two DWI offenses (within 5 years) or 3 such offenses (within 10 years) before the license can be restored. §322.03(2)
Alcohol Treatment: See Alcohol Education above.	If BAC/BrAC is; > .05, drivers < 21 years old must complete a substance abuse course. §322.2616(2)(c)
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	**Yes (Limited) -**A DUI offender's vehicle is subject to **forfeiture,** if at the time of the DWI offense, that person was driving on a suspended or revoked license for a prior DUI driving offense. §§322.34(9)(a) and 932.701(2)(a)(9)
Terms Upon Which Vehicle Will Be Released:	**None**
Other:	**Impoundment or Immobilization. First** offense – **10 days**[270]; second offense (within 5 years) – **30 days**[271] Third offense (within 10 years) – **90 days** §316.193(6)(a), (b), (c) *and* (d) 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); *State v. Burdette*, 826 So.2d 1092 (Fla. App 2 Dist. 2002)
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 **322.2715 Ignition interlock device--** Use of ignition interlock device[272] is mandatory for at least 1 year upon a second conviction if driver qualifies for a permanent or restricted license §316.193(2)(a)(3), and for at least 2 years for any third conviction and for other extenuating circumstances. §316.193(2)(b) and (4)(c). If a first–time DUI offender was accompanied in the vehicle by a person younger than 18 years of age, the person shall have the ignition interlock device installed for 6 months for the first offense and for at least 2 years for a second offense. § 322.2715(3) {Ignition interlock device.} Also, a DWI defendant, who is placed on probation and who is otherwise "permitted" to operate a motor vehicle, shall be required to operate vehicles equipped with "ignition interlock" devices for not less than 6 months. §§

[270] 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)

[271] Applies to all vehicles owned by the offender. This action may not be concurrent with probation or imprisonment but unlike first offenses must be concurrent with the driver's license revocation. §316.193(6)(b) and (c)

[272] Upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person.

322.2715(1), 316.193 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), and *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: [273]

State Has Such a Law:	**Yes** I. DWI (DUI) Manslaughter (a death related to a drunk driving offense)[274]-felony second degree II. Manslaughter (death related to vehicle operation where there is negligent action without lawful justification) – felony first degree III. Vehicle Homicide (death related to reckless vehicle operation) – felony second degree §§316.193(3)(c)(3), §782.07 and 782.071
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Felony second degree – Not more than **15 years** §775.082(3)(c)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Felony second degree – Not more than **$10,000** §775.083(1)(b)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Revocation** (All offenses) §322.28(3)(e) and (5)(a)
Length of Term of Licensing Withdrawal:	I. DWI (DUI) Manslaughter-**3 years** (minimum) II.

[273] Under §322.34(3), it is third 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 second DWI offense, (2) vehicular manslaughter, (3) vehicular homicide or (4) a DWI offense that requires an enhanced sanction. Sanctions: Jail – not more than 5 years (§775.082(3)(d); fine – not more than $5,000 §775.083(1)(c).

[274] The unlawful killing of a viable fetus by any injury to the mother of such child which would be murder if it resulted in the death of such mother shall be deemed murder in the same degree as that which would have been committed against the mother. § 782.09

	Manslaughter-**3 years** (minimum); if related to a DWI offense conviction-**Permanent** III. Vehicle Homicide-**3 years** (minimum); if related to a DWI offense conviction-**Permanent** §322.28(2)(e) and (5)(a)
Mandatory Action—Minimum	
Length of License Withdrawal:	I. DWI (DUI) Manslaughter-**3 years** II. Manslaughter-**3 years;** if related to a DWI offense conviction-**Permanent** III. Vehicle Homicide-**3 years**; if related to a DWI offense conviction-**Permanent**[275] §322.28(2)(e) and (5)(a)
Other:	A defendant may be required to pay restitution to a victim. §775.089 I. A defendant must complete a driver-training course. §322.291. The court may order a person to serve 120 hours of community service is either a trauma center or hospital. §782.071(4)
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote No. [276] and the Special Note below.
Sanction:	
Criminal:	
Imprisonment (Term):	First offense (Misd second degree) – Not more than **60 days**; second offense (Misd first degree) – Not more than **1 year**; third or subsequent offense (felony third degree) – Not more than **5 years** §§322.34(2) and 775.082
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	First offense – Not more than **$500**; second offense – Not more than **$1,000**; third and subsequent offense – Not more than **$5,000** §775.083
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:[277]	
Type of Licensing Action	

[275] After 5 years, a person is eligible for restricted occupational driving privileges for not less than 1 year and unrestricted privileges thereafter. Before being granted these privileges, the person must demonstrate that he/she has been drug-free for 5 years and that he/she has 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)

[276] A person who has had his/her 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 third degree felony. The sanctions for this offense are a term of incarceration of not more than 5 years and/or a fine of not more than $5,000. §§322.34(3), 775.082 and 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 his/her driving privileges had been suspended or revoked. §322.34(2) If the person had no knowledge of such action and operate a motor vehicle, that person commits 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) and 322.34(1)

Special Note: The following sanctions apply if a person operates a CMV during a CDL disqualification: first off (first degree misdemeanor) a jail term ≤ 1 year and/or a fine ≤ $1,000; second or subsequent off (third degree felony) an imprisonment ≤ 5 years and/or a fine ≤ $5,000. And, for both first and subsequent offenders, driving privileges cannot be restored for an additional 3 months. §322.28(3) and 322.34(4)

[277] 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(8) and (9)

II. See Vehicle Impoundment/Confiscation.

(Susp/Rev):	First offense – **Suspension/Revocation**; second and subsequent offenses – **Suspension/Revocation** §322.28(3)
Length of Term of License Withdrawal Action:	First offense – An additional **3 months**; second and subsequent offenses An additional **3 months** §322.28(3)
Mandatory Term of License Withdrawal Action: §322.271	**No** A restricted hardship license may be issued.
Habitual Traffic Offender Law:	
State Has a Such Law (Yes/No):	**Yes** §322.264
Grounds for Being Declared an Habitual Offender:	3 serious or 15 normal moving violations within a 5-year period.
Term of License Rev While Under Habitual Offender Status:	**Revocation – 5 years** §322.27(5) Note: After 12 months, the offender may have the driving privileges restored. §322.27l(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:	Third degree felony §322.34(5)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **5 years** §775.082
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$5,000** §775.083
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**Revocation** period extended an additional **3 months** §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**
BAC Chemical Test Is Given to the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**No**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21**[278] §562.11(1)(a) and (2)
Minimum Age (Years) Possession:	**21** Except for employment purposes §562.111
Minimum Age (Years) Consumption:	**None**[279]

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): Yes **Limited** §768.125 See Footnote Nos. [280], [281 and 282].

Other State Laws Related to Alcohol Use: (continued)

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation): **No**[283]

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[278] It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to "misrepresent" his/her age in order to obtain alcoholic beverages. §562.11 (2)

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

[280] 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. *Sabo*, 591 So.2d 907 (Fla. 1991) 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, 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), *and 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)

[281] A licensee may be held liable for the actions of an intoxicated minor to whom he/she has not sold alcoholic beverages. Such is the case if an underage 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)

[282] I. A patron, who is a known "habitual drunkard," can hold a licensee liable, under the dram shop law, for injures 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 his/her 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 judgment 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)

[283] 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), and *Bennett v. Godfather's Pizza, Inc.,* 570 So.2d 1351 (Fla. App. 3 Dist. 1990)

Dram Shop Actions-Social Hosts:	**Limited** *Bankston v. Brennan,* 507 So.2d 1385 (Fla. 1987), and *Newsome v. Haffner,* 710 So.2d 184 (Fla. App. 1 Dist. 1998)[284], and *Trainor v. Estate of Hanson,* 740 So.2d 1201 (Fla. App. 2 Dist. 1999)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**None**[285]
(continued)	
Term of Imprisonment:	**None**
Fine ($ Range):	**None**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**No**
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:	**Misdemeanor second** degree §562.11(1)(a)
Term of Imprisonment:	Not more than **60 days** §775.082
Fine ($ Range):	Not more than **$500** §775.083
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension or revocation**[286] §561.29(l)(a) and (b)
Length of Term License Withdrawal:	Time period is not specified in the statute.
Anti-Happy Hour Laws/Regulations:	**No**

[284] I. Despite the *Bankston* decision above, an employer may be held liable, via a respondent 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 *Trainer,* 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 that 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.

[285] It is a second degree misdemeanor (jail – not more than 60 days; fine – not more than $500) for 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 and 775.083 A licensee is also subject to license suspension under §561.29(1)(a)and (b).

[286] Admin. sanctions may be mitigated if the licensee has been certified as a responsible vendor. Such a vendor must have provided special training to his/her employees/managers in how to sell alcoholic beverages so as not to violate the ABC laws by selling such beverages to minors. §561.701 et seq.

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 (But this law was modified by a July 1, 2005 amendment. §316.1936)[287]
Anti-Consumption Law (Yes/No):	**Yes** Driver and Passengers §316.1936

[287] However, a bottle of wine that has been resealed and is transported pursuant to s. 564.09 is not considered an open container … Section 564.09 provides in pertinent part: A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with and a dated receipt for the bottle of wine and full-course meal shall be provided by the licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine must be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

STATE:	**GEORGIA**
General Reference:	Code of Georgia Annotated (Code of 1981)
Basis for a DWI Charge:	
Standard DWI Offense:	**Under the influence of alcohol** §40-6-391(a)(1)
Illegal Per Se Law (BAC/BrAC):	**≥ .08**[288and289] **or Any Amount of a Controlled Substance or Marijuana** (in the blood or urine)[290] §§40-1-1(1), 40-6-391 (a)(5) and (6) and 40-6-392(c)(.l) Persons Under 21 Years Old- ≥ **.02**[291] §§40-6-39l(k)(l) and 40-6-392(c)(3).
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	(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) and (4)[292]
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**No**[293]
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[294] §40-5-55(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §40-5-55(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes**[295and296] (Criminal Cases) §40-6-392(d) *Allen* v. *State,* 494 S.E.2d 229 (Ga. App. 1997), and

[288] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 (.02 for persons under 21 years old) or more.
[289] Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §40-1-1(1)
[290] 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, allowing 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)(6), *Stevenson v. State,* 453 S.E.2d 18 (Ga. 1995), and *Love v. State,* 517 S.E.2d 53 (Ga. 1999) See also *State v. Kachwalla* 561 S.E.2d 403 (2002) discussing 3(a)(2) of the statute.
[291] Except as noted, the sanctions for this offense are the same as for any other drunk driving offense.
[292] The courts have held that §40-6-391 establishes one offense namely that of "driving under the influence." Subsection (a)(l), the standard DWI offense, and subsequentsection (a)(5), the .08 illegal per se offense, represent two different methods of proving this "one" offense. *Kuptz v. State,* 345 S.E.2d 670 (Ga. App. 1986), and *French v. State,* 401 S.E.2d 67 (Ga. App. 1990) (affirmed by the Georgia Supreme Court, 405 S.E.2d 35 (Ga. 1991)) The State Supreme Court also has held that §40-6-391(k), which makes it illegal for a person under 21 years old to operate a motor vehicle with an alcohol concentration ≥ .02, does not violate such 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)
[293] 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).
[294] It appears that an arrest is not required if there are "reasonable grounds" to believe that a person was DWI and they were involved in an accident that resulted in either serious injury or death. §40-5-55(a)
[295] Refusal to submit to a PBT also may be admitted into evidence at a DWI trial. *Keenan v. State,* 436 S.E.2d 475 (Ga. 1993)
[296] If proper warnings are not given, evidence of refusal may not be admissible. *State v. Leviner,* 443 S.E.2d 688 (Ga. App. 1994)

(continued)

Brinson v. State, 503 S.E.2d 599 (Ga. App. 1998)

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**[297] §40-5-55(a)
Urine: **Yes** §40-5-55(a)
Other: **"Other Bodily Substance"** §40-5-55(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**[298]
Anti-Plea-Bargaining Statute (Yes/No): **No**
Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** first offense (discretionary); second or subsequent offense (mand) §§40-5-1(9), 40-5-63. l and 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): **None**
Administrative Licensing Action (Susp/Rev): **Suspension 1 year** (mand) §40-5-67.1(d)

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[297] The law further provides that a blood test with a "drug screen" be administered to drivers involved in accidents resulting in either a serious injury or death. This stipulation, however, is not "mandatory." §40-5-55(a)

[298] The court cannot accept 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 ≥ .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 ≥ .02. §§40-6-391(k)(3) and 40-6-391.1(a)
Double Jeopardy. Based upon the same factual situation, a person 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), *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:	See Footnote Nos. [299] and [300].
Criminal Sanctions:	
Imprisonment:	First offense (misdemeanor) – **10 days to 12 months**; second offense (within 5 years) (misdemeanor) – **90 days to 12 months**; third and subsequent offenses within 5 years – (High and Aggravated Misdemeanor) – **120 days to 12 months** §40-6-391(c) and (k) Persons Under 21 Years Old: Same penalties apply, but these offenders must be kept segregated from all other offenders. §17-10-3.1(b) §40-6-391(k)(2) Also, if convicted of operating a motor vehicle with a BAC/BrAC level ≥ .02, at the discretion of the court, such persons may be sentenced to serve imprisonment time either on weekends or during nonworking hours. §17-10-3.1(a)
Mandatory Minimum Term:	First offense – **24 hours**[301] if BAC/BrAC was ≥ .08; second offense (within 5 years) (misdemeanor) – **72 hours**; third and subsequent offenses within 5 years (High and Aggravated Misdemeanor) – **15 days**
Fine:	
Amount ($ Range):	First offense (misdemeanor) – **$300 to $1,000**; second offense within 5 years (misdemeanor) – **$600 to $1,000**; third and subsequent offenses within 5 years – (High and Aggravated Misdemeanor) – **$l,000 to $5,000** §40-6-391(c) and (k)
Mandatory Minimum Fine ($):	First offense (misdemeanor) – **$300**; second offense within 5 years (misdemeanor) – **$600**; third and subsequent offenses within 5 years – (High and Aggravated Misdemeanor) – **$l,000** or a $500 fine on condition that the defendant undergoes an alcohol or drug treatment program. (§40-6-391 (g)(2)) In cases of "extreme hardship", the fine may be paid in installments. For subsequent offenses, half of the fine may be suspended if the offender participates in a treatment program. §40-6-391(g)(l)
Other Penalties:	
Community Service:	First offense (misdemeanor) – Not less than **40 hours** (40 hrs mand); second offense within 5 years – (misdemeanor) – Not less than **30 mandatory days**; third and subsequent offenses within 5 years – (High and Aggravated Misdemeanor) – Not less than **30 mandatory days** §40-6-391(c)

[299] 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 if operating a **school bus** – imprisonment from **1 to 5 years** and/or a fine of **$1,000 to $5,000**. §40-6-391.3

[300] **Child Endangerment**. It is a separate offense to transport a child under 14 years old while DWI. The sanctions for this offense are as follows: first offense (misdemeanor) – jail not more than 12 months; fine not more than $1,000; second offense (misdemeanor) – jail not more than 12 months; fine not more than $1,000; third and subsequent offense (felony) – jail l to 3 years; fine $1,000 to $5,000. §§16-12-1(d) and 40-6-391(1)

[301] An offender is subject to both a period of mandatory jail and mandatory community service. *Gidey* v. *State,* 491 S.E.2d 406 (Ga. App. 1997)

	Persons Under 21 Years Old with an alcohol concentration of < .08: first offense – Not less than **20 mandatory hours**; second or subsequent offense – Not less than **40 mandatory hours** §40-6-391 (c)(1)(C). (c)(2)(C) and (c)(3)(C) Must be completed within 60 days of date of sentencing §40-6-391(k)(2)
Restitution (e.g., Victim's Fund)	**Yes** (1) A defendant may have to pay restitution (or other relief to a victim) as a condition of probation. §17-14-1 et seq. (2) A victim may also receive payment from the State's victims' compensation fund. §17-15-1 et seq. Awards are limited to a maximum amount of $1000 or $5,000 – $25,000 in the aggregate depending on circumstances. §17-15-8(c)
Other:	**Photo, Name *and* Address Publication**. For a second or subsequent offenses, a defendant's name, address and photograph shall be published in the "legal organ of the appropriate county." §40-6-391(j) **Special Fine for the Peace Officer's Annuity and Benefit Fund**.[302] An additional fine equal to 5 percent of the original fine is imposed and deposited into this fund. §15-21-131 **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 and 15-21-115 **Probation**. If jail is <12 months, mandatory probation for any period of time not served in confinement. §40-6-391(c)(1)(E) second and subsequent 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 months**. §§42-8-111 and 42-8-112
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes**[303] **≥ .08 BAC/BrAC** (≥ .02 for persons under 21 years old) §§40-5-67.1(c) and 40-5-67.2(a) first action– suspension **1 year** (License reinstatement after 30 days and after completion of an Alcohol or Drug Use Risk Reduction Program. However, limited driving privileges may be granted at any time. Second action (within 5 years) – **Suspension 3 years** (License reinstatement after either (1) a 18-month suspension or (2), if on probation for a drunk

[302] **Special Penalty for the Brain and Spinal Injury Trust Fund**. An additional fine equal to 10 percent of the original fine is imposed and deposited into this fund. §§15-21-149, 15-21-150 and Article III, §IX, VI(k) of the State Constitution.

[303] 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 pleaded *nolo contendere* to such an offense. §40-5-67.1(g)(4)

driving offense, 12-month suspension followed by 6-months 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. Third and subsequent action (within 5 years) – **Suspension 5 years** (2 years mand) After 2 years, a person may be issued a "probationary" driver's license. During the first six months of probation, the offender may only operate vehicles equipped with **ignition interlock** devices. 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) and (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[304]: For **all** DWI offenses: first offense – **Suspension**; second offense – **Suspension**; third offense (within 5 years) – **Revocation** (See Habitual Traffic Offender Law.) §§40-5-62(a)(1), 40-5-63, 40-5-64, 42-8-111 *and* 42-8-112 DWI-Serious Injury– suspension §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)

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

Persons ≥ 21 Years Old: I. Alcohol and Non-controlled Substance (Drug) DWI Offenses: first offense – **12 months**[305]; second offense – **3 years**; third offense – **5 years** (See Habitual Traffic Offender Law.) DWI-Serious Injury-**3 years**
II. Controlled Substance DWI Offenses: first offense – Not less than **180 days**; second offense – **3 years**; third offense – **5 years** §§40-5-63(a) and 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: first offense – No**ne**[306]; second offense – License

[304] If the vehicle operator was below the driving age (age 16) at the time of the DWI offense, the privilege to obtain a driver's license must be "delayed" until age 17 for a first offense and until age 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 {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.}

[305] For first drunk driving offense convictions, the license suspension period may be limited to only 120 days. Under §40-5-63(a)(l), a driver's license may be reinstated after 120 days, provided the defendant has completed a DWI alcohol or drug use risk reduction program. The offender must have completed this program before the license can be restored.

[306] For a first DWI offense conviction, a defendant may receive for limited driving privileges in cases of "extreme hardship." §40-5-64 Driving privileges may be reinstated after the offender has completed a drug treatment program if a refusal to allow such privileges would cause "extreme hardship." §40-5-64

reinstatement after either (1) a **18-month suspension** or (2), if on probation for a drunk driving offense, **12-month suspension** followed by 6 months use of an **ignition interlock** device with restricted driving privileges. Third offense (within 5 years) – **2 years** After **2 years**, a person may be issued a "probationary" driver's license. If on probation for a drunk driving offense, the offender can only operate vehicles equipped with **ignition interlock** devices for the first 6 months of probationary driving privileges §§40-5-63(a)(3) and 42-8-112 DWI-Serious Injury-**3 years**
II. Controlled Substance DWI Offenses: first offense – **180 days**; second offense – 1 year; third offense – **2 years** §§40-5-63(a) and 40-5-75(a)
Persons Under 21 Years Old: first offense – If BAC was < .08-**6 months**; if BAC was ≥ .08-**12 months**; second or subsequent offense – mandatory licensing actions as noted above. §40-5-57.1(b)(2)

Other:

Rehabilitation:

Alcohol Education: **Yes**

Alcohol Treatment: **Yes** I. For a first or second DWI conviction listed under admin. action I or II, a person's license cannot be reinstated until completion of an alcohol or drug risk reduction program. §40-5-63(a)(l) and(2) §40-6-391(c)(1)(d) and (2)(D)
II. For second or third 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) and 40-5-63.1, §40-6-391(2)(E) and (3)(E)

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **Yes Forfeiture** – A person's vehicle is subject to forfeiture if convicted of a fourth DWI offense and such offense occurred while 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)

Terms Upon Which Vehicle Will Be Released: **None**

Miscellaneous Sanctions Not Included Elsewhere: 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 (misdemeanor) – 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 a "Habitual Violator", the license has been revoked and there is no "malice aforethought". §§16-1-3(5) (defines a felony offense) and 40-6-393

Sanctions:

Criminal Sanction:

Imprisonment (Term): I. **3 to 15 years** (§40-6-393); II. Not more than **12 months** (§17-10-3(a)(2)); III. **5 to 20 years** (§40-6-393)

Mandatory Minimum Term: I. **None**; II. **None**; III. **1 year** (§40-6-393)

Fine ($ Range): I. **None**[307]; II. Not more than **$1,000** (§17-10-3(a)(2)); III. **None**

Mandatory Minimum Fine: **None** (This applies to all vehicle homicide offenses)

Administrative Licensing Action:

Licensing Authorized and

Type of Action: **Suspension/Revocation**§§40-5-54(a)(l), 40-5-58 and 40-5-63

Length of Term of

Licensing Withdrawal: I. **Suspension – 3 years** (§40-5-63(e))/**Revocation – 5 years** if "Habitual Violator"; II. First offense – **Suspension – 12 months**; second offense (within 5 years) – **Suspension – 5 years**; third offense (within 5 years) – "Habitual Violator" – Revocation **– 5 years** III. **Revocation – 5 years**

Mandatory Action--Minimum Length

of License Withdrawal: I. **Suspension – 3 years** (§40-5-63 (e))/**Revocation – 5 years** if "Habitual Violator" (§40-5-58(f)); II. First offense – **Suspension – None**; second offense (within 5 years) – **Suspension – 120 days**; third offense (within 5 years) – "Habitual Violator" – Revocation **– 2 years** III. **Revocation – 2 years**

Other: **None**

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[307] 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)(l) and 40-5-63(a) would indicate that the same licensing sanctions apply to both Type II and Type III in 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 (first or subsequent) would be subject to another license revocation for 5 years with 2 years mandatory because the offender would have been convicted of more than three serious traffic offenses within five years and, therefore, would be subject once again to the Habitual Violator Law (§40-5-58).

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	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.[308]
Sanction:	
Criminal:	
Imprisonment (Term):	First offense – **2 days to 12 months** (misdemeanor); second and subsequent offense within 5 years – (high and aggravated misdemeanor) – **10 days to 12 months** §40-5-121 (a)
Mandatory Minimum Term of Imprisonment:	First offense – **2 days**; second and subsequent offense (within 5 years) – **10 days** §40-5-121(a) Op. Atty. Gen. U92-4
Fine ($ Range):	First offense – $**500 to $1,000**; second and subsequent offense (within 5 years) – **$l,000 to $2,500** §40-5-121 (a)
Mandatory Minimum Fine:	First offense – $**500**; second and subsequent offense (within 5 years) – **$l,000** §40-5-121(a)

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 mandatory year (not less than 3 years if transporting hazardous materials) if convicted of driving a CMV (1) with a BAC/BrAC/UrAC ≥ .04 "percent by weight" of alcohol or more in the blood, breath or urine (The usual standards for alcohol concentrations in the blood (grams of alcohol per 100 milliliters of blood), breath (grams of alcohol per 210 liters of breath) or urine (grams of alcohol 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) or by refusing to submit to a chemical test for alcohol concentration. (The CMV implied consent provision, §40-5-153, applies to 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 years mand). It is a misd. to operate a CMV with a BAC ≥ .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) and (21), 40-5-151, 40-5-152, 40-5-153, 40-6-391(i) and 40-6-392(c)(2)

(continued)

Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Suspension/Revocation** §40-5-121(b)(2) and (c)
Length of Term of License Withdrawal Action:	Original suspension or revocation period is extended **6 months**
Mandatory Term of License	

[308] It is a misdemeanor 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 months. §§40-5-146(b) and 40-5-159(c) In addition, a person who violates an out-of-service order is subject to the following disqualification periods: first violation – 90 days to 1 year; second violation-l to 5 years; and, third or sub. violation-3 to 5 years. The minimum period of disqualification appears to be mandatory. §40-5-151(g)

Withdrawal Action:	Original suspension or revocation period is extended **6 months**
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 within 5 years
Term of License Rev While Under Habitual Offender Status:	**Revocation 5 years**[309] §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**[310] §§16-1-3(5) and 40-5-58(c)(1) and (2)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**1 to 5 years** §40-5-58(c)(l) and (2)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not less than **$750** §40-5-58(c)(l) If habitual offender status was based only on DWI offense convictions, not less than **$1,000** §40-5-5 8(c)(2)
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**
Other State Laws Related To Alcohol Use:	
Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No)	**Possible** §45-16-46 and Ops. Att. Gen. U79-10 and U80-56 Test via the coroner or medical examiner.[311]
BAC Chemical Test Is Given to the Following Persons:	
Driver:	**Possible**

[309] A 3-year probationary restricted hardship license may be issued after 2 years of the revocation 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 months after the probationary license has been issued. §42-8-112(b)(3) {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).}

[310] It is a misdemeanor (jail – not more 12 months; fine – not more than $1,000) to operate a vehicle without a license after the 5-year revocation has passed. §§17-10-3(a) and 40-5-58(c)

License Plates Surrendered. A second or subsequent drunk driving offender must have the **license plates** of all vehicles owned 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

[311] 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.

Vehicle Passengers:	**Possible**
Pedestrian:	**Possible**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** §3-3-23(a)(1) and (2)
Minimum Age (Years) Possession:	**21** §3-3-23(a)(2) and (b) Exceptions: Medical purposes, religious ceremonies, and home use with parental consent, or handling pursuant to employment
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)[312,313 and 314]
"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**[315]
Dram Shop Actions-Social Hosts:	**Yes Limited** §51-l-40(b)
Other:	A patron injured by an 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. 1999)
Criminal Action Against Owner or Employees of Establishments That	

[312] 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), *and McNamee v. A.J.W.,* 519 S.E.2d 298 (Ga. App. 1999)

[313] Sec. 51-1-40 has been held not to violate the due process clause of the U.S. Constitution. *Riley v. H and H Operations, Inc.,* 435 S.E.2d 659 (Ga. 1993)

[314] 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. *Lufran, 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), *Birnbrey, Minsk and Minsk, LLC v. Yirga,* 535 S.E.2d 792 (Ga. App. 2000) and *Hulsey v. Northside Equities, Inc.* 548 S.E.2d 41 (Ga.App.2002) affirmed 567 S.E.2d 4 (Ga. 2002). 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 became 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)

[315] The following case law, it appears, has been abrogated, at least in part, by the dram shop law (§51-l-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. Siudebaker's of Savannah,* 362 S.E.2d 377 (Ga. App. 1987).

Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misdemeanor** §§3-3-9, 3-3-22 and 17-10-3
Term of Imprisonment:	Not more than **12 months**
Fine ($ Range):	Not more than **$1,000**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension or cancellation** §3-2-3
Length of Term of License Withdrawal:	**2 years**
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	First offense – **Misdemeanor** Subsequent offenses – **Misdemeanor** of a high and aggravated nature. §§3-3-9, 3-3-23, 3-3-23.1, 17-10-3 and 17-10-4
Term of Imprisonment:	For first and subsequent offense – Not more than **12 months**
Fine ($ Range):	First offense – Not more than **$1,000;** Subsequent offense – 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 Suspension or cancellation** §3-2-3
Length of Term License Withdrawal:	**2 years**
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** Applies to drivers and passengers §40-6-253

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

Basis for a DWI Charge*:

Standard DWI Offense: Under the influence of alcohol[316] §291E-61(a)(1)

Illegal Per Se Provision (BAC/BrAC): **≥.08**[317and318] §291E- 61(a)(3) and (4)

Presumption (BAC/BrAC): **None**

Types of Drugs/Drugs and Alcohol: Under the influence of **Any Drug**[319and320] §291E-61(a)(2)

Other: Person Under 21 Years Old. **≥.02 but <.08**[321] §291E- 64(a)
A BAC/BrAC ≥**.08** is "competent evidence" of being under the influence of an intoxicant. §291E-3(a)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Provision: **No.**[322]

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 and 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 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); *State v. Entrekin,* 47 P. 3d 336 (Haw. 2002).

*Except for offenses under §291E-64 concerning persons <21 years 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 and 291E-81(a)

Chemical Tests of Other Substances for Alcohol

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[316] "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 metal faculties or ability to care for the person and guard against casualty. §291E-1

[317] In addition, the illegal per se provisions make it an offense to operate a motor vehicle with a breath alcohol concentration ≥ .08.

[318] "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §291E-1

[319] "Drug" means any controlled substance as defined in schedules I through IV of Chapter 329 or its metabolites. §291E-1

[320] Under the influence of any drug that impairs the person's ability to operate a vehicle in a careful and prudent manner. §§291E-1 and 291E-61(a)(2)

[321] The law prohibits a person <21 years old from driving with any measurable amount of alcohol concentration. This is defined as an alcohol concentration equal to or greater than .02 but less than .08. §§291E-1 and 291E-64(a)

[322] Even though 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 a test is not a substitute for usual chemical tests under the implied consent law. §§291 e-1 and 291 e-11(f).

Concentration Which Are Authorized Under the Implied Consent Provision:

Blood:	**Yes** §291E-11(a)
Urine:	**Yes** §291E-11(a)
Other:	**None**

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) and 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):	First alcohol enforcement contact. [323] **Revocation- 1 year** (A restricted conditional license may be issued after 30 days for employment purposes. §291E-44); second alcohol enforcement contact (within 5 years) – **Revocation- 2 years (mand)**; third alcohol enforcement contact (within 7 years) – **Revocation – 4 years**; fourth or subsequent alcohol enforcement contact (within 10 years) – **Revocation for life** §291E-41(b) and (d). Persons under the age of 18 who violate §291E-61 shall be subject to the above revocation periods or until they reach 18, whichever is longer. §291E-41(b)(5).

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment[324]:	
Term (Day, Month, Years, Etc.):	First offense – **48 hours to 5 days**; second offense (within 5 years) – **5 to 14 days**; third offense (within 5 years) – **10 to 30 days**; fourth or subsequent offense(within 10 years) (Class C felony) – Not more than **5 years**[325] §291E-61(b)
Mandatory Minimum Term:	First offense – **48 hours**[9]; second offense (within 5 years) – **5 days**

[323] "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 term must be explained in order to secure a knowing refusal under §291E-11. *Castro v. Admin Director of the Courts,* 40 P. 3d 865 (Haw. 2002).

[324] A person must be sentenced to one of these sanctions but may be sentenced to more than one. §291E-61(b)

[325] See §§701-107(5), 706-640 and 706-660 in the Hawaii Penal Code.

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

(within 5 years) – **10 days** (w/ at least 48 con hrs); fourth or subsequent offense(within 10 years) (Class C felony) – **10 days** (w/ at least 48 con hrs) §291E61(b)

Fine:

Amount ($ Range): First offense – $**150 to $1,000**; second offense (within 5 years) – **$500 to $1,500**; third offense (within 5 years) – **$500 to $2,500**; fourth or subsequent offense (within 10 years) (Class C felony) – Not more than **$10,000** §291E-61(b)

Mandatory Min. Fine ($): First offense – $**150**; second offense (within 5 years) – **$500**; third offense (within 5 years) – **$500**; fourth or subsequent offense (within 10 years) (Class C felony) – **None** §291E-61(b)

Other Penalties:

Community Service: First offense – **72 hours**; second offense (within 5 years) – Not less than **240 hours** (as an alternative to imprisonment) §291E-61(b)

Restitution (e.g. Victim's Fund):

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action*:

Administrative Per Se Provision: **Yes First** alcohol enforcement contact[326] – Revocation **for 3 months to 1 year** (A restricted conditional license may be issued after 30 days for employment purposes. §291E-44); second alcohol enforcement contact (within 5 years) – **Revocation for 1 year (mand) to 2 years**; third alcohol enforcement contact (within 7 years) – **Revocation for 2 years (mand) to 4 years**; fourth or subsequent alcohol enforcement contact (within 10 years) – **Revocation for life (mand)** §291E-41(b) (The licensing sanction imposed cannot exceed the longer of the one imposed either under the administrative per se law or via a conviction for a drunk driving offense. §291E-32(b)}

Post DWI Conviction Licensing Action*:

Type of Licensing Action (Suspension/Revocation): First offense – **Suspension**; second offense (within 5 years) – **Suspension**; third offense (within 5 years) – **Revocation**; fourth or subsequent offense (within 10 years) (Class C felony) – **Revocation** §291E-61(b)

Term of License Withdrawal (Days, Months, Years, etc.): First offense – **90 days** or **30 days** with restricted driving privileges for the remaining 60 days for employment purposes; second offense (within 5 years) – **1 year**; third offense (within 5 years) – **1 to 5 years**; fourth

[326] "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

or subsequent offense (within 10 years) (Class C felony) – **1 to 5 years** §291E-61(b)

(continued)

Mandatory Minimum Term of Withdrawal: First offense – **30 days**; second offense (within 5 years) – **1 year**; third offense (within 5 years) – **1 year**; fourth or subsequent offense (within 10 years) (Class C felony) – **1 year** §291E-61(b)

Other:

Rehabilitation:

Alcohol Education: See Alcohol Treatment below.

Alcohol Treatment: First offense – **14 hour** substance abuse rehabilitation program including education and counseling or other program as deemed appropriate by the court; second or subsequent offenses – **Treatment** if recommended via an assessment §291E-61(b)(1)(A) and (d). All offenders are referred to the driver's education program for an assessment. §291E-61(d)

Vehicle Impoundment/Confiscation:

Authorized by Specific Provisions: **Admin Registration Revocation:**[327] The registration of all of the vehicles owned by a second or subsequent DWI offender, must be revoked for the same periods of time as the license of the offender is revoked. Special registrations with special plates may be issued in hardship situations concerning co-owners or other household members. Forfeiture under chapter 712A of the vehicle for third or subsequent conviction within 5 years, or conviction of habitually operating a vehicle under the influence of an intoxicant {provided the department of transportation provides storage for vehicles} §§291E-33(c), 291E-34(10), 291E-37 (e), 291E-38(1), 291E-41and 291E-61(b)(3)(E)

Persons Under 21 Years Old: The following sanctions apply to persons <21 years old, who operate a motor vehicle with "a measurable amount of alcohol concentration." first offense – (1) Attendance at an alcohol abuse education/counseling program (the person's parent or guardian must also attend if the person is<18); (2) 180 day license suspension or 30-day mandatory suspension with a 150-day 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. Second offense (within 5 years of a prior alcohol enforcement contact) – (1) 1-year mandatory 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. Third offense (within 5 years of 2 prior alcohol enforcement contacts) – (1) 2-year mandatory license suspension; and (2) any of the following discretionary sanctions: Not more than 100 hrs of community service; or, a fine of $300 to $1,000. §291E-64.

[327] **Administration Registration Revocation for Refusal:** If a person refuses to submit to a chemical test under the implied consent law, the registrations of all the vehicles that person owns must be revoked for the same period of time as for a refusal licensing action. §291E-41(d) and(e). Special registrations with special plates may be issued in hardship situations concerning co-owners or other household members.

In addition, all offenders must be assessed by the driver's education program as to alcohol abuse or dependence and the need for treatment.

Miscellaneous Sanctions Not Included Elsewhere:

Child Endangerment: Offenders ≥18 years old who were operating a motor vehicle with a passenger <15 years old at the time of the offense are subject to the following additional mandatory sanctions: (1) A mandatory fine of $500; and, (2) 48 con hrs of imprisonment. However, the total imprisonment time imposed for first, second or third offenses cannot exceed the maximum term of imprisonment provided for first, second and subsequent DUI offenses. (1), (2), or (3). §291E-61(b)(4)

Compensation Fund: A person who has been convicted of a criminal offense must pay the following fees into the State Criminal Injuries Compensation Fund: felony offense – $**100 – $500;** misdemeanor offense – $**50;** petty misdemeanor offense – $**25.** §§351-35 and 351-62.6

Payment of Costs: Offenders shall make restitution to the county police dept or other agency for cost of blood and urine tests..§291E-61(f).

Surcharge: All offenders are charged a surcharge of $35 for deposit into the Neuro-trauma Special Fund. §291E-61(b).

Bodily Injury Related to Motor Vehicle Operation: I. Serious bodily injury caused by negligent vehicle operation (negligent injury in the first degree) – Class C felony: Jail – Not more than **5 years** (Mandatory jail term of 1 year, 8 months if the victim is blind, paraplegic, quadriplegic, ≥60 years old, or ≤8 years old (**child endangerment**). Fine – Not more than **$10,000.** II. Substantial bodily injury caused by negligent vehicle operation (negligent injury in the 2Nd degree- misdemeanor. Jail – not more than **1 year**; Fine – not more than **$2,000.** §§706-620, 706-660, 706-660.2, 760-663. 707-705 and 707-706.

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 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has an alcohol concentration ≥.04, (2) is under the influence of alcohol, a controlled substance or any drug which impairs driving ability , or (3) refuses to submit to a chemical test for an alcohol concentration. The CMV "disqualification" provision, based on a refusal, applies only to a refusal to submit to a chemical test for alcohol concentration; however, the CMV implied consent provision applies to testing for alcohol or controlled substances. For either a subsequent violation or a combination of two or more violations of any of the above listed items, the "disqualification" is for like (mand). In addition, a CMV operator who has a BAC/BrAC≥.01 must be placed "out-of-service" for 24 hours. §§286-2, 286-231, 286-240, 286-242 and 286-243.

It is a misdemeanor to operate a CMV following CDL disqualification with the following sanctions: Jail- not more than 1 year; Fine – $550 to $1000 and disqualification for not less than 1 year and up to life. §§286-235(b), 286-249(a) and 701-107(3). It is a misdemeanor 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 year and up to life with the following specific disqualification periods. First offense – 90 days (mand) to 1 year; second offense (within 10 yr) – 1 year (mand) to 5 years; and third or subsequent offense (within 10 years) – 3 years (mand) to 5 years. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or 15 or more persons: first offense – 180 days (mand) to 2 years; second or subsequent offense (within 10 years) – 3 years (mand) to 5 years. §§286-235(b), 286-240(g) and (h), 286-249(b) and 701-107(3).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:	**Yes**, 3 types of offenses: (1) Death caused by negligent vehicle operation while DWI (negligent homicide in the first degree) – Class B felony; (2) death caused by negligent vehicle operation (negligent homicide in the second degree) – Class C felony; (3) death caused by simple negligence (negligent homicide in the third degree) – misdemeanor §§706-620, 706-640, 706-660, 706-660.2, 706-663. 707-702.5, 707-703 and 707-704
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Death caused by negligent vehicle operation while DWI (negligent homicide in the first degree, a Class B felony- Not more than **10 years**; Death caused by negligent vehicle operation (negligent homicide in the second degree), a Class C. felony – Not more than **5 years**; Death caused by simple negligence (negligent homicide in the third degree), a misdemeanor – not more than **1 year.**
Mandatory Minimum Term:	The following mandatory imprisonment sanctions apply when the person killed is 60 years of age or older, blind, paraplegic, quadriplegic, or 8 years old or younger: Negligent homicide in the first degree-3 years, 4 months; negligent homicide in the 2d degree – 1 year, 8 months. §§706-620 and 706-660.2.
Fine ($ Range):	Negligent homicide in the first degree, a Class B felony- not more than **$25,000**; negligent homicide in the 2d degree, a Class C felony- not more than **$20,000;** negligent homicide in the 3d degree, a misdemeanor- not more than $**2,000.**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	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 year license revocation if convicted of manslaughter resulting from the operation of a motor vehicle." §§286-124, 286-126 and 707-702. (2) In addition, a

person is subject to discretionary license suspension or revocation if 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 if ordered to be suspended, the suspension cannot be for more than 5 years. If the license is ordered to be revoked, the revocation is for a mandatory period of 1 year. §§286-125 and 286-126.

Length of Term of Licensing Withdrawal:

Mandatory Action--Minimum Length of License Withdrawal:

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

Sanctions:

Criminal:

Imprisonment (Term): First offense – **3 consecutive days to 30 days**; second offense (within 5 years) – **30 days**; subsequent offense (within 5 years) – **1 year** §291E-62(a) and (b)

Mandatory Minimum Term of Imprisonment: First offense – **3 consecutive days**; second offense (within 5 years) – **30 days**; subsequent offense (within 5 years) – **1 year** §291E-62(a) and (b)

Fine ($ Range): First offense – $**250 to $1,000**; second offense (within 5 years) – **$1,000**; subsequent offense (within 5 years) – **$2,000** §291E-62(a) and (b)

Mandatory Minimum Fine: First offense – $**250**; second offense (within 5 years) – **$1,000**; subsequent offense (within 5 years) – **$2,000** §291E-62(a) and (b)

Administrative Licensing Actions:

Type of Licensing Action (Suspension/Revocation): ALL offenses – Revocation §291E-62(a) and (b)

Withdrawal Action: First offense – An additional period or **1 year**; second offense (within 5 years) – An additional period of **2 years**; subsequent offense (within 5 years) – **Permanent** §291E-62(a) and (b) 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.

Habitual Traffic Offender Provision:	
State Has Such a Law (Yes/No):	**Yes-** Habitually operating a vehicle under the influence of an intoxicant. § 291E-61.5
Grounds for Being Declared an Habitual Offender:	Has been convicted three or more times within 10 years[328] of operating a vehicle under the influence of an intoxicant at the time the person is convicted of driving impaired offense.
Term of License Revocation While Under Habitual Offender Status:	For first offense, or any offense not proceeded within a 5-year period by a prior conviction: 90 day suspension or a 30 day absolute driving prohibition, with a following 60 day restricted license for work-related purposes and participation in substance abuse treatment programs. For an offense occurring within 5 years of a prior conviction – one-year revocation with no exceptions, and not more than 5 years total.
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	Class C felony {§ 291E-61.5 (c) }
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Indeterminate term of imprisonment up to 5 years; or 5 years probation, with at least 10 days imprisonment, with 48 hours served consecutively.
Mandatory Minimum Fine:	$500 plus $25 to the neurotrauma special fund.
Range of fine:	$500 to $1,500($2,500 on second offense), plus $25 neurotrauma fund fee.
Other Provisions Related To Alcohol Use:	
Provisions Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Provision (Yes/No):	**Yes**
BAC Chemical Test Is Given to the Following Persons:	
Driver:	**Yes**

[328] "Convicted three or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had three or more times within 10 years of the instant offense, including:
(1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere;
(2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; or
(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; but
(4) All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

Vehicle Passengers:	**Possible-**Indirect chemical test via the coroner §841-3
Pedestrian:	**Possible-**Indirect chemical test via the coroner §841-3
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:[329]	
Minimum Age (Years) Sale/Purchase:	**21**. §§2811-1, 281-78 and 281-101.5 [330]
Minimum Age (Years) Possession:	**21**. Employment situations, medical treatment and religious ceremonies are excluded. Any violation by someone under 18 shall be subject to the jurisdiction of the Family Court; any violation by someone 18 to 21 shall be a misdemeanor. §§281-1, 281-78, 281-101.5 and712-1250.5(2)(a) and (b)
Minimum Age (Years) Consumption:	**None**
Dram Shop Provisions and Related Legal Actions:	
Dram Shop Provision (Yes/No):	**Yes** – third-party liability for damages caused by intoxication of persons under age 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 Case (Case Citation):	**Yes.** *Ono v. Applegate,* 612 P. 2d 533 (Haw. 1980).
Dram Shop Actions-Social Hosts:	**No.** *Johnston v. KFC Nat. Mgmt. Co.,* 788 P. 2d 159 (Haw. 1990), and *Faulk v. Suzuki Motor Co., Ltd.,* 851 P. 2d 332 (Haw. App. 1993).
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misdemeanor:** Not more than **6 months.** §§281-78, 281-90 and 281-102
Fine ($ Range):	Not more than **$1,000**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension or Revocation**
Length of Term of License Withdrawal:	Not specified in the statute. A civil penalty of not more than $2,000 may be assessed in lieu of a license suspension or revocation. §§281-78 and 281-91

[329] 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

[330] Under some circumstance, a licensee may be held liable for the actions of an intoxicated minor to whom he/she has not sold alcoholic beverages, Such is the case if an underage 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 (haw. 1994).

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:	**Misdemeanor** [331]
Term of Imprisonment:	Not more than **6 months**
Fine ($ Range):	Not more than **$1,000**. §§281-78, 281-91 and 281-
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 Suspension or Revocation**
Length of Term License Withdrawal:	Not specified in the statute. A civil penalty of not more than $2,000 may be assessed in lieu of a license suspension or revocation. §§281-78 and 281-91[332].
Anti-Happy Hour Provisions:	**Yes.** Rule 78.5 (Applying only to City and County of Honolulu) [333]. Under §281-78.5(a), licensees are prohibited from engaging in practices that promote the excessive consumption of alcoholic beverages. The various county commissions are required to promulgate regulations to prohibit specific practices that promote excessive consumption. §281-78.5(b).
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 Provision (Yes/No):	**Yes.** §§291-3.1(a) and 291-3.29(a). [334]
Anti-Consumption Provision (Yes/No):	**Yes.** Driver and passengers. §§291-3.1(b), 291-3.2(b) and 291-3.3.

[331] Under §712-1250.5, it is a misdemeanor to promote intoxicating liquor to a minor; Not more than 1 year in jail and /or a fine of not more than $2,000.

[332] Alcoholic beverage licensing and enforcement is under the authority of county liquor commissions. §281-17

[333] This regulation was promulgated by the City and County of Honolulu Liquor Commission and only applies in that jurisdiction.

[334] There is an exception in the case of motor vehicles for hire. §291-3.4.

STATE:	**IDAHO**
General Reference:	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):	≥ **.08**[335and336] §18-8004(1)(a)
Presumption (BAC):	**None** Persons Under 21 Years Old-≥ **.02 but < .08** §18-8004(1)(d)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug, (2) Intoxicating Substance (3) Any Narcotic Drug, (4) a Combination of Any Drug and Alcohol[337] §§18-8004(1)(a) and 18-8004(5)
Other:	
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[338] The implied consent law, §18-8002, applies to CMV DWI offenses committed under §18-8004(1)(b) and (c).
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §18-8002(1)
Refusal to Submit Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *State v. Bock,* 328 P.2d 1065 (1958) criticized under other grounds in *State v. Cliett* 534 P.2d 476 (Id. 1975) and *State v. Curtis* 680 P.2d 1383 (Id. App. 1984)
Other Information:	Under §18-8002(6)(b), a law enforcement officer may order a "qualified person" to

*Under separate provisions of law, it is a misdemeanor to operate either a snowmobile or all-terrain 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 months and/or a fine of not more than $300. §§18-113 and 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 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/Alcohol Concentration in a "Bodily Substance" ≥ .04, (2) is under the influence of alcohol or a controlled substance (not all drugs) or (3) refuses 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 ≥ .04 but < .08 or while under the influence of alcohol/any drug/intoxicating substances, commits a DWI offense and is subject to same criminal

[335] 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 .08 or more or (2) a urine alcohol concentration of .08 or more.

[336] Standards: Grams of alcohol per 100 cubic centimeters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine. §18-8004(4)

[337] Under §37-2732C, it is a 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.

[338] The police need only "reasonable grounds" of a DWI offense before the implied consent law is applicable. §18-8002(1) However, §18-8002(4)(b) appears to indicate that "probable cause" is needed.

sanctions as other DWI offenders. III. Under separate provisions, a person who operates a CMV with an alcohol concentration ≥ .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 first DWI offense do not apply but they do apply for subsequent ones.

Comment: It would appear that a CMV operator who is a first offender and who is only charged with a CMV DWI offense under either II or III (§§18-8004(l)(b) and 18-8004(l)(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. During period of disqualification, restricted driving privileges will not be granted. V. In addition, a CMV operator who has any "detectable" amount of alcohol in the system must be placed "out-of-service" for 24 hours. §§49-104(9), 49-105(7), 49-123(2)(c), 49-335 (Reference is made to 49 CFR part 383.), 18-8002(3)(a), 18-8004(1)(b), (l)(c) and (6), 18-8004(4) and 18-8005(2), (3), (4), and (12)

Chemical Breath Tests for Alcohol Concentration: (continued)

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. See *State v. Worthington* 2002 Id. App. LEXIS 112 (Id. App 2002)

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

Blood:	**Yes** §§18-8002(1) and 18-8004
Urine:	**Yes** §§18-8002(1) and 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(l)(d), (2)(e) and (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):	First Refusal – **180 days suspended** (mand); second Refusal (within 5 years) – **l year suspended** (mand) §18-8002(3)(c), (4)(b) and (4)(c)
Other:	**None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	First offense – Misdemeanor – Not more than **6 months**; first offense with BAC/BrAC ≥ 0.20-Misdemeanor – Not more than **1 year**; second offense (within 5 years) Misdemeanor-**10 days to 1 year; second** or subsequent offense with a BAC/BrAC ≥ 0.20 where there has been a previous offense at or above 0.20 within 5 years – felony – Not more than **5 years**; third and subsequent offense (within 5 years) or fourth or subsequent offense (within 10 years) felony – Not more than **5 years** Aggravated DWI offense where there is bodily harm or disfigurement felony – Not more than **10 years** §§18-8004C(1)(a) and (2)(a), 18-8005 and 18-8006 Persons Under 21 Years Old (.02 Offense) – first offense Misdemeanor – No**ne**; second offense Misdemeanor – Not more than **30 days**; third and subsequent offense Misdemeanor – Not more than **6 months** §18-8004A(2)(a) and (3)(a)
Mandatory Minimum Term:	First offense – No**ne**; first offense with BAC/BrAC ≥ 0.20-**10 days** (must serve 48 con hrs)[339]; second offense (within 5 years) – **10 days** (must serve 48 con hrs w/5 days in jail)[340,341and342]; second or subsequent offense with a BAC/BrAC ≥

Special Note: If a person is convicted of a DWI offense and he/she has had within the past 10 years a prior conviction for (1) a DWI felony offense, (2) Aggravated DWI or (3) DWI Vehicle Homicide, he/she is guilty of a felony. The sanctions for this offense are as follows: Jail – not more than 5 years; fine – not more than $5,000; and license suspension from 1 to 5 years after release from imprisonment (a 1-year license suspension after release from imprisonment is mandatory). §18-8005(5) and (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), and *State v. Reichenberg,* 915 P.2d 14 (Idaho 1996) The result is the

[339] **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. *State v. Pena-Reyes* 962 P.2d 1040 (Idaho 1998).

[340] The court may assign an offender to a work detail program within the custody of the county sheriff during the period of incarceration. §18-8005(4)(a)

[341] **Comment on Mandatory Jail for Drunk Driving Offenses**: I. Although not clear, the law appears to provide for a 10-day mandatory 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 he held after a person has been incarcerated for certain fixed time periods (e.g., for a 5 to 7 year sentence, the first hearing is 15 months from the date of incarceration). IDAPA 5.01.01.25.02

[342] Idaho law provides that the 5 and 10-day mandatory jail sentences for second and subsequent 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)

same where the administrative action coming after the DUI criminal convictions. *Marshall v. Idaho DOT* 48 P.3d 666 (Idaho App. 2002)

(continued)

	0.20 where there has been a previous offense at or above 0.20 within 5 years-**30 days**; third and subsequent offense (within 5 years) or fourth or sub. offense (within 10 years) – **30 days** (must serve 48 con hrs with 10 days in jail) Aggravated DWI offense where there is bodily harm/ disfigurement- **30 days** (must serve 48 con hrs) §§18-8004C, 18-8005 and 18-8006 Persons Under 21 Years Old (.02 Offense) – first offense – No**ne**; second offense – **5 days**; third and subsequent offense – **10 days** §18-8004A(2)(a) and (3)(a)
Fine:	
Amount ($ Range):	First offense – Not more than **$1,000**[343]; first offense with BAC/BrAC ≥ 0.20 – Not more than **$2,000**; second offense (within 5 years) – Not more than **$2,000**; second or subsequent offense with a BAC/BrAC ≥ 0.20 where there has been a previous offense at or above 0.20 within 5 years – Not more than **$5,000**; third and subsequent offense (within 5 years) or fourth or sub. offense (within 10 years) – Not more than **$5,000** Aggravated DWI offense where there is bodily harm/disfigurement – Not more than **$5,000** §§18-8004C(1)(b) and (2)(b), 18-8005 and 18-8006 Persons Under 21 Years Old (.02 Offense) – first offense – Not more than **$1,000**; second offense – **$500 to $2,000**; third and subsequent offense – $**1,000 to $2,000** §18-8004A(1)(a), (2)(b) and (3)(b)
Mandatory Minimum Fine ($):	Regular DWI offenses and Aggravated DWI – No**ne** Persons Under 21 Years Old (.02 Offense) – first offense **– None**; second offense **– $500**; third and subsequent offense – $**1,000 Comment**: The law is not clear. These fines may not be mandatory.
Other Penalties:	
Community Service:	**Possible** Although not specifically authorized by statute, community service could be a condition of probation. §19-2601
Restitution (e.g., Victim's Fund)	**Yes** (1) Under §19-5304, a person who has been convicted of any criminal offense may be ordered to pay restitution to a victim. (2) Aggravated DWI offense – paid by the defendant to a victim §18-8006(l)(e) And, (3) there is also a victims' compensation fund. §72-1001 et seq.
Other:	**Ignition Interlock**. For **ANY** drunk driving offense, a defendant is required to only operate a

[343] A defendant is also assessed a special fine (not less than $50 for any felony, not less than $25 for any misdemeanor) that 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 or for alcohol or drug abuse related probation, treatment or prevention programs. §18-8010

	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) and (3)(e), 18-8004C(2)(e), 18-8005(4)(f) and (5)(e) and 18-8008(1) and (2) **Electronic Monitoring**. 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 curfew hours, driving privilege restrictions, or home confinement requirements. §18-8008(3)
Administrative Licensing Actions: Pre-DWI Conviction Licensing Action: Administrative Per Se Law:	**Yes** (1) ≥ .08 (BAC/BrAC/UrAC) or (2) under the influence of alcohol, drugs, or an intoxicating substance: first violation– suspension **90 days** (30 days mand followed by 60 days restricted driving privileges); second or subsequent violation (within 5 years) – **Suspension 1 year** (mand) §18-8002A
Other:	Under §49-326(1)(a) and (5), a person's license may be suspended for not more than 1 year if he/she has "committed" an offense that usually requires license revocation (e.g., vehicle homicide)[344]. Such action may be taken without a preliminary hearing.
Post DWI Conviction Licensing Action: Type of Licensing Action (Susp/Rev):	First offense – **Suspension**[345]; first offense with BAC/BrAC ≥ 0.20– suspension; second offense – **Suspension**; second or subsequent offense with a BAC/BrAC ≥ 0.20 where there has been a previous offense at or above 0.20 within 5 years– suspension; third and subsequent offense – **Suspension** Aggravated DWI offense – **Suspension** §§18-4004C(1)(e) and (2)(e), 18-8005 and 18-8006 Persons Under 21 Years Old (.02 Offense) – first offense – **Suspension**; second offense – **Suspension**; third and subsequent offense – **Suspension** §18-8004A(l)(b), (2)(c) and (3)(d)
Term of License Withdrawal (Days. Months, Years, etc.):	First offense – **30 to 150 days**; first offense with BAC/BrAC ≥ 0.20 – 1 **year** after release from confinement; second offense – 1 **year** after release

[344] These provisions do not apply to DWI offense convictions since such convictions result in license suspension not revocation.

[345] If the offender is a minor (a person under 18 years old), his/her license is suspended or denied for either an additional period of 1 year or until the person reaches 21 whichever period is longer following the end of any regular period of suspension or revocation. This licensing action appears to be mandatory. §§18-8005(11) and 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. §18-8002 A(7)

from confinement; second or subsequent offense with a BAC/BrAC ≥ 0.20 where there has been a previous offense at or above 0.20 within 5 years – 1 **to 5 years** after release from confinement; third and subsequent offense – 1 **to 5 years** after release from confinement Aggravated DWI offense – 1 **to 5 years** after release from confinement §§18-8004C(1)(e) and (2)(e), 18-8005 and 18-8006
Persons Under 21 Years Old (.02 Offense) – first offense – 1 **year**; second offense – Not more than **2 years**; third and subsequent offense – 1 **year** or until the person reaches 21 whichever is greater §18-8004A(1)(b), (2)(c) and (3)(d)

Mandatory Minimum Term of Withdrawal:

First offense – **30 days**[346]; first offense with BAC/BrAC ≥ 0.20 – 1 **year** after release from confinement; second offense – 1 **year** after release from confinement; second or subsequent offense with a BAC/BrAC ≥ 0.20 where there has been a previous offense at or above 0.20 within 5 years – 1 **year** after release from confinement; third and subsequent offense – 1 **year** after release from confinement Aggravated DWI offense – **1 year** after release from confinement §18-8004C(l)(e) and (2)(e), 18-8005 and 18-8006
Persons Under 21 Years Old (.02 Offense) – first offense – **90 days** (restricted driving privileges may be granted after this mand period); second offense – 1 **year**; third and subsequent offense – 1 **year** §18-8004A(1)(b), (2)(c) and (3)(d)

Other:
Rehabilitation:
Alcohol Education:
Alcohol Treatment:

A DWI offender may be required to participate in an alcohol treatment program by the court. §§128-8004A(l)(d), (2)(e) *and* (3)(e) and 18-8005(12)

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority:

No

Terms Upon Which Vehicle Will Be Released:
Other:

None

Miscellaneous Sanctions Not Included Elsewhere:

Surcharge. A mandatory **$15** surcharge is added to all fines. Funds collected from this surcharge are deposited into a special account which is used either (1) to purchase ignition interlock or electronic monitoring devices or (2) for

[346] After the 30-day period, the license must be suspended by the court for at least 60 additional days but not more than 150 days. However, the defendant may be issued a restricted license for employment/family needs during this 60 to 150-day period. §18-8005(l)(d)

misdemeanor drunk driving offense probation programs. §18-8010

Child Endangerment. It is an offense for a person >18 years old to operate a motor vehicle in violation of the drunk driving laws while transporting a "minor." If there is no injury or death associated with this offense, it is a misdemeanor with a jail term of not more than 6 months 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 years (unless a more severe penalty is authorized by law.) §§18-113 and 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 offenses. Death as a result of (1) an unlawful act not amounting to a felony where gross negligence is involved (felony), (2) a DWI offense (felony) or (3) death as a result of an unlawful act not amounting to a felony where there is no gross negligence (misdemeanor). §§18-111, 18-4006(3)

Sanctions:

Criminal Sanction:

Imprisonment (Term): Death as a result of (1) gross negligence not more than **10 years** (2) a DWI offense – Not more than **15 years**; (3) death as a result of an unlawful act not amounting to gross negligence – Not more than **1 year** §18-4007(3)

Mandatory Minimum Term: **None**

Fine ($ Range): Death as a result of (1) gross negligence not more than **$10,000** or (2) a DWI offense – Not more than **$15,000**; (3) death as a result of an unlawful act not amounting to gross negligence – Not more than **$2,000** §18-4007(3)

Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: Death as a result of (1) gross negligence or (2) a DWI offenses – Revocation §49-325(l)(a); (3) death as a result of an unlawful act not amounting to gross negligence – **Revocation** §49-325(l)(a)

Length of Term of Licensing Withdrawal: Death as a result of (1) gross negligence or (2) a DWI offense – Not less than **1 year** §49-326(5) (3) death as a result of an unlawful act not amounting to gross negligence – Not less than **1 year** §49-326(5)

Court Suspension. In addition, an offender's license "may be suspended for a time determined by the court." §18-4007(3)(a)

Mandatory Action--Minimum Length of License Withdrawal: Death as a result of (1) gross negligence or (2) a DWI offense – 1 **year**; (3) Death as a result of an unlawful act not amounting to gross negligence – 1 **year** §§49-325(a) and 49-326(5)

Other: Note: A temporary restricted license cannot be issued following revs based on vehicle manslaughter. §49-325(2)
Death of a Parent-If a parent of a minor was fatally injured, the offender may be required to pay child support until the minor reaches 18 years old. §18-4007(3)(d)

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense: See Footnote No. [347].

Sanction:
Criminal: First offense Misdemeanor – Not less than **2 days to 6 months**; second offense Misdemeanor (within 5 years) – **20 days to 1 year**; third and subsequent offenses Misdemeanor (within 5 years) – Not more than **1 year** §18-8001

Imprisonment (Term):
Mandatory Minimum Term of Imprisonment: First offense Misdemeanor-**2 days**[348]; second offense Misdemeanor (within 5 years) – **20 days**; third and subsequent offenses Misdemeanor (within 5 years) – **30 days**
Note: A defendant may be assigned to a work release program within the custody of the county sheriff. However, he/she is not eligible for community service in lieu of imprisonment. §18-8001(3)(a), (4)(a), (5)(a) and (8)

Fine ($ Range): First offense – Misdemeanor – Not more than **$500**; second offense – Misdemeanor (within 5 years) – Not more than **$1,000**; third and subsequent offenses Misdemeanor (within 5 years) – Not more than **$3,000**

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:
Type of Licensing Action (Susp/Rev): First offense – **Suspension**; second offense (within 5 years) – **Suspension**; third and subsequent offenses (within 5 years) – **Suspension** §18-8001

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[347] If a person is convicted of an alcohol driving offense 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 offense conviction. §18-8001(7)

[348] The court may assign an offender to a work detail program within the custody of the county sheriff during the period of incarceration. §18-8001(l)(a) and (4)(a)

Length of Term of License Withdrawal Action:	First offense (misdemeanor) – License suspended for an additional **6 months**; second offense (misdemeanor) (within 5 years) – License suspended for an additional **1 year**; third and subsequent offenses (misdemeanor) (within 5 years) – License suspended for an additional **2 years** §18-8001
Mandatory Term of License Withdrawal Action:	First offense – No**ne**[349]; second offense (within 5 years) – An additional suspension for **30 days** mandatory[350]; third and subsequent offenses (within 5 years) – An additional suspension for **90 days** is mandatory. §18-800l(3)(c), (4)(c) and (5)(c)

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	

[349] Restricted licenses available for employment or education reasons or family health needs. §18-8001(3)(c)
[350] After the mandatory suspension period, a person is eligible for a restricted license for employment or education or family health needs. §18-8001(4)(c) and (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. 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": first offense – 90 days (mand) to 1 year; second offense (within 10 years) – 1 (mand) to 5 years; third or subsequent offense (within 10 years) – 3 (mand) to 5 years. However, the following disqualification periods apply if the violation occurred while either transporting hazardous materials or 16 or more persons: first offense – 180 days (mand) to 2 years; second or subsequent offense (within 10 years) – 3 (mand) to 5 years. §49-335(8)

to the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** §§23-312, 23-603, 23-615(1) and 23-1401(2)
Minimum Age (Years) Possession:	**21** §23-949 There is an employment exemption for persons who are at least 19 years old. §§23-949, 23-1013, 23-1023 and 23-1334
Minimum Age (Years) Consumption:	**21** §23-949 There is an exemption for the home consumption of beer and wine. §§23-1023 and 23-1334
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §23-808 This law limits liability to situations where the patron/guest was either (1) obviously intoxicated or (2) intoxicated and under the legal drinking age.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	*Alegria v. Payonk,* 619 P.2d 135 (1980)) spurring the passage of §23-808 in 1986
Dram Shop Actions-Social Hosts:	**Yes** §23-808
Other:	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 a cause of action against the such host under the dram shop act for such injuries.[351] *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:	I. State liquor dispensary employees (pkg. Sales) – **Misdemeanor** §§23-312 and 23-601 II. State authorized licensees (beer, wine and liquor by the drink) – **Misdemeanor** §§18-113, 23-605 and 23-615(2) and (3)
Term of Imprisonment:	I. State liquor dispensary employees (pkg. sales) – **3 months to 1 year**; II. State authorized licensees (beer, wine and liquor by the drink) – **not more than 6 months**
Fine ($ Range):	I. State liquor dispensary employees (pkg. sales**) – $300 to $1,000**; II. State authorized licensees (beer, wine and liquor by the drink) – **not more than $300**
Administrative Actions Against Owners of Establishments that Serve Alcoholic	

[351] 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.

Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): I. State authorized licensees (beer, wine and liquor by the drink) – **Suspension or Revocation**[352] §§23-933, 23-1037 and 23-1331
II. The court must include in its judgment of a licensee, who is convicted of a violation of the alcoholic beverage control code, Title 23, a

State Laws Related To Alcohol Use: (continued)

forfeiture of the alcoholic beverage license or permit. §23-608

Length of Term of License Withdrawal: For revocations for all licensees, a suspension of not more than 6 months. § 23-1037(1)

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

Type of Criminal Action: I. State liquor dispensary employees (pkg. sales) – **Misdemeanor** §§23-312 and 23-601
II. State authorized licensees (beer, wine and liquor by the drink) – first offense – **Misdemeanor**; second or subsequent offense – **felony** §§18-112, 18-113, 23-603 and 23-615(l)

Term of Imprisonment: I. State liquor dispensary employees (pkg. sales) – **3 months to 1 year**;
II. State authorized licensees (beer, wine and liquor by the drink) – first offense – Not **more than 6 months**; second or subsequent offense – Not **more than 5 years**

Fine ($ Range): I. State liquor dispensary employees (pkg. sales) – **$300 to $1,000;**
II. State authorized licensees (beer, wine and liquor by the drink) – first offense – Not **more than $300**; second or subsequent offense – 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 and liquor by the drink) – **Suspension or Revocation**[353] §§23-603[354], 23-933, 23-1037 and 23-1331

[352] 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) and 23-1331(2)
[353] 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) and 23-1331(2)

II. The court must include in its judgment 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 revocations for all licensees, not more than 6 months §23-1037. For retail sale of alcoholic beverages (beer, wine or liquor by the drink), a suspension of not more than 6 months. § 23-603

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[355] and 23-1333[356]

Anti-Consumption Law (Yes/No): **Yes** §§23-505

[354] Under §23-603, the licensee is also subject to an administrative fine. The law establishes no limits for this fine.
[355] 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 and 23-505
[356] 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.

STATE:	**ILLINOIS**
General Reference:	West's Smith-Hurd Illinois Compiled Statutes Annotated
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of alcohol 625 ILCS 5/11-501(a)(2)
Illegal Per Se Law (BAC/BrAQ):	≥ **.08**[357and358] or Any Amount[359] of Cannabis, Controlled Substance or Intoxicating Compound (Under the Use of Intoxicating Compounds Act[360]) or 625 ILCS 5/11-501(a)(1) and (6)[361]
Presumption (BAC):	**≥ .08** 625 ILCS 5/11-501.2(b)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** (2) an Intoxicating Compound or (3) a Combination of Any Drug, Intoxicating Compound and Alcohol 625 ILCS 5/11-501(a)(3), (4) and (5)
Other:	The court may impose as a condition of bail of a defendant charged with DUI that the defendant refrain from operating a motor vehicle not equipped with an ignition interlock device. The court also may allow a defendant who is not self-employed to operate a vehicle owned by the defendant's employer that is not equipped with an ignition interlock device in the course of the defendant's employment. 725 ILCS 5/110-10 (b) (14.4)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes**[362and363] 625 ILCS 5/11-501.5(a)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[364] 625 ILCS 5/11-501.1
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** 625 ILCS 5/11-501.1(a)

[357] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more. 625 ILCS 5/11-501.2(a)(5)

[358] Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 625 ILCS 5/11-501.2(a)(5), 501.8(v). cf. *People v. Thoman* 770 N.E.2d 228 (Ill. App. 2002)

[359] As found in the breath, blood or urine "resulting from unlawful use or consumption." 625 ILCS 5/11-501(a)(6)

[360] For a list of "intoxicating compounds," see 720 ILCS 690/1.

[361] 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), *and People v. Gassman, 622* N.E.2d 845 (Ill. App. 2 Dist. 1993)

[362] Before a PBT can be administered, a law enforcement officer must have "reasonable 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. *People v. Rose*, 643 N.E.2d 865 (Ill. App. 4 Dist. 1994)

[363] 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)

[364] **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 his/her 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 suspicion" to believe that the driver has violated the DWI law. The test is given prior to an ILCS 5/11-501.8(a)

Chemical Breath Tests for Alcohol Concentration: (continued)

Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) 625 ILCS 5/11-501.2(c)(1), *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[365] of "driving while under the influence" 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 and 5/11-501.8
Urine:	**Yes** 625 ILCS 5/11-501.1 and 5/11-501.8
Other:	Other bodily substances 625 ILCS 5/11-501.2
Adjudication of DWI Charges:	
Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**No**[366]
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[367]:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	First refusal – Suspension for **6 months** A Judicial Driving Permit is available after 30 days

[365] In addition to statutory law, case law provides that for the purpose of determining blood alcohol concentration, a blood sample may be taken without consent or 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), *and People* v. *Yant,* 570 N.E.2d 3 (Ill. App. 2 Dist. 1991)

[366] A defendant cannot obtain deferred judgment and be placed on supervision if within the past 10 years that person has (1) been convicted of DWI, (2) pleaded guilty to or stipulated-facts supporting the conviction of a DWI offense charge or (3) received supervision for a prior DWI offense. 730 ILCS 5/5-6-l(c) and (d)

[367] A person involved as a driver in an a fatal accident or an accident involving severely bleeding wounds, distorted extremities, or injuries that required the injured party to be carried from the scene (or any person arrested after being involved as a driver in a fatal accident or an accident involving personal injury) is deemed to have consented to undergo chemical testing for alcohol, drugs, or intoxicating compounds if the testing occurs within 12 hours of the time of the occurrence of the accident that led to the arrest. The person's driving privileges are subject to statutory summary suspension under Section 11-501.1 if that person refuses to undergo the testing. 625 ILCS 5/11-401(b-1)

of the suspension. Also, restricted driving privileges are available under 625 ILCS 5/6-206(c)(3)

Subsequent refusals[368] (within 5 years) Suspension for **3 years** (2 years mandatory) 625 ILCS 5/6-206(c)(3), 6-206.1, 6-208.1 and 11-501.1

Other: **Injury/Death Related Implied Consent Law**. Under another separate and independent implied consent law, 625 ILCS 5/11-501.6, if a law enforcement officer has arrested a driver under any provision of the vehicle code and the driver has been involved in an accident that has resulted in either an injury or a fatality, the officer may request that the person submit to a chemical test of their blood, breath or urine for the purpose of determining either the alcohol or drug content in such person's blood. 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: first Refusal – **6 months**; 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 years 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) and (e) 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. 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) cert denied 521 U.S. 1118 (1997)

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[368] Or a refusal where the person has had a previous DWI offense conviction or admin. per se violation (within 5 years). 625 ILCS 5/11-500 The mandatory license suspension provisions for subsequent refusals by a person > 21 years 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. 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: first refusal – **Suspension 6 months** (30 days mand .Restricted driving privileges may be issued after 30 days.); subsequent refusal – **Suspension 2 years** (12 months mand. Restricted driving privileges may be issued after 12 months.) 625 ILCS 5/6-208.2 After a hearing, the State Secretary of State has the authority to "rescind" this licensing action. 625 ILCS 5/6-206(c)(3) and 6-208.2(a)

Sanctions Following a Conviction for a DWI Offense

Criminal Sanctions[369]:

Imprisonment:	First and second offenses (Class A misdemeanor) – Less than **1 year**; third offenses[370and371] (Class 4 felony) – **1 to 3 years** fourth or subsequent offenses: (Class 2 felony: mandatory minimum of 10 days of imprisonment or mandatory minimum of 480 hours of community service – not eligible for a sentence of probation or conditional discharge; 730 ILCS 5/5-8-1 (5), 625 ILCS 5/11-501 and 730 ILCS 5/5-8-1(a)(7) and 5-8-3(a)(l)
Mandatory Minimum Term:	Second offense (within 5 years) – **5 days**; third and subsequent offense (within 5 years) – **10 days** (if probation or conditional discharge is granted) 625 ILCS 5/11-501(c), (d) and (h) and 730 ICLS 5/5-5-3(c)(3) and 5-6-1(d) **Child Endangerment**.[372] Jail sanctions are **enhanced** as follows if the driver was transporting a person <16 years old. A person 21 years of age or older convicted of DUI while transporting a person under the age of 16 is subject to 6 months of imprisonment, an additional mandatory minimum fine of $1,000, and 25 days of community service. Second violations with no bodily harm punished as follows: 6 months of imprisonment, an additional mandatory minimum fine of $1,000, and an additional mandatory minimum 140 hours of community service, which shall include 40 hours of community service in a program benefiting children. Second violations with no

[369] All DUI Felonies are prosecuted by the State Attorney of the county where the felony was charged; {prosecution of felony DUI by local authorities prohibited}. 625 ILCS 5/11-208.5

[370] This offense is defined as "Aggravated Driving Under the Influence of Alcohol or Drugs or a Combination of Both" and includes a second offense where there has been a prior DWI related reckless homicide offense. 625 ILCS 5/lI-501(d)

[371] **Aggravated Driving**. The following offenses are also defined as felony "Aggravated Driving" offenses: (1) Driving a school bus while DWI while the bus is occupied by school children (imprisonment – 1 to 3 years/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 years/fine – not more than $25,000) (3) driving in a 20 MPH school or construction zone in violation of the drunk driving law and causing an accident that resulted in bodily harm (but not great bodily harm with disability or disfigurement) (imprisonment – 1 to 3 years/fine – not more than $25,000), (4) any third or subsequent DWI or (5) a second DWI and a previous conviction relating to reckless homicide or DWI homicide. As a condition of probation or conditional discharge an offender must serve either 10 days of imprisonment or 60 days of community service. Restitution may be required. 730 ICLS 5/5-8-1(a)(7), 5-9-1(a)(l) and 625 ILCS 5/11-501(a), (d)(1) and (2) and (h)

[372] **Child Endangerment/.16**. Under another provision of law, 625 ILCS 11-501(c-4) and 730 ILCS 5/5-5-3(c)(4.1)(10), in addition to any other sanctions, a person, convicted for a drunk driving offense is subject to the following sanctions if they (1) were transporting a child < 16 years old or (2) had a BAC/BrAC ≥ .16: first offense – 100 hours (mand) community service/$500 (mand) fine; second offense (within 10 years) – 2 days (mand) jail/$l,250 (mand) fine; third off (within 20 years) – 90 days (mand) jail/$2,500 (mand) fine; and, fourth or subsequent off- Class 2 felony-3 to 7 years imprisonment and a fine of not more than $25,000 ($2,500 mand) with no eligibility for probation/conditional discharge.

bodily harm within 10 years is a Class 4 felony and in addition to any other penalty imposed, is subject to one year of
Imprisonment, 25 days of mandatory community service in a program benefiting children, and a mandatory fine of $2,500.
The penalties are increased if the person while committing a DUI was involved in a motor vehicle accident that resulted in bodily harm to the child under the age of 16 being transported by the person, if the violation was the proximate cause of the injury. This violation is a class 4 felony and is subject to one year of imprisonment, a mandatory fine of $2,500, and 25 days of community service in a program benefiting children. If repeated within 10 years, it is subject to 18 months of imprisonment, a mandatory fine of $5,000, and 25 days of community service in a program benefiting children.

The imprisonment or assignment of community service for any child endangerment violations is not subject to suspension, nor is the person eligible for a reduced sentence. 625 ILCS 5/11-501 (c-5)

Fine:

Amount ($ Range): First and second offenses – Not more than **$2,500**; third and subsequent offenses – Not more than **$3,000** 730 ICLS 5/5-9-1 (a)(1) and (2) {except for DUI by school bus drivers with children on bus- not more than $25,000.}

Mandatory Minimum Fine ($): **Child Endangerment**. For a first or second offense (within 5 years), an additional **$1,000** fine is mandatory if at the time of the offense the driver was transporting a person <16 years old. 625 ILCS 5/11-501(c)

Other Penalties:

Community Service: I. Second offense (within 5 years) – A minimum of **30 days** (Alternative to the term of 5 days of mandatory imprisonment) 625 ILCS 5/11-501(c) and (d) and 730 ICLS 5/5-5-3(c)(3)
II. For a third or subsequent offense where the offender has been granted either probation or conditional discharge, he/she must be sentenced to serve a
minimum (mand) term of either **60 days** of community service or 10 days of imprisonment. 625 ILCS 5/11-501(h)

Restitution (e.g., Victim's Fund) **Yes** For all offenses Paid directly by a defendant to a victim. 730 ICLS 5/5-5-3(b)(7), 5-5-6 and 5-6-3.1(c)(9) There is also a victims' compensation fund. 740 ILCS 45/1 et seq.

Other:

Ignition Interlock. The State Secretary of State shall require the use of "ignition interlock" devices
on all vehicles owned/used by second or subsequent DWI/ALR law violator or where there has been a combination of two or more DWI/ALR violations. The law does not provide for a time period for "ignition interlock" use. However, the State must promulgate regulations concerning certification and use of these devices. 625 ILCS 5/6-205(C) and (h), 5/6-206(c)(3) and 5/ll-501(i)

Visitation Program. DWI offenders who are under 21 years old may be ordered by the court to participate in a special visitation program. An offender may be required to visit (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. Second 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) and 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 05/27.1(c) II. For counties with a population > 180,000 but < 3,000,000: Misd – $50; felony – $80 705 ILCS 105/27.1a(w) and 27.2(w) III. For counties with a population > 3,000,000: Misd – $75 – $110, felony – $125 – $190, 705 ILCS 105/27.2a(w)(1)

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) and 730 ILCS 5/5-5-3

Trauma Center Fund. A convicted drunk driving law offender must pay a fee of **$100**. This fee is deposited into the Trauma Center

Fund and is used to pay for hospital trauma care. 705 ILCS 105/27.6(b) and 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

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 mandatory months (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC ≥ .04), (2) has any amount of cannabis or a controlled substance in their blood, breath or urine resulting from the unlawful use of the substance, (3) is under the influence of alcohol or drugs or (4) refuses 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 years mand); however, there is a mandatory lifetime disqualification if, after the driver's CDL has been reinstated after the 10 year mandatory period, he/she commits 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 and 6-517

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 $5 fee to defray administrative costs and to support the Spinal Cord Injury Paralysis Cure Trust Fund. 730 ILCS 5/5-9-1 (c-7)

Equipment Costs. In addition to any other sanctions, an offender must pay a fine of **$100** for a first offense and **$200** for a subsequent offense which is used to purchase law enforcement equipment related to the "prevention of alcohol related criminal violence". 625 ILCS 5/11-501

Administrative Licensing Actions: See the Special Administrative Per Se Law below.

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **Yes ≥ .08**(BAC/BrAC) or **Any Amount**[373] **of Cannabis, Controlled Substance or Intoxicating Compound** First action- **3 months suspension**[374and375] (30 days mand)

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

[374] A Judicial Driving Permit (JDP) may be issued after the first 30 days of the suspension period have passed. 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) If a person with a JDP is issued another DUI citation, the arresting officer shall confiscate the JDP and within 10 days a hearing will be held for a summary suspension. If a person applying for a JDP is issued another DUI citation before the JDP is issued, the JDP application may not be granted. If a person with a JDP is issued a non –DUI citation, the JDP may be canceled by court order. 625 ILCS 5/6-206.16-206.1(c) A JDP cannot be issued to a person under 18 years old. 625 ILCS 5/6-206.1(a)(4)(iv); *People v. Delcorse*, 711 N.E.2d 1217 (Ill. App. 1999).

[375] 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 678 (Ill. App. 1 Dist. 1991).

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 (lll. App. 5 Dist. 1996), and *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 he/she is 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)

subsequent action[376] (within 5 years)[377]**-l year suspension** (mand)[378] 625 ILCS 5/6-206(a)(31), 6-206.1, 6-208.1(a) and 11-501.1

Persons Under 21 Years Old. Under a separate admin per se law, persons under 21 years old, who have BAC/BrAC > **.00 but < .08**[379and380] are subject to the following sanctions: first violation– suspension **3 months** (30 days appears mand; restricted driving privileges may be issued after 30 days.); subsequent violation– suspension**1 year** (mand)[381]

625 ILCS 5/6-208.2 and 5/11-501.8 A Judicial Driving Permit (JDP) is not authorized by law. *People v. Schmidt,* 676 N.E.2d 11 (Ill. App. 3 Dist. 1997) After a hearing, the State Secretary of State has the authority to "rescind" this

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[376] Or an admin. per se violation where the person has had a previous DWI conviction or refusal to submit to a chemical test (within 5 years). 625 ILCS 5/11-500

[377] 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 ≥ .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

[378] A person is not eligible for a "restricted driving permit" under 625 ILCS 5/6-205(c). 625 ILCS 5/6-208.1(g)

[379] Standards: Grams of alcohol per l00 milliliters of blood or grams of alcohol per 210 liters of breath. 625 ILCS 5/11-501.8(b)(v)

[380] 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)

[381] 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), and *People* v. *Fisher,* 705 N.E.2d 67 (Ill. 1998)

licensing action. 625 ILCS 5/6-206(c)(3) and 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 suspend a license where (1) a person has been arrested for any vehicle code violation, (2) there has been an accident that resulted in either an injury or fatality and (3) the driver submits to a chemical test that indicates a BAC/BrAC ≥ .08 or the presence of any amount of cannabis/controlled substance resulting from unlawful use in their blood or urine. Driving privileges are suspended as follows: first Action- **3 months**; 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 **year**. These suspensions, however, are not mandatory. If a driver requests a hearing, the State can modify the suspension order or issue a restricted license {JDP} for employment, educational or medical purposes. 625 ILCS 5/6-208.1, 11-500 and 11-501.6(a), (c) and (e) 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 suspensions under both admin. per se laws.

Other:

I. Under 625 ILCS 5/6-206(a)(1) and 6-208, a person's license may be suspended/revoked for not more than 1 year if he/she has "committed" an offense that usually requires license revocation (e.g., DWI). i.e., such action can occur prior to a conviction 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 years if, while operating such a vehicle, he/she either (1) refuses to submit to a chemical test for alcohol concentration following a traffic offense arrest or (2) submits to such a test which indicates he/she was driving with an alcohol concentration > .00.[382] 625 ILCS 5/6-106.1a and 6-106.1b

Post DWI Conviction Licensing Action:

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

Term of License Withdrawal (Days, Months, Years, etc.)First offense – 1 **year**; second offense (within 20 years) – **5 years**; third offense – **10 years**; subsequent offense – **Permanent**[383] 625 ILCS 5/6-208(b)(l), (2), (3) and (4)

Mandatory Minimum Term of Withdrawal: First offense – No**ne** (A hardship license may be issued. 625 ILCS 5/6-205(c) and (i)); second offense (within 20 years) – **l year**; third offense – 1 **year**; subsequent offense – 1 **year**[384] 625 ILCS 5/6-205(i) and 5/6-208(b)(1), (2), (3) and (4)[385]

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 third or subsequent DWI offense or (2) a second DWI offense where the offender had a prior alcohol/drug-related reckless homicide driving offense. 720 ILCS 5/36-1. 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

Authorized by Specific Statutory Authority:

Terms Upon Which Vehicle Will Be Released:

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[382] 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)

[383] A restricted license may be issued after this period. 625 ILCS 5/6-205(c) and (i)

[384] A "person may not make application for a license" if he/she has been convicted of a fourth or subsequent offense. 625 ILCS 5/6-208(b)(4)

[385] A person under 21 years old who is convicted of a DWI offense must have his/her license revoked for a mandatory period of 1 year. After this l-year period, such a youthful offender must have his/her driving privileges restricted for at least 1 additional year. If the person is still under 21 years old after the expiration of the 1-year restricted license, restricted driving privileges may be granted in 12-month intervals until the person reaches 21. For a second or subsequent offense, a restricted license cannot be issued unless the offender operates vehicles that are equipped with ignition interlock devices. 625 ILCS 5/6-205(d)

Other:	**Limited Impoundment**. I. Following a DWI arrest, a person's vehicle may be impounded for not more than **12 hours** 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: second offense – Impoundment for **24 hours**; third offense – Impoundment for **48 hours**. 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:	Under 730 ILCS 5/5-6-1 and 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 that person had a previous DWI conviction or been in such a diversion program within 5 years of the charged offense. As a supervision condition, he/she may be required to only operate motor vehicles equipped with ignition interlock devices.

Other Criminal Actions Related to DWI:

Homicide by Vehicle[386]:	
State Has Such a Law:	**Yes** Reckless homicide (Death must be the result of reckless action of the accused driver.) – Class 3 felony. However the offense is a Class 2 felony[387and388] if the defendant was under the influence of alcohol or drugs at the time of the offense 720 ILCS 5/9-3
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Class 3 felony-**2 to 5 years** 730 ILCS 5/5-8-1(a)(6); Class 2 felony-**3 to 14 years** (if two or more person were killed, **6 to 28 years**) 730 ILCS 5/9-3(e)and (e-5)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Class 3 and 2 felonies – Not more than **$25,000** 730 ICLS 5/5-9-1(a)(l)
Mandatory Minimum Fine:	**None**

[386]"Custodial interrogations" concerning this crime must be videotaped to be considered valid evidence in court. 705 ILCS 405/5-401.5; 725 ILCS 5/103-2.1(b)

[387] 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), nor does it violate due process. *People v. Henderson* 768 N.E.2d 222 (Ill. App. 2002)

[388] 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)

Administrative Licensing Action: Licensing Authorized and Type of Action:	**Revocation**[389] 625 ILCS 5/6-205(a)(1)
Length of Term of Licensing Withdrawal:	First offense – **2 years**; second offense (within 20 years) – **5 years**; third offense – **10 years**; fourth and subsequent offense – **Permanent** 625 ILCS 5/6-208(b)(1), (2), (3) and (4)
Mandatory Action--Minimum Length of License Withdrawal:	**None** Under 625 ILCS 5/6-205(c), a restricted license may be issued.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense[392]:	See Footnote Nos. [390] and [391].
Sanction:	
Criminal:	
Imprisonment (Term):	First offense – Class A misdemeanor-Less than **1 year**; subsequent offense – Class 4 felony – 1 **to 3 years** 625 ILCS 5/6-303(a), (d), (d-2) and (d-3) and 730 ILCS 5/5-8-1(a)(7) and 5/5-8-3(a)(1)
Mandatory Minimum Term of Imprisonment:	First offense – **10 consecutive days** or community service; second offense – **30 days** or community service; third offense – **30 days**;

[389] A person convicted of "reckless homicide" is not eligible for a license until 24 months after release from imprisonment. 625 ILCS 5/6-103(15) and 5/6-208(b)(1)

[390] I. It is a Class A misdemeanor 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 year and/or a fine of not more than $1,000. II. Persons convicted of operating a CMV after disqualification are subject to a 1-year license revocation. This revocation does not appear to be mandatory. III. A person who operates a CMV after having been placed "out-of-service" is subject to the following CDL disqualification periods: first offense – 6 months; second offense (within 10 years) – 1 year; third or subsequent offense (within 10 years) – 3 years. If the offender was transporting passengers or hazardous materials, the disqualification periods are as follows: first offense – 1 year; second offense (within 10 years) – 3 years; third of subsequent offense (within 10 years) – 5 years. 625 ILCS 5/6-205(12)(a) and (c), 5/6-208, 5/6-507(b), (d) and (e), 5/6-514(i) and 730 ILCS 5/5-8-3(a)(1) and 5/5-9-1(1)(2)

[391] **DWI While Suspended or Revoked**. A person who commits a DWI offense while driving privileges are still suspended or revoked for either a DWI offense, implied consent law violation, or vehicle homicide is subject to the following sanctions: first or second offense (Class 4 felony) – Imprisonment from 1 to 3 years and/or a fine of not more than $25,000; third offense (Class 3 felony) – Imprisonment from 2 to 5 years 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 days of incarceration or 60 days of community service; and, fourth or subsequent offense (Class 2 felony) – Imprisonment from 3 to 7 years 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) and (h), 730 ILCS 5/5-8-1(a)(5) and (6) and 730 ILCS 5/5-5-3(c)(2)(S) and 5/5-9-1(a)(1) A person committing a DWI offense while driving privileges are still under either revocation or suspension for a previous DWI offense is subject to one of the following mandatory sanctions: (1) 30 con days of imprisonment; (2) 40 days of 24 hour periodic imprisonment; or, (3) 720 hours 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 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

[392] This offense is considered aggravated driving under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or any combination thereof and is guilty of a Class 4 felony.{Class 3 felony on third violation} A DUI while knowingly driving without liability insurance is also aggravated driving under the influence. 625 ILCS 5/11-501 (C-1) (1); (2) and (3)

	{mandatory minimum of 10 days of imprisonment or a mandatory minimum of 480 hours of community service} fourth or subsequent offense – **180 days.** Fourth, fifth, sixth, seventh, eighth, or ninth violations: Class 4 felony – 180 days imprisonment; Tenth, eleventh, twelfth, thirteenth, or fourteenth violations: Class 3 felony – not eligible for probation or conditional discharge. Fifteenth or subsequent violation of this Section is guilty of a Class 2 felony – not eligible for probation or conditional discharge. 625 ILCS 5/6-303(c), (d), (d-2) and (d-3) and 730 ICLS 5/5-5-3(c)(4); (4.3), (4.5) and (4.6) and 5/5-6-3(e) **Aggravated DUI Causing death –** Class 2 felony. Unless the court determines that extraordinary circumstances exist and require probation, it shall be punished as follows: (A) a term of imprisonment of not less than 3 years and not more than 14 years if the violation resulted in the death of one person; or (B) a term of imprisonment of not less than 6 years and not more than 28 years if the violation resulted in the deaths of 2 or more persons. 625 ILCS 5/11-501 (d) (2)
Fine ($ Range):	First offense – Not more than **$2,500**; subsequent offense – Not more than **$25,000** 730 ICLS 5/5-9-1(a)(1) and (2)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Suspension or revocation** 625 ILCS 5/6-303(b)
Length of Term of License Withdrawal Action:	If the original charge is based on a suspension, the suspension is extended an additional period of time equal to that of the original suspension. If the original charge is based on a revocation, the revocation is extended 1 year. 625 ILCS 5/6-303(b)
Mandatory Term of License Withdrawal Action:	Same as above.
Other:	**Community Service**. First offense – **30 days** (alternative to jail); second offense – **300 hrs** (alternative to imprisonment) 625 ILCS 5/6-303(c) and (d) and 730 ICLS 5/5-5-3(c)(4) and (4.3) **Vehicle Impoundment/Immobilization**. If the offender is the registered owner of the vehicle: second offense – Impoundment for **24 hours**; third offense – Impoundment for **48 hours**. 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) fourth offense – 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)
Forfeiture: The motor vehicle is subject to seizure and forfeiture if the revocation was pursuant to a DWI offense. 625 ILCS 5/6-303(g).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No):	**Yes** 55 ILCS 5/3-3013
BAC Chemical Test Is Given to the 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** 235 ILCS 5/6-16 and 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, 235 ILCS 5/16-20
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**[393,394 and 395] 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**
Dram Shop Actions-Social Hosts:	**No** *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:	**Class A Misdemeanor** 235 ILCS 5/6-16(a)
Term of Imprisonment:	**Less than 1 year** 730 ILCS 5/5-8-3(a)(1)
Fine ($ Range):	**$500** (mand) but not more than **$2,500** 235 ILCS 5/6-16(a) and 730 ICLS 5/5-9-1(a)(2) See Court Costs (Fees).
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension/Revocation** 235 ILCS 5/3-12 (State licenses) and 235 ILCS 5/7-5 (local licenses) Mandatory revocation for a conviction for a "willful" violation of the law. 235 ILCS 5/7-12
Length of Term of License Withdrawal:	Not specified in the statute.[396and397]
Criminal Actions Against Owners	

[393] Damages for personal injuries or to property are limited pursuant to a calculation based on the percent change in the consumer price index during the preceding 12 months. See 235 ILCS 5/6 21, as applied to the amounts of $45,000 and $55,000 depending on the loss incurred.

[394] 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).

[395] 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), and *Graham* v. *United National Investors, Inc.,* 745 N.E.24 1287 (Ill. App. 4 Dist. 2001)

[396] 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 first offense, $1,500 for a second offense (within 12 months) and $2,500 for a third or subsequent offense (within 12 months); however, the maximum or total fine amount that may be imposed during any licensing period is $15,000. 235 ILCS 5/3-12 and 7-5

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

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 Misdemeanor** 235 ILCS 5/6-16(a)
Term of Imprisonment:	**Less than 1 year** 730 ICLS 5/5-8-3(a)(1)
Fine ($ Range):	**$500** (mand) but not more than **$2,500** 235 ILCS 5/6-16(a) and 730 ICLS 5/5-9-1(a)(2).
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension/Revocation** 235 ILCS 5/3-12 (State licenses) and 235 ILCS 5/7-5 (local licenses) Mandatory revocation 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.[398and399]
Anti-Happy Hour Laws/Regulations:	**Yes** 235 ILCS 5/6-2S[400]
Open Container Law (Yes/No):	**Yes – driver and passengers**[401] 625 ILCS 5/11-502
Anti-Consumption Law (Yes/No):	**Yes**; A person cannot consume alcoholic beverages while operating a limousine, chartered bus, motor home or mini motor home. 625 ILCS 5/11-502(c)

[398] 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 first offense, $1,500 for a second offense (within 12 months) and $2,500 for a third or subsequent offense (within 12 months); however, the maximum or total fine amount that may be imposed during any licensing period is $15,000. 235 ILCS 5/3-12 and 7-5

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

[400] Rollin Foods v. Village of Glendale Heights. 646 N.E.2d 12 (Ill. App. 2 Dist. 1995)

[401] 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:	**INDIANA**
General Reference:	Burn's Indiana Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Operating a vehicle while intoxicated[402] (Class C Misdemeanor) IC9-30-5-2(a) Operating a vehicle while intoxicated and endangering a person (Class A Misdemeanor) IC9-30-5-2(b)
Illegal Per Se Law (BAC/BrAC)	I. ≥ **.08 but < .15**[403] (Class C Misdemeanor) IC9-30-5-1(a) and 9-30-5-4(a)(1) II. ≥ **.15** (Class A Misdemeanor) IC9-30-5-1(b) **III. Any Amount of a Controlled Substance**[404,405and 406] (Class C Misdemeanor) IC9-30-5-1(c) and 9-30-5-4(a)(2) Persons Under 21 Years Old. ≥**.02 but <.08** (Class C Infraction) IC9-30-5-8.5
Presumption (BAC/BrAC):	≥ **.08**[407] IC9-30-6-15(b)(2) Persons Under 21 Years Old. ≥ **.02** 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 (Class A Misdemeanor) IC9-30-5-2 and IC9-13-2-86
Other:	A BAC/BrAC ≥ **.05 but < .08** is **relevant evidence** of intoxication. IC 9-13-2-151 A BAC/BrAC ≥ **.08** is also *prima facie* evidence of intoxication. IC9-13-2-131

[402] The term "intoxicated" is defined as under the influence of alcohol, a controlled substance (as defined under IC 35-48-1-9), 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

[403] 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 and 9-30-15-3

[404] This State's illegal per se law also makes it an offense (Class C misdemeanor) for a person to operate a motor vehicle with any amount of a controlled substance in his/her 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), transfer denied 774 N.E.2d 507 (Ind. 2002)

[405] 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); 20-9.1-3-1.6(c).

[406] 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. *Rhoades 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 *Rhoades* 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), and *Estes v. State,* 656 N.E.2d 528 (Ind. App. 1995)

[407] Under IC9-30-6-15(b)(2), a chemical test indicating a BAC ≥ .08 is to be taken as a presumption of such BAC.

School Bus Operators. It is a Class A Misdemeanor. to consume either alcohol or a controlled substance within six hours of operating a school bus. IC20-9.1-3-1.6 Sanctions: Jail – not more than 1 year; fine – not more than $5,000. IC35-50-3-2

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Limited** PBT for injury/death offenses IC9-30-7-2and3
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 and *Clark v. State,* 372 N.E.2d 185 (Ind. 1978). *Dalton v. State*, 773 N.E.2d 332 (Ind. App. 2002)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** IC9-30-6-2
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) IC9-30-6-3(b)
Other Information:	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) and (h) II. In order to insure that offenders are < .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:	**Yes**[408]
Urine:	**Yes**
Other:	**Any other bodily substance**

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** Mandatory for subsequent 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):	Class C Infraction – Not more than **$500** IC9-30-7-5(a) and 34-28-5-4(c) **Suspension** – Not more than **1 year** IC9-30-7-5(b)
Administrative Licensing Action (Susp/Rev):	

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥ .04, (2) is under the influence of alcohol or a controlled substance or (3) refuses 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

[408] 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 and IC9-30-6-6(a)

"disqualification" is for life. However, for a second violation only, the CDL may be reinstated after 10 years. It is a Class C Infraction for a person to operate a CMV with a BAC ≥ .04 but < .08. The sanction of this offense is a fine of not more than $500. IC9-24-6-8 et seq.

(continued)

Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**Yes Limited**[409]
Administrative Licensing Action (Susp/Rev):	**1-year suspension.**[410] May not be mandatory if there is a DWI conviction. IC9-30-6-9 (a) A driver's license may be reinstated if the DWI charges are dismissed. IC9-30-6-11 (a)(1)
Sanctions Following a Conviction for a DWI Offense:	
Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1. Intoxicated offense/Illegal per se offense BAC/BrAC ≥ .08 but < .15 – Class C Misdemeanor – Not more than **60 days** 2. Endangerment Intoxicated offense/Illegal per se offense BAC/BrAC ≥ .15 – Class A Misdemeanor – Not more than **1 year** 3. Either 1 or 2 above if there has been a previous conviction of either offense (within 5 years) – Class D felony[411]-A fixed term of **1½ years** 4. A serious injury where a person has been operating a vehicle with a BAC/BrAC ≥ .08, with a schedule I or II controlled substance or while intoxicated – first offense – Class D felony-A fixed term of **2 years**; subsequent offense[412] (within 5 years) – Class C felony-A fixed term of **4 years** IC9-30-5-1, -2, -3, -4and5, IC35-50-2-6 and -7 and IC35-50-3-2and4 Persons Under 21 Years Old. BAC/BrAC ≥ .02 but < .08-C1ass C Infraction – No**ne**
Mandatory Minimum Term:	I) A conviction for **ANY** alcohol-related driving offense, where there has been a **one** previous conviction for **ANY** type of alcohol driving offense, **5 days** (w/ 48 con hrs) 2) A conviction for **ANY** alcohol-related driving offense, where there have been **two or more** previous convictions for **ANY**

[409] 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 Class C Infraction with a possible fine of not more than $500. The court may impose a license suspension for not more than 1 year. IC9-27-5-4(b), IC9-30-7-1 to 9-9-30-7-5 and 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) trans. denied 735 N.E.2d 230 (Ind. 2000). For a discussion of 4th Amendment issues regarding the general implied consent statute, IC9-30-6-2, see *Cochran v. State* 771 N.E.2d 104 (Ind. App. 2002) *Brown v. State* 774 N.E.2d 1001 (Ind. App. 2002)

[410] This suspension is consecutive to any suspension 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)

[411] 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 year, fine: Not more than $5,000) provided that this was the person's first felony conviction. IC35-50-2-7 and IC35-50-3-2

[412] A Class C infraction is a civil (not a criminal) violation.

	type of alcohol driving offense, **10 days** (w/48 con hrs) IC9-13-2-130[413] and IC9-30-5-15
Fine:	
Amount ($ Range):	1. Intoxicated offense/Illegal per se offense BAC/BrAC ≥ .08 but < .15 – Class C Misdemeanor – Not more than **$500** IC35-50-3-4; 2. Endangerment Intoxicated offense/Illegal per se offense BAC/BrAC ≥ .15 – Class A Misdemeanor – Not more than **$5,000** IC35-50-3-23. Either 1 or 2 above if there has been a previous intoxicated offense (within 5 years) – Class 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 ≥ .08, with a schedule I or II controlled substance or while intoxicated – first or subsequent offense (within 5 years) – Class D or C felony respectively – Not more than **$10,000** IC35-50-2-6 IC35-50-2-5 and -6 Persons Under 21 Years Old. BAC/BrAC ≥ .02 but < .08– Class C Infraction – Not more than **$500** IC9-30-5-8.5 and IC34-4-32-4(c)
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	For a second alcohol offense, mandatory community restitution or service of **30 days** in lieu of imprisonment. For a third or subsequent alcohol offense, mandatory community restitution or service of **60 days** in lieu of imprisonment. IC9-13-2-130 and IC9-30-5-15.
Restitution (e.g., Victim's Fund)	**Yes** The court may order a defendant to pay direct compensation to a victim. IC35-50-5-3 There is also a victims' compensation fund. IC5-2-6.1-1 et seq.
Other:	**Alcohol and Drug Countermeasures Fee.** All DWI offenders are assessed a fee of **$200** for alcohol and drug countermeasures programs. IC33-19-6-10 **Emergency Medical Services Fund**. The court may order a defendant to make "restitution" of up to **$1,000** to the emergency medical services fund for any needed services provided by emergency services personnel as a result of their actions. IC9-30-5-17 **Victim Impact Program**. A defendant may be ordered by the court to participate in programs with DWI offense victims. IC9-30-14-2

[413] A prior conviction for "driving while intoxicated" is defined to mean a prior violation of IC9-30-5-1 thru IC9-30-5-9. 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)

Visitation Program. A defendant may be required to visit emergency care facilities, coroner facilities or alcoholism treatment centers. IC9-30-14-3 (3)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes[414] Based on BAC/BrAC *prima facie* evidence ≥ **.08** First and subsequent offenses – suspension up to **180 days** 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 days. IC9-30-6-9 (e) Such privileges, however, cannot be granted if the person has been convicted of a serious injury/death-related DWI offense or if he/she has been convicted of a previous DWI offense. IC9-24-15-6.5 A person may also be issued a restricted license under IC9-30-5-11 et seq. if he/she has 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 offense, the court shall order the driver's license reinstated. IC9-30-6-11

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. The initial hearing must be held within 10 days after the arrest. IC35-33-7-1(c)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):

Suspension All offenses IC9-30-5-8.5 and IC9-30-5-10

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

First offense (Illegal per se/Intoxicated) – **90 days to 2 years**; second or subsequent offense (Illegal per se/Intoxicated) (within 10 years but more than 5 years from a first off) – **180 days to 2 years**; second or subsequent offense (Illegal per se/Intoxicated) (within 5 years) – **1 to 2 years**; Injury Related offense (where a person has been operating a vehicle with a BAC/BrAC ≥ .08, with a schedule I or II controlled substance or while intoxicated) – **2 to 5 years** IC9-30-5-10[415]

Persons Under 21 Years Old. BAC/BrAC ≥ .02 but < .08 – Not more than **1 year** IC9-30-5-8.5

[414] 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. The reinstatement cannot take effect until 90 days after the initial hearing. IC9-30-6-11 and IC9-30-6-18

[415] IC9-13-2-130 defines the phrase "previous conviction of operating while intoxicated" to include any DWI offense under IC9-30-5.

Mandatory Minimum Term of Withdrawal:	First offense (Illegal per se/Intoxicated) – **30 days** (90 days)[416]; second or subsequent offense (Illegal per se/Intoxicated) (within 10 years but more than 5 years from a first off) – **180 days**[417]; second or subsequent offense (Illegal per se/Intoxicated) (within 5 years) – **l year**; Injury Related offense (where a person has been operating a vehicle with a BAC/BrAC ≥ .08, with a schedule I or II controlled substance or while intoxicated) – **2 years** IC9-24-15-9, IC9-30-5-10 and IC9-30-5-12 Persons Under 21 Years Old. BAC/BrAC ≥ .02 but <.08 – No**ne**
Other:	
Rehabilitation:	
Alcohol Education:	**Yes**[418]
Alcohol Treatment:	**Yes**
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No**
Terms Upon Which Vehicle Will Be Released:	
Other:	Vehicle registration "certificates" shall be suspended/revoked for **6 months** if the defendant was convicted of a felony while using a motor vehicle (e.g., subsequent DWI offenses). IC9-30-4-6(b)(3) *and* (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" using electronic monitoring also may be ordered as a part of probationary work release program. IC35-38-1-21, 35-38-2-2.3(a)(15), 35-38-2.5 and 35-38-3-5 **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; violation of this requirement is a Class A infraction. 9-30-5-7 II. Other provisions of law also provide that a person convicted of an illegal per se/intoxicated offense (within 5 years or within 10 years but more than 5 years

[416] A probationary (restricted) license may be issued for 180 days. This restricted license does not take effect until a defendant's license has been suspended for 30 days under the admin. per se law. IC9-30-5-11 and IC9-30-6-9 However, a first 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 days. IC9-30-5-12

[417] 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) and 9-30-5-12(c)(2)

[418] IC9-30-5-15(a)(2) and (b)(2), 9-30-9-3, 9-30-9-6 and 12-23-14-1

of a previous conviction) may be granted probationary (restricted) driving privileges on the condition that the person only operate vehicles equipped with ignition interlock devices. IC9-30-5-10(c) and (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 he/she has 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 ≥ .08, with a schedule I or II controlled substance or while intoxicated – first offense – Class C felony; subsequent offense[419] (within 5 years) – Class B felony IC9-30-5-1, -2, -3, -4 and -5, IC35-50-2-5, 6 and -7 and IC35-50-3-2, and -4.

II. Involuntary Manslaughter where the death is related to vehicle operation and the defendant has committed or attempted to commit either a Class C felony, Class D felony or Class A Misdemeanor (e.g., driving while intoxicated) that imposes a risk of serious bodily injury– Class D felony IC35-42-1-4 and 35-50-2-7

III. Involuntary Manslaughter where the death is related to vehicle operation and the killing of a fetus– Class D felony IC35-42-1-4

Sanctions:

Criminal Sanction:

Imprisonment (Term): Class B felony-A fixed term of **10 years** Class C felony-A fixed term of **4 years** Class D felony-A fixed term of **1½ years**

Mandatory Minimum Term: There are mandatory imprisonment sanctions in cases involving offenders who have prior felony convictions. See IC35-50-2-2 for details.

Fine ($ Range): Class B, C or D felonies – Not more than **$10,000**

[419] A previous offense includes any prior drunk driving offense conviction.

License Suspension and DWI Charge Deferral. For first 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 and 9-30-9-5, the charges may be deferred for up to 4 years. As part of the deferral, the court may suspend a defendant's license from 2 to 4 years. However, it appears that the court must suspend a defendant's license for 1 year. The court may grant restricted driving privileges after this 1-year period; in addition, the defendant may be required to participate in an alcohol treatment program.

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 days to 4 years. However, it appears that a defendant's license must be suspended for 30 days. After this 30-day period, the court may grant probationary (restricted) driving privileges. IC9-30-9-3, 9-30-9-6 and 9-30-9-7

Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	I. A death where a person has been operating a vehicle with a BAC ≥ .08, with a schedule I or II controlled substance or while intoxicated– suspension 9-30-5-8.5 and 9-30-5-10 II. Involuntary Manslaughter– suspension/**Revocation**[420] IC9-30-4-6 (b)(1) and (d)(2)
Length of Term of Licensing Withdrawal:	I. A death where a person has been operating a vehicle with a BAC ≥ .08, with a schedule I or II controlled substance or while intoxicated-**2 to 5 years** II. Involuntary Mansluaghter-**2 to 5 years**
Mandatory Action--Minimum Length of License Withdrawal:	For either I or II above, there appears to be a mandatory licensing action for **2 years**.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:[421]	These sanctions apply when a person operates a motor vehicle while the 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 and IC35-41-1-19
Sanction:	
Criminal:	
Imprisonment (Term):	I. Class A Misdemeanor – Not more than **1 year** IC9-24-19-3 and IC35-50-3-2 II. Where there is Bodily Injury– Class D felony-A fixed term of **1½ years** IC35-50-2-7 Under certain conditions, this may be reduced to a Class A Misdemeanor IC35-50-2-7(b) III. Where there is a Death– Class C felony-A fixed term of **4 years** IC35-50-2-6
Mandatory Minimum Term of Imprisonment:	There are mandatory imprisonment sanctions in cases involving offenders who have prior felony convictions. See IC35-50-2-2 for details.

[420] Registration "certificates" may also be suspended/revoked for not less than two but no more than five 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. IC30-4-6(b)(1) and (d)(2)

[421] I. It is a Class C misdemeanor to operate a CMV during a CDL disqualification. The sanctions for this offense are a jail term of not more than 60 days and/or a fine of not more than $500. IC9-24-6-16 and 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: first violation – 90 days (mand) to 1 year; second violation (within 10 years) – l year (mand) to 5 years; and, third or subsequent violation (within 10 years) – 3 years (mand) to 5 years. 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: first violation-180 days (mand) to 2 years; and, subsequent violation (within 10 years) – 3 years (mand) to 5 years. For any violation, a civil fine of $1,000. IC9-13-2-120.5, 9-24-6-10.5 and 9-24-6-19

Fine ($ Range)	Class A Misdemeanor – Not more than **$5,000** IC35-50-3-2 Class C or D felony – Not more than **$10,000** IC35-50-2-6 and IC35-50-2-7
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action: (Susp/Rev):	**Suspension** IC9-24-19-5
Length of Term of License Withdrawal Action:	**90 days to 2 years** IC9-24-19-5
Mandatory Term of License Withdrawal Action:	**90 days** IC9-24-19-5
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** IC9-30-10-1 et seq.
Grounds for Being Declared an Habitual Offender:	I. 2 convictions (within 10 years) for traffic law violations related to death offenses as listed in IC9-30-10-4(a) (e.g., DWI resulting in death) II. 3 convictions (within 10 years) for major offenses as listed in IC9-30-10-4(b) (e.g., DWI and reckless driving) III. 10 convictions for any moving violations (within 10 years) IC9-30-10-4(c) However, one of these must have been a conviction for an offense 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 offenses convictions under IC9-30-10-4 (a) – **10-year suspension** IC9-30-10-5(b)(1) II. For 3 major offense convictions under IC9-30-10-4(b) – **10-year suspension**[422and423] IC9-30-10-5(b)(2) III. For 10 convictions of moving violations under IC9-30-10-4(c) – **5-year suspension** [424and425]IC9-30-10-5(b)(3)
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	Class D felony IC9-30-10-16 At the court's discretion, a first offender may be sentenced for a Class A Misdemeanor
Sanctions Following a Conviction	

[422] After **5 years**, 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)

[423] After **3 years**, a probationary restricted license may be issued the offender's status is based on a violation of IC9-30-10-4 (b) and (c). In order to be eligible for such a license, the offender must establish, among other things, (1) no convictions of a death-related offense as listed in IC9-30-10-4(a) and (2) any convictions were either: driving without a license based on infractions or driving without a license for a subsequent time. IC9-30-10-9(d)

[424] 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 he/she has 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)

[425] An habitual offender cannot obtain hardship driving privileges under IC9-24-15. IC9-24-15-9 and IC9-30-10-14(c)

of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Class D felony-**1½ years**; Class A Misdemeanor – Not more than **1 year** IC35-50-2-7 and IC35-50-3-2
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Class D felony – Not more than **$10,000**; Class A Misdemeanor – Not more than **$5,000**
Mandatory Minimum Fine:	**None**
Licensing Actions (Specify):	For a Class D felony conviction-**Forfeiture of license for life**[426] IC9- 30-10-16(c) Class C felony for a person to operate a motor vehicle after the license has been suspended for life – Sanctions: Jail – not more than 4 years; fine – not more than $10,000. IC9-30-10-17 and 35-50-2-6 and *Austin v. State,* 700 N.E.2d 1191 (Ind. App. 1998) (transfer denied 726 N.E.2d 1999 (Ind. 1999)). For a Class A misdemeanor conviction – the court on its own discretion may add an additional suspension period (time period to be set by the court) to any suspensions already imposed. IC9-30-10-16(c)

Other State Laws Related to Alcohol Use:

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

State Has Such a Law (Yes/No):	**Yes**[427] IC9-27-5-4 (a)
BAC Chemical Test Is Given to the Following Persons:	
Driver:	**Yes** IC9-27-5-4(a)
Vehicle Passengers:	**No**
Pedestrian:	**Yes** for persons ≥ 15 years old IC9-27-5-4(a)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21**[428] IC7.1-1-3-25, 7.1-5-7-1, 7.1-5-7-8 and 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:

[426] After **10 years,** a person may petition the court for reinstatement of his/her license. IC9-30-10-14 (a)(1) However, under some circumstances, offender's license may be reinstated after only **3 years**. For early reinstatement, the offender must not have been convicted of a death-related offense listed in IC9-30-10-4 (a) and the lifetime suspension must have based on traffic infractions. IC9-30-10-14 (e)

[427] The State Department of Toxicology in conjunction with the Office of Highway Safety may require "appropriate agencies" to collect "necessary specimens" (within 4 hrs) from either drivers or pedestrians who are killed in traffic accidents. IC9-27-5-4(a)

[428] It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a Class C infraction for a minor to "misrepresent" age in order to obtain alcoholic beverages. IC7.1-5-7-1

State has a Dram Shop Law (Yes/No):	**Yes** IC7.1-5-10-15.5[429and430]
"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** *Picadilly, Inc. v. Colvin,* 519 N.E.2d 1217 (Ind. 1988), *Elder v. Fisher,* 217 N.E.2d 847 (1966), and *Parrett v. Lebamoff, Inc.,* 408 N.E.2d 1344 (Ind. App. 1980)
Dram Shop Actions-Social Hosts:	**Yes** *Gariup Const. Co. v. Foster,* 519 N.E.2d 224 (Ind. 1988), *Ashlock v. Norris,* 475 N.E.2d 1167 (Ind. App. 3 Dist., 1985), *Delta Tau Delta v. Johnson,* 712 N.E.2d 968 (Ind. 1999)[431], *Murdock v. Fraternal Order of Eagles*, 779 N.E.2d 964 (Ind. App. 2002) and IC7.1-5-10-15.5
Other:	An alcoholic beverage licensee is liable for the injuries or death of an intoxicated patron who is over 21 years old, if two conditions are proven. (1) The licensee knew that the patron was visibly intoxicated when 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).[432]
<u>Criminal Action Against Owners or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons</u>:	
Type of Criminal Action:	**Class B Misdemeanor** IC7.1-5-1-8, 7.1-5-10-15, 7.1-5-10-22 and 35-50-3-3
Term of Imprisonment:	Not more than **180 days** IC7.1-3-23-3
Fine ($ Range):	Not more than **$1,000** {An administrative fine of not more than $1,000 may also be imposed.}
<u>Administrative Actions Against Owners or Establishments that Serve Alcoholic Beverages to Intoxicated Patrons</u>:	

[429] 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), *and 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)

[430] **Historical Note**: After April 1, 1986, common law dram shop actions were restricted by IC7.1-5-10-15.5. The *Gariup Const. Co. and Ashlock* decisions were based on factual situations that occurred prior to this date.

[431] 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.

[432] **Historical Note and 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 his/her 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)

License of Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes**[433] IC7.1-3-23-2, 7.1-3-23-5 and 7.1-5-10-22

Length of Term of License Withdrawal: For revocations, no period is specified in the statute IC7.1-3-23-6 For suspensions, not more than 30 days 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: **Class C Misdemeanor**[434] IC7.1-5-7-8, 7.1-5-10-22 and 35-50-3-4

Term of Imprisonment: Not more than **60 days**

Fine ($ Range): Not more than **$500** {An administrative fine of not more than $1,000 also may be imposed. IC7.1-3-23-3}

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): **Yes** IC7.1-3-23-2, 7.1-3-23-5, 7.1-3-23-26.1 and 7.1-5-10-22

Length of Term License Withdrawal: For revocations, no period is specified in the statute. IC7.1-3-23-6 For suspensions, not more than 30 days. IC7.1-3-23-7 The licensee may also be fined. 7.1-3-23-26.1

Anti-Happy Hour Laws/Regulations: **Yes** IC7.1-5-10-20

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

Open Container Law (Yes/No): **Yes** Drivers and passengers—Applies while the motor vehicle is located on the right-of-way of a public highway {Class C infraction}. Exempted are passengers in vehicles for the transportation of persons for compensation, the living quarters of a house coach or house trailer, a container located in a fixed center console or other

[433] An employee or bartender who is convicted of serving alcoholic beverages to an intoxicated person is subject to mandatory revocation of the permit to serve such beverages. IC7.1-3-18-9(f) and IC7.I-3-18-11(f) The permit may be suspended pending the disposition of the charges. IC7.1-3-23-7 (b)(2)

[434] 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."

	similar fixed compartment that is locked, a container located behind the last upright seat or in an area not normally occupied by a person in a motor vehicle not equipped with a trunk. A violation is not considered a moving violation for which points are assessed. IC 9-30-15-3
Anti-Consumption Law (Yes/No:)	**Yes** Drivers only IC9-30-15-4

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

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an alcoholic beverage[435] §321J.2(1)(a)
Illegal Per Se Law (BAC/BrAC):	**≥ .08**[436and437] or Any Amount of a Controlled Substance in the Blood or Urine[438] §§321J.1(1) and 321J.2(1)(b) and (c). Persons under 21 – .02 BAC 321J.2A
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug or (2) Any Combination of Drugs Including an Alcoholic Beverage §321J.2(1)(a)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	
Implied Consent Law:	**Yes** [439] §321J.5
Arrest Required (Yes/No):	**No**[440] §3211.6(1)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §3211.6
Refusal to Submit a Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) §321J. 16 A person may be required to submit to a chemical test via a search warrant issued pursuant to an investigation of involuntary manslaughter (§707.5) where a traffic accident has resulted in a death or in a personal injury likely to cause death and there is evidence of a DWI offense. §321J.10

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[435] 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."

[436] 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 .08 or more or (2) a urine alcohol concentration of .08 or more.

[437] Standards: 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. §§ 321.1(1) and 321J.1(1)

[438] There is an "affirmative defense" if the controlled substance was present because of a valid prescription and there is no evidence of alcohol consumption and no direction to refrain from operating a vehicle. §321 J.2 (7)

[439] Physicians, physician assistants or advanced registered nurse practitioners may certify a person's unconscious state or other incapacitated condition rendering that person incapable of consent or refusal, for purposes of implying consent for chemical testing of a person suspected of driving while intoxicated. {§ 321J.7 DEAD OR UNCONSCIOUS PERSONS}

[440] 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 years old driving with a BAC/BrAC ≥ .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 ≥ .08 (for CMV operators, PBT BAC/BrAC reading of ≥ .04. §§321.1(1) and 321J.1(1); and for persons under 21 years old PBT BAC/BrAC reading of ≥ .02) or (2) 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 < .08. §321J.6(1)

Chemical Tests of Other Substances for Alcohol Concentration That Are Authorized Under the Implied Consent Law:	
Blood:	**Yes** §3211.6(2)
Urine:	**Yes** §321J.6(2)
Other:	**None**
Adjudication of DWI Charges:	
Mandatory Adjudication Law (Yes/No):	**No**[441]
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 and 321J.17 Also, the court may order an evaluation if it thinks that the defendant "regularly abuses alcohol or other controlled substances". §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):	**Revocation** First refusal – 1 year (90 days mand); second or subsequent refusal[442] – 2 years (1 year mand) §§321J.9 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)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for one mandatory year (3 years mand if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC ≥ .04; (2) is 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

441 first offenders who have BAC < .15 who have not refused to consent and where there has been no bodily injury are eligible for deferred judgment. §907.3 However, such persons are subject to a license revocation from 30 (mand) to 90 days. A 90-day revocation is mandatory if the offender refused to submit to a chemical test. §321J.4(3)

442 I. 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 years. §321.12(4)

II For either a first 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) and 321J.20(6)

III 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 years old. §321J.4(9)

the above listed items, the "disqualification" is for life (10 years mandatory). 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, and any driver driving in violation of an "out-of-service" order is subject to a fine of $100. §§321.1(1) and (11), 321.208, 321.208A, 321J.6 and 321J.8(3)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):	First offense (Serious misdemeanor) – Not more than 1 year; second offense (within 12 years) (aggravated misdemeanor) – Not more than 2 years; third and subsequent offense (within 12 years) (Class D felony) – Not more than 5 years (or up to 1 year in the county jail §902.9); serious Injury related to a drunk driving offense (Class D felony) – Not more than 5 years (or up to 1 year in the county jail) §321J.2(2) and (3), 707.6A(3), 902.9, 903.1 and 907.3(3)
Mandatory Minimum Term:	First offense (Serious misdemeanor) – 48 hours (Limited Application)[443]; second offense (within 12 years) (aggravated misdemeanor) – 7 consecutive days[444and445]; third and subsequent offenses (within 12 years) (Class D felony) – 30 consecutive days (limited)[446]; serious Injury related to a drunk driving offense (Class D felony) – None

Fine:

Amount ($ Range):	First offense (Serious misdemeanor) – $500/$l,000[447]; second offense (within 12 years) (Aggravated misdemeanor) – $1,500 to $5,000; third and subsequent offenses (within 12 years) (Class D felony) – $2,500 to $7,500; serious Injury related to a drunk driving offense (Class D felony) – $750 to $7,500.
Mandatory Min. Fine ($):	First offense (serious misdemeanor) – $500/$l,000 (Limited Application); second offense (Aggravated misdemeanor) – $l,500; third and subsequent

[443] For a first offense, there is a mandatory imprisonment sentence of 48 hours and fine as indicated if the offender (1) had a BAC/BrAC > **.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) and 907.3(2)

[444] This sentence may not be deferred or suspended. §321J.2(3)(a)

[445] For second and subsequent offenders the 7 day and 30 day 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 hours. In that case, the defendant must perform community service, with the period of community service decided by the court – as it "deem(s) appropriate." §321J.2(3)(d)

[446] 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)

[447] 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)

offenses (Class D felony) – $2,500; serious Injury – (Class D felony) – $750

Sanctions Following a Conviction for a DWI Offense:

Other Penalties:

Community Service: First offense (serious misdemeanor) – Community service in lieu of part of or the entire fine. §321J.2(2)(a)
Under separate provisions, the court may order either a first or subsequent offender to perform community service equivalent in value to any fine imposed. The value of the community service performed based on the Federal minimum wage. §909.3A

Restitution (e.g., Victim's Fund): **Yes** For any intoxicated offense, the court may order the defendant to make restitution for any damages resulting from the offense. §32lJ.2(9)(a) Court-ordered restitution is possible, under §910.1 et seq. and 915.100. II. In addition, a victim is eligible for compensation from the State's crime victim reparation fund. §915.80 et seq.

Other: **Deferred judgment** is allowed for some first DWI offenses. During such deferment their license is revoked 30 to 90 days. The same mandatory license revocation periods and temporary restricted license provisions apply as for DWI. §§321J.4(2) and 907.3
Surcharges. A surcharge of 30 percent of the fine actually imposed is assessed against anyone convicted of a State criminal offense and a drug abuse resistance education surcharge of $10 must also be paid §911.2

Civil Penalty. An additional civil penalty of $200 is assessed against a person who has had the 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. §321.218A, §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(9)(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. Kocher,* 542 N.W.2d 556 (Iowa 1996), and *State v. Krebs,* 562 N.W.2d 423 (Iowa 1997).

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law: **Yes** first violation – Revocation 180 days (90 days mand;.); second or subsequent violation[448] (within 12 years) – Revocation l year (mand)
Persons Under 21 Years Old -> .02 but < .08 (BAC/BrAC/UrAC first violation – Revocation 60 days; second or subsequent violation (within 12 years) – Revocation

Administrative Per Se Law: 90 days (mand) §§321J.2A and 321J.12(5) DWI defendants under 21 years old are not eligible for restricted driving privileges. §§321J.4(9) and 321J.20(2) 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)
Under §§321.210 and 321.212, a person's license may be suspended for not more than 1 year if that person "committed" an offense usually requiring license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

Post DWI Conviction
Licensing Action:
Type of Licensing Action First offense – **Revocation**; second offense (within 12 years)
(Susp/Rev): **Revocation; third** and subsequent offenses (within 12 years) – **Revocation**; Any DWI offense where there has been a serious injury – Revocation §§321.12, 321J.2(2)(a) and (3) and 321J.4

Term of License
Withdrawal
(Days, Months, Years, etc.) First offense – **180 days – 1 year**; second offense (within 12 years)[449] – 2 years; third and subsequent offenses (within 12 years.) – **6 years** DWI offense involving serious injury – **1 year**[450] §§321J.2(2)(a) and 321J.4 DWI offense involving death – 6 years – first offenders

[448] A first offender may participate in a substance abuse awareness program, §321J.25(4)

[449] A previous offense includes either an admin. per se action or an implied consent law violation. §321J.4(1)

[450] 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.§321J.20 The court is prohibited from issuing a temporary restricted license for employment purposes to offenders or admin. per se violators who are < 21 years old. §321J.4(9) Such a license is not available via the licensing agency. §321J.20(2)

with deferred judgments – **30 – 90 days.**

Post DWI Conviction
Mandatory Minimum
Term of Withdrawal: First offense -**30 days** (60 days if the offender was < 21 years old) **90 days** if there was a chemical test refusal; second offense – 1 **year; third** and subsequent offenses **– 1 year**§§321J.4 and 321J.20 DWI involving death – 2 years 321J.4(6). Deferred judgments-**30 days**

Rehabilitation:
Alcohol Education: **Yes First** and subsequent offenses §§321J.2(2)(a), 321J.3, 321J.17(2) and 321J.22

Alcohol Treatment: Yes I. Based upon a substance abuse evaluation, a court may order a DWI offender to attend a treatment program. Such a program could include inpatient treatment. The time the offender spends in this inpatient treatment program is credited towards their sentence. §321J.3
II. Under separate provisions of law, the court may commit a subsequent offender, as a condition for suspending a sentence, to an inpatient treatment program for alcoholism or drug addiction. Again, the time the offender spends in this program is credited towards their sentence. §321J.3(2)
III. In addition, under §901 .5(8), the court may order a defendant to complete a treatment program pursuant to an evaluation for alcohol or drug abuse conducted under §901.4A.

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **No**
Impoundment or Immobilization. For a second or sub offense, the vehicle owned and used by the

defendant in the offense "is subject to either impounded or immobilized for either the period of the driver's license rev or for 180 days whichever is longer[451] §321J.4B(2)(a), (5)(d),
Miscellaneous Sanctions (7)(a) and (7)(b)
Not Included Elsewhere: I. **Ignition Interlock.** (1) A DWI offender may be required to install ignition interlock devices on the vehicles they own. (2) A second 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 second or

[451] 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)

	subsequent offender, the State shall require such person to install ignition interlock devices on all of the vehicles they own for 1 year. §§321J.17 and 321J.4 II. Persons sentenced to the county jail may be assigned "home detention" instead of incarceration. §356.26 III. (1) A second or subsequent offender is prohibited from either purchasing or registering a motor vehicle during impoundment, immobilization or license revocation. (2) During this period, a vehicle cannot be sold or have its title transferred. §321J.4B(11)(a)(1)(2)
Other Criminal Actions Related to DWI:	
Homicide by Vehicle: Has Such a Law:	**Yes** If death is unintentional and is related to State 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 years** §902.9(4) Class C felony – Not more than **10 years** §902.9(3) Class B felony – Not more than **25 years** §902.9(1)
Mandatory Minimum Term:	If death is related to reckless driving – 10 years [452] §902.12 If death is related to drunk driving – **25 years**[453] §902.12
Fine ($ Range):	Class D felony – $750 to $7,500 §902.9(4) Class C felony – $l,000 to $10,000 §902.9(3) Class B felony – None
Mandatory Minimum Fine:	Class D felony – $750; Class C felony – $l,000
Administrative Licensing Action:	
Type of Action:	**Revocation** §§321.209(1), 321J.4(5) and 707.6A(1)(a)
Length of Term of Licensing Withdrawal:	**1 year** §321.212(l)(a) 6 years if DWI §707.6A(1)
Mandatory Action --Minimum Length of License Withdrawal:	**1 year** §321.212(1)(a); 2 years if DWI related Restricted driving privileges are available after 2 year revocation period.[454] §§321J.4(5) and (8), 321J.20(2) and 707.6A(1)

[452] A surcharge of 30 percent of the fine actually imposed is assessed against any person who is convicted of a State criminal offense. §911.2

[453] A person is not eligible for parole or work release. However, his/her sentence may be reduced for "good conduct time." §902.12

[454] I. It is a simple misdemeanor to operate a CMV during a CDL disqualification. The sanctions for this offense are a jail term of not more than 30 days or a fine of $50 to $500 and an additional disqualification period that is to equal to the original. §§321.218(5) 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: First violation – 90 days; second violation (within 10 years) – 1 year; third and subsequent violation (within 10 years) – 3to 5 years. §§321.208, 321.208A and 805.8A

Other:	**Civil Penalty**. There is a civil penalty of $200 (if the offender is ≤ 19 years 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 For DWI related deaths, the offender may be required to attend either alcohol education or treatment programs. **Special License Suspension.** Prior to an adjudication of a person for vehicle homicide related to either reckless driving or drunk driving, the license is suspended until the completion of the judicial proceedings. If not convicted, the license is reinstated. §321.210D In addition to any other pecuniary damages, an offender must pay up to $150,000 in restitution to a victim's estate. §910.3B and *State* v. *Klawonn,* 609 N.W.2d 515 (Iowa 2000) §707.6A
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense</u>:	
Sanction – Criminal:	Serious misdemeanor – Not more than one year
Imprisonment (Term):	§§321J.21 and 903.1(1)(b)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	$1,000 to $1,500 §§321J.21 and 903.1(1)(b) There is also a Civil Penalty of $200. §321J.17
Mandatory Minimum Fine:	$1,000 §321J.21
Administrative Licensing Actions:	
Type of Licensing Action	Suspension or revocation §321J.21
Length of Term of License Withdrawal Action:	Original suspension/revocation extended an additional like period §321J.21
Mandatory Term of License Withdrawal Action:	**None** §321J.21

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 years old. §702.5 I. The Iowa Supreme Court has held that a parent can be charged with child neglect (recklessly exposing his/her child to a danger), a Class C felony, if while transporting the child, the defendant operates a motor vehicle in an intoxicated condition. §726.3 and *State v. Caskey,* 539 N.W.2d 176 (Iowa 1995), *State v. Friend* 630 N.W.2d 843 (Iowa. App. 2001) II. There is the possibility that general criminal law provisions concerning child endangerment may apply as well. 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 seriously injured in which case it is a Class C felony or unless the child is less than seriously injured in which case it is a Class D 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 years {Note: Normally, for a Class B felony conviction, a person is subject to an imprisonment term of not more than 25 years. 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 years and/or a fine of not more than $10,000; and, aggravated misdemeanor -incarceration for not more than 2 years and/or a fine of not more than $5,000 §§726.6A and 902.9

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** 21.555
Grounds for Being Declared an Habitual Offender:	Three or more serious offenses (within 6 years), or six or more minor offenses (within 2 years) 321.555
Term of License Rev While Under Habitual Offender Status:	If based on serious offenses – **two to six years**[455]; if based on minor offenses – **one year** 321.560
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	Aggravated misdemeanor §§321.561 and 903.1
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **two years** 903.1
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$500 to $5,000**[456]
Mandatory Minimum Fine ($):	**$500** appears to be mandatory
Licensing Actions (Specify):	Same as for driving while revoked.

Other State Laws Related To Alcohol Use:

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

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

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §§123.3(19), 123.47, 123.49(2)(h) and 123.59
Minimum Age (Years) Possession:	**21** There are exemptions for medical reasons, employment and home use with parental consent. §123.47
Minimum Age (Years) Consumption:	**None**

[455] I. If habitual offender status is based only on the operation of vehicles while the 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, that person may 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 his/her vehicle(s) and (3) the minimum period of license revocation has expired. §§321.215, 321.560 and §321J.4(98) This scheme was held constitutional. *Iowa Dept. of Transp. v. Pottawattamie Cty.,* 592 N.W.2d 41 (Iowa 1999)

[456] There is a **civil penalty of $200** (if the offender is 19 years old, the civil penalty is $50). §321.218A

Dram Shop Laws and Related Legal Actions: State Has a Dram Shop Law (Yes/No):	**Yes** §123.92[457]
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes** *Lewis v. State,* 256 N.W. 2d 181 (Iowa 1977), and *Haafke v. Mitchell,* 347 N.W.2d 381 Law (Iowa 1984)
	Yes Limited Liability limited to injuries caused by minors (persons under the legal drinking age) who are knowingly served alcoholic beverages by social hosts. In order to be liable, the social host must "physically" serve alcoholic beverages to the minor. §§123.49(1) and 123.92[458]
Dram Shop Actions-Social Hosts:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Simple misdemeanor §§123.49(1), 123.50(1) and 903.1(1)(a)
Term of Imprisonment:	Not more than 30 days
Fine ($ Range):	$50 to $500 ($50 fine appears to be mandatory)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension or revocation**[459] §§123.39, 123.40 and 123.50(2)
Length of Term of License Withdrawal:	**Suspension** – not more than 1 year 123.39(1)(a) **Revocation** – 2 years §123.40
Civil Penalty (Fine):	Not more than $1,000 per violation §123.39(1)(a).
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Persons Under the Minimum Legal Drinking Age:	

[457] 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), and *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)

[458] 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)

[459] 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)

Type of Criminal Action:	**Simple misdemeanor** (a scheduled violation) §§123.3(19), 123.47, 123.49(2)(h), 123.50(1) and 805.8(10)(a)
Term of Imprisonment:	**None**
Fine ($ Range):	Licensee (Permittee) – $1,500 §805.8(10)(a) Employee of Licensee (Permittee) – $500[460]§805.8(10)(a)

Administrative Actions
Against Owners of Establishments
That Serve Alcoholic Beverages to Persons Under the
Minimum Legal Drinking Age[461]and[462]:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes first offense – None; second offense (within 2 years) – Suspension; third offense (within 3 years) – **Suspension** fourth offense (within 3 years) – **Revocation** §§123.39[463], 123.40 and 123.50(3)
Length of Term License Withdrawal:	First offense – None. Second offense (within 2 years) – 30 days; third offense(within 3 years) – 60 days; fourth offense (within 3 years) – 2 years **Civil Penalty. Second** offense (within 2 years) or third offense (within 3 years) – $1,500 §123.50(3)(b) and (c) **Comment:** This civil penalty appears to apply only to licensees (permittees).

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** Drivers and passengers §§321.284 and 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 a motor

[460] For a first 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 days. §123.50(3)(a)

[461] 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 year 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)

[462] Section 123.91 provides for additional sanctions for persons who violate the liquor laws. For a second offense, a person commits a serious misdemeanor; the sanctions for this offense are jail term of not more than 1 year 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 years and/or a fine of not more than $5,000 (§903.1(2)).

[463] Sec. §123.59 also makes it illegal to sell alcoholic beverages to persons under 21 years old. It is a serious misdemeanor (first offense) to violate §123.59 and the sanctions for this offense are jail term of not more than 1 year and/or a fine of not more than $1,000 (§903.1(1)(b)).

home, mobile home, travel trailer or fifth-wheel travel trailer. §321.284A(2)

Anti-Consumption Law: **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…or in any public place…"

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):	**≥.08**[464] §8-1567(a)(1), (a)(2) and (q)(1); persons under 21, **≥.02** §8-1567a. Violation of §8-1567a is not a criminal offense – civil penalties only. *State v. Shuster,* 46 P.3d 1140- (Kan.2002)
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) and (5)
Other:	A BAC/BrAC **≥.08** is *prima facie* evidence that the defendant was under the influence of alcohol. §8-1005(b) No person who is an habitual user of narcotics shall operate or attempt to operate a motor vehicle. §8-1567(b)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** §§ 8-1001.(a), 8-1012,
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[465] §8-1001(b) {Except an arrest is not required if the person has been involved in a vehicle accident or collision resulting in property damage, personal injury or death.}
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §8-1001(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §8-1001(f) and *State v. Rubick,* 827 P.2d 771 (Kan. App. 1992)
Other Information:	A blood test may be administered without the driver's consent in situations where there is probable cause of any DWI offense and there was either a serious injury or the death of another person[466]. §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)

[464] Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§8-1013(a) and 1567(r)(1)

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

[466] Based on §8-11001(a) and (b), a blood test of an unconscious driver involved in an injury-causing accident may be taken without consent or an arrest. However, probable cause is needed. *State v. Murry,* 21 P. 3d 528 (Kan. 2001)

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.

Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** Alcohol and Drug Evaluation required §§8-1008(c) and (d), 8-1567

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) and 21-4503(4), $90 if a person pleads guilty or no contest under the uniform fine schedule. §8-2118(c)

Administrative Licensing Action (Susp/Rev): **None**

Other: **None**

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): **None**

Administrative Licensing Action (Susp/Rev): First occurrence- **Suspension – 1 year** (mand); 2d occurrence- **Suspension – 2 years**; 3d occurrence- **Suspension – 3 years** (mand); fourth occurrence– suspension **– 10 years**; fifth or subsequent occurrence- **Permanent Revocation** §§8-1002(a) and 8-1014(a)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment: First offense (Class B misdemeanor) – **48 consecutive hours to 6 months**; second offense (Class A misdemeanor) – **90 days to 1 year**; third and subsequent offenses (felony) – **90 days to 1 year** §§8-1567(d), (e), (f) and (g)

Mandatory Minimum Term: First offense – **48 consecutive hours**; second offense **-5 consecutive days** (or 48 con hours, then work release or house arrest); third and subsequent offenses – **90 days** (or 48 con hours, then work release or receive house arrest); fourth or subsequent offense – **90 days** (or 72 con hours, then work release.)§8-1567(d), (e), (f) and (g).
Note: I. Under the DWI law, "imprisonment" includes "any restrained environment" under the control of a court and law enforcement agency". §8-1567(r)(2). However, incarceration for a felony DWI offense is not to be served in a facility operated by the State secretary of corrections. §21-4704(i). II. All offenses committed by a person during a lifetime are considered in determining the number of priors. §8-1567(l)(3).

Fine:

Amount ($ Range): First offense – $**500 to $1000**; second offense – $**1000 to $1500**; third and subsequent offenses (– $**1500 to $2500**; fourth or subsequent offense – **$2500.** §8-1567(d), (e) (f) and (g).

Mandatory Minimum Fine ($):[467] First offense – **$500**; second offense – $**1000**; third offense – **$1500;** fourth or subsequent offense – $**2500.** §8-1567(d), (e), (f) and (g). Community service may be performed in lieu of a fine. §8-1567(j).

Other Penalties:

Community Service: First offense – **100 hours** (in lieu of imprisonment) §8-1567(d); second and subsequent offenses – may be ordered in lieu of fine. A $5 credit is allowed on the fine for every hour of community service. §8-1567(i)

Restitution (e.g., Victim's Fund) **Yes** (1) Direct compensation by defendants to victims as a condition of probation or parole. §§8-1019(c), 21-4603(b)(3), 21-4610(d)(1) and 22-3717(l). (2) Victims may also receive restitution for damages from the State's crime victims' compensation fund. The maximum amount that can be received from this fund is $25,000. §74-7301 et seq.

Other: **"Ignition interlock"** device use required for one year after license reinstatement for 2d, 3d, or fourth offense. §8-1014(b)(2)

Assessments: Unless indigent, an offender must pay an assessment of $**150**. This assessment is deposited into an alcohol and drug safety fund. §8-1008(e). II. An offender is assessed **$9** in addition to any fine; this assessment is used to fund various law enforcement and crime victim activities. §12-4117(a).

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **Yes ≥.08** (BAC/BrAC §§8-1013(a) and (h), 8-1014(b) and 8-1015(a) First occurrence- Suspension **30 days** (mand) and **330 days** restricted driving privileges ; 2d, 3d, fourth occurrence– suspension **1 year** (mand) followed by ignition interlock for 1 year; fifth and subsequent occurrence-**Permanent Revocation** (mand) §§8-1001, 8-1002 and 8-1014(b) and 8-1015(c). **Persons under 21: ≥.02 but<.08: first** occurrence– suspension **30 days** (mand) and **330 days** restricted driving privileges; second or subsequent occurrence or BAC >.08- Suspension **1 year** (mand). §§8-1014(c), 8-1015 and8-1567a(f).

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): First – fourth occurrence[468]- **Suspension;** fifth or sub. occurrence) – **Revocation** §§8-1001, 8-1002 and 8-1014(b)

Term of License Withdrawal

[467] An "assessment" of $110 is levied against persons who are either convicted of a DWI offense or who enter a DWI diversion program. The "assessment" funds are used to support community-based alcohol and drug safety action programs. §8-1008(e

[468] An "occurrence" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction. §8-11013(e

(Days, Months, Years, etc.): First occurrence -**30 days; second** – fourth occurrence) – **1 year** followed by use of an ignition interlock for 1 year; fifth or sub. occurrence – **Permanent Revocation**

Mandatory Minimum Term of Withdrawal: First occurrence ¯ **30 days** (mand) and **330 days** restricted driving privileges; second – fourth occurrence- **1 year** (mand) followed by use of an ignition interlock for 1 year; fifth or subsequent occurrence – **Permanent Revocation** (mand) §§8-1001, 8-1002, 8-1014(b) and 8-1567(m) **First offenses** – A person's driving privileges may be restricted to operating a motor vehicle for educational, employment and medical purposes for 90 days – 1 year or the court may require the person to operate only vehicles equipped with an **"ignition interlock"** device. §§8-292 and 8-1015

Rehabilitation:

Alcohol Education: First offense – As a condition of probation, parole, etc., a defendant must complete either an alcohol education or treatment program. §8-1567(d). Attendance at an alcohol education or treatment program could be a condition for issuing a restricted license. §8-1015

Alcohol Treatment: Second offense – As a condition of probation, suspended sentence or parole, an offender shall be required to complete an inpatient or outpatient treatment program. Third offense – As a condition or parole, an offender may be required to complete an inpatient or outpatient treatment program. fourth or subsequent offenses – Following release from prison, the offender is required to participate in an inpatient or outpatient program during a 1-year mandatory post release supervision program. §8-1567(e), (f) and (g).

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **No**

Terms Upon Which Vehicle Will Be Released:

Other: **License Plate Revocation:** For a fourth or subsequent DWI conviction, the license plate of the vehicle used in the offense may be revoked for 1 year. §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. Second and subsequent DWI offenders must, nevertheless, serve at least 48 consecutive hours of imprisonment. §8-1567(g) Any city or county may enact ordinances allowing or requiring courts to order a convicted person's vehicle to be impounded for a period not to exceed one year and for the driver to pay all towing and

storage fees. § 8-1567(o)[469]

Injury to a Pregnant Woman: It is a Severity Level 5 Person felony to injure a pregnant woman that causes a miscarriage while violating the DWI law. The sanctions for this offense are an imprisonment term of 50 to 55 months and/or a fine of not more than $300,000. §§ 21-3441, 21-4503a(a)(2) and 21-4704.

Child Endangerment: If at the time of the offense, a person was driving with a passenger <14, the incarceration period is increased by 1 month consecutive to any other sanction, to be served in jail or as house arrest, work release of other conditional release. §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 -Severity Level 4 Person Felony §21-3442.

Vehicle Homicide- Death caused by operation of a vehicle in a manner that causes unreasonable risk. Class A Personal Misd. §21-3405

Criminal Sanction:

Sanctions:

Imprisonment (Term): Severity Level 4 Person Felony- **62 to 69 months.**[470]

Class A Misdemeanor – Not more than **1 year** §§21-4502 and 21-4704

Mandatory Minimum Term: **None**

Fine ($ Range): Severity Level 4 Person Felony – Not more than **$300,000.** §8-4503(a)(2)

Class A Misdemeanor – Not more than **$2,500.** §21-4503(b)(1)

Mandatory Minimum Fine: **None**

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[469] (2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease. § 8-1567.(k)

[470] For second or third convictions, the incarceration sanction may be increased by twice or three times these time periods respectively. §21-4504(a) and (b)

Administrative Licensing Action:	
Licensing Authorized and Type of Action:	DWI Related Involuntary Manslaughter Suspension[471] DWI Related Involuntary Manslaughter-` Vehicle Homicide – Revocation §8-254
Length of Term of Licensing Withdrawal:	DWI Related Involuntary Manslaughter- same as for DWI offenses. Vehicle Homicide – 1 **year** §8-256
Mandatory Action--Minimum Length of License Withdrawal	DWI Related Involuntary Manslaughter-Mandatory suspensions are the same as for DWI offenses. Vehicle Homicide – No**ne.** Restricted driving privileges may be granted. §8-254(b)
Other:	**Assessment.** For vehicle homicide (§21-3405), an offender is assessed $9 in addition to any other fine. §§8-249(b) and 12-4117.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	§8-262
Sanction:	
Criminal:	
Imprisonment (Term):	First offense (Class B Non-person Misdemeanor) – Not more than **6 months**; second or subsequent offense (Class A Non-person Misdemeanor) – Not more than **1 year**; §§8-262, 21-4502 and 21-4704.
Mandatory Minimum Term of Imprisonment	:Second and subsequentoffense – **5 days**[472and473] §8-262(a)(3)

[471] 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 Non-person Felony, the grid provides for an imprisonment sanction of **7 to 9 months** but "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 **62-69 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, 21-4718 and 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 Class B misdemeanor 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 months and/or a fine of not more than $1,000. §§8-2,132(b) and (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 form operating a CMV for the following periods: first violation – 90 days; second violation – 1 year; and, third or subsequent violation-3 years. These disqualifications appear to be mandatory. §8-2,136(c).
[472] *State v. Harpool,* 788 P.2d 281 (Kan. 1990)
[473] A 90-day 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), and Atty. Gen. Op 88-23 (Feb. 19, 1988) and *State v. Gee,* 8 P. 3d 45 (Kan. App. 2000)

Fine ($ Range):	First offense – Not more than **$1,000**; second offense – Not more than **$2,500**; third and subsequent offense – Not more than **$100,000.** §21-4503a(a)(3)and(b)(1)and(2)
Mandatory Minimum Fine:	**$100** appears to be mandatory. §8-262(a)(3)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Suspension or revocation §8-262(b)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥.04, (2) is under the influence of alcohol or any drug or (3) refuses 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 violations, the "disqualification" is for life (10 years mand). A person, operating a CMV with either an alcohol concentration ≥.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 con hours to 6 months and/or a fine of $200 to $500. 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 the system must be placed "out-of-service" for 24 hours. §§8-1001(g) and (j), 8-1002, 8-2,128(b), (f), (h), (i), and (s), 8-2,136, 8-2,137, 8-2,142 and 8-2,144

Length of Term of License Withdrawal Action:	The original suspension/revocation is extended for an additional period of **90 days**. §8-262(b)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §§8-284 and 8-285
Grounds for Being Declared an Habitual Offender:	Three serious offenses within 5 years. §8-285(a)
Term of License Rev While Under Habitual Offender Status:	**3 years** §§8-286 and 8-288
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	Class A Misdemeanor §8-287
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**7 to 9 months.** §21-4704
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$100,000.** §21-4503a(a)(3)
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	

Driver:	**N/A**
Vehicle Passengers:	**N/A**
Pedestrian:	**N/A**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §§21-3610, 41-102(q), 41-715, 41-727(a) and 41-2701(h)
Minimum Age (Years) Possession:	**21** §§41-715 and 41-727(a). There is an employment exception. §47-2704(e)
Minimum Age (Years) Consumption:	**21** §41-727(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) and *Meyers v. Grubaugh,* 750 P.2d 1031 (Kan. 1988).
Dram Shop Actions-Social Hosts:	**No.** *Thies v. Cooper,* 753 P.2d 1280 (Kan. 1988)[474] 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:	Misdemeanor §41-715[475]
Term of Imprisonment:	Not more than **30 days.** §41-715
Fine ($ Range):	**$100 to 250.** §41-715

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes. Revocation**[476] §§41-314, 41-2611(f) and 41-2626
Length of Term of License Withdrawal:	Not specified in the statute **Civil Fine.** A "civil fine" on not more than **$1,000** may also be imposed. §41-328(a)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons

[474] 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

[475] These sanctions only apply to the service of alcoholic beverages containing more than 3.2 percent alcohol to intoxicated persons. §§41-102(b) and 41-715

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

Under the Minimum Legal Drinking Age:	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 days, a fine of from $100 to $250, a "civil fine" of not more than $1,000 and/or license suspension or revocation. §§41-2615, 41-2626 and 41-2633a(a).
Type of Criminal Action:	Class B Person Misdemeanor (Furnishing alcoholic beverages to any person under 21 years of age) §21-3610
Term of Imprisonment:	Not more than **6 months.** §21-4502(1)(b)
Fine ($ Range):	Not more than **$1,000.**[477] § 21-4503(2)(b)

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

Withdrawn (Yes/No):	**Yes. Suspension or Revocation** §§41-2611(f), 41-2626 and 41-2708(a)
Length of Term License Withdrawal:	Not specified for alcoholic beverages with an alcoholic content of more than 3.2 percent. For cereal malt beverages (alcoholic beverages with an alcoholic content below 3.2 percent), license revocation for 6 months.
Anti-Happy Hour Laws/Regulations:	**Yes.** §§41-2640(a)(3) and 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; Exception for persons in passenger compartment of recreational vehicles or buses §8-1599(b)(3)
Anti-Consumption Law (Yes/No):	**Yes (Limited)**[478] Driver and passengers §41-719(a)

[477] Mandatory minimum fine of $200. §§21-3610

[478] The law only applies to the consumption of alcoholic beverages which have an alcoholic content >3.2 percent alcohol by weight. i.e., the law does not prohibit the consumption of cereal malt beverages with an alcoholic content ≤3.2 percent alcohol by weight

STATE:	**KENTUCKY**
General Reference:	Kentucky Revised Statutes
Basis for a DWI Charge:	
Standard DWI Offense:	Under the Influence of Alcohol §189A.010(1)(b)[479]
Illegal Per Se Law (BAC/BrAC):	≥ **.08**[480and481] §§189A.010(1)(a) and 189A.005(1) Persons Under 21 Years Old. ≥ **.02** §189A.010(1)(e)[482] and (6)
Presumption (BAC):	**None**[483]
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Substance or (2) a combination of alcohol and any substance which may impair one's driving ability §189A.010(l)(c) and (d)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** §§189A.100 and 281A.230 (Commercial Motor Vehicle Operators)
Implied Consent Law: Arrest Required (Yes/No):	**No** §189A.103(1) and (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):	**Yes** §189A.103(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §189A.105(2)(a)(1) and *Commonwealth v. Hager,* 702 S.W.2d 431 (Ky. 1986)
Other Information:	If a person has been arrested for any 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 and *Combs v. Commonwealth, 965* S.W.2d 161 (Ky. 1998), *Commonwealth v. Morris* 70 S.W.3d 419 (Ky. 2002) If a person has an alcohol concentration > .15, that person must be detained at least 4 hours following the arrest. §189A.l10
Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:	
Blood:	**Yes** §189A.103(1)
Urine:	**Yes** §189A.103(1)
Other:	**None**

[479]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) and (5), 189.520 and 189.990(1).

[480]This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

[481] Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§189.005(1) and 189A.005(1)

[482] Prior law that also established a special offense against persons < 21 years old who operate a motor vehicle with BAC/BrAC ≥ .02 was held not to violate a persons' Federal or State constitutional rights to equal protection of the law. *Commonwealth v. Howard,* 969 S.W.2d 700 (Ky. 1998)

[483] 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 ≥ .080.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**Yes** Plea bargaining is not allowed if any one of the three following conditions exist: (1) a defendant ≥ 21 years old has a BAC/BrAC ≥ **.08**, (2) a defendant < 21 years old has a BAC/BrAC ≥ **.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** A DWI offender must undergo an alcohol assessment as part of the mandatory alcohol education or treatment program. §189A.040

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	**None**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	If a person is **NOT** convicted of a drunk driving offense but refused to submit to a chemical test under the implied consent law, that person is subject to the same administrative licensing sanctions as if they had been convicted of such offense. §§189A.070(1) and 189A.107(2) The court shall suspend the license of a person who refuses during the pending of the action. 189A.107(a)

Sanctions following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	First offense (Class B misdemeanor) – **48 hours to 30 days**[484]; second offense within 5 years (Class A misdemeanor) – **7 days to 6 months**; third offense within 5 years) Class A misdemeanor) – **30 days to 12 months**; Fourth and subsequent offense within 5 years) (Class D felony) – **1 to 5 years** §§189A.010(5),532.020 and 532.060 Persons Under 21 Years Old. **BAC ≥ .02 but < .08 – None;** if BAC is ≥ .08, then sanctions of 189A.010(5) apply. 189A.010(7)

[484] **Weekend Confinement.** For either a first or second offense, a defendant, except for any mandatory 48-hour jail term that has to be served, may be allowed to serve the imprisonment term on weekends provided they spend at least 24 hours in confinement. §189A.030.

Mandatory Minimum Term:	First offense – **48 hours/2 days**[485] (4 days if there are aggravating circumstances); second offense (within 5 years) – **7 days** (with 48 con hrs; 14 days if there are aggravating circumstances); third offense – **30 days** (with 48 con hrs; 60 days if there are aggravating circumstances); fourth and subsequent offenses – **120 days** (with 48 con hrs; 240 days if there are aggravating circumstances) §189A.0105(a) – (e) **Home Incarceration**. A person convicted of a misdemeanor may be able to serve the mandatory jail sanction via "home incarceration". §532.210 **Aggravating Circumstances**. A person who has been convicted of a drunk driving offense is subject to enhanced mandatory incarceration by committing one or more of the following aggravating circumstances during the offense: (1) Driving >30 MPH over the speed limit; (2) driving in the wrong direction on a limited access highway; (3) causing an accident that resulted in either a death or a serious bodily injury; (4) driving with a **BAC ≥ .18**; (4) refusing to submit to a chemical test under the implied consent law; or, (5) transporting a child <12 years old (**child endangerment**). §189A.010(11). But a first time DUI offender is not subject to enhancement where the aggravating circumstance is refusal to submit to a chemical test. *Commonwealth v. Gaitherwright* 70 S.W.3d 411 (Ky. 2002)
Fine:	
Amount ($ Range):	First offense – $**200 to $500**; second offense (within 5 years) – $**350 to $500**; third offense – $**500 to $1,000**; fourth and subsequent offenses – $**1,000 to $10,000** §§189A.010(5) and 534.030 Persons Under 21 Years Old. **≥ .02 but < .08 – $100 to $500** §189A.010(6)
Mandatory Minimum Fine ($):	**None**
Other Penalties:	
Community Service:	First offense – **48 hours to 30 days**; second offense (within 5 years) – **10 days to 6 months**[486]; third offense (within 5 years) – **10 days to 12 months** §189A.010(5) Persons Under 21 Years Old. ≥ **.02 but < .08-20 hours** in lieu of a fine 189A.010(6)
Restitution (e.g., Victim's Fund)	**Yes –** Victim's compensation board (§346.010 et seq.) Also, the court shall order a defendant to pay

[485] For a first offense, a defendant must be sentenced to one of the following sanctions: (1) 48 hours in jail; (2) a $200 fine; or (3) 48 hours of community service. §189A.010(5)(a) and (9)

[486] For second or third offenses not related to aggravating circumstances, the law seems to provide 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 days of community service for the mandatory term of incarceration. §189A.010(8)

	restitution directly to a victim as a condition of probation. §§532.358 and 533.030(3)
Other:	**Service Fee**. A DWI offender must pay a **$250** service fee in addition to any other fine. §189A.050. **Ignition Interlock.** At the conclusion of an offender's license revocation period, the court may require that person to operate only motor vehicles equipped with ignition interlock devices (with the exception of an employer's vehicles). This requirement lasts for the following periods following license revocation: first offense – **6 months**; second offense (within 5 years) – **12 months**; third or subsequent offense (within 5 years) – **30 months**. Second or subsequent offenders must wait at least 1 year from the start of the license revocation period before applying to the court for permission to use an ignition interlock device. This requirement may be used as an alternative to impounding the license plates of a second or subsequent drunk driving offender. §189A.340
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	At arraignment, the court shall suspend 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):	First and subsequent offenses – Revocation §189A.070(1)[487] Persons Under 21 Years Old. **> .02 but < .08– suspension** §189A.010(6)
Term of License Withdrawal (Days, Months, Years, etc.):	First offense – **30 to 120 days**; second offense – **12 to 18 months**; third offense – **24 to 36 months;** fourth and subsequent offense – **60 months** §189A.070 Persons Under 21 Years Old. **≥ .02 but < .08-30 days to 6 months** §189A.010(6)
Mandatory Minimum Term	

[487] Under §189A.070(4), a person under 18 years old convicted of a regular drunk driving offense has the license revoked until age 18 or as otherwise provided under §189A.070, whichever sanction is longer.

of Withdrawal: First offense – **30 days**; second offense – **12 months**; third offense – **24 months**[488]; fourth and subsequent offense – **60 months** §189A.070
Persons Under 21 Years Old. **≥ .02 but < .10-30 days**[489] §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 equipped with ignition interlock devices. This privilege may ONLY be granted after the expiration of any mandatory license revocation period; and is NOT available to a person subject to licensing action because of refusal to submit to a chemical test under the implied consent law. §189A.410
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** first offense – Participation in either an alcohol education or treatment program for 90 days is mandatory. §189A.040(1) costs to be paid by offender up to his ability.

Alcohol Treatment: For subsequent DWI offense convictions, the defendant must be sentenced to an alcohol or substance abuse treatment program for 1 year. §189A.040(2) and (3)

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: **Impoundment**. For either a second 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 not exceeding the period of license action. A hardship

[488] It may be possible for this offender to obtain hardship driving privileges after only 1 year provided that person agrees to operate motor vehicles equipped with ignition interlock devices. §189A.340(2)(b)(4)
[489] This sanction appears to be mandatory but the law is not clear on this point.

Double Jeopardy: 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 subjected to judicially ordered licensing prior to a DWI trial could 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)

exemption is available to other family members allowing only them to use the affected vehicles. §189A.085

Reimbursement. If a person is placed on probation or given conditional release from incarceration, the court may require payment to either an education or treatment program for drug or alcohol abuse or for periodic testing. The amount of this payment is not to exceed the amount of any fine that could have been imposed for the offense. §533.030

Incarceration Costs. An offender may be required to reimburse the State or local government for incarceration costs. §§532.352 and 532.358

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC ≥ .04, (2) is under the influence of alcohol or a controlled substance or (3) has 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 years mand). A person who operates a CMV with a BAC/BrAC ≥ .04 but ≤ .08 is subject to a fine of not less than $20 and not more than $50. However, if the BAC/BrAC is > .08, that person is 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 the 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 operator's privilege to operate a CMV can be either suspended or revoked. For first refusal, the CMV privilege is suspended for one 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. The pre-trial and implied consent provisions of Ch. 189A also apply to CMV operators (§281A.220(2)). §§281A.010(2), (8), (10) and (11), 281A.190, 281A.210, 281A.220 and 281A.2102 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 provides a sanction for this prohibition. However, except as noted above for driving while suspended or revoked for a drunk driving offense, it is a Class B misdemeanor for a person to operate a motor vehicle while the license is either suspended, revoked or withdrawn; the sanctions for this offense are a jail term of not more than 90 days and/or a fine of not more than $250. §§186.620(2), 186.990(3), 532.090(2) and 534.040(2)(b

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law: **No**

But "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 Class C felony. §507.040(2) The sanctions for this felony are imprisonment from **5 to 10 years** and/or a fine of **$1,000 to $10,000**. §§532.060(2)(c) and 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: Even though this State does not have vehicle homicide statute, it nevertheless provides for mandatory license revocation for not less than 5 years for a conviction of manslaughter[490] resulting from the operation of a motor vehicle. §186.560(1)(a) *and* (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: §189A.090

Sanction:
Criminal:
Imprisonment (Term): I. First offense (Class B misdemeanor) – Not more than **90 days**[491]; second offense within 5 years – (Class A misdemeanor) – Not more than **12 months**; third and subsequent offense within 5 years – (Class D felony)**1 to 5 years** §§189A.090(2), 532.060 and 532.090
II. Also in Violation of the Drunk Driving Laws. First offense (Class A misdemeanor) – Not more than **12 months**; second offense within 5 years – (Class D felony) – **1 to 5 years**; third and subsequent
offense within 5 years – (Class D felony) – **1 to 5 years** §§189A.090(2), 532.060 and 532.090

Mandatory Minimum
Term of Imprisonment: **None**
Fine ($ Range): First offense – Not more than **$250**; second offense (within 5 years) – Not more than **$500**; third and subsequent offenses (within 5 years) – **$l,000 to $10,000** §§534.030 and 534.040
Also in Violation of the Drunk Driving Laws. First offense – Not more than **$500**; second offense (within 5 years) – **$l,000 to $10,000**; third and subsequent offenses (within 5 years) – **$l,000 to $10,000** §§534.030 and 534.040

[490] This could include either (1) manslaughter in the second degree (§507.040) or reckless homicide (§507.050). "Reckless homicide" is a Class D felony. The sanctions for a Class D felony are an imprisonment term of 1 to 5 years and a fine of $1,000 to $10,000. §§532.060(2)(d) and 534.030
[491] Under §50.095, a defendant may be assigned community service in lieu of incarceration.

Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	ALL offenses – Revocation §189A.090(2)
Length of Term of License Withdrawal Action:	I. First offense – **6 months**; second offense (within 5 years) – **l year**; third and subsequent offenses (within 5 years) – **2 years** §189A.090(2) II. Also in Violation of the Drunk Driving Laws. First offense – 1 year; second offense (within 5 years) – **2 years**; third and subsequent offenses (within 5 years) – **5 years** §189A.090(2)
Mandatory Minimum Fine:	**None**
Mandatory Term of License Withdrawal Action:	**Yes** As indicated above. After 1 year of revocation, second or subsequent offenders may move the court to have an ignition interlock device installed for the balance of the revocation §189A.090(4)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Other State Laws Related To Alcohol Use:	
Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Possible**[492]
BAC Chemical Test Is Given to 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 and 244.085
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**[493] §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

[492] Language in §189.590 requiring coroners to report on the circumstances surrounding fatal accidents may impliedly require such test, *Woosley v. Central Uniform Rental,* 463 S.W. 2d 345 (1971) or at least allow them. See OAG 82-590

[493] 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.

(Ky. 1987), and *Watts v. K, S and H,* 957 S.W.2d 233 (Ky. 1997)[494and495]

Dram Shop Actions-Social Hosts: **No**[496]

Other: **None**

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

Type of Criminal Action: First offense – **Class B Misdemeanor**; second and subsequent offense – **Class A Misdemeanor** §§241.010(2), 244.080(2) and 244.990(1)

Term of Imprisonment: First offense – Not more than **90 days**; second and subsequent offense – Not more than **12 months** §532.090

Fine ($ Range): First offense – Not more than **$250**; second and subsequent offense – Not more than **$500** §534.040

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Suspension or Revocation**[497] §§243.480, 243.490 and 243.500

Length of Term of License Withdrawal: **2 years** §243.100(1)(e)

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: First offense – **Class B Misdemeanor; second** and subsequent offense – **Class A Misdemeanor**§§241.010(2), 244.080(1)[498] and 244.990(1)

Term of Imprisonment: First offense – Not more than **90 days**; second and subsequent offense – Not more than **12 months** §532.090

Fine ($ Range): First offense – Not more than **$250**; second and subsequent offense – 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:

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[494] 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 underage 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.

[495] 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)

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

[497] 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 his/her discretion pay a fine. For retail licensees and all others, the fine is $50 per day the license would have been suspended; §243.480(1) For a second violation within 2 years, the license must be revoked or suspended. §243.500(4)

[498] 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)

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes – Suspension or Revocation** §§243.480, 243.490 and 243.500

Length of Term of License Withdrawal: **2 years** §243.100(1)(e)

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 and passengers except passengers riding in vehicles used for compensation (e.g., buses, taxis and limousine), recreational vehicles, motor homes or motor coaches. §189.530(2)

STATE:	LOUISIANA
General Reference:	West's Louisiana Statutes Annotated: Revised Statutes Note: Citations are to the Revised Statutes unless otherwise stated
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of alcoholic beverages[499]
Illegal Per Se Law (BAC):	§14:98(A)(1)(a)
Presumption (BAC):	≥ **.08**[500] §14:98(A)(1)(b) For Persons Under 21 Years Old. ≥**.02**[501] §14:98.1(A)[502] ≥ **.08** §32:662(A)(1)(c)
Types of Drugs/Drugs and Alcohol:	For Persons Under 21 Years Old. ≥ **.02** §32:662(A)(1)(d)
Other:	Under the influence of **Any Drug** §§14:98(A) and 40:964
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	
Implied Consent Law:	**No**
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**[503] (Criminal and civil cases} §§32:666(A)(3), 13:3714(B)
Other Information:	Under §32:666(A), if there is probable cause that any drunk driving offense occurred and a driver has been involved in a traffic fatality or accident resulting in a serious bodily injury, the driver may not refuse to submit to a chemical test. A law enforcement officer may direct that a chemical test be performed (i.e., that a blood sample be obtained). Such a test (or sample) may be performed (or obtained) even without the consent of the driver. *State v. Hebert,* 559 So.2d 821 (La. App. 3 Cir. 1990) (interpreting an earlier version of the law requiring arrest).

[499] 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)

[500] Standard: "Percent by weight" based on grams of alcohol per 100 cubic centimeters of blood. §§14:98(A)(1)(b), 14:98.1(A) and 32:662(A)(2)

[501] 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 .02 percent or more by weight...." §14:98.1(A) Note: If the person's alcohol concentration is ≥ .08, they must be charged under the regular illegal per se law. §14:98.1(B)

[502] This law, that makes it a criminal offense for a person under 21 years old to operate a motor vehicle with a BAC of ≥ .02, was held not to 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)

[503] 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)

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**[504]
Anti-Plea-Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Required for third and subsequent offenses. §14:98(D), (E) and (G) Persons <21 years old charged with driving with an alcohol concentration ≥ .02. §14:98.1(E)
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:	
Refusal to Take Implied Consent Chemical Test	
Criminal Sanction (Fine/Jail):	**None,** except if arrested for driving while intoxicated after refusing to submit to such test on two previous occasions {R.S.14:98.2}[505]

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from (i.e., their CDL is suspended, revoked or cancelled for) operating a CMV for minimum period of 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC ≥ .04 (Standards: 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.), (2) is under the influence of alcohol or a controlled substance or (3) refuses 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 years mand). It is a criminal offense (1) to operate a CMV with BAC/BrAC/UrAC ≥ .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 months and a fine of $10 to

[504] Code of Criminal Procedure Article 892.1(C) and (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 within 2 years. 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.

[505] [1]B.(1) Penalty: fined not less than $300 nor more than $1,000, and shall be imprisoned for not less than 10 days nor more than 6 months.
(2) Imposition or execution of sentence shall not be suspended unless one of the following circumstances occurs:
The offender is placed on probation with a minimum condition that he serve 2 days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program.
The offender is placed on probation with a minimum condition that he perform four 8-hour days of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program, participate in a court-approved substance abuse program, and participate in a court-approved driver improvement program. R.S. § 14:98.2

$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) and (5), 32:414.2 and 32:427(A)(2)

Administrative Licensing Action (Susp/Rev):

First refusal – **Suspension 90 days** (30 days mand in situations where the use of an ignition interlock device has been authorized.[506] Otherwise, a hardship license may be issued after the 90 days mand period.); second or subsequent refusal (within 5 years) or any refusal related to either a fatality or serious bodily injury– suspension **545 days** (mand except in situations where the use of an ignition interlock device has been authorized. §§32:667(B)(2) and (4), 32:668(B)(1), (2), and (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) cert denied 570 So.2d 1119 (La. 1991) *Schott v. Dept. of Public Safety,* 556 So.2d 999 (La. App. 3 Cir. 1990), and *Chalker v. Dept. of Public Safety and Corr.,* 593 So.2d 948 (La. App. 4 Cir. 1992)

Refusal by Persons Under 21 Years Old. Suspension for **180 days** (90 days mand) §§32:667(B)(2) and 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)

Sanctions Following Conviction for DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

First offense: Fined not less than $300 nor more than $1,000, and shall be imprisoned for not less than 10 days nor more than 6 months. Imposition or execution of sentence shall not be suspended unless:
(a) The offender is placed on probation with a minimum condition that he serve 2 days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program or
(b) The offender is placed on probation with a minimum condition that he perform four 8-hour days of court-appointed community service activities, at least half of which shall consist of participation in a litter abatement or collection program participate in a court-approved substance abuse program , and participate in a court-approved driver improvement program . R.S. §14:98(1).

Blood alcohol concentration of .15 percent – at

[506] This exception **only** applies if the driver has been arrested for either a first or second drunk driving offense. §32:378.2(A)(2)(iii)

least 48 hours of the sentence shall be served without benefit of parole , probation or suspension of sentence. R.S. §14:98 (2)(a)

Second offense – Fined not less than $750, nor more than $1,000$1,000, and shall be imprisoned for not less than 30 days nor
more than 6 months, with at least 48 hours of the sentence imposed shall be served without benefit of parole, probation or suspension of sentence. §14:98 C. (1)

Blood alcohol concentration of 0.20 percent – fined $1,000$1,000 and at least 96 hours of the sentence shall be served without the benefit of parole, probation or suspension of sentence. §14:98 (2)(b)

Second offense when the first offense was for the crime of vehicular homicide or first degree vehicular negligent injuring: imprisoned with or without hard labor for not less than 1 year nor more than 5 years, and fined $2,000. At least 6 months of the sentence of imprisonment imposed shall be without benefit of parole, probation or suspension of sentence. §14:98 (b)(3)

Third offense: Fined $2,000 and imprisoned with or without hard labor for not less than 1 year nor more than 5 years, with at least 30 days of the sentence imposed without benefit of parole, probation or suspension of sentence, but the remainder of the imprisonment may be suspended if the offender is required to undergo an evaluation of the offender's substance abuse disorder. §14:98 D (1)(a)
Following the evaluation, offender to be sentenced to an inpatient substance abuse facility for a period of not less than 4 weeks nor more than 6 weeks. §14:98D(1)(b) and may be sentenced to additional outpatient substance abuse treatment for up to 12 months. §14:98D(1)(c). Upon successful completion of the inpatient substance abuse treatment the offender shall be sentenced to home incarceration for not less than the period of time remaining on the offender's suspended sentence. R.S. § §14:98(D)(1)(d), 14:98(D)(1)(b), (c) and (d) and (E)(1)(a)
In addition, the vehicle being driven by the offender shall be impounded and sold at auction. §14:98 (D)(2)(a) unless it was stolen, or the driver at the time of the violation was not the owner and the owner did not know that the driver was operating the vehicle while intoxicated. §14:98 D(2)(b) In addition, the vehicle shall be exempt from sale if all towing and storage fees are paid by a valid lienholder. §14:98 D(2)(c)

Fourth or subsequent offense: Imprisoned with or without hard labor for not less than 10 years nor

more than 30 years and fined $5,000. Sixty days of the imprisonment shall be imposed without benefit of parole, probation or suspension of sentence; the remainder shall be suspended and the offender required to undergo an
evaluation to determine the nature and extent of the offender's substance abuse disorder. §14:98E(1)(a) But if the offender has previously been required to participate in substance abuse treatment and home incarceration, the offender shall not be sentenced to substance abuse treatment and home incarceration for a fourth and subsequent offense, but shall be imprisoned at hard labor for not less than 10 nor more than 30 years, and at least 3 years of the sentence shall be imposed without benefit of probation, parole or suspension of sentence. §14:98E(4)(a)

Driver's license suspension and/or ignition interlock requirement:

First offense with a BAC of 0.20 or more: suspended for at least 2 years. But a restricted license may be granted during the entire period of suspension with ignition interlock.§14:98K(1)
Second offense: Ignition interlock for at least 6 months and during any period of suspension or additional period as determined by the court. §14:98 K(2)(a)
Second offense with a BAC of 0.20 or more: suspension for 4 years; restricted license allowed with ignition interlock during the first 3 years of the 4-year period of the suspension. §14:98 K(2)(b)
Third or subsequent offense: ignition interlock until completion of substance abuse treatment and home incarceration. §14:98 K(3)(a)

Special Note: For the purpose of sanction enhancement, a prior drunk driving offense includes drunk driving related injury and homicide offenses. §14:98(F) The time periods used to determine whether enhanced sanctions will be imposed on second 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 years 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 years of the present offense. Enhanced licensing sanctions for subsequent administrative per se violations are also based whether the prior violations occurred within 5 years of the present violation.
DWI Related Injury. I. A person is guilty of "vehicular negligent injuring" by injuring another, while operating motor vehicle either while under the influence of alcoholic beverages/drugs or with an alcohol concentration .08 or more. The sanctions for this offense are imprisonment for not more than 6 months 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 injure another, while operating motor vehicle either while under the influence of alcoholic beverages/drugs or with an alcohol concentration ≥ **.08**. The sanctions for this offense are imprisonment (with or without hard labor) for not more than 5 years 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 and Corrections, 609 So.2d 790 (La. 1992), and *State v. Sonnier,* 679 So.2d 1011 (La. App. 3 Cir. 1996)

Criminal Sanctions:

Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	
Restitution (e.g. Victim's Fund)	An offender must pay restitution to a victim where there is "actual pecuniary loss";[507] or where the victim has incurred costs in connection with a criminal prosecution. Code of Crim. Proc. Art. 883.2
Other:	**Chemical Test Fee**. A DWI offender must pay a fee of $75 for the purpose of covering the costs of administering a BAC chemical test. They also must pay a fee of $50 to defray the expenses of administering any conditions of probation or incarceration. Code of Criminal Procedure §887(C) and (D) **Child Endangerment**. A DWI offender is subject to the following mandatory sanctions if a child 12 years old or younger was a passenger in a vehicle driven by the offender at the time of the offense: first offense – **10 days** jail/**$125** fine; second offense – **30 days** jail/**$300** fine; third offense – **30 days** jail; fourth and subsequent offense – **2 years** jail §14:98(J) **Substance Abuse Programs Costs**. Offender pays the cost of participation unless unable to do so. 14:98(I)
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes** BAC ≥ .08 (≥ **.02** For Persons under 21 Years Old) BAC is based upon the amount of alcohol in the blood. First Offense – Suspension for **90 days** (30 days mandatory[508] followed by 60 days of restricted driving privileges.[509] If the use of an ignition interlock device has been authorized, a restricted license may be issued

[507] 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)

[508] Thirty days mandatory except as per the *Noustens* case cited in Footnote No. 11. *Corley v. Dept. of Public Safety and Corr.,* 648 So.2d 936 (La. App. 1 Cir. 1995)

[509] When a person has been convicted of a first DWI offense 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)) This case has been severely criticized and several circuits have explicitly chosen to not follow it. *Chalker v. Dept. of Public Safety and Corr.* 648 So.2d 936 (La. App. 4 Cir 1992) and *Corley v. Dept. of Public Safety and Corr.* 648 So.2d 936 (La. App. 1 Cir 1994); *Schott v. Dept. of Public Safety and Corr.* 556 So.2d 999 (La. App. 3 Cir 1990); and *Allen v. Dept. of Public* Safety 554 So.2d 207 (La. App. 2 Cir 1989). However, with the exception of the use of an **ignition interlock device**, a person with 2 admin. per se violations within 5 years is generally ineligible for restricted driving privileges. *Hauck v. Dept. of Public Safety and Corr.,* 597 So.2d 493 (La .App. 1 Cir. 1992), and *McLean v. Dept. of Public Safety and Corr.,* 572 So.2d 1066 (La .App. 5 Cir. 1990)

without the mand period.); second and subsequent offenses (within 5 years) – **Suspension for 365 days** (mand except for second offense where the use of an ignition interlock device has been authorized)[510] §§32:667(B)(1) and (3), 32:668(B)(1)(c) and (3) and 32:378.2(2)(a)
The exceptions noted above **only** apply to offenders who have been convicted of either a first or second drunk driving offense. §32:378.2(A)(2)(a)(iv)
Persons Under 21 Years Old (BAC ≥ **.02**).
Suspension for **180 days** (30 days mand) §§32:667(B)(1)and(3) and 32:668(B)(1)(b),(1)(c)and (3)

Other: Under §32:414(E)(1) and (F)(2), a person's license may be suspended, canceled or revoked for not more than 1 year if he/she has "committed" an offense that usually requires license revocation (e.g., second offense 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.

Post DWI Conviction Licensing :

Type of Licensing Action (Susp/Rev): First and subsequent offenses – **Suspension**[511] §§32:401(18), 32:414 and 32:430

Term of License Withdrawal (Days, Months, Years, etc.): First offense[512] – **90 days** (hardship driving privileges are available) For Persons under 21 Years Old – 180 **days** (hardship driving privileges are available); second offense (within 5 years) – **12 months**; third and or subsequent offenses (within 5 years) – **24 months** §§32:414, 32:415 and 32:415.1.

Mandatory Minimum

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[510] 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 and Corrections,* 609 So.2d 790 (La. 1992)

[511] I. Sec. 32:430(A)(1) and (C) provides for the following licensing actions for persons who are at least 13 but not more than 19 years old and who are convicted of any crime related to the possession, use or abuse of alcohol or a "controlled dangerous substance." For a first offense, suspension from 90 days up to 1 year or until the person reaches 18 whichever is the longer suspension period; for a second or subsequent offense, revocation for 1 year or until the person reaches 19 whichever is the longer revocation period. For first offenders only, after the first 30 days of the suspension period, restricted hardship driving privileges are available. §32:430(E), (F) and (G)
II. Sec. 32:430(A)(2) and (E) provides for the following licensing actions for persons who are 19 years old and who are convicted of any crime related to the possession, use or abuse of a "controlled dangerous substance" must have their licenses suspended from 90 days to 1 year. Again, as above, for first offenders only, after the first 30 days of the suspension. period, restricted hardship driving privileges are available. §32:430(E), (F) and (G)
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 day waiting period.

[512] Includes vehicular negligent injuring under §14:32.1.

Term of Withdrawal: First offense – No**ne**[513] (hardship/restricted driving privileges are available); second offenses (within 5 years) – **12 months** (mand except in situations where the use of an ignition interlock device has been authorized); third and subsequent offenses (within 5 years) – **24 months** (**12 months** mandatory in situations where the use of an ignition interlock device has been authorized[514])

Other:

Rehabilitation: **Yes First** and second offenses §14:98(B)(1)(a) and (C)(1)(a) Alcohol Education: For a first offense, a restricted license may be issued to facilitate attendance at driver improvement schools. §32:415.1(A)(2)

Alcohol Treatment: **Yes First** and subsequent offenses §14:98(B), (C), (D) and (E)

Vehicle Impoundment/ Confiscation:

Authorized by Specific Statutory Authority: **Forfeiture**. For a third or subsequent offense, the vehicle used by the offender shall be forfeited. §14:98(D)(2)

Terms Upon Which Vehicle Will Be Released: and (E)(2) unless the owner was not the offender and the owner didn't know the offender was operating the vehicle while intoxicated. 14:98(B)(2)(6), 14:98(E)(2)(b)

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. §14:98(D)(3); 14:98(E)(3); §15:1133 and Code of Criminal Procedure Art. 894.2(J)
Ignition Interlock. I. Probation. For a first offense, the court may and, for a second offense, the court shall require an offender who has been placed on probation to operate only motor vehicles (except employer's vehicles) that are equipped with ignition interlock devices during the period of probation. §§15:306 and 32:378.2(A)(1) II. Without Probation. For a second offense, an offender shall be required to operate motor vehicles (except employer's vehicles) that are equipped with ignition interlock

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[513] For either a first or second 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) and (B)(2)(b)

[514] See §32:414(D)(1)(b).

Persons Under 21 Years Old. It is illegal for a person < 21 years old to operate a motor vehicle with an alcohol concentration ≥ .02. The sanctions for this are as follows: first offense – A fine of **$100 to $250** and participation in a substance abuse and driver improvement program; and second or subsequent offense – Imprisonment for **10 days to 3 months** and a fine of **$150 to $500.** The sanctions for a second or subsequent offender may be suspended if they (1) serve either 48 hours in jail or perform community service for 10 8 hr days and (2) participate in a substance and driver improvement program. §14:98.1(C) and (D) Note: There is no licensing sanction for a violation of this provision. However, licensing action is taken via the admin. per se.

devices for at least 6 months. For a third or subsequent offense, an offender shall be required to operate 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 months following the issuance of a restricted license. §14:98(K)

Incarceration Costs. An offender may be required to pay the costs of their incarcerations. Ten percent of what is collected shall go to the Crime Victims' Reparation Fund. §15:705 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 percent 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 **≥ .08,** must be prohibited by public education authorities from operating a school bus. §17:491.2(A)

"Driving is a Privilege" Law. Authorizes suspension of drivers' licenses of students expelled from school for 10 or more consecutive school days for infractions involving the sale or possession of drugs, alcohol or any other illegal substance, the possession of a firearm, or an infraction involving assault or battery on a member of the school faculty or staff. (Such students may still receive provisional driving privileges in order to drive to and from school, work, a drug or alcohol treatment counseling program, or a mental health treatment program, when no other transportation is available.)

Other-Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes Felony/Misdemeanor[515] Death caused by operating a motor vehicle either (1) while under the influence of alcoholic beverages/drugs (2) with a BAC ≥ .08 or (3) with several combinations of drugs and/or alcohol. §14:32.1(A)

Alcohol Involvement with Hit-and-Run Driving

Section 100C(1)(b) Whoever commits the crime of hit-and-run driving where there is no death or serious bodily injury shall be fined not more than $500, imprisoned for not less than 10 days nor more than 6 months, or both, when(i) there is evidence

[515] If the defendant is imprisoned with hard labor, the conviction is considered a felony; otherwise, it is a misdemeanor. §§14:2(4) and (6), 14:32.1(B), Code of Criminal Procedure Art. 933 and *State v. Cobb,* 450 So.2d 59 (La. App. 3 Cir. 1984)

	that the vehicle operator consumed alcohol or used drugs or a controlled dangerous substance prior to the accident; (ii) the consumption of alcohol, drugs or a controlled dangerous substance contributed to the accident; and (iii) the driver failed to stop, give his identity, or render aid with the knowledge that his actions could affect an actual or potential present, past or future criminal investigation or proceeding.
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	**2 to 20 years**[516] §14:32.1(B)
Mandatory Minimum Term:	**1 year**
Fine ($ Range):	**$2,000 to $15,000** §14:32.1(B)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Suspension §32:414**
Length of Term of Licensing Withdrawal:	**12 months.**
Mandatory Action--Minimum Length of License Withdrawal:	**12 months.**
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 Revoked Where the Basis Was a DWI Offense	See Footnote No. [517] and the CMV Note below.

[516] 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 years without hard labor) (§15:1133) or to "**home incarceration**." Code of Criminal Procedure Art. 894.2

[517] Code of Criminal Procedure Article 892. 1(C) and (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 within 2 years. **Comment**: Since this is a Title 32 offense, it would appear that dismissal of a charge per this criminal procedure provision is possible.

CMV Note: A person is subject to the following sanctions if they operate a CMV while his/her CDL privileges have been suspended, revoked or cancelled: Imprisonment for not more than 1 year, a fine of not more than $5,000 and/or a civil penalty of not more than $2,500 §32:415(C)(2) and (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 first violation there is a disqualification from 90 days to 1 year (if transporting hazardous materials or operating a vehicle with 15 or more persons, the disqualification period is from 180 days to 2 years). For a second violation (within 10 years) there is a disqualification from 1 to 5 years (if transporting hazardous materials or operating a vehicle with 15 or more persons, the disqualification period is from 3 to 5 years). For a third or subsequent violation within 10 years (including transporting hazardous materials or operating a vehicle with 15 or more persons) there is a disqualification from 3 to 5 years. §§32:415(B)(2) *and* 32:427(A)(3)

Death to Unborn Child (Third Degree Feticide – Felony/Misdemeanor) Death caused by operating a motor vehicle either (1) while under the influence of alcoholic beverages/drugs or (2) with a BAC ≥ .10 (.08 on 9/30/2003). Sanctions: Imprisonment with or without hard labor for not more than 5 years and a fine not less than $2,000. §14:32. 8(A)(2) and (B)

Sanction:	
Criminal:	
Imprisonment (Term):	**Misdemeanor** Not more than **6 months.** If such violation was simultaneous with a second or subsequent DWI conviction – **7 days to 6 months**. §32:415
Mandatory Minimum Term of Imprisonment:	**7 days** 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 **Civil Penalty**: An offender is also subject to a civil penalty of not more than **$1,250** §32:415(D)(1)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Suspension/Revocation** §32:415(B)
Length of Term of License Withdrawal Action:	Original suspension/revocation period extended for **1 year** §32:415(B)
Mandatory Term of License Withdrawal Action:	For second and subsequent offenses, original suspension/revocation period extended for **1 year** (mand <u>except</u> in situations where the use of an ignition interlock device has been authorized[518]) Note: A hardship license is available for first offenders. §32:415.1 **Ignition Interlock:** First or subsequent offendesr are eligible for restricted driving for the **entire** suspension/revocation period, if they equip their vehicles with "ignition interlock" devices. §32:378.2(A)(2)(ii) **Incarceration Costs**. An offender may be required to pay the costs of their incarceration. §15:705 and Code of Criminal Procedure art. 890.2

<u>Habitual Traffic Offender Law:</u>

State Has Such a Law (Yes/No):	**Yes** §32:1472 et seq.
Grounds for Being Declared an Habitual Offender:	Convictions for 10 or more traffic law offenses within 3 years. Applies to those offenses that are required to be reported to the Department of Public Safety and Corrections. §32:1472(A)
Term of License Rev While Under Habitual Offender Status:	**Prohibition** from operating a vehicle for **3 years** §32:1479 Note: A first time habitual offender may apply for a hardship license under §32:1477(B) and (C)(3).

[518] This exception **only** applies if the original licensing action was the result of either <u>first or second</u> drunk driving offense conviction. §32:378.2(A)(2)(ii)

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** §32:661(2)(6) A report is made by the coroner.

BAC Chemical Test Is Given to the Following Persons:

Driver: **Yes**
Vehicle Passengers: **Yes**
Pedestrian: **Yes**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years)
Sale/Purchase: **21**[519and520] §§14:93.11, 14:93.12, 26:90(A) and 26:286(A)

Minimum Age (Years)
Possession: **21** §14:93.12

Minimum Age (Years)
Consumption: **21** §14:93. 12 The term "public possession" is defined to include consumption. §14:93.10(2)

Other penalties: License suspension for 180 days may be imposed for an age 21 drinking violation. §§93.12 (B) (3), 93.13(B)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Limited** Under §9:2800.1(B)[521], 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 provide immunity to commercial servers with regards to the actions of

[519] 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 years old, (3) for medical purposes or (4) at a private residence. §14:93.10(2)

[520] The Louisiana Supreme Court has held that the law, making it illegal (1) to sell alcoholic beverages to persons < 21 years or (2) for these persons to purchase such beverages does not violate the State constitutional provision which prohibits age discrimination, Art. I, §3. *Manuel v. State,* 677 So.2d 116 (La. 1996)

[521] This statute has been held constitutional. *Schulker v. Roberson,* 676 So.2d 684 (La. App. 3 Cir. 1996)

intoxicated minor patrons. *Godfrey v. Boston Old Colony Ins. Co.,* 718 So.2d 441 (La. App. 4 Cir. 1998)[522]

"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 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 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), *and Mills v. Harris.* 615 So.2d 533 (La. App. 3 Cir. 1993)
Dram Shop Actions-Social Hosts:	**Limited Liability.** Sec. 9:2800.1(C) prohibits liability actions against social hosts for injuries sustained by or caused by an intoxicated guest over the legal drinking age. *Hollis v. City of Baton Rouge,* 593 So.2d 388 (La. App. 1 Cir. 1991). For situations involving minors, see *Garcia on behalf of Garcia v. Jennings,* 427 So.2d 1329 (La. App. 2 Cir. 1983)[523], and *Gresham v. Davenport,* 537 So.2d 1144 (La. 1989)[524]. See Footnote No. [525].

[522] The *Godfrey* decision provides a complete history of dram shop liability actions in the State of Louisiana

[523] 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)

[524] 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 Mutual, Inc. Co.,* 725 So.2d 39 (La .App. 3 Cir. 1998).

[525] 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)

Other:	Under §9:2800.1(B), a licensee is not liable for the injuries sustained by an intoxicated patron over the legal drinking age.[526]
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 percent or above-**Misdemeanor** §§26:2(1) and 26:90(A)(2) B. For alcoholic beverages with an alcohol content of ½ of 1 percent to 6 percent-**Misdemeanor** §§26:241(1) and 26:286(A)(2)
Term of Imprisonment:	A. For alcoholic beverages with an alcohol content of 6 percent or above-**30 days-6 months** §26:171 B. For alcoholic beverages with an alcohol content of ½ of 1 percent to 6 percent-**30 days-6 months** §26:521
Fine ($ Range):	A. For alcoholic beverages with an alcohol content of 6 percent or above – $**100 to $500** (and/or the following administrative fines: first offense – $**50 to $500**; second offense – (within 3 years**) – $250 to $1,000** Third offense – (within 3 years) – **$500 to $2,500** §26:96) B. For alcoholic beverages with an alcohol content of ½ of 1 percent to 6 percent – $**100 to $500** §26:521 (and/or the following administrative fines: first offense – $**50 to $500**; second offense(within 3 years) – **$250 to $1,000**; third offense – (within 3 years) – **$500 to $2,500** §26:292) **Incarceration Costs**. An offender may be required to pay the costs of their incarceration. §15:705(A) and Code of Criminal Procedure art. 890.2
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Revocation or Suspension**[527] Not mandatory §§26:90(I) and 26:286(I)[528]
Length of Term of License Withdrawal:	**Not specified**
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	See Footnote No. [529].

[526] 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.

[527] If a licensee has been certified as a "responsible vendor" of alcoholic beverages, his/her license is not suspended or revoked for a first offense. §26:935(B)(1)(a)

[528] Under §§26:97 and 26:293, the liquor licensing authority may deny issuing a permit for a premises for one year if such premises were the subject of a revoked license.

[529] In addition to the sanctions provided in the alcoholic beverage control law, the following sanctions are available in criminal law: An imprisonment term of not more than 6 months and/or a fine of not more than $100. §§14:93.11 and 14:93.14

Type of Criminal Action:	A. For alcoholic beverages with an alcoholic content of 6 percent or above – **Misdemeanor** §§ 26:2(1) and 26:90(A)(1) B. For alcoholic beverages with an alcoholic content of ½ of 1 percent to 6 percent – **Misdemeanor** §§26:241(1) and26:286(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):	**Yes Revocation or Suspension** Not mandatory §§26:90(I) and 26:286(I)
Length of Term License Withdrawal:	**Not specified**
Anti-Happy Hour Laws/Regulations:	**Yes** §§26:90(A)(15) and 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 pm.
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** Applies to drivers and passengers §32.300
Anti-Consumption Law (Yes/No):	**Yes** Applies only to drivers §32.300

STATE:	**MAINE**
General Reference:	Maine Revised Statutes Annotated (MRSA) and Code of Maine Rules (CMR)
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of intoxicants[530] 29-A MRSA §2411(1)(A)
Illegal Per Se Law (BAC):	≥ **.08**[531] 29-A MRSA §2411(1)(B)
Presumption (BAC):	**No**[532]
Types of Drugs/Drugs and Alcohol:	Under the influence of **intoxicants** 29-A MRSA §2411(1)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	No statutory law but a PBT may be conducted by law enforcement officers without legislative authority. *State v. Pinkham,* 536 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) and *State v. Allen,* 485 A.2d 953 (Me. 1984), *State v. Bavouset* 784 A.2d 27 (Me. 2001), (cert. denied 122S.ct 1542 (US 2002)
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. 29-A MRSA §2522 and *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 as a warrantless search if there is probable cause to believe that a driver has committed a DWI offense and he/she has refused to submit to a chemical test. *State v. Baker,* 502 A.2d 489 (Me. 1985)

[530] "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) and (13)

[531] "Blood alcohol level" (blood alcohol concentration) is stated as "percent by weight" 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)

[532] 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 he/she has a blood alcohol level ≥ .08. 29-A MRSA §2432(3)

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

Blood:	**Yes** 29-AMRSA §2521(1)[533]
Urine:	**Yes** 29-A MRSA §2521(1)
Other:	**None**

Adjudication of DWI Charges:

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

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Other:	**N/A**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	
Administrative Licensing Action (Susp/Rev):	I. First refusal – **Suspension – 90 day**; second refusal – **Suspension – 18 months** (mandatory); third refusal – **Suspension – 4 years** (mandatory); fourth refusal – **Suspension – 6 years** (mandatory) 29-A MRSA §2521(6) If there is probable cause to believe that death has occurred or will occur as a result of crash, DUI chemical test mandatory. Failure to submit to mandatory chemical test results in suspension for one year. 29-A MRSA §2522

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) he/she has a BAC ≥ .04 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 ≥ .04) related to CMV operations, their CDL is suspended for 1 mandatory year (3 years if transporting hazardous materials). If that person has either a prior DWI offense conviction or administrative license adjudication (e.g., driving with BAC ≥ .04) related to CMV operations, the 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 ≥ .04 or while under the influence of drugs, their privilege to operate a CMV is suspended for 1 mandatory year (3 years if transporting hazardous materials) for a first refusal and permanently for a second or subsequent refusal. 29-A MRSA §§101(17), 1253, 2458(2)(M) and 2523 and CMR 29-250-006 (§§3 and 4)

Child Endangerment. First or subsequent refusal, an additional **275 days suspension** if the driver was arrying a passenger under 21 years old. This additional suspension appears to be mandatory. 29-A MRSA §2451(5)

[533] A breath test is administered unless it is unreasonable to give such test. 29-A MRSA §2521(2)

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: first refusal – **Suspension – 18 months**[534]; subsequent refusal – **mandatory 30 month suspension (**29-A MRSA §2472 (4)
First or subsequent refusal, an additional **180 day suspension** if the driver under 21 was carrying a passenger under 21 years old. This additional suspension appears to be mandatory. 29-A MRSA §2472(4)

Other: 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)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: See Aggravated Punishment below

Imprisonment:

Term (Day, Month, Years, Etc.): First offense – No unless defendant (1) had a BAC ≥ .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**) – then.

Mandatory Minimum Term: **Not less than 48 hours**[535and536]; **96 hours** if the person refused to submit to a chemical test; second offense (within 10 years– Class D crime) – **7 days** or **12 days** if the person refused to submit to a chemical test; third offense (within 10 years- Class C Crime) – **30 days** or **40 days** if the person refused to submit to a chemical test; fourth or sub. offense (within 10 years– Class C crime) or **6 months** or **6 months and 20 days** if the person refused to submit to a chemical test 29-A MRSA §2411 (5)

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[534] If negligence was involved in the related death as well as alcohol or drugs, the suspension for refusal is 3 consecutive years (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

[535] This mandatory jail sanction applies only when at least one of the following conditions is satisfied. The defendant either (1) had a BAC ≥ .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**).

[536] Not consecutive. A county jail term of imprisonment may be served intermittently. 17-A MRSA §1252(3-A)

Aggravated Punishment Category (Class C Crime). Three types: (1) a DWI offense with serious bodily injury; (2) a DWI offense that is a subsequent Class 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 years; fine – not more than $5,000; and, license suspension – 6 years. The following mandatory sanctions apply: (1) Jail for 6 months; (2) a $2,000 fine; and, (3) 6 years license suspension. 17-A MRSA §§1252 and 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), *and Allen v. Attorney General of State of Maine,* 80 F.3d 569 (first Cir. 1996)

Fine:	First offense – $**400 or $500** if the person refused to submit to a chemical test;
Amount ($ Range):	Second offense(within 10 years– Class D crime) – $**600 or $800** if the person refused to submit to a chemical test and third offense (within 10 years– Class C Crime) – $**1,100 or $1,400** if the person refused to submit to a chemical test fourth or sub. offense (within 10years**) – $2,000 or $2,400** if the person refused to submit to a chemical test 29-A MRSA §2411(5)
Mandatory Min. Fine ($):	First offense – $**400 or $500** if the person refused to submit to a chemical test; second offense (within 10 years) – **$600 or $800** if the person refused to submit to a chemical test; third or subsequent offense (within 10 years –Class C Crime) – **$1,1 00 or $1,400** if the person refused to submit to a chemical test; fourth or sub. offense (within 10 years) – **$2,000 or $2,400** if the person refused to submit to a chemical test 29-A MRSA §2411(5)
Other Penalties:	
Community Service:	**Yes** as a condition of probation 17-A MRSA §1204(2-A)(L)
Restitution: (e.g., Victim's Fund)	**Yes** I. Compensation by the defendant to a victim either as a condition of probation or as part of the incarceration sanction. 17-A MRSA §§1204(2-A)(B), 1252(3) and 1321 et seq. II. A victims' compensation fund. Claims cannot exceed $5,000. 5 MRSA §3360 et seq.
Other:	**Surcharges**. I. A **$30** (**$125** if DWI drugs/alcohol and drugs) surcharge must be imposed and paid into the Highway Fund to cover the administration and analysis costs of chemical tests. 29-A MRSA §2411(7) II. A 12 percent surcharge must be imposed on any fine for the respective purposes of funding jail/criminal operations and the Community Policing Institute. 4 MRSA §§1057 and 1057-A.. 4 MRSA §1057-A(4)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes BAC ≥ .08**[537and538] The periods of license

[537] **Persons Under 21 Years Old**. Under 29-A MRSA §2472(3), (3-A) and (6), a person, under 21 years 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" has his/her license suspended as follows: first offense – 1 **year**; and, second offense – **2-years** (mand). For first 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 (within 10 years), 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 months if they complete an alcohol and drug program. 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 days** (mand) if the driver was carrying a passenger under 21 years old. 29-A MRSA §2472(3-A) and (6) These licensing actions may not be mandatory in all situations.

[538] The licensing agency may administratively suspend a driver's license for 3 years if the driver negligently causes a death while operating a motor vehicle either (1) while under the influence of intoxicants, (2) with a BAC ≥ .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 and 29-A MRSA §2456.

suspension and conditions for reinstatement for first and subsequent offenses are the same as Post DWI Conviction Licensing Actions (below). However, unlike a first DWI offense conviction, there is no mandatory suspension for a first admin. per se violation; a work restricted license is available.[539] 29-A MRSA §§2453 and 2503

Other: Under 29-A MRSA §2458(2)(A), a person's license (or certificate of registration/title) may be revoked/suspended if he/she has "committed" an offense that usually requires license/registration suspension or revocation (e.g., DWI). Such action may be taken without a preliminary hearing. The time period for this revocation/suspension is not specified[540].

Post DWI Conviction Licensing Action: See Footnote [541], Aggravated Punishment Category, and Assault-Related Revocations.

Type of Licensing Action (Susp/Rev): For all offenses – **Suspensions**

Term of License Withdrawal (Days, Months, Years, etc.): First offense **-90 days**[542]; second offense (within 10 years– Class D crime) – **18 months**; third offense (within 10 years– Class C crime) – **4 years**; fourth or sub. offense (within 10 years) – **6 years** 29-A MRSA §§2411(5) and 2451

Mandatory Minimum Term of Withdrawal: First offense – **90 days**[543],[544]**and second** offense – **18 months**[545];

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

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[539] If there is no alternative means of transportation, a work-restricted license may be issued provided that person has not (1) been convicted of a DWI offense (within 10 years) or (2) had a previous admin. per se suspension (within 10 years). 29-A MRSA §2503

[540] A person may be denied CDL privileges without a preliminary hearing if they were operating a operating CMV with a BAC ≥ .04 or were in violation of Federal law or regulation concerning CMV operations. 29-A MRSA §§1253(5) and 2458(2)(M)

[541] 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 his/her school bus endorsement suspended for 3 years (1 year mand) for a first offense and for 6 years (mand) for a second or subsequent offense (within 10 years). 29-A MRSA §2452

[542] 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)

[543] 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)

[544] For first offenders, after 2/3 of license suspension 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 days after the original suspension date. 29-A MRSA §2501(1) and (2)

[545] This licensing action is not mandatory in all situations.

Assault Related Revocations: If a person operates a motor vehicle in a manner which (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 he/she is convicted of **ANY** criminal offense related to either assault, reckless conduct or threatening, his/her 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

third offense – **4 years**; fourth or sub. offense – **6 years** These suspensions may be reduced if the offender participates in the "ignition interlock" program; see Ignition Interlock . These suspensions run consecutively to any suspension for failure to submit to a test. 29-A §2451(4)

Child Endangerment. A person who violates the drunk driving law while transporting a passenger under 21 year old must have their license suspended for an additional **275 days**. 29-A MRSA §§2411(5)(G) and 2451(5)

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) and 2453(6)(D)

Conditional License. Under 29-A MRSA §§2504 and 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: first conviction/admin. per se action-for a period of 1 year from the date of reinstatement, the driver cannot operate a motor vehicle after having consumed any alcohol; and, second and subsequent convictions/admin per se actions (within 10 years) – for a period of 10 years 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 year 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 may be issued if there is no alternative means of transportation and is contingent upon completion of an alcohol treatment (rehabilitation) program. 29-A MRSA §2503 (2) For refusal to submit to a chemical test where there is probable cause to believe that

the driver has any amount of alcohol in the blood, suspension for not less than 2 years.

Other: Rehabilitation:
Alcohol Education:
Alcohol Treatment:

I. First and subsequent offenders must participate in and complete an alcohol or drug program before their driving privileges can be restored. 29-A MRSA §2504

II. Second and subsequent 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-hour Weekend Intervention Program consisting treatment and evaluation. 5 MRSA §20073-A(3)
Special License: first offenders may be issued a special license following alcohol/drug assessment and the completion of at least 3 treatment sessions. A first offender includes a first violator of the implied consent law, drunk driving law, administrative per se law and, for persons under 21 years old, operating a motor vehicle with any alcohol in their system. 29-A MRSA §2502
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 subsequent offense within 10 years, a defendant's vehicle registration (including the right to register a vehicle) and plates must be **suspended** for the same length of time as the license suspension.[546] 29-A MRSA §§2411(5)(B)(4), (5)(C)(4) and (5)(D)(4) and 2416.[547].
A sole owner's vehicle must be **forfeited** if operated in violation of the DWI laws while under suspension/revocation of a previous DWI offense.[548] 29-A MRSA §2421
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 hours. 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)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

[546] 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. 29-A §2416(2), (3)
[547] 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 §2458(1)
[548] 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)

State Has Such a Law:	**Yes** Class C Crime to cause a death while operating a vehicle in violation of the drunk driving laws.[549] 29-A MRSA §2411(6).
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **5 years** 17-A MRSA §1252
Mandatory Minimum Term:	**6 months** 29-A MRSA §2411(6)
Fine ($ Range):	Not more than **$5,000** 17-A MRSA §1301
Mandatory Minimum Fine:	**$2,000** 29-A MRSA §2411(6)
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Suspension**[550] (court ordered) 29-A MRSA §2411(6)
Length of Term of Licensing Withdrawal:	**6 years** 29-A MRSA §2411 (6)
Mandatory Action--Minimum Length of License Withdrawal:	**6 years** 29-A MRSA §2411(6)
Other:	I. **Administrative Suspension:** A person, who negligently causes the death of another, while driving (1) while under the influence of intoxicants, (2) with a BAC ≥ .08 or (3) who fails to submit to a chemical test, has their license suspended for 3 years (mand) by the licensing agency. If the case of test refusal, the suspension is consecutive to the refusal suspension. Otherwise, this suspension is deducted from the regular suspension or revocation 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-year after-care program prior to license restoration. 29-A MRSA §2455(3)
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote [551].
Sanction:	

[549] **Manslaughter Statutes:** It is a Class A Crime to cause a death by criminal negligence or reckless conduct via a motor vehicle. The sanctions for a Class A Crime are incarceration for not more than **40 years** and/or a fine of not more than **$50,000**. 17-A MRSA §§1252 *and* 1301 And, an offender's license is revoked for **5 years**. 29-A MRSA §2454(1).{The Maine Criminal Code (17-A MRSA) does not use the terms "misdemeanor" or "felony" to either describe or define crimes. The law describes the offense of vehicle homicide as a Class A crime without further defining it as either a misdemeanor or a felony. Most States would consider a Class A to be a felony.}

[550] **Death Related to Intoxication:** A defendant's license is **permanently revoked** if under the influence of an intoxicant at the time of the offense. However, a first offender may have the license reinstated after 10 years. 29-A MRSA §2454(2) and (5)

[551] The CMV law does not provide sanctions for operating CMV during either a CDL disqualification or a CDL out-of-service order. 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 and 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.

Criminal:

Imprisonment (Term): First, second and third offenses – Class E crime – Not more than **6 months**; subsequent offense – Class C crime – Not more than **5 years** 17-A MRSA §1252 and 29-A MRSA §2412-A.

Mandatory Minimum Term of Imprisonment: First offense – **7 consecutive days**; second offense (within 10 years) – **30 consecutive days**[552]; third offense (within 10 years) – **60 consecutive days**; fourth or subsequent offense (within 10 years) – **6 months** 29-A MRSA §2412-A(3)

Fine ($ Range): First. Second and third offenses – Class E crime – Not more than **$1,000**; subsequent offense – Class C crime – Not more than **$5,000** 17-A MRSA §1301, subs. 1-A

Mandatory Minimum Fine: First offense – **$500**; second offense (within 10 years) – **$l,000**; third offense (within 10 years) – **$2,000**;
Fourth or subsequent offense (within 10 years) – **$3,000** 29-A MRSA §2412-A(3)

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): **Suspension** 29-A MRSA §2412-A(3)

Length of Term of License Withdrawal Action: **1 to 3 years** Added to the original suspension or revocation.

Mandatory Term of License Withdrawal Action: **1 year** Added to the original suspension or revocation.

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 offenses within 5 years.
(e.g. veh. homicide, DWI, reckless driving, etc.)[553]

Term of License Rev While Under Habitual Offender Status: **Revoked – Indefinitely** However, relief from such revocation may be granted after 3 years[554]. 29-A MRSA §§2552 and 2554

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

[552] For second and subsequent offenses, the mandatory sanctions are imposed only if mandatory sanctions were imposed for prior offenses. 29-A MRSA §2412-A(3)

[553] Relief from habitual offender status shall not be granted for at least 3 years from the date the offender was convicted. 29-A MRSA §2557

[554] A **work-restricted license** is available after 18 months. 29-A MRSA §2556 However, a person is not eligible for this type of license, if (1) one of the offenses used to determine habitual offender status was homicide related to motor vehicle operations, (2) he/she is convicted of operating a motor vehicle while on habitual offender status or (3), after having his/her license restored, he/she is convicted within 5 years 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 he/she completes (1) the required license suspension periods and (2) any alcohol or drug program. 29-A MRSA §2556(5)

Offender Status	First offense – Class D crime; sub. offense (within 10 years) – Class C crime 29-A MRSA §2557(2)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	First offense – Less than **1 year**; sub. offense (within 10 years) – Not more than **5 years** 17-A MRSA §1252
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	First offense – Not more than **$2,000**; sub. offense (within 10 years) – Not more than **$5,000** 17-A MRSA §1301
Mandatory Minimum Fine ($):	**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** 28-A MRSA §§2(20) and 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) and 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) and 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[555]
"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**[556]
Dram Shop Actions-Social Hosts:	**Yes** Liability is limited to situations where the social host served alcoholic beverages (1) to a minor or (2)

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

[556] 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), *and Jackson v. Tedd-Lait Post No. 5,* 723 A.2d 1220 (Me. 1999)

	to a minor or a visibly intoxicated person in a "reckless manner". 28-A MRSA §§2503(5), 2505(2), 2506(1) and 2507
Other:	A licensee may be liable for the injuries sustained by an intoxicated patron. If the patron is less than 18 years old, liability may be based on negligent or reckless service of alcoholic beverages. If the patron is at least 18 years old, liability is based on reckless service of alcoholic beverages. 28-A MRSA §§2504 and 2507 and *Jackson v. Tedd-Lait Post No. 75,* 723 A.2d 1220 (Me. 1999)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Class E Crime 28-A MRSA §§1 and 354
Term of Imprisonment:	Not more than **6 months** 17-A MRSA §1252(2)(E)
Fine ($ Range):	For a person, not more than **$1,000**; for an organization, not more than **$10,000** 17-A MRSA §1301(1)(C) and (3)(E)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Suspension or revocation 28-A MRSA §§801 and 803(5)
Length of Term of License Withdrawal:	For suspension – not specified in the statute; for revocation – 1 **to 5 years**[557] 28A MRSA §803(5)
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverage or the Wrong Type of Alcoholic Beverage Those Persons Under the Minimum Legal Drinking Age[558]:	

[557] 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)
*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 year: 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 (within 6 years). A third or subsequent offender (within 6 years) 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 years; fine – not more than $5,000. 17-A MRSA §§1252(2)(C) and (D), 1301(1)(C) and (D) and 28-A MRSA §2081

[558] 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 year: 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 (within 6 years). A third or subsequent offender (within 6 years) 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 years; fine – not more than $5,000. 17-A MRSA §§1252(2)(C) and (D), 1301(1)(C) and (D) and 28-A MRSA §2081

Type of Criminal Action:	Class E Crime 28-A MRSA §§1, 2(20), 62(8), 354, 705(2)(E), 705(3)(E), 1901 and 1902
Term of Imprisonment:	Not more than **6 months**. 17-A MRSA §1252(2)(E)
Fine ($ Range):	For a person, not more than **$1,000**; for an organization, not more than **$10,000** 17-A MRSA §1301(1)(C) and (3)(E)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Suspension or Revocation 28-A MRSA §§801 and 803(5)
Length of Term License Withdrawal:	For suspension – not specified in the statute; for revocation – 1 **to 5 years**
Anti-Happy Hour Laws/Regulations:	**Yes** 28-A MRSA §709
Laws Prohibiting (1) the Possession of Open Containers of Alcohol Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** Applies drivers and passengers 29-A MRSA §2112-A
Anti-Consumption Law (Yes/No):	**Yes** Applies drivers and passengers 29-A MRSA §2112-A

STATE:	**MARYLAND**
General References:	Annotated Code of Maryland Most references are to (1) the Transportation Article (Tran.), (2) the Courts and Judicial Proceedings Article (CandJP) 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)
Illegal Per Se Law (BAC/BrAC):	≥ **.08**[559and560] Tran. §§11-127.1 and 21-902(a)(2)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	While impaired by (1) Any Drug, (2) Any Combination of Drugs, (3) a Combination of One or More Drugs and Alcohol and (4) Any Controlled Dangerous Substance Tran. §21-902(c)(1) and (d)
Other:	An alcohol concentration ≥ **.07 but < .08**[2] is *prima facie* evidence of driving while impaired by alcohol. CandJP §10-307(d) An alcohol concentration ≥ **.08** shall be considered under the influence of alcohol per se. CandJP §10-307(e) Anyone arrested for DWI may not drive for 12 hours after the arrest. §21.902.1 For **Persons Under 21 Years Old**, see Footnote No. [561].
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** Tran. §16-205.2. Results of any such test may be entered into evidence by the defendant, but may not be used by the State. §16-205.2(c)
Implied Consent Law: Arrest Required (Yes/No):	**Yes** The law uses the term "detained" instead of "arrest". Tran. §16-205. 1(2)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** Tran. §16-205.1 See also CandJP §10-302 et seq.; however, such tests may only be requested by officers trained as drug recognition experts. §16.205.1(i)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) CandJP §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. *Krauss* v. *State,* 587 A.2d 1102 (Md. 1991)

[559] 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 ≥ .08 at the time of testing. Tran. §11-127.1

[560] Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. CandJP §10-307(a)(2)(i) and (ii), Tran. §§11-103.2 and 11-127.1 and Crim. Law §2-502(a), §3-211(b)

[561] **Persons Under 21 Years Old**. A person < 21 years old must have a restriction placed on the license that prohibits them from operating a motor vehicle with alcohol in the blood. A BAC/BrAC ≥ .02 is *prima facie* evidence of a violation of driving with alcohol in the blood. CandJP §10-307(e) and (f) and Tran. §16-113(b)(1)

Other Information:	**Death or injury involvement:** If a driver is involved in either a driving while under the influence of alcohol 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 blood or breath. Tran. §16-205.1(c)(1) Except as noted above, a person cannot be compelled to submit to a chemical test. CandJP §10-309(a)(l)
Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:	
Blood:	**Yes**[562] Tran. §16-205.1 See also CandJP §10-302 et seq.
Urine:	**No**
Other:	**None**
Adjudication of DWI Charges:	
Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No**
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):	Fine of not more than $500 or imprisonment for not more than 2 months or both if the person knowingly refused to take a test and state's attorney serves notice of the alleged test refusal on the defendant before the acceptance of a plea of guilty or nolo contendere or at least 15 days before trial in a circuit court or 5 days before trial in the district court, whichever is earlier.
Administrative Licensing Action	(Susp/Rev): First refusal – **Suspension** for **120 days**; second and subsequent refusals – **Suspension** for **1 year** A suspension may be modified or a restricted license may be issued if an offender

[562] Under CandJP §10-305(a), a test for alcoholic content of the blood cannot be administered unless (1) the driver is unconscious and incapable of refusing a test, (2) the driver, because of injuries, has been taken to a medical facility or (3) breath test equipment is not available. The Court of Appeals of Maryland has held that, under this statute, if a driver agrees to submit to a breath test and the equipment is available but not a qualified operator, the driver may refuse to submit to blood test without incurring licensing action. Under these circumstances, a refusal to submit to a blood test is not considered to be a refusal to submit to a chemical test under the implied consent law. *Hyle v. MVA,* 702 A.2d 760 (Md. 1997)

participates in the "ignition interlock" program for at least 1 year, Tran. §16-205.1(a)(2)(b)(1) and (n)

Sanctions Following a Conviction for a DWI Offense

Criminal Sanctions: See Footnote No. [563].

Imprisonment:

Term (Day. Month, Years, Etc.): **1) Driving while impaired**[564] (misdemeanor): first offense – Not more than **2 months**; if a court suspends a sentence or stays a judgment of conviction, it must impose probation, require participation in treatment programs, and prohibit the defendant from operating a motor vehicle unless the vehicle has an alcohol ignition interlock system. Subsequent offense[565] – Not more than **1 year** ; **2) Driving while under the influence of alcohol/≥ .08** (misdemeanor): first offense – Not more than **1 year**; second offense[566] – Not more than **2 years**; third and subsequent offense[8] – not more than **3 years** Trans. §§21-902 and 27-l01(c), (f) and (k) 3**) A person < 21 years old operating vehicle in violation of the .02 BAC/BrAC license restriction** (misdemeanor) – **None** Tran. §§27-101(b) and 27-102

Mandatory Minimum Term: First offense – **None**; second within 5 years – Imprisonment for not less than 5 days or community service for not less than 30 days; third or sub. offense – Imprisonment for not less than 10 days or community service for not less than 60 days. 27-101{Convictions for a crime committed in another State or federal jurisdiction that, if committed in this State, would constitute a Maryland DWI violation, are counted for purposes of the application of subsequent offender penalties. 21-902(e)}[567]

Fine:

Amount ($ Range): **1) Driving while impaired**: first offense – Not more than **$500**; Subsequent offense – Not more than **$500** 2) **Driving while under the influence of alcohol/≥ .08, first offense** – Not more than **$1,000**, second offense – Not more than **$2,000**; third and subsequent offense – not more than **$3,000** 3**) A**

[563] Probation before judgment cannot be granted by a court for a sub. alcohol driving offense within 5 years. A prior offense includes offenses for which a person has received probation before judgment. Crim. Proc. §6-220(d)(1) and *State v. Shilling,* 577 A.2d 83 (Md. 1990) The record of a person who has been placed on probation before judgment for an alcohol driving offense cannot be expunged. Crim. Proc. §10-105(a)(3)

[564] Includes driving while impaired by drugs/alcohol and drugs/controlled substances. Tran. §§21-902(c) and (d) and 27-101(c) and (f)(1)

[565] A previous offense includes **ANY** prior alcohol driving offense. Tran. §27-101(f)(2), (3) and (4)

[566] The law does not place a time for determining a second or subsequent under the influence of alcohol/.08 offense where the first offense was also an under the influence of alcohol/.08 offense. However, for sentence enhancement purposes, a previous offense does include **ANY** prior driving while impaired offense committed within 5 years of an under-the influence-of- alcohol/.08 offense. Tran. §27-101(k)(2)

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

	person < 21 years old operating a vehicle in violation of the .02 BAC/BrAC license restriction (misdemeanor) – Not more than **$500** Tran. §§27-101(b) and 27-102
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	For a subsequent under the influence of alcohol/≥ .08 offense – conviction within 3 years. In lieu of the mandatory jail sentence, 80 hours of community service. Tran. §27-101(j)
Restitution (e.g., Victim's Fund)	(1) The court may order a defendant to pay restitution. Crim Proc §11-603 (2) Also, a victim may receive payments (≤ $45,000) under the Criminal Injuries Compensation Act. Crim. Proc §11-801 et seq.
Other:	**Ignition Interlock**. As a condition of probation, the court may order a defendant for **3 years** to operate only vehicles equipped with "ignition interlock" devices. Crim. Proc. §6-221 and Tran. §§27-107 *and* 27-108
Administrative Licensing Actions	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes ≥ .08** (BAC/BrAC) First violation– suspension **45 days**; second or sub. violation– suspension **90 days**. These suspensions are **not** mandatory under the following conditions. I. A restricted hardship license can be issued [568] if the licensee has (1) not had a previous admin. per se violation (within 5 years), (2) not had a prior alcohol offense[569] conviction (within 5 years) or (3) not refused to submit to a test under the implied consent law. II. 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 year. CandJP §10-307(a)(2) and Tran. §16-205.1

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥ .04 (2) has violated Tran. §21-902 or a similar Federal law or (3) refuses 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 is mandatory unless a reduced period is provided by Federal regulations. A CMV operator is also subject to DWI criminal sanctions and administrative actions against their regular diving privileges. In addition, a CMV operator, who has any "detectable" amount of alcohol in the system, must be placed "out-of-service" for 24 hours, CandJP §10-307(a) and Tran. §§11-103.1, 11-103.2, 11-109, 11-109.1, 11-111.1, l6-205.1(b)(1)(iii), 16-208.1, 16-812 and 16-813

Double Jeopardy: Based upon the same factual situation, a person subjected to licensing action under the administrative per se law may also be subsequently prosecuted for a drunk-driving offense. Such subsequent

[568] 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 the license suspension modified and be issued a restricted license. § Tran. 16-205(e)

[569] A conviction within 5 years for either Driving While Under the Influence of alcohol/≥ .08 or Driving While Impaired.

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)), *and Johnson v. State,* 622 A.2d 199 (Md. App. 1993)

Post DWI conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	I. Driving while impaired (of alcohol or alcohol and drugs), first offense – **Suspension**; second offense (within 3 years)[570]– suspension; third and subsequent offense (within 3 years) – **Revocation** II. Driving while under the influence of alcohol/≥ .08 (or impaired by a controlled dangerous substance) – **Revocation** III. A person < 21 years old operating a vehicle in violation of the .02 _BAC/BrAC license restriction– suspension **or Revocation** Tran. §§16-205, 16-208 and l6-113(f) IV. Persons < 18 Years Old: (1) Driving while under the influence of alcohol/≥ .08 or while impaired by a "controlled dangerous substance" – Revocation (2) Driving while impaired by alcohol or any other drug– suspension; Tran. §16-205
Term of License Withdrawal (Days, Months, Years, etc.):	I. For Driving while impaired, first offense – Not more than **60 days; second** offense (within 3 years) – Not more than **120 days** II. For Driving while impaired third and subsequent offense (within 3 years) **and** for all Driving while under the influence of alcohol/≥ .08 offenses (or impaired by a controlled dangerous substance), the period of revocation is based on the **number of previous revocations** a person has regardless of the basis[571]; the periods are as follows: first revocation-**6 months**; second revocation – 1 year; third revocation-**18 months**[572]; fourth and subsequent revocation **2 years** III. A person < 21 years old operating a vehicle in violation of the .02 BAC/BrAC license restriction **Suspension** – Not more than **1 year** or **Revocation**-Based on the number of previous revocations; see II above. IV. Persons < 18 Years Old: (1) Driving while under the influence of alcohol/≥ .08 or under while impaired by a "controlled dangerous substance" – Revocation in the same manner as an adult (2) Driving while impaired by alcohol or any other drug – first offense – **6 months**; second or subsequent offense – 1 year **License Restrictions**. I. If a person has been convicted of any combination of two or more drunk

[570] A previous offense includes a Driving While Under the Influence of Alcohol/≥ .08. Tran. §16-205(a)(2) and (d)
[571] I.e., the previous revocations do not have to be alcohol-driving-offense related
[572] License reinstatement only after the licensing agency is satisfied that it is safe to take such action. Tran. §16-208(b)

driving offenses (within 5 years), 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 years. 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 that 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 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 that 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) and (2) A BAC/BrAC ≥ .02 is *prima facie* evidence that the person was operating a motor vehicle with alcohol in their body. CandJP §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 – No**ne** (2) – violation of a court-ordered restriction – not more than **2 years**; fine – Not more than **$500**; licensing action– suspension **or Revocation –** If suspension, not more than **1 year**; 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 months** for a first revocation; **1 year** for a second revocation; **18 months** for third revocations; and **2 years** for fourth and subsequent revocations. Tran. §§16-113(f), 16-208, 27-101(b) and 27-102 **Point System**. A person who has been convicted of an alcohol driving offense can have the 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 offense convictions: Driving While Impaired (by alcohol, drugs or a combination of alcohol and drugs) – 8 points and Driving While Under the Influence of Alcohol/≥ .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 years. A person who accumulates 8 points is subject to a license suspension and an accumulation of 12 points results in license revocation. The higher point accumulations, 16 for suspension and 19 for revocation, allowed for persons who drive in the course of employment do not apply to drunk driving

offense violations. Tran. §16-405(b) and (c) The following suspensions apply for point accumulations related to Driving While Impaired (by alcohol, drugs or a combination of alcohol and drugs): first offense – suspension not more than 6 months; second offense (at least 5 years after first) – suspension for not more than 9 months; second offense (within 5 years) or third offense – suspension for not more than 12 months; and fourth or subsequent offense – suspension for not more than 24 months. 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 months** for a first revocation; **1 year** for a second revocation; **18 months** for a third revocation; and **2 years** for a fourth or subsequent revocation. Tran. §16-208(b)
Special Note: A person who has been convicted of two Driving While Impaired (by alcohol or drugs and alcohol) offenses within 2 years would accumulate 16 points on the driving record and be subject to license revocation instead of suspension.
Persons < 18 years old – **Suspension** for **6 months** if accumulating 6 points; **suspension** for **1 year** if accumulating 2 additional points. Tran. §16-206(b) These suspensions may be modified (i.e., they are not mandatory). Tran. §16-206(c)(5)
Ignition Interlock. Under Tran. §16-404.1, the licensing agency may establish an ignition interlock program for persons who have been convicted of alcohol related driving offenses. 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 by participating in the Ignition Interlock Program. Tran. §§16-404(c)(3) and 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 ≥ .08) may have the license suspended in lieu of revocation by participating 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 fourth or subsequent offender is considered an "habitual offender" and he/she cannot have his/her driving privileges restored until he/she has participated in this program for at least 24

mos. Tran. §16-404. 1(d) 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 years. 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 year. Tran. §16-205.1(n)(2), (3) and (4) Under separate provisions of law, a person who participates in the "ignition interlock" program may have the suspension modified and be issued a restricted license. Tran. §16-205(e)

Mandatory Minimum Term of Withdrawal: **None** Tran. §§16-205, 16-206(5), 16-208, 16-404.1 and 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 of reinstatement of their driving privilege. Crim Proc §6-219(c) and Tran. §16-212

Alcohol Treatment: **Yes**

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **No**

Terms Upon Which Vehicle Will Be Released:

Miscellaneous Sanctions Not Included Elsewhere: **Child Endangerment**. I. Driving while under the influence of alcohol/alcohol per se[573] while transporting a "minor"[574]: first offense – Jail not more than **2 years**/fine – not more than **$2,000**; second offense[575]-Jail not more than **3 years**/fine – not more than **$3,000**; third and subsequent offense – Jail not more than **4 years**/fine – not more than **$4,000**. II. Driving while impaired by alcohol, drugs or a controlled dangerous substance while transporting a "minor": first offense – Jail not more than **6 months**/fine – not more than **$1,000**; second and subsequent offense – Jail not more than **1 year**/fine – not more than **$2,000**. Tran, §27-101(q)

[573] "Under the influence of alcohol per se" is defined as a BAC/BrAC ≥ .08 at the time of testing. Crim. Law §3-211(a)(2) and Tran. §11-127.1 The offense involves operating motor vehicle while under the influence per se.

[574] A "minor" is a person < 18 years old. Art. 1, §24(b)(2)

[575] A prior offense includes any type prior drunk driving offense whether or not related to child endangerment.

Negligent-Related Drunk Driving Which Causes a Life Threatening Injury.[576] While under the influence of alcohol/alcohol per se-Misdemeanor-Jail not more than **3 years**/fine – not more than **$5,000** II. While impaired by alcohol-Misdemeanor-Jail not more than **2 years**/fine – not more than **$3,000** III. While impaired by drugs-Misdemeanor-Jail not more than **2 years**/fine – not more than **$3,000**. IV. While impaired by a controlled dangerous substance-Misdemeanor-Jail not more than **2 years**/fine – not more than **$3,000** Crim Law §3-211

Provisional Licensee. A provisional licensee is subject to the following **additional** sanctions, first alcohol driving offense – "driver improvement program" (mand); second alcohol driving offense – **Suspension – not more than 30 days**; third or subsequent alcohol driving offense – **Suspension/Revocation – not more than 180 days** This action is not mandatory. Tran. §16-213

Alcohol-Restricted License. A person's driving privileges may be restricted to operating motor vehicles without any alcohol in the blood. Tran. §16-113(a)(1)(ii)

Custodial Confinement. 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). Crim. Proc. Art. §§6-219, 6-220 and 6-225

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law: **Yes** I. Death caused by driving a vehicle in a grossly negligent manner (felony) Crim. Law §2-209

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[577] (felony) Crim. Law §2-503

III. Death caused by driving in a vehicle in a negligent manner while impaired by alcohol (felony) Crim. Law §2-504

IV. Death caused by driving in a vehicle in a negligent manner while impaired by drugs (felony) Crim. Law §2-505

V. Death caused by driving in a vehicle in a negligent manner while impaired by a controlled dangerous substance (felony) Crim. Law §2-506

[576] For these offenses, 12 points are assessed and this results either in a **6-month** revocation, if this is a first revocation, **1 year** revocation if this is a second revocation or **18 months** if this is a third revocation. These revocations are not mandatory. Tran. §§16-208(b), 16-402(a)(29), 16-404(a)(3)(ii) and 16-405(a) and (b)

[577] "Under the influence of alcohol per se" is defined as a BAC/BrAC ≥ .08 at the time of testing. Crim. Law §2-501 and Tran. §11-127.1 The offense involves operating motor vehicle while under the influence per se.

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	I. Death caused by driving a vehicle in a grossly negligent manner – Not more than **10 years.** 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[19] (felony) – Not more than **5 years.** III. Death caused by driving in a vehicle in a negligent manner while impaired by alcohol (felony) – Not more than **3 years.** IV. Death caused by driving in a vehicle in a negligent manner while impaired by drugs (felony) – Not more than **3 years.** V. Death caused by driving in a vehicle in a negligent manner while impaired by a controlled dangerous substance (felony) – Not more than **3 years.**
Mandatory Minimum Term:	**None**
Fine ($ Range):	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[19] (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:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	I. Drunk Driving Related Offenses – Revocation Tran. §16-205(b) II. Other Offenses – Revocation via the point system. Twelve points are assessed for these offenses.[578] Tran. §§16-402(a)(29), 16-404(a)(3)(ii) and 16-405(b)
Length of Term of Licensing Withdrawal:	**6 months** revocation, if this is a first revocation; **1 year** revocation, if this is a second revocation; **18 months** revocation, if this is a third revocation; **2 years** revocation, if this is a fourth or subsequent revocation. Tran. §16-208(b)

[578] 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, he/she is allowed to accumulate 19 points before his/her license is revoked.

Mandatory Action— Minimum Length of License Withdrawal:	**None.** A revocation may be denied, canceled or modified if a defendant needs to operate a motor vehicle for employment purposes. Tran. §16-405(a)
Driving While License Suspended or Revoked Where the Basis Was a DW1 Offense:	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. Tran §16-303 But see Footnote No. [579].
Sanction: Criminal: Imprisonment (Term):	Misdemeanor – first offense – Not more than **1 year**; second and subsequent offenses – Not more than **2 years** Tran. §§16-303(c) and (d) and 27-101(h)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	First offense – Not more than **$1,000**; second and subsequent offenses – Not more than **$1,000** Tran. §27-101(h)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	See Footnote No. [580].
Type of Licensing Action (Susp/Rev):	**Revocation** via the point system (12 points are assessed) Tran. §16-402(a)(30)
Length of Term of License Withdrawal Action:	**6 months** if a first revocation; **1 year** if a second revocation; **18 months** if this is a third revocation; and **2 years** revocation, if this is a fourth or subsequent revocation. Tran. §16-208(b)
Mandatory Term of License	

[579] I. If a person drives a motor vehicle with a suspended or revoked license (for an alcohol offense), the registration of the motor vehicle may be suspended for not more than 120 days. Tran. §§13-705.1, 16-303 and 27-101
II. In addition, if a person drives a motor vehicle with a suspended or revoked license (for an alcohol offense), the vehicle used in the offense may be either **impounded or immobilized** for not more than **180 days**. Hardship exceptions exist. Tran. §27-111(c)
III. A person convicted of a moving violation while the license is still revoked is subject to having the revocation extended for 1 year for a first violation, 18 months for a second violation and 2 years for a third or subsequent violation. This action is discretionary. Tran. §16-402(c)

[580] If a person with a revoked license is convicted of any moving violation, the revocation may be extended as follows: first violation – 1 year; second violation -18 months; and, third or subsequent violation – 2 years. Tran. §16-402(c)

CMV Operation: I. It is a misdemeanor to operate a CMV during a CDL disqualification. The sanctions for this offense are as follows: first offense – imprisonment for not more than 6 months and/or fine for not more than $1,000; second offense – imprisonment for not more than 1 year and/or a fine of not more than $2.000; and, third or subsequent offense – imprisonment for not more than 2 years and/or a fine of not more than $3,000. Tran. §§16-808(9) and 27-101(a) and (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: first violation – not less than 90 days; second violation within 10 years – not less than 1 year; and, third or subsequent violation within 10 years – not less than 3 nor more than 5 years. If the transportation of either hazardous materials or passengers was involved in the violation, the disqualification is as follows: first violation – not less than 180 days; subsequent violation within 10 years – not less than 3 nor more than 5 years. 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)).

Withdrawal Action:	A revocation may be canceled or modified if employment or opportunity for employment 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:

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**[581] Art. 2B, §12-108(a) and Crim. Law §10-117
Minimum Age (Years) Possession:	**21** Art. 2B, §12-108(d)[582] and Crim. Law §10-114 There is an employment exception. However, a person under 18 years old "may not be engaged in the sale of alcoholic beverages." Art. 2B, §12-302(a)(1)
Minimum Age (Years) Consumption:	**None**[583]

Dram Shop Laws and Related Legal Actions:

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

[581] 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 statement" about his/her age in order to obtain alcoholic beverages. Crim. Law §10-113

[582] 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 licensed premises.

[583] Under Crim. Law §10-117, 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 as part of a religious ceremony.

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** For 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), and *Wright v. Sue and 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) (cert. den. 541 A.2d 964 (1988)) and *Wright v. Sue and Charles,* 749 A.2d 241 (Md.App.)(cert. denied 755 A.2d 1140 (2000))
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misdemeanor** Art. 2B, §§10-401, 10-402, 12-108 and 16-503 See Footnote No. [584]
Term of Imprisonment:	Not more than **2 years**[585]
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 Suspension or revocation** Art. 2B, §10-401 For licenses issued by the Comptroller a monetary compromise of not more than $2,000 may be paid in lieu of a suspension. Art. 2B, §10-402.
Length of Term of License Withdrawal:	The law does not specify a term of suspension for licenses issued by the Comptroller. However, if a license is revoked by the Comptroller, it is for **6 months**. The periods of license suspension/ revocation may be longer for certain counties. Art. 2B, §10-404
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misdemeanor** Art. 2B §§10-401, 10-402, 12-108 and 16-503
Term of Imprisonment:	Not more than **2 years**
Fine ($ Range):	Not more than **$1,000**
Administrative Actions Against Owners of Establishments That Serve Alcoholic	

[584] 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.
[585] See Custodial Confinement.

Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension or revocation** Art. 2B, §10-401 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 License Withdrawal:	The law does not specify at term of suspension for licenses issued by the Comptroller. However, if a license is revoked by the Comptroller, it is for **6 months**. The periods of license suspension/ revocation may be longer for certain counties. Art. 2B, §10-404
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcohol Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes**[586] Drivers and passengers Crim. Law §10-125(a)
Anti-Consumption Law (Yes/No):	**Yes** Drivers only. Tran. §21-903, Crim. Law §10-125

[586] 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

STATE:	**MASSACHUSETTS**
General Reference:	Massachusetts General Laws Annotated
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of intoxicating liquor[587] Ch. 90 §24(1)(a)(l)
Illegal Per Se Law (BAC):	**≥ .08** Ch.90 § 24
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Marijuana, Narcotic Drugs, Depressants or Stimulant Substances all as defined in Ch. 94C §1[588] or (2) Vapors of Glue Ch.90§24(1)(a)(l)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	**Yes** Ch. 90 §24(1)(f); Ch. 90F §11(B)
Arrest Required (Yes/No):	**Yes**
Implied Consent Law Applies to Drugs (Yes/No):	**No** Prohibited by statute in both criminal and Refusal to civil cases. Ch. 90 §24(1)(e) Such evidence
Submit to Chemical Test Admittance into Evidence	**No –** is prohibited by the State's constitution. *Opinion of the Justices to the Senate*, 591 N.E.2d 1073 (Mass. 1992) A driver may not refuse to submit to field sobriety tests but such refusal cannot constitutionally be admitted into evidence *Com. v. Blais,* 701 N.E.2d 314 (Mass. 1998) and *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:	**Yes** 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** Alcohol screening is required for a first offense. Ch. 90 §24(1)(a)(4)

Sanctions for Refusal to Submit to a Chemical Test:

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[587] The term "intoxicating liquor" includes beer and other alcoholic beverages "capable of subjecting a person to its alcoholic influence." *Commonwealth v. Bridges,* 189 N.E. 616 (Mass. 1934) cited in *Commonwealth v. Cass,* 467 N.E.2d 1324 (Mass. 1984)

[588] 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), and *Com. v. Finegan,* 699 N.E.2d 1228 (Mass. App. 1998)

Refusal to Take a Preliminary Breath Test:	**N/A**
Criminal Sanctions (Fine/Jail):	**N/A**
Administrative Licensing Action (Susp/Rev):	**N/A**
Refusal to Take Implied Consent	**Suspension –** 180 days (90 days mand)[589] second refusal or refusal by someone under the age of 21-- suspension for a period of 3 years; third refusal – – suspension for a period of 5 years. Ch. 90 §24 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(3)(c) and 24N
Sanctions Following a Conviction for a DWI Offense:	
Criminal Sanctions:	
Imprisonment: Years, Etc.) –	First offense – Not more than 2½ years; second Term (Day, Month, offense (within 10 years) – 60 days to 2½ years; third offense (within 10 years) – 180 days to 2½ years (or 2½ to 5 years in State prison) (felony); fourth offense (within 10 years) – 2 to 2½ years (or 2½ to 5 years in State prison) (felony); fifth and subsequent offenses (within 10 years) – 2½ years (or 2½ to 5 years in State prison) (felony) Ch. 90 §24(1)(a)(1) and Ch. 274 §1
Mandatory Minimum Term:	First offense – None; second offense – 30 days[590]; third offense – 150 days; fourth offense – 12 months; fifth and subsequent offense – 24 months
Fine: Amount ($ Range):	First offense – $500 to $5,000; second offense – $600 to $10,000; third offense – $l,000 to $15,000; fourth offense$15,000 to $25,000; fifth and subsequent offenses – $2,000 to $50,000 Ch.90§24(l)(a)(l)
Mandatory Min. Fine ($):	**None**
Other Penalties:	For any offense – 30 hours (minimum) via court order as a condition of probation Ch.90 §24D
Restitution : (e.g., Victim's Fund)	**Yes** (1) By a compensation fund Ch. 258C §1 et seq. or (2) by a defendant as a condition of probation Ch.276 §92

Administrative Licensing

[589] Work release is available for this period. See Rehabilitation. Ch. 90 §24(1)(a)(l)

[590]Persons Under 21 Years Old. I. For persons < 21 but a ≥18 years old– suspension – 180 days. 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 years old– suspension – 1 year (mand). However, for a first refusal, there is only a 180-day mandatory suspension if the person participates in an alcohol education or treatment program. Ch. 90 §24(1)(f), §24N, and 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) (cert. denied 519 U.S. 827, 136 L.Ed.2D 47, 117 S. Ct. 91

Actions:

Pre-DWI Conviction

Licensing Action:

Administrative Per Se Law: **Yes** BAC ≥ .08 (Persons under 21 years old-BAC ≥ .02) – Suspension until the drunk driving charges are disposed of but not more than 90 days (mand) Ch.90 §24(1)(f)(2) Persons Under 21 Years Old. The following suspensions apply notwithstanding the finding concerning any offense (e.g. drunk driving). I. A person < 21 but ≥ 18 years old who has a BAC ≥ .02 has the license suspended for 180 days. 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. A person < 18 years old who has a BAC ≥ .02 has the license suspended for 1 year (mand). However, for a first violation, there is only a 180-day mandatory suspension if the person participates in an alcohol education or treatment program. Ch. 90 §24P(a)

Other: I. If the law enforcement officer does not take action under the admin. 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 days), provided the State establishes a *prima facie* showing that the defendant was operating a motor vehicle with a BAC ≥ .08 (persons under 21 years old BAC ≥ .02). Ch. 90 §24N II. A person's license may be suspended without a hearing if he/she has "committed" a violation of the motor vehicle laws that "constitute an immediate threat to the public safety." Ch. 90 §22(a)

Post DWI Conviction

Licensing Action:

Type of Licensing Action (Susp/Rev): **Revocation** for all offenses Ch. 90 §24(l)(b)

Term of License Withdrawal (Days, Months, Years, etc.): First offense – 1 year; second offense (within 10 years) 2 years; third offense (within 10 years) – 8 years; fourth offense (within 10 years) 10 years; fifth and subsequent offenses (within 10 years) – Life Ch. 90 §24 (3)(c)

Mandatory Minimum Term of Withdrawal: First offense – 3 months second offense – 6 months-third offense – 2 years revocation; fourth offense – 5 years revocation; fifth and subsequent offenses – Life Ch. 90 §24(1)(c)

Other:

Rehabilitation: **Yes** first offense – For first offenders who have not caused major injury or death, they may be placed on probation for not more than 2 years on the condition that they attend a residential alcohol treatment program for not less than 14 days and participate in an outpatient counseling program. They must pay for cost of treatment and also pay an additional fee of $250. Ch. 90 §§24(1)(a)(4) *and* 24D and; second and subsequent offenses – In lieu of imprisonment, defendant may serve all or part of the mandatory imprisonment term in a residential alcohol treatment program. Ch.90 §24

Alcohol Education

Alcohol Treatment:	**Yes** If B.A.C. was ≥ .20 or if a repeat violation, the violator shall complete an assessment of the level of the offender's addiction to alcohol or drugs, and the department's recommended course of treatment. Ch.90 §§24D, 24Q
Vehicle Impoundment:	
Authorized by Statutory Authority:	**Yes –** Impoundment for at least 12 hours Ch.90 §24(1) (iii)
Vehicle Confiscation or license plates seized:	**Yes** for three-time DUI violators unless vehicle jointly owned (before the second DUI violation) by a parent, spouse, child, grandparent, brother, sister, or parent of the spouse living in the defendant's household who requires use of the vehicle.Ch.90 §§24W, 24X
Miscellaneous Sanctions Not Included Elsewhere:	Ignition Interlock Devices: offenders with more than one drunken driving conviction required to install an ignition-interlock device on their vehicles for a period of 2 years as a condition of having their licenses reinstated.[591] second or subsequent conviction, by imprisonment in a State prison for not less than 3 nor more than 5 years. Ch.90 § 24U I. Special Surcharge. A defendant must pay a surcharge of $125 – $250 for the purpose of funding head injury treatment services, and a second assessment of $50 to fund the Victims of Drunk Driving Trust Fund. Ch. 90 §24(1)(a)(l) 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 Tampering with ignition interlock punished by imprisonment in the house of correction for not less than 6 months nor more than 2 1/2 years or by imprisonment in the State prison for not less than 3 years nor more than 5 years; Ch.90 §24T Illegally breathing into an interlock device or otherwise starting an interlocked vehicle for the purpose of providing

[591] Operating in violation of an interlock requirement: fine of not less than $1,000 nor more than $15,000 and by imprisonment for not less than 180 days nor more than 2 1/2 years or by a fine of not less than $1,000 nor more than $15,000 and by imprisonment in the State prison for not less than 2 1/2 years nor more than 5 years. The sentence imposed upon such person shall not be reduced to less than 150 days, nor shall any such person be eligible for probation, parole or furlough or receive any deduction from his sentence for good conduct until he shall have served 150 days of such sentence. {But exceptions from 150 day rule possible to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at that institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction.} Two violations of interlock rules may lead to suspension for an extended period, conceivably even for life. Ch.90 §24S

an operable motor vehicle to a person whose license or right to operate a vehicle is restricted to the operation of vehicles equipped with a certified ignition interlock device – punished by a fine not less than $1,000 nor more than $5,000 or imprisonment in a house of correction for not less than 6 months nor more than 2 1/2 years in the house of correction.

Other Criminal Actions Related to DWI

"Manslaughter by motor vehicle"	A motor vehicle-related death where offender was under the influence of intoxicating substances and acted with recklessness or negligence. Ch.265 §131/2
Sanctions:	
Criminal Sanction:	
Imprisonment (Term): `	**5 years to 20 years**
Mandatory Minimum Term:	**5 years**
Fine ($ Range):	Not more than **$25,000** Mandatory Minimum
Administrative Licensing Action:	
Type of Action:	**Revocation**
Length of Term of Licensing Withdrawal:	First offense – 15 years; subsequent offense – up to life
Mandatory Action—Minimum	First offense – 15 years; subsequent offense – up to life Ch. 90 §24

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	Ch. 90 §23
Sanction:	
Criminal:	Not less than 1 year and not more than 2½ years [592] Ch. 90 §23 and Ch. 274 §1
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	**$2,500 to $10,000** Ch. 90 §23
Mandatory Minimum Fine:	**None**

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 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥ .04 (Comment: Ch. 90F §9 does not appear to apply to alcohol concentrations in urine 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 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) refuses 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 ≥ .04 For two or more test refusals or "failures" or for a combination of two or more such violations, the "disqualification" is for life (mand). In addition, a CMV operator who has any alcohol in the system must be placed "out-of-service" for 24 hours. Ch.90 F §§1, 9, 10 and 11

[592] Sentence must be served consecutively to and not concurrent with any other sentence or penalty. At least one year of the sentence must be served, except a temporary release in the custody of an officer only to obtain emergency medical or psychiatric services unavailable, or to engage in employment pursuant to a work release program may be granted. Ch. 90 §23

A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. Ch. 90F, §5(B) However, Ch. 90F does not provide sanctions for such a prohibition. 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: first offense, imprisonment for not more than 10 days and/or a fine of $500 but not more than $1,000; and, subsequent offense, imprisonment for 60 days but not more than 1 year (There appears to be no fine sanction.). For either a first or subsequent offense, an additional period of license suspension or revocation of 60 days. Ch. 90, §23

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):	**Suspension/Revocation** Ch. 90 §23
Length of Term of License Withdrawal Action:	**Suspension/revocation** is extended for an additional period of 1 year. Ch. 90 §23

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** Ch.90§22F
Grounds for Being Declared an Habitual Offender:	Any combination of three or more serious traffic offenses (e.g., DWI, reckless driving, etc.) (within 5 years) or 12 convictions (within 5 years) for traffic offenses (including serious offenses) for which a person may or must receive a 30-day license suspension/revocation.
Term of License Rev While Under Habitual Offender Status:	**4 years** If the defendant has a proven hardship, a license may be issued after 1 year. Ch. 90 §22F
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	**Felony** Ch. 274 §1
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than 2 years Ch. 90 §23
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$500 to $5,000** Ch.90§23
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	Revocation is extended for an additional 60 days. Ch. 90 §23

Other State Laws Related To Alcohol Use:

'Child Endangerment':	Individuals who drive under the influence with a child under the age of 14 in the vehicle. Ch. 90 §24V
Penalties:	First offense: not less than 90 days nor more than 2 1/2 years and a fine of not less than $1,000 nor more than $5,000; For repeat offenders: imprisonment in the House of Corrections for not less than 6 months[593] nor more than 2 1/2 years or by

[593] The sentence of imprisonment imposed upon such person shall not be reduced to less than 6 months, nor suspended,

imprisonment in State prison for not less than 3 years but not more than 5 years, and a fine of not less than $5,000 nor more than $10,000. First offense: License Suspension – 1 year; second or subsequent violations – 3 years Ch. 90 §24V
Knowingly loaning a car to someone licensed to drive only a vehicle with ignition interlock Mandatory one-year jail sentence and a fine of more than $500 for a first offense; for a second or subsequent offense: by a fine of not more than $1,000 or imprisonment in a house of correction for not more than 2 1/2 years; one-year license suspension for first or subsequent offenses.
Ch. 90 §12 (c)

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** Limited Ch. 38 §4A
BAC Chemical Test Is Given to the Following Persons:	
Driver:	**Yes**[594]
Vehicle Passengers:	**No**
Pedestrian:	**No**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	21 Ch. 138 §§34 and 34A
Minimum Age (Years) Possession:	21 Applies to the transportation of alcoholic beverages by an unattended person under 21. There is an exemption for persons 18 and 19 years old for employment purposes. Ch §.138 34C
Minimum Age (Years) Consumption:	None
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court the State (Case Citation):	**Yes** *Adamain v. Three Sons,* 233 N.E.2d 18 (Mass. 1967), *Cimino v. The Milford Keg, Inc.,* 431 N.E.2d 920 (Mass.1982), *Michnik-Zilberman v. Gordon's Liquor, Inc.,* 453 N.E.2d 430 (Mass. 1983), *and Douillard v. LMR, Inc.,* 740 N.E.2d 618 (Mass. 2001)

nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served at least 6 months of such sentence but the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at the institution; or to engage in employment pursuant to a work release program. Ch 90 § 24V

[594] In the case of a single vehicle accident, 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 hours 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.

Dram Shop Actions-Social Hosts:	**Yes** *McGuiggan v. New England Telephone Co.,* 496 N.E.2d 141 (Mass. 1986), and *Langemann v. Davis,* 495 N.E.2d 847 (Mass. 1986) An employer is not liable as a social host for the injuries caused by an intoxicated employee, who stored and consumed alcoholic beverages at work with the employer's permission, so long as such beverages were not supplied by the employer. *Kelly v. Avon Tape, Inc.,* 631 N.E.2d 1013 (Mass. 1994)
Other:	A patron who sustains injuries as a result of becoming intoxicated at a licensed establishment may bring a negligence cause action for such injuries against the licensee. *O'Hanley v. Ninety-Nine, Inc.,* 421 N.E.2d 1217 (1981). The plaintiff must prove willful, wanton or reckless conduct on the part of the licensee to maintain an action. (Ch. 231 §85S and §85T) 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. *Zeroulias v. Hamilton American Legion,* 705 N.E.2d 1164 (Mass. App. Ct. 1999)(review denied 710 N.E.2d 604 (Mass. 1999)) However, a social host will not be liable for the injuries sustained by an intoxicated (adult) guest. *Manning v. Nobile,* 582 N.E.2d 942 (Mass. 1991), and Ch. 231 §85T. An adult is a person ≥ 19 years old. *Hamilton v. Ganias,* 632 N.E.2d 407 (Mass. 1994)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	.
Type of Criminal Action:	**Misdemeanor** Ch. 138 §§62 and 69
Term of Imprisonment:	Not less than 1 month and not more than 1 year
Fine ($ Range):	Not less than $50 and not more than $500
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Suspension, revocation or cancellation Ch.138 §64
Length of Term of License Withdrawal:	If revocation is imposed, a licensee is disqualified from receiving a license for 1 year after the expiration of the term of the revoked license. No established period for 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:	**Misdemeanor** Ch. 138 §34
Term of Imprisonment:	Not more than 1 year

Fine ($ Range):	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):	**Yes Suspension, revocation or cancellation** Ch. 138 §64
Length of Term License Withdrawal:	If revocation is imposed, a licensee is disqualified from receiving a license for 1 year after the expiration of the term of the revoked license. No established period for either a suspension or a cancellation. A licensee who is convicted of a violation within 24 months 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 and Ch. 138, §67 (116)
Anti-Happy Hour Laws/Regulations:	**Yes** 204 CMR 4.03 and (Regulation)
Laws Prohibiting (l) 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** This law applies to both drivers and passengers. Ch. 90 §241
Anti-Consumption Law (Yes/No):	**No**

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

Basis for a DWI Charge:

Standard DWI Offense:	1) Operating while intoxicated- Under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance. §257.625(1)(a) 2) 'Visibly impaired' by intoxicating liquor §257.625(3)
Illegal Per Se Law (BAC/BrAC):	**≥ .08**[595and596] §257.625(1)(b) Persons Under 21 Years Old: **Any Bodily Alcohol Content**[597] – meaning either (1) a BAC/BrAC/UrAC of **≥.02 but ≤.08, or** "any presence of alcohol within a person's body resulting from the consumption of intoxicating liquor", (except) "as part of a generally recognized religious service or ceremony." §257.625(6)(a) and (b)§257.625(6)
Presumption (BAC/BrAC):	A BAC/BrAC/UrAC **>.07** but **<.08** is a presumption of impairment. A BAC/BrAC/UrAC **≥.08** is a presumption of driving while under the influence. §257.625a
Types of Drugs/Drugs and Alcohol:	Under the influence of or visibly impaired by (1) **A Controlled Substance** or (2) a Combination of Liquor and a Controlled Substance. §§257.625(1)(a) and (3)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §257.625a(2) For CMV operators, see §§257.319d and 257.625a(4).
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §257.625c(1)(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §257.625c(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes**
Other Information:	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), 257.625d(1) and *People v. Wurm,* 404 N.W.2d 235 (Mich. App. 1987)

[594] This State's illegal per se law makes it an offense to operate a motor vehicle with either a breath or urine alcohol concentration of .08 or more. Note: the standard reverts to .10 BAC on 9/1/13.

[595] Standards: 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. §§257.625(1)(b) and (6)(a), 257.625a(9)(b) and (c) and 257.625g(4)

[596] The term "any bodily alcohol content" means either (1) a BAC/BrAC/UrAC of **≥.02 but ≤.08** (the standard reverts to .10 BAC on 9/1/13), 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) and (b)

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

Blood:	**Yes** §257.625c(1)
Urine:	**Yes** §257.625c(1)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**Limited** A person under 21 years old who is charged with driving while under the influence, driving while visibly impaired or illegal per se offenses under §257.625(1) and (3), cannot enter a plea of either guilty or *nolo contendre* to driving with "any bodily alcohol content" under §257.625(6). §257.625(15)
Pre-Sentencing Investigation Law (PSI)	**Yes**[598] Alcohol and Drug (Screening and 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):	**None**
Administrative Licensing Action (Susp/Rev):	**None.** However, if a person <21 years old refuses to submit to a PBT, 2 points are assigned to the driving record. §257.320a.
Other:	Civil infraction-Fine not more than **$100** plus court costs. §§257.625a(2)(d), 257.741 et seq. and 257.907 It is a misdemeanor for a CMV operator to refuse to submit to a PBT. §§257.319d and 257.625a(4)

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	First refusal – 1 year **suspension** A restricted/hardship license may be issued. Second and subsequent refusals (within 7 years) – **1 year mandatory suspension** §§257.323c and 257.625f(1)and(4)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	1) Driving while visibly impaired or driving while under the influence/Illegal per se: (misdemeanor) – first offense punishable by 1 or more of the following: Not more than 93 days **or** community service for not more than 360 hours **or** a fine of not less than $10.00 or more than $50.00; second

[597] For offenses where a defendant may be sentenced to prison for more than 1 year 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 and 780.764

offense (misdemeanor) within 7 years, a fine of not less than $20.00 or more than $1,00.00 and 1 or more of the following:
5 days to 1 year, with at least 48 hours served consecutively or community service for not less than 30 days or more than 90 days. Third or subsequent offense within 10 years (felony) – punishable by a fine of not less than $50.00 or more than $5,00.00 and either of the following: 1 to 5 years[599] **or** probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days, with at least 48 hours served consecutively. Terms of imprisonment imposed upon repeat violators shall not be suspended. .§257.625(9)
Any DWI offense where there is a "serious impairment of a body function"[600]-felony – not more than **5 years.**[601] §257.625(5)
Persons Under 21 Years Old. **Any Bodily Alcohol Content** – first offense – none; second or subsequent offense (within 7 years) (misdemeanor) – **93 days** §257.625(11)

Minimum Term:

1) Driving while visibly impaired: first offense – No**ne**; second offense (within 7 years) – **5 days (with 48 con hrs)**[602]; third or subsequent offense (within 10 years) – **if probation is granted, 30 days to 1 year with 48 consecutive hours**[603] §257.625(10)
2) Driving while under the influence/Illegal per se: first offense – No**ne**; second offense (within 7 years) – **5 days (with 48 consecutive hours)**; third or subsequent offense (within 10 years) – **if probation is granted, 30 days to 1 year with 48 consecutive hours** §257.625(8)
3) Any DWI offense where there is a "serious impairment of a body function"- imprisonment for not more than 5 years or a fine of not less than $1,00.00 or more than $5,00.00, or both.
4) Persons Under 21 Years Old. **Any Bodily Alcohol Content** – No**ne**

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[598] A person who commits a second 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 first felony off. §769.10(1)(a) and *People v. Bewersdorf,* 475 N.W.2d 231 (Mich. 1991)
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)

[599] 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 days, (5) brain damage, (6) scull or other serious bone fracture or (7) subdural hemorrhage or hematoma. §257.625(5)

[600] A person who commits a second 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 first felony offense. §769.10(1)(a) and *People v. Bewersdorf,* 475 N.W.2d 231 (Mich. 1991)

[601] The law appears to authorize a sentence of community service in addition to or in lieu of imprisonment. §257.625(8)(b) and (10)(b)

[602] 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) and (10)(d)

Fine:

Amount ($ Range): 1) Driving while visibly impaired – first offense – $100 to **$300**; second offense (within 7 years) – **$200 to $1,000**; third or subsequent offense (within 10 years) – **$500 to $5,000.** §257.625(10)
2) Driving while under the influence/illegal per se: first offense – $**100 to $300**; second offense (within 7 years) – **$200 to $1,000**; third or subsequent offense (within a 10-years) – $**500 to $5,000.** §257.625(8)
3) Any DWI offense where there is a "serious impairment of a body function" – $**1,000 to $5,000.** §257.625(5)
4) Any DWI offense that **causes the death** of another person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than $2,50.00 or more than $10,00.00, or both. If the DUI offense causes the death of a police officer, firefighter, or other emergency response personnel, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not less than $2,50.00 or more than $10,00.00, or both §257.625(4)
4) Persons Under 21 Years Old. **Any Bodily Alcohol Content** – first offense – Not more than **$250**; second and subsequent offense (within 7 years) – Not more than **$500** §257.625(11)

Mandatory Min. Fine ($): 1) Driving while visibly impaired – first offense – $100; second offense (within 7 years) – **$200** Third or subsequent offense (within 10 years) – **$500**
2) Driving while under the influence/illegal per se: first offense – $**100**; second offense – $**200**; third offense – $**500**[604]
3) Any DWI offense where there is a "serious impairment of a body function" – No**ne**
4) Persons Under 21 Years Old: Any Bodily Alcohol Content – No**ne**

Other Penalties:

Community Service: 1) Driving while visibly impaired – first offense (misdemeanor) – Not more than **45 days**; second offense (within 7 years) (misdemeanor) – **30 days (mand) to 90 days** in lieu of imprisonment; third or subsequent offense (within 10 years) (felony) – **60 days (mand) to 180 days** (Provided probation is granted. This sanction is in addition to the mandatory 30-day jail sentence.)[605] §§257.625(10) and 771.3(2)(e).
2) Driving while under the influence/ illegal per se First offense – Not more than **45 days**; second offense – **30 (mand) to 90 days** in lieu of imprisonment; third or subsequent offense – **60 days (mand) to 180 days** in addition to mandatory imprisonment (Provided probation is

[603] See *Wayne City Prosecutor v. Wayne Circuit Judge*, 397 N.W.2d 274 (Mich. App. 1986).
[604] In cases where probation is granted for a third or subsequent offense, the law does not appear to allow for the substitution of community service for the minimum mandatory term of imprisonment.

granted. This sanction is in addition to the mandatory 30-day
jail sentence) §257.625(8)
3) Any DWI offense where there is a "serious impairment of a body function" – No**ne**
4) Persons Under 21 Years Old. **Any Bodily Alcohol Content** – first offense – Not more than **45 days**; second and subsequent offense (within 7 years) – Not more than **60 days** §257.625(11)

Restitution:
(e.g., Victim's Fund) **Yes**[606]

Other: **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(1). Juveniles pay an assessment of **$20.** §780.905(2)
Costs of Prosecution: For any drunk driving offense listed above, an offender may be required to pay the costs of prosecution. §§257.625(12) and 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. §769.1f(1) and (3).

Aministrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law: **None**

Other: But under §257.625g, if a driver either refuses to submit to a chemical test or submits to such test which indicates an "unlawful alcohol content"[607], the license is confiscated and destroyed by the police. A temporary license is issued and is valid until the conclusion of the DWI criminal proceedings, or if not prosecuted, for 90 days or until admin suspension, whichever comes first.

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[605] 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)(f) and 780.766 et seq.

[606] An "unlawful alcohol content" means either (1) a person under 21 years old was operating motor vehicle with a BAC/BrAC/UrAC ≥.02, (2) a person with a CDL was operating a CMV with a BAC/BrAC/UrAC ≥.04 or (3) a person was operating any motor vehicle with a BAC/BrAC/UrAC ≥.08. §257.625g (4)
Child Endangerment/Embryo/Miscarriages: I. For any regular drunk driving offense while carrying a passenger <16 years old. First offense (misdemeanor) – Jail-5 days (with either 48 con hours (mand) in jail or 30 (mand) to 90 days community service) to 1 year; fine – $200 to $1,000; and, license Suspension – 180 days (90 days mand); subsequent offense within 7 years – felony -Imprisonment – 1 to 5 years or, with probation, 30 days (48 con hours mand) to 1 year in jail and community service for 60 to 180 days; fine – $500 to $5,000 §257.625(7)(a) II. For a violation of the .02 law by a person <21 years while carrying a passenger <16 years old: first offense – Jail – Not more than 93 days; community service – not more than 60 days; fine – not more than $500; and, license Suspension – 180 days (90 days mand); subsequent offense (within 7 years of a prior offense or within 10 years of 2 prior offenses) – Jail 5 days (48 con hours mand) to 1 year; community service for 30 to 90 days; fine – $200 to $1,000 §257.625(7)(b) III. For violations under I or II, either vehicle **forfeiture** or **immobilization** if the offense was a drunk driving offense. .§§257.319(8)(e) and 257.625(7) IV. A person commits a felony by causing 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 years and/or a fine of $1,000 to $5,000. §750.90d (b). V. A person commits a felony by causing 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 years 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.

Post DWI Conviction Licensing Action:	See Footnote No.[608].
Type of Licensing Action (Susp/Rev):	1) Driving while visibly impaired: first offense – **Suspension**; second offense (within 7 years) – **Revocation**; third offense (within 10 years) – **Revocation** 2) Driving while under the influence/illegal per se: first offense – **Suspension**; second offense (within 7 years) – **Revocation**; third offense (within 10 years) – **Revocation** 3) Any DWI offense where there is a "serious impairment of a body function" – Revocation 4) Persons Under 21 Years Old: **Any Bodily Alcohol Content** – first offense – **Suspension**; a violation of this prohibition where there have been 2 violations of any other drunk driving law provision – Revocation; in addition, for any offense where there has been a prior revocation within 7 years – Revocation Citations for the above actions: §§257.303(2) and (4) and 257.319(8)
Term of License Withdrawal (Days, Months, Years, etc.):	1) Driving while visibly impaired: first offense – **90 days** (If the offense involved driving while impaired by a controlled substance or a controlled substance and alcohol – 180 **days**); second offense – not less than **1 year**; any subsequent offense where there has been a prior revocation within 7 years – not less than **5 years.** §§257.303(2) and (4) and 257.319(8) 2) Driving while under the influence/illegal per se: first offense – **180 days**; second offense – not less than **1 year**; subsequent offense where there has been a prior revocation withi 7 years – not less than **5 years** §§257.303(2) and (4) and 257.319(8)

[607] 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 points in two years may result in suspension/revocation. A suspension cannot be longer than one year. §§257.320(1) (d), (2) and (4) and 257.320a (1) (a), (c) and (i)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is suspended for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has violated the law that prohibits CMV operation with a BAC/BrAC/UrAC ≥.04, (2) has violated the provisions of the drunk driving law (§257.625(1), (3), (4), (5), (6) or (7)) or (3) has 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 years. §257.625f (1) (b) and (c). Under §257.625m, a person who operates a CMV with a BAC/BrAC/UrAC ≥.04 but <.07 commits a criminal offense: first offense (misdemeanor) – Jail – Not more than 93 days and/or fine of not more than $300 and license suspension for 90 days (a restricted license is available for all of this period); second offense (within 7 years) (misdemeanor) – Imprisonment for not more than 1 year and/or a fine of not more than $1,000 and license revocation for 1 year (mand); and, third offense (within 10 years) (felony) – Imprisonment to 5 years or probation with county jail from 30 days to 1 year (w/48 con hrs) with 60 to 180 days of community (the minimum imprisonment and/or community service are mand) and/or a fine of $500 to $5,000 and license revocation for 5 years (mand). In addition, a CMV operator who has a BAC/BrAC/UrAC ≥.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 days and/or a fine of not more than $100, and results in a 24-hour out-of-service order. Note: The standards for BAC, BrAC and UrAC are respectively as follows: 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. §§257.1c, 257.4b, 257.7a, 257.303(2) and (4), 257.312e, 257.319(8)(f), 257.319b, 257.319d, 257.625a (4) and (5) and 257.625m

3) Any DWI offense where there is a "serious impairment of a body function" – first offense – not less than **1 year**; any subsequent offense where there has been a prior revocation within 7 years – not less than **5 years** §§ 257.303(2) and (4)
4) Persons Under 21 Years Old.: **Any Bodily Alcohol Content** – first offense – **30 days**; subsequent offense (within 7 years) – **90 days**; a violation of this prohibition where there has been 2 violations of any other drunk driving law provision – not less than **1 year**; for any offense where there has been a prior revocation within 7 years – not less than **5 years** §§257.303(2) and (4) and 257.319(8)

Mandatory Minimum Term of Withdrawal:

1) Driving while visibly impaired: first offense – No**ne.** (A restricted/hardship license may be issued.); second offense – 1 year; any subsequent offense where there has been a prior revocation within 7 years) – 5 years §§257.303(2) and (4) and 257.319(8)
2) Driving while under the influence/illegal per se: first offense – **30 days** (A restricted hardship license may be issued after this period of time); second offense – 1 year; any subsequent offense where there has been a prior revocation within 7 years – 5 years
3) Any DWI offense where there is a "serious impairment of a body function" – first offense – 1 year; any subsequent offense where there has been a prior revocation within 7 years – 5 years §§ 257.303(2) and (4)
4) Persons Under 21 Years Old: **Any Bodily Alcohol Content** – first offense – No**ne** (A person is eligible for restricted driving privileges); a violation of this prohibition where there have been 2 violations of any other drunk driving law provision – 1 year; for any offense where there has been a prior revocation within 7 years – 5 years §§257.303(2) and (4) and 257.319(8)
Ignition Interlock: A person who has had the license revoked for any drunk driving offense may, after the mandatory revocation 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 year. §257.322(6), (7), (8) and (9)

Other:
Rehabilitation:
Alcohol Education: **Yes** §§257.625b(5) and 771.3(2)(i)
Alcohol Treatment: **Yes** §§257.625b(5) and 771.3(2)(g)

Vehicle Impoundment/Confiscation:
Authorized by Specific

Statutory Authority:

Driving While Impaired, Driving While Under the Influence or Illegal Per Se: second or subsequent offense– **Forfeiture** (discretionary) §257.625(8) and (10) and 257.625n

Terms Upon Which Vehicle Will Be Released:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

See **Special Vehicle Sanctions** for DWI-related death.
Yes. Felony Any DWI offense – related death §257.625(4)[609]
Misdemeanor Negligent Homicide-Driving at an immoderate rate of speed, in a careless, reckless or negligent manner but not willfully or wantonly. §750.324

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 with any alcoholic bodily content): first offense – **Immobilization** – Not more than **180 days** (discretionary/mand if death or serious injury offenses); second offense (within 7 years)–**Immobilization** (Note: If the vehicle is not forfeited for the above offenses, this sanction applies.) – **90 (mand) to 180 days**; third or subsequent offense (within 10 years) – **Immobilization** (If the vehicle is not forfeited for above offenses, this sanction applies.) – **1 year (mand) to 3 years** §§257.625(8) and (10) and 257.904d. This sanction does not apply to rental vehicles or to vehicles that are registered in another State, §257.904d(7)(b), or to a vehicle owned by local, state, or federal government. §257.904d(7)(c). Driving While Impaired, Driving While Under the Influence, Illegal Per Se, Under Age 21 Offense Drunk Driving Offense (driving w/ any alcoholic bodily content) or A Violation of §257.625m by a CMV Operator: Third or subsequent offense – Where the offender's license is still suspended or revoked for these offenses – that person shall be denied the right to either **register** a vehicle or to **purchase**, lease or otherwise acquire a motor vehicle. §257.219(1)(d) and 257.233(6) A defendant, who is subject to vehicle immobilization cannot purchase, lease or otherwise obtain a motor vehicle during the period of immobilization. §257.904e. When a law enforcement officer has detained a person for an offense that 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 the charges are dismissed, there is a guilty or *nolo contendere* plea or there is a finding of guilt. §257.904c

Sanctions:

Criminal Sanction:

[608] The Michigan Supreme Court has held that §257.625(4) is constitutional. *People v. Lardie,* 551 N.W.2d 656 (Mich. 1996)

Imprisonment (Term):	**Felony** – Not more than **15 years**[610] §257.625(4) **Misdemeanor** – Not more than **2 years** §750.324
Mandatory Minimum Term:	See **Sentencing Guidelines** below.
Fine ($ Range):	**Felony** – $**2,500 to $10,000** §257.625(4) **Misdemeanor** – Not more than **$2,000** §750.324
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Revocation** §257.303(2)(d), (e), (c) and (f)
Length of Term of Licensing Withdrawal:	First offense – 1 year; second or sub. offense (within 7 years) – **5 years** §§§257.303(4)(a)(i) and (ii)
Mandatory Action--Minimum Length of License Withdrawal:	First offense – 1 year; second or sub. offense (within 7 years) – **5 years** §§§257.303(4)(a)(i) and (ii)
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnote No. [611] below.
Sanction:	
Criminal:	
Imprisonment (Term):	I. First offense (misdemeanor) – Not more than **93 days**; second and subsequent offenses (misdemeanor) – Not more than **1 year** §257.904(1) and (3) II. If the offense resulted in **death** of another person Not more than **15 years.** §257.904(4) III. If the offense resulted in **serious impairment of a body function** (felony) – Not more than **5 years.** §257.904(5) **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 (a) causing death/serious injury, (b) with a minor or (c) for a third offense; (2) impaired driving for a third 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.

[609] The imprisonment term is for not more than 20 years if the homicide resulted in the death of either a law enforcement officer, firefighter or EMS personnel. §257.625(4)

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked. §257.904

[610] A person who operates a CMV while his/her 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 misdemeanor offense and is subject to an imprisonment term of not more than 90 days and/or a fine of not more than $100. §257.319d

Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	I. First offense – Not more than **$500**; second and subsequent offenses – Not more than **$1,000** §257.904(1) and (3) II. If the offense resulted in **death** of another person (felony) – **$2,500 to $10,000** §257.904(4) III. If the offense resulted in **serious impairment of a body function** – $**1,000 to $5,000** §257.904(5)
Mandatory Minimum Fine:	I. **None** II. If the offense resulted in **death** of another person (felony) – **$2,500** (appears to be mand) §257.904(4) III. If the offense resulted in **serious impairment of a body function** – $**1,000** (appears to be mand) §257.904(5)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	For all of the above offenses – **Suspension or revocation**[612] §257.904(10)
Length of Term of License Withdrawal Action:	The original license suspension or revocation is extended for a like period.
Mandatory Term of License Withdrawal Action:	The original license suspension or revocation is extended a like period.
Other:	See **Sanctions** above.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

[611] For a first or subsequent offense, the registration plates of the vehicle involved in the offense shall also be "cancelled." §257.904(3)(a) and (b) Also, vehicle impoundment for not more than 120 days. §257.904b **Sanctions:** I. For a prior offense (within 7 years), vehicle **immobilization** for not more than 180 days. For 2 or 3 prior offenses (within 7 years), vehicle **immobilization** from 90 to 180 days (90 days mand). For 4 or more prior offenses (within 7 years), vehicle **immobilization** from 1 to 3 years (1 year mand). In addition, for any offenses related to either **death** or **serious impairment of a body function**, either vehicle **forfeiture** or **immobilization** for 180 days (mand). §§257.904(6) and 257.904d(2) II. Fourth or subsequent offense – While license is in suspension/revocation status, no right to register a motor vehicle. §257.219.(1)(d) III. Fourth or subsequent offense – While license is in suspension/revocation status, no right to purchase, lease or otherwise acquire a motor vehicle. §257.233(6)

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
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** §§436.1701(1), 436.1703(1) and 436.1801(2)
Minimum Age (Years) Possession:	**21** Employment exemption §436.1703(7)
Minimum Age (Years) Consumption:	**21**[613] Exemption for religious services.§§436.1703(10) and 257.625(6)(b).
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §436.1801(3) and (10)[614]
"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
Dram Shop Actions-Social Hosts:	**Yes. Limited to minors' actions.** *Longstreth v. Gensel,* 377 N.W.2d 804 (Mich. 1985) and *Trayler v. Koposky,* 384 N.W.2d 819 (Mich. App. 1986)[615, 616 and 617]
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 *Madejski v. Lotmar Limited,* 633 N.W. 2d 429 (Mich. App. 2001)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	

[612] A person <21 years old may consume 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) and (11)

[613] 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 an example of an abrogated common law case, see *Jones v. Bourrie,* 120 N.W.2d 236 (Mich. 1963).

[614] Nevertheless, a social host is not liable for theinjures caused intoxicated minor guests who commit criminal acts. The court felt that there was 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)

[615] 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) and *Kuehn v. Edward Rose and Sons,* 472 N.W.2d 59 (Mich. App. 1991)

[616] The "impairment defense" may be used in a social host dram shop case. *Piccalo v. Nix,*653 N.W. 2d 447 (Mich. App. 2002)

Type of Criminal Action:	**Misdemeanor** §§436.1707, 436.1801(2), 436.1901 and 436.1909
Term of Imprisonment:	Not more than **6 months**[618]
Fine ($ Range):	Not more than **$500**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension or Revocation** §§436.1903(1) and 436.1907(3)
Length of Term of License Withdrawal:	Period of license suspension is not specified in the statute; period of license revocation is at least 2 years. §436.1907(3). A civil fine of not more than $300 may be assessed in addition to or in lieu of a suspension or revocation. §436.1903(1)
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misdemeanor**[619] §§436.1701, 436.1801(2), 436.1901 and 436.1909(2)
Term of Imprisonment:	Not more than **6 months**
Fine ($ Range):	Not more than **$500**
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension or Revocation**[620] §§436.1903(1) and 436.1907(3)
Length of Term License Withdrawal:	Suspension period is not specified; revocation is 2 years A civil fine of not more than $1,000 may be assessed in addition to or in lieu of suspension/revocation.
Anti-Happy Hour Laws/Regulations:	**Yes** R 436.1438 (regulation)
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages	

[617] 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 and 750.504

[618] 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)

[619] The Liquor Control Commission cannot suspend or revoke a license or take other action against a licensee in situations where the State/local police, when enforcing the law prohibiting a licensee from selling alcoholic beverages to persons under 21 years old, have not charged the minors involved in the offense (except minors being used as undercover agents) with violating the law prohibiting these persons from purchasing or attempting to purchase such beverages. §436.1905(1)

and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** Driver and passengers §257.624a {Does not apply to passengers in a chartered vehicle.}
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §436.1915(1) The law states that "[a]lcoholic liquor shall not be consumed on the public highways."

STATE:	**MINNESOTA**
General Reference:	Minnesota Statutes Annotated
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of alcohol §169A.20, subd. 1[621]
Illegal Per Se Law (BAC/BrAC):	≥ **.08** [622and623] §169A.20, subd. 1(5) **Any Amount of a Controlled Substance in the Body** §169A.20,subd. 1(7)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) A Controlled Substance, (2) A Listed Hazardous Substance or (3) a Combination of Alcohol, a Controlled Substance or a Listed Hazardous Substance §169A.20, subd. 1(2), (3) and (4)
Other:	An alcohol concentration ≥ **.04** is relevant evidence that a person was under the influence of alcohol. §169A.45, subd. 2
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** Also applies to CMV operators. §169A.41
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[624]
Applied Consent Law	
Applies to Drugs (Yes/No):	**Yes** controlled[625] or hazardous substances §169A.51, subd. 1
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** §169A.45, subd 3, *and McConnell v. Com'r of Public Safety,* 473 N.W.2d 848 (Minn. 1988)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC ≥ .04, (2) is under the influence of alcohol or a controlled substance or (3) refuses 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 years (10 years mand). A CMV operator is placed "out-of-service" for 24 hrs if any alcohol is in the system. A person commits a drunk driving offense if they operate a CMV with a BAC/BrAC/UrAC ≥ .04; the sanctions for this offense are the same as for any drunk driving offense. §§169.01, subds. 50 and 75; 169A.03, subd. 4; 169A.54, subd. 7(c); 169A.20, sub. (1)(6); 169A.51, subds.

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[621] AIDING AND ABETTING – Every person who aids or abets in the commission of any act declared in this chapter to be an offense, whether individually or in connection with one or more persons , or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of this chapter is likewise guilty of that offense. §169A.78

[622] 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 concentration at or above this level.

[623]Standards: 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. §169A.20. subd. 2

[624] 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 ≥ .10 {.08 on or after 8/1/2005}; or, (4) a person is involved in an accident resulting in property damage, personal injury, or death. §169A.51, subd. 1(b)

[625] Applies to controlled substances listed in Schedules I and II except marijuana or tetrahydrocannabinols. §169 A.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 and 609.21 subd. 4a

1(c); 169A.52, subds. 3(b) and 4; 169A.54, subd. 1, 7; 171.01, subd. 22; 171.165, subds. 1, 2, 3(1) and 3(2); and 609.03

Other Information:	I. A driver is required to submit to a chemical test if there is probable cause to believe that the person violated criminal vehicular homicide or injury laws. §§169A.51, sub. 2(3) and 169A.52, subd 1 II. In addition to the above statutory provision, a person may be administered a blood test without consent if there is "probable cause" that the person 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[626]
Urine:	**Yes** §169A.51, subd. 1May 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 (PS1) (Yes/No):	**Yes**[627] §§169A.70, subd. 2 and 169A.70, subd. 3 Alcohol assessment required

[626] 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, subds. 3 and4

[627] If a person has had two or more implied consent tests showing an alcohol concentration ≥ .07 within 2 years, 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, the driving license may be denied for not more than 90 days. §169A.54, subd. 11

School or Head Start Bus Operators: It is a misdemeanor to operate a school or head start bus with <u>any</u> alcohol in the body-Sanction: jail for not more than 90 days and/or a fine of not more than $1,000. The offense is a gross misdemeanor if it occurred within 5 years of a prior drunk driving offense or the offense occurred while the driver was transporting a child < 16 years old who was 36 months younger than the driver; the sanctions for this offense is jail for not more than 1 year and/or a fine of not more than $3,000. §§169A.31 and 609.03 A PBT result may be admitted into evidence to prove this offense. §169A.41, subd. 1 There are severe administrative penalties. §169A.54, subd. 9, §171.3215

Conditional Release. I. Unless maximum bail is imposed, a person charged with a drunk driving or implied consent offense where the offender: (1) has had 2 or more such convictions within 10 years; (2) was < 19 years old and this is the second or subsequent charge for either a drunk driving offense or implied consent law violation; or (3) has been charged with driving with an alcohol concentration ≥ 0.20. The offender can be released from detention only by agreeing to abstain from alcohol use and to submit to daily monitoring of alcohol levels. §169A.44(a) and (b) II. Unless maximum bail is imposed, a person <u>charged</u> with a drunk driving or implied consent offense where the offender had 3 or more prior offense convictions within 10 years can <u>only</u> 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 die use of alcohol or controlled substances and subsequentmit to weekly random testing for alcohol/drugs. §l69A.44(c)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): See Footnote No. [628]

Administrative Licensing Action (Susp/Rev):

Other:

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 A refusal to submit to a chemical test is a drunk driving offense.

Administrative Licensing Action (Susp/Rev): **Admin. Revocations**. Revocation **1 year** §169A.52, subd. 3(a) However, for a first refusal criminal offense conviction, the licensing revocation of 90 days applies instead of this action. §169A.54, subds. 1(2) and 6
First offense – **15 days** mandatory – For persons < 18 years old-90 days mandatory subsequent Refusal (within 10 years) or a refusal where the person has had a prior drunk driving or admin. per se violation (within 10 years) – **180 days** mandatory For persons < 18 years old-**360 days** mandatory §171.30, subds. 2a and 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)
In any civil or criminal hearing or trial, the results of a breath test, when performed by a person who has been fully trained in the use of an infrared or other approved breath-testing instrument … are admissible in evidence without antecedent expert testimony that an infrared or other approved breath-testing instrument provides a trustworthy and reliable measure of the alcohol in the breath.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Fourth Degree Drunk Driving Offense
No Aggravating Factors- **Misdemeanor** §169A.27
Third Degree Drunk Driving Offense
One Aggravating Factor-**Gross Misdemeanor** §169A.26
Second Degree Drunk Driving Offense

[628] 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

A drunk driving offense with **two** Aggravating Factors-**Gross Misdemeanor** §169A.25

First Degree Drunk Driving Offense

A drunk driving offense with **three or more** Aggravating Factors-Felony §169A.24

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 and vehicle homicide or injury offenses.); (2) driving with an alcohol concentration ≥ **0.20**; or, (3) driving with a passenger < 16 years old if the passenger is more than 36 months younger than the driver. §§169A.03, subds 3, 20, 21 and 22, 169A.095, 169A.25, 169A.26 and 169A.27

Persons Under 21 Years Old. It is a misdemeanor for persons less than 21 years old to operate a motor vehicle while consuming 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 days, a fine of not more than $1,000 (mand fine of $210 or $50 if there is undue hardship. See license suspension. For a first offense, license suspension for 30 days and, for a subsequent offense, license suspension for 180 days. These suspensions appear to be mandatory. §§169A.33 and 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 **"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 ≥ .10{.08 on or after 8/1/2005}, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body, the following sanctions apply: Jail – not more than 1 year; fine – not more than $3,000 (mand fine of $900 or $50 if there is undue hardship) and 1 year mandatory license revocation.) For persons <18 years old, a mandatory license revocation for 2 years. §§609.21, subd. 2b, 609.101, subds. 4 and 5 and 171.30, subds. 2a(4) and 2b

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 ≥ .10, {.08 on or after 8/1/2005}, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body , the following sanctions apply: Jail – not

more than 5 years; fine – not more than $10,000 (mand fine of $3,000 or $50 if there is undue hardship); and 1 year mandatory license revocation. For persons < 18 years old, a mandatory license revocation for 2 years. §§609.21, subd. 2, 609.101, subds. 4 and 5 and 171.30, subds. 2a(4) and 2b

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 ≥ .10, {.08 on or after 8/1/2005}, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body , the following sanctions apply: Jail – not more than 3 years; fine – not more than $10,000 (mand fine of $3,000 or $50 if there is undue hardship); and, 1 year mandatory license revocation. For persons < 18 years old, a mandatory license revocation for 2 years. §§609.21, subd. 2a, 609.101, subds. 4 and 5 and 171.30, subds. 2a(4) and2b

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 ≥ .10, {.08 on or after 8/1/2005}, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body, the following sanctions apply: Jail – not more than 5 years; fine – not more than $10,000 (mand fine of $3,000 or $50 if there is undue hardship); and 1 year mandatory license revocation. For persons < 18 years old, a mandatory license revocation for 2 years. §§609.21, subd. 4, 609.101, subds. 4 and 5 and 171.30, subds. 2a(4) and 2b

Imprisonment: See Mandatory Consecutive Sentences below.

Term (Day, Month, Years, Etc.): Misdemeanor-Up to **90 days** Gross Misdemeanor – Not more than **1 year** §609.03

Mandatory Minimum Term: First offense – No**ne**

Second offense (within 10 years) – **30 days** with 48 consecutive hours[629]

[629] 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 hours of consecutive incarceration or 80 hours of community service. §169A.275, subd. 1(d)

Third offense (within 10 years) – (1) **90 days** w/30 con days (not more than 60 days may be served on home detention or intensive probation[630]) or (2) **6 days** of incarceration followed by intensive probation.
Fourth offense (within 10 years) – (1) **180 days** with 30 consecutive days (not more than 150 days may be served on home detention or intensive probation) or (2) **6 days** of incarceration followed by intensive probation. Fifth or subsequent offense (within 10 years) – **1 year** with 60 consecutive days (the remainder of the minimum sentence may be served via on intensive probation with electronic monitoring or home detention) or (2) **6 days** of incarceration followed by intensive probation. §§169A.275

Fine:
Amount ($ Range): Misdemeanor – Not more than **$1,000** §609.03
Gross Misdemeanor – Not more than **$3,000**
§609.03

Mandatory Min. Fine ($): Misdemeanor Offenses – $**300**; Gross Misdemeanor Offenses – $**900** The law provides, that these mandatory fines may be reduced to $50 based on undue hardship. §609.101, subds. 4 and 5 See **Felony Offenses** below.

Other Penalties:
Community Service: First offense – 8 hours of community service for each day less than 30 of incarceration as an alternative to mandatory jail §169A.275, subd. 1(a)(2)

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[630] **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 within 10 years. The court may sentence consecutively in 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. 1,2 and 3
I. For **felony offenses**, mandatory fines are based on 30 percent of the maximum statutory fine. For either gross misdemeanor or misdemeanor offenses, mandatory fines are based either on 30 percent of the maximum statutory fine or on 30 percent 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) and (2) II. A person, who has been convicted of any criminal offense, **must** pay a surcharge of **$35** §357.021, subd 6(a)

Restitution (e.g., Victim's Fund)	**Yes** Victim's Fund (§§6llA.51 et seq.)[631] and also direct payment by the defendant to a victim (§§609.10 and 609.125(4))[632]
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes** ≥ **.10** {.08 BAC on or after 8/1/2005} (BAC/BrAC/UrAC or **Any Amount of a Controlled Substance in the Body** first violation – Revocation **90 days**[633,634and635] (15 days mand) For persons < 18 years old-90 days mand); second or Subsequent Violation (within 5 years) – **Revocation – 180 days** (90 days mand- For persons < 18 years old – 180 days mand) A limited license is available after the minimum mandatory revocation (or "waiting") period. §§169A.52, subd. 4, and 171.30, subd. 2a and 2b
Other:	Under §171.18, a person's license may be suspended for not more than 1 year if that person has "committed" an offense requiring mandatory license revocation (e.g., DWI). Such action may be taken without a preliminary hearing.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	All offenses – Revocation §§169A.54, subd. 1, and 171.17
Term of License Withdrawal (Days, Months, Years, etc.):	First **offense – Not** less than **30 days**[636] (90 days for refusal to submit to a chemical test); second **offense** (within 10 years) – Not less than **180 days** (1 year for refusal to submit to a chemical test) and until treatment/rehabilitation has been completed; third

[631] Payments to all claimants shall not exceed $50,000 per victim. §611A.54

[632] **Assessments and Surcharges**. I. For alcohol screening, there is a surcharge of $125 ($130 if there has been a prior offense within 5 years). §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 ≥ 0.20 under §169A.20 may be required to pay an assessment of up to **$**1,000. §169A.285, subd. 1

[633]For persons less than 21 years old, the revocation period is six months (12 months if alcohol concentration ≥ 0.20). §169A.52, subd. 4

[634]The admin. per se revocations do not apply if a person has been convicted of a first DWI offense related to the same incident. §169A.54, subd. 6

[635] If the person's alcohol concentration was ≥ 0.20, the license revocation periods are **double** the ones given. §§169A.52, subd. 4(4) and 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); *State v. Nelson* 608 N.W.2d 913 (Minn App. 2000).

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), *Hamilton v. Comm of Public Safety*, 600 N.W.2d 720 (Minn. 1999)

[636] A person who has been convicted of driving with an alcohol concentration ≥ 0.20 under §169A.20 must have the driving privilege **revoked for double** these periods. §§169A.54, subd. 5 and 171.30, subd. 2c Under previous law, which was similar to the present provision, these longer waiting periods in cases where the driver's BAC was ≥ 0.20 were held not to violate such person's procedural due process of law rights. *Hamilton v. Commissioner of Public Safety,* 600 N.W.2d 720 (Minn. 1999)

offense (within 10 years) – Not less than **1 year** and until rehabilitation has been established; **fourth and subsequent offenses** – Not less than **2 years** and until rehabilitation has been established.[637and 638.]

Mandatory Minimum Term of Withdrawal:

First offense – **15 days**[639]; second or subsequent offense (where a person submits to a chemical test) – **90 days**; second or subsequent offense (where a person refuses to submit to a chemical test) – **180 days** §171.30, subd. 2a
II. For persons < 18 years old – first offense – **90 days**; second or subsequent offense (where a person submits to a chemical test) – **180 days**; second or subsequent offense (where a person refuses to submit to a chemical test) – **360 days** §171.30, subd. 2b

Other:
Rehabilitation:
Alcohol Education: **Yes** §169A.275, subd 5
Alcohol Treatment: **Yes** §169A.275, subd 5
Except for mandatory criminal sanctions, the court may stay imposition of fine or jail sentence but not the 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[640,641and642] (1) if the vehicle operator within 10 years has been convicted of or had a license revocation either for driving while under the influence of alcohol or a controlled substance or with an alcohol concentration ≥ .10,{.08 on or after 8/1/2005} (2) if the vehicle operator was driving with an alcohol

[637] Ninety additional days are added to the above revocation base periods if the drunk driving offense involved either a death or an injury. §169A.54, subd.4
[638] If the drunk driving law offender is under 21 years old, the license is revoked for 6 months or for the normal period of time for drunk driving law violators whichever is the greater period. §169A.54, subd. 2
[639] Under §171.30, after the minimum mandatory revocation (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.
[640] License plate impoundment does not apply either to rental vehicles or to vehicles registered in other States. §169A.60, subd. 2(b)
[641] If the registered owner of a vehicle was not a passenger at the time of the offense, the vehicle registration plates may be reissued. §169A.60, subd. 8
[642] **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 that person has 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.) After *Grayeagle*, the legislature amended §168.0422 to specifically authorize such stops. The court in *State v. Henning;* 644 N.W.2d 500 (Minn. App. 2002) found it to be constitutional.

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 years old where the child was at least 36 months younger then the driver. New registration plates are issued when the driver's license revocation order is "rescinded or if the vehicle belongs to a person other than the violator and was not a passenger at the time of violation. §169A.60

Forfeiture (Administrative or Judicial).[643] Under §169A.63, any motor vehicle used in the following offenses or violations is subject to forfeiture.

I. A third or subsequent implied consent refusal or admin. per se revocation within 10 years (a prior violation includes any drunk driving offense).

II. A person who has been convicted of a drunk driving offense while license was cancelled or restricted.

Terms Upon Which Vehicle Will Be Released:

Other: 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 Ignition Interlock Program below

Punitive Damages. In a civil action involving a motor vehicle accident, punitive damages may be awarded if the defendant (1) had an alcohol concentration ≥ .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

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[643] **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 his/her 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), and *City of New Brighton v. 2000 Ford Excursion,* 622 N.W.2d 364 (Minn. App. 2001) (review denied by the Stale supreme court, 2001 Minn. LEXIS 225); *Miller v. 2001 Pontiac Aztek,* 655 N.W.2d 12 (Minn. App. 2002)

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 having 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); *Miller v. 2001 Pontiac Aztek,* 655 N.W.2d 12 (Minn. App. 2002)

Ignition Interlock Program: Pursuant to §171.305 subd. 5, the commissioner may issue a limited license to a drunk driving offender who had been denied driving privileges based on good cause that the person is a threat to public safety under §171.04, subd. 1(10), if (1) at least half of the person's required alcohol abstinence period has been completed (2) the treatment program has been completed, (3) the person was currently participating in a group support abstinence program and (4) operated motor vehicles equipped with **ignition interlock** devices. §171.305

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/controlled substance, (ii) with an alcohol concentration ≥ .10, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body §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 ≥ .10, (iii) while knowingly under the influence of a hazardous or (iv) with any amount of controlled substance in the body §609.21, subd. 3

Sanctions:

Criminal Sanction:

Imprisonment (Term): Not more than **10 years** §609.21, subds. 1 and 3

Mandatory Minimum Term: **None**

Fine ($ Range): Not more than **$20,000** §609.21, subds. 1 and 3

Mandatory Minimum Fine: **$6,000** ($50 if there is undue hardship) §609.101, subds. 4 and 5

Administrative Licensing Action:

Licensing Authorized and Type of Action: **Revocation** §§169.11[644] and 171.17.

Length of Term of Licensing Withdrawal: See Footnote No. [645]

Mandatory Action--Minimum Length of License Withdrawal: **1 year** (For persons < 18 years old, 2 years) §171.30 A limited license may be issued after the 1 (or 2) – year minimum license revocation period. §171.30, subd. 2a and 2b

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense: No specific statutory provision on this subject. Sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

[644] A defendant may also be required to surrender his/her vehicle's registration plates during the period of license revocation. §168.041, subds. 3 and4

[645] **Injury or Death Related DWI Offenses**. The maximum revocation for these offenses is not specified by statute. However, the following provisions are applicable. (1) An offender cannot have the driving privilege restored until completion of an examination by the licensing agency. §171.29, subd. 1 And, (2) if a court has denied an offender's petition for reinstatement of the license, the offender must wait 1 year before petitioning the court again for such reinstatement. §171.19

Criminal:	
Imprisonment (Term):	**Misdemeanor** Not more than **90 days** §§171.24[646] and 609.03(3)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Not more than **$1,000** 609.03(3)
Mandatory Minimum Fine:	**$300** ($50 if there is undue hardship) §609.101, subds. 4 and 5 See **Vehicle Forfeiture** below.
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Suspension** Applies only to second or subsequent offenses. §168.041, subd. 2
Length of Term of License Withdrawal Action:	Second or subsequent offense – Not more than **1 year** §168.041, subd. 2
Mandatory Term of License Withdrawal Action:	**None**
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

[646] Motor vehicle registration plates impounded under §168.041, subds. 1, 2 and 4 for a violation of this provision.
I. A person commits a misdemeanor by operating a CMV during a CDL disqualification. The sanctions for this offense are imprisonment for not more than 90 days and/or a fine of not more than $1,000 (mand fine of $300 or $50 if there is undue hardship). §§171.24, subd. 4 and 609.03 II. A person is subject to the following CDL disqualifications, if operating a CMV during an out-of-service order: first violation – 90 days (mand) to 1 year; second violation (within 10 years) – 1 year (mand) to 5 years; and, third or subsequent violation (within 10 years) – 3 years (mand) to 5 years. §171.165. subd. 4A III. A person is subject to an administrative "penalty" of not more than $1,000 if operating 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 either a drunk driving or aggravated drunk driving offense occurs after the driving privilege has been canceled by the licensing agency on the grounds that "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)

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**[647] §340A.503, subd. 2(1) and (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**[648] §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 years of age who serve or provide alcoholic beverages that result in the intoxication of persons <21 years old are liable for the injuries caused by such minors. However, the law excludes such intoxicated minors from recovering for any of the injuries they may sustain. §340A.90
Other:	A licensee is not liable for the injuries sustained by an intoxicated patron. *Line Const. Ben. Fund (Lineco) v. Skeates,* 563 N.W.2d 757 (Minn. App. 1997), *and Empire Fire and Marine Insurance Co. v. Williams,* 121 N.W.2d 580 (Minn. 1963)
Criminal Action Against Owner	

[647] A person under 21 years old may purchase alcoholic beverages if under the supervision of a person over 21 years 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

[648] 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 licensee 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 injured in an automobile accident while riding with the intoxicated patron. *Lefto v. Hoggsbreath Enterprises, Inc.,* 581 N.W.2d 855 (Minn. 1998) Also, bartenders may be able to recover damages from the employer for injuries received 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) (rev denied 2001 Minn. LEXIS 115 (2001))

or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Gross Misdemeanor** §§340A.502, 340A.702(7) and 609.03
Term of Imprisonment:	Up to **1 year**
Fine ($ Range):	Not more than **$3,000** (a mandatory fine of $900 or $50 if there is undue hardship §609.101, subds. 4 and 5) (An admin. fine of up to **$2,000** may also be imposed. §340A.415)
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** §340A.415
Length of Term of License Withdrawal:	Suspended for up to **60 days** or revoked for an unspecified period of time.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Gross Misdemeanor** §§340A.503, subd. 2(1), and 340A.702(8) and 609.03
Term of Imprisonment:	Up to **1 year**[649]
Fine ($ Range):	Not more than **$3,000** (a mandatory fine of $900 or $50 if there is undue hardship §609.101, subds. 4 and5) (An admin. fine of up to **$2,000** may also be imposed. §340A.415)
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**

[649] In *State v. Guminga,* 395 N.W.2d 344 (Minn. 1986), the Minnesota Supreme Court held 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. See §340A.501 which also eliminates the possibility of such vicarious criminal liability.
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 years 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 years and/or a fine of not more than $10,000. However, unless an offender's criminal history would indicate a greater sanction via the sentencing guidelines, the presumptive sentence is a stay of execution with 90 days incarceration and probation. §§340A.701, subds. 1(4) and 2 and 609.03(1)

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

Open Container Law (Yes/No):	**Yes**	§169A.35, subds. 3 and 4
Anti-Consumption Law (Yes/No):	**Yes**	Driver and passengers §169A.35, subd. 2

STATE:	**MISSISSIPPI**
General Reference:	Mississippi Code Annotated
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of intoxicating liquor §63-11-30(1)
Illegal Per Se Law (BAC/BrAC):	≥ **.08**[650and651] §63-11-30(1)(c) Persons Under 21 Years Old-≥ **.02** §63-11-30(1)(c)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Substance which has impaired driving ability §63-11-30(1)(b) or (2) Any Drug or Controlled Substance the possession of which is illegal §63-11-30(1)(d)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** §63-11-5
Implied Consent Law:	
Arrest Required (Yes/No):	**No** However, a request to submit to a test is based on reasonable grounds and probable cause of DWI. §63-11-5(1)
Implied Consent Law Applies to Drugs (Yes/No):	**No** §63-11-5
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §63-11-41; *Ricks v. State* 611 So.2d 212 (Miss. 1992)
Other Information:	If a driver has been legally arrested for an offense where BAC evidence is relevant, a blood sample may be obtained in order to determine such BAC without the consent of the driver[652] *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:	**Yes** §63-11-5
Urine:	**Yes** §63-11-5
Other:	**None**
Adjudication of DWI Charges:	
Mandatory Adjudication Law (Yes/No):	**No**[653]
Anti-Plea-Bargaining Statute (Yes/No):	**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) and (c)

[650] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath or alcohol concentration of .08 (.02 for persons < 21 years old) or more.

[651] 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) and 63-11-30(1)

[652] 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) Despite *McDuff* the Miss Ct of Appeals has upheld the admissibility of such blood tests where probable cause was found to be present by the trial court. *Halloman v. State,* 820 So.2d 52 (Miss. App. 2002)

[653] However, a drunk driving offense cannot be dismissed upon the completion of court imposed conditions. §99-15-26(1) and A.G. Op. #93-0889, January 12, 1994, 1994 Miss. AC LEXIS 56

Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Mandatory for subsequent offenses §63-11-30(2)(d) and (e)
Sanctions for Refusal to Submit to a Chemical Test:	
Refusal to Take Implied Consent Chemical Test:	**None**
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):	**Suspension** for **90 days** (mand) if there has been no previous conviction for a DWI offense. (§63-11-30). **Suspension** for **1 year** (mand) if there has been a previous conviction for a DWI offense. (§63-ll-30) §§63-11-5 and 63-11-23. These suspensions are additional to any others ordered. §63-11-30(4)
Other:	A *de novo* court trial may be held following administrative hearings on these suspensions. §63-11-25
Sanctions Following a Conviction for a DWI Offense:	
Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	DWI offense – Misdemeanor (third and subsequent offense – felony) first offense – Not more than **48 hours**[654] (See Victim Impact Panel); second offense (within 5 years) – **5 days**[655] – 1 year; third and Subsequent offense (within 5 years) – **1 to 5 years** (felony – State penitentiary) Conviction for a DWI offense where there has been negligence resulting in disfigurement, disability, etc., (felony) – **5 to 25 years** §63-11-30(2)(a), (b) and (c) and (5), §47-5-3

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)

For persons < 21 years old, the sanctions for a normal drunk driving offenses apply if the BAC/BrAC ≥ .08. However, different sanctions apply if the BAC/BrAC is ≥ .02 but < .08; §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 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC ≥ .04, (2) is under the influence of alcohol or a controlled substance or (3) refuses 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 the system must be placed "out-of-service" for 24 hours. A person commits a drunk driving offense by operating a CMV with a BAC/BrAC ≥ .04. §§63-1-75(b), 63-1-82(3), 63-1-83, 63-1-84 and 63-11-30(1)(e)

[654] An offender may attend a victim impact panel in lieu of 48 hours of incarceration. §63-1 l-30(2)(a)

[655] See Community Service.

(continued)

Mandatory Minimum Term:	First offense – No**ne**; second offense – **5 days**; subsequent offense – 1 year §63-11-30(2)(b) and (c)
Fine:	
Amount ($ Range):	First offense – $**250 to $1,000**; second offense (within 5 years) – **$600 to $1,500**; third and Subsequent offense (within 5 years) – **$2,000 to $5,000** Conviction for a DWI offense where there has been negligence resulting in disfigurement, disability, etc. (felony) – Not more than **$10,000** §63-11-30(2)(a), (b) and (c) and 99-19-32
Mandatory Min. Fine ($):	First offense – $**250**; second offense (within 5 years) – **$600**; third and subsequent offense (within 5 years) – **$2,000** §§63-11-30(2)(b) and (c) and 99-19-25
Other Penalties:	
Community Service:	**Yes** Second offense – Community service from 10 days (mand) to 1 year in addition to imprisonment. §63-11-30(2)(b)
Restitution (e.g., Victim's Fund)	**Yes**[656] I. A defendant may be ordered by the court to make direct restitution to a victim. §99-37-3 II. A victim may also obtain limited compensation from the State Crimes Victims' Compensation Fund. §99-41-1 et seq.
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes** This law encourages DWI offenders who have a BAC/BrAC ≥ .08 (for persons < 21 years old ≥ **.02**), to request a trial within 30 days 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 to the licensing agency. The driver is issued a receipt for such license. This receipt may be used as a temporary permit for 30 days. However, driving privileges are extended if a trial is requested by the driver but not commenced within 30 days. §63-11-23(2) **Important**: If temporary driving privileges expire without a trial having been requested by the offender, the license suspension periods for implied consent violations apply. §63-11-23(2)
Other:	A person's license may be suspended if he/she has "committed" an offense that usually requires license revocation (e.g., vehicle homicide)[657]. Such action may be taken without a preliminary hearing.

[656] 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 receiving funds from the escrow account. §99-38-1 et seq.

[657] A DWI offense results in license suspension not revocation.

The time period for this suspension is not specified. §63-1-53(2)(a) Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): **Suspension – All offenses** §63-11-30

Term of License Withdrawal (Days, Months, Years, etc.): First offense – **90 days to 1 year**[658and659]; second offense (within 5 years) – **2 years**; third or subsequent offense (within 5 years) – **5 years**

Mandatory Minimum Term of Withdrawal: First offense – **30 days**[660]; second offense (within 5 years) – **l year**[661]; third and subsequent offense (within 5 years) – **3 years**[662and663].

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 the driving privileges forfeited for not less than 6 months. The revocation or suspension is to run consecutive to any others. 63-1-71(1)

II. If a person is convicted of a DWI offense where there has been a chemical test refusal, the licensing sanctions for the DWI conviction are in addition (i.e., consecutive) to those imposed under the implied consent law. §63-11-30(4)

Other:

Rehabilitation:

Alcohol Education: **Yes first offense** – Required before license can be reinstated. §§63-11-30(2)(a) and 63-11-32

Alcohol Treatment: **Yes** Second and third offenses §63-11-30(2)(d) and(e)

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **Forfeiture.** For a second offense (within 5 years), the vehicle used in the offense **may** be forfeited. For third or subsequent offenses, vehicle **shall** be seized. However, the vehicle owner's spouse may obtain possession of the vehicle by demonstrating the vehicle is the only means of transportation. §§63-11-30(2)(b), 63-11-30(2)(c) and 62-11-49.

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[658] Judicial review is not allowed for these suspension actions by the licensing agency. §63-11-26

[659] The law requires that a first offender complete an alcohol education program before having the license reinstated. However, in no event can a license suspension exceed 1 year.

[660] The county circuit court may reduce the suspension period to 30 days provided the defendant demonstrates a need for a 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. §63-1 l-30(2)(a)

[661] For a second conviction, the suspension period may be reduced to 1 year 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)

[662] For a third or subsequent conviction, a defendant's license may be reinstated after three years upon successful completion of an alcohol/drug abuse treatment program. §63-11-30(2)(e)

[663] 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 18 years old. §63-11-30(9)

Impoundment/Immobilization. For second or subsequent offenses, **all** vehicles owned by the offender must be impounded/immobilized for the length of the license suspension. §§63-11-30(2)(b), 63-11-31-(1)(a) and 63-11-49(1)

Terms Upon Which Vehicle Will Be Released:

Miscellaneous Sanctions Not Included Elsewhere:

I. Mandatory State Traffic Violations Assessment: $51 – imposed on anyone a court fines or penalizes for a traffic violation other than vehicle parking, registration or implied consent violation. §99-19-73(1) and (7)
II. Mandatory State Implied Consent Violation Assessment: $178 §99-19-73(2) and (7)
III. Victim Impact Panel. First offense – Attendance at a victim impact panel in lieu of 48 hours in jail. §63-11-30(2)(a)
IV. Bus Drivers and Operators of Vehicles for Hire. The privilege to operate a bus/vehicle for hire may be suspended/revoked if a person drives such a vehicle while intoxicated or noticeably under the influence of intoxicating liquor. §§21-27-137 and 21-27-155
V. 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)
VI. Ignition Interlock. (1) Where other persons must use a vehicle, the use of an ignition interlock may be required in **lieu** of impoundment or immobilization. (2) For a first or subsequent offense, the court may order the use of an ignition interlock for **6 months** on all vehicles owned by the offender following license reinstatement §§63-11-30(11) and 63-11-31(1)(a)

Other Criminal Actions Related to DWI:
Homicide by Vehicle:

State Has Such a Law: **Yes Felony** Death via DWI and negligence[664] §63-11-30(5)

Sanctions:
Criminal Sanction:
Imprisonment (Term): **5 to 25 years** §63-11-30(5).
Mandatory Minimum Term: **None**

[664] The DWI law provides that, for the purposes vehicle homicide, a death-related DWI offense also includes a death caused by a person < 21 years old who is operating a motor vehicle with a BAC ≥ .02. §63-11-30(1) and (5) The State supreme court has held the law does not violate constitutional provisions requiring equal protection of the laws. *Mason v. State,* 781 So.2d 99 (Miss. 2000)

Persons Under 21 Years Old. The following sanctions apply to persons < 21 years old who drive with a BAC/BrAC ≥ .02 but < .08. First offense – A fine of **$250**, license Suspension – **90 days** (30 days mand). A hardship license may be issued after the 30-day period for purposes of employment, education or medical needs, and completion of an alcohol education program; second offense (within 5 years) – A fine of not more than **$500** and license suspension – 1 year (6 months mand); and, third or subsequent offense (within 5 years) – A fine of not more than **$1,000** and license suspension until age 21 or for **2 years –** whichever is longer suspension period (6 months mand). For a second offense, driving privileges may be reinstated after 6 months if the person receives a "diagnostic assessment" and completes any needed alcohol treatment program. §63-11-30(3).
(continued)

Fine ($ Range):	Not more than **$10,000** §§47-5-3 and 99-19-32
Mandatory Minimum Fine:	**None –** However, there is a mandatory State assessment of $157 §99-19-73(2) and (7)
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Revocation** §63-1-51(1)(a)
Length of Term of Licensing Withdrawal:	**1 year** §63-1-51(1)(a)
Mandatory Action--Minimum Length of License Withdrawal:	**l year** §63-1-51(1)
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	**Yes** §63-11-40[665]
Sanction:	
Criminal:	
Imprisonment (Term):	**Misdemeanor- 48 hours-6 months** §63-11-40
Mandatory Minimum Term of Imprisonment:	**48 hours §**63-11-40
Fine ($ Range):	**$200 to $500** §63-11-40
Mandatory Minimum Fine:	**$200** §99-19-25
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Suspension**
Length of Term of License Withdrawal Action:	**6-month suspension** added to the original suspension period §63-11-40
Mandatory Term of License Withdrawal Action:	**6-month suspension** added to the original suspension period §63-11-40
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of	

[665] It is a misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-or-service order. The sanctions for this offense are imprisonment from 1 to 6 years, a fine of $5 to $250 and an assessment of $30. §§63-1-69, 63-1-77(2) and (3) and 99-19-73(1)

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 Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**No**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §§67-1-81, 67-3-53(b) and 67-3-70(1)
Minimum Age (Years) Possession:	**21** There is an employment exemption. §§67-1-81 and 67-3-54
Minimum Age (Years) Consumption:	**None**[666]

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes**[667] §67-3-73(2) and (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** *Munford, Inc. v. Peterson,* 368 So.2d 213 (Miss. 1979), *Bryant v. Alpha Entertainment Corp.,* 508 So.2d 1094 (Miss. 1987), *and Delahoussaye v. Mary Mahoney's Inc.,* 783 So.2d 666 (Miss. 2001)[668]
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 and *Boutwell v. Sullivan,* 469 So.2d 526 (Miss. 1985)

Criminal Action Against Owner or Employees of

[666] Persons under 21 years old may consume light wine and beer in the presence of a parent or legal guardian. §67-3-54(1)
[667] The Dram Shop Law, §67-3-73, appears to limit but not abrogate common law.
[668] 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

Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action: **Misdemeanor** §§67-1-83, 67-3-53(b) and 67-3-69(1)

Term of Imprisonment: Not more than **6 months**

Fine ($ Range): Not more than **$500**[669]

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Revocation –** For alcoholic beverage 4 percent or more alcohol by weight §67-1-83(4); **Revocation** For wine and beer not more than 4 percent alcohol by weight. §67-3-29

Length of Term of License Withdrawal: (1) For alcoholic beverage of 4 percent or more, no period of license suspension/revocation is specified. (2) For licensees holding light wine and beer permit (alc. content of not more than 4 percent *alcohol* by wgt), their permit may be revoked for 2 years for willful neglect or refusal to comply with the alcoholic beverage control laws. §67-3-29(2) Also, under §67-3-69(1), a permittee who is convicted of an offense must have the license voided at the time of the conviction. A new license cannot be issued for 1 year.

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

Type of Criminal Action: (1) Selling alcoholic beverages (4 percent or more alcohol by wgt.) to those under 21 years old: first offense – **Misdemeanor**; second and subsequent offenses – **Misdemeanor** (2) Selling to a person under 21 years old beer and wine not more than 4 percent alcohol by weight-**Misdemeanor** §§67-1-81 and 67-3-53

Term of Imprisonment: (1) Selling alcoholic beverages (4 percent or more alcohol by wgt.) to those under 21 years old: first offnse – No**ne**; second and subsequent offenses – Not more than **1 year** (2) Selling to a person under 21 years old beer and wine not more than 4 percent alcohol by weight – Not more than **6 months** §§67-1-81, 67-3-53 and 67-3-69

Fine ($ Range): (1) Selling alcoholic beverages (4 percent or more alcohol by wgt.) to those under 21 years old: first offense – $**500-1,000**[670and671]; second and subsequent

[669] There is also a mandatory State assessment of $50.50 §99-19-73(5) and (7)

[670] There is also a mandatory State assessment of $71.50. §99-19-73(5) and (7)

[671] The following additional sanctions may also apply to licensees who sell beer and light wine (not more than 4 percent alcohol by weight) to persons under 21 years old: first offense – A fine of $200-1,000 and license suspension for 3 months; second offense – (within 12 months) – A fine of $200 – $1,500 and license suspension for 6 months; and, third

offenses – **$l,000-2,000** (2) Selling to a person under 21 years old beer and wine not more than 4 percent alcohol by weight – Not more than **$500** §§67-1-81, 67-3-53 and 67-3-69

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): (1) Selling alcoholic beverages (4 percent or more alcohol by wgt.) to those under 21 years old: first offense – **Revocation**[672] §67-1-71; second and subsequent offense – **Automatic Revocation** §67-1-81 (2) Selling to a person under 21 years old beer and wine (not more than 4 percent alcohol by weight) – **Revocation/ Suspension**

Length of Term License Withdrawal: (1) Selling alcoholic beverages (4 percent or more alcohol by wgt.) to those under 21 years old: first offense – **Revocation** – length not specified §67-1-71; second and subsequent offenses – **Permanently revoked**. §67-1-81 (2) Selling to a person under 21 years old beer and wine (not more than 4 percent alcohol by weight) – **Revocation** – length not specified However, persons who have had any alcoholic beverage license revoked may not apply for a license to sell light wine and beer (not more than 4 percent alcohol by wgt.) for 2 years. §67-3-19(b)[22]

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**

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and Subsequent offense – (within 12 months) – A fine of $1,000 – $5,000 and a license suspension for 1 year. §67-3-69(3)

[672] A limited suspension may be imposed in lieu of revocation.

Special Note: Under a separate provision, the law makes it illegal to sell alcoholic beverages of 4 percent or more except as authorized by law. The sanctions for violating this provisions are as follows: first offense – 1 week to 3 months in jail and/or a fine of $100 to $500; second offense – 60 days to 6 months in jail and/or a fine of $100 to $5,000; and, third offense – 1 to 5 years in the State Penitentiary and/or a fine of $100 to $5,000 §67-1-9(1) and (2)

STATE:	**MISSOURI**
General Reference:	Vernon's Annotated Missouri Statutes
Basis for a DWI Charge:	
Standard DWI Offense:	Driving while intoxicated (while in an intoxicated or drugged condition)[673] §577.010
Illegal Per Se Law (BAC/BrAC):	**≥.08**[674] §577.012
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	**Drugged Condition** §577.010
Other:	A BAC/BrAC **≥.08** is *prima facie* evidence of intoxication. §577.037
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** §577.021 and *Justice v. Director of Revenue,* 890 S.W.2d 728 (Mo. App. 1995)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §577.020.1(1). For persons under 21: reasonable cause is sufficient. §577.020.1 (2), (3), (4)
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 and Possibly Civil Cases), *State v. Berry,* 803 S.W.2d 37 (Mo. App. 1990), *State v. McCarty,* 875 S.W.2d 622 (Mo. App. S.D. 1994), and *State v. Myers,* 940 S.W.2d 64 (Mo. App. S.D. 1997)
Other Information:	Under "exigent circumstances", a blood sample may be withdrawn from a driver without their consent but prior to a DWI arrest if there is "probable cause" of such offense. *State v. LeRette,* 858 S.W.2d 816 (Mo. App. W.D. 1993)
Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:	
Blood:	**Yes** §577.020.1
Urine:	**Yes** §577.020.1
Other:	**Saliva** §577.020.1
Adjudication of DWI Charges:	
Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** For all offenses as part of the alcohol and drug education and rehabilitation programs §§577.001.4 and 577.049.1

[673] The term "intoxicated condition" means "under the influence of alcohol, a controlled substance, or drug, or any combination thereof." §577.001.2

[674] The illegal per se law provides that no one shall operate a motor vehicle with a .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 and 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.

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):	First Refusal – **Revocation – 1 year** (90 days mand) (A limited hardship license may be issued by the court after the 90-day period.); second or subsequent refusal (within 5 years) – **Revocation – 1 year** (Mand) §§302.309.3(5)(e) and (f), and 577.041
Other:	A person must complete a substance abuse program before the license can be reinstated. For cause, the court may modify or waive this requirement unless the offender's BAC was ≥.15. §577.041.7

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	Intoxicated/illegal per se offense, first offense – Class B Misdemeanor – not more than **6 months**; Intoxicated/illegal per se offenses; "prior offender"[675]– Class A Misdemeanor – not more than **1 year**; "persistent offender"[676]– Class D felony – Not more than **5 years** §§577.010, 577.012, 577.023, 558.011, 56.011 and 56.016
Mandatory Minimum Term:	"Prior" Intoxicated/illegal per se offenses – **5 days**; "Persistent" Intoxicated/illegal per se offenses – **10 days**[677] **;** "Aggravated"[678] – minimum of sixty days "Chronic"[679] – minimum of two years imprisonment. §577.023.
Fine:	
Amount ($ Range):	Intoxicated offense, first offense – Not more than **$500**; Intoxicated/illegal per se offense, "prior

[675] A "prior offender" is a person who has had one previous alcohol related driving offense conviction within 5 years of the presently charged offense. §577.023

[676] A "persistent offender" is a person who has had two or more previous alcohol-related driving offense convictions within 10 years of the presently charged offense. §577.023

[677] For a "prior," or "persistent" offender, except for community service, the offender is not eligible for either parole or probation until serving these mandatory sentences. §577.023.

[678] An "aggravated offender" is a person who has been found guilty of three or more intoxication-related traffic offenses; or a person who has been found guilty of involuntary manslaughter or assault of a law enforcement officer {in the second degree}and one other intoxicated-related traffic offense. §577.023. 1 (1) {An "intoxication-related traffic offense" is driving while intoxicated, driving with excessive blood alcohol content, involuntary manslaughter, assault of a law enforcement officer {in the second degree} or driving under the influence of alcohol or drugs. §577.023. 1 (3)}

[679] A "chronic offender" is: a person who has been found guilty of four or more intoxication-related traffic offenses; or a person who has been found guilty on two or more separate occasions of involuntary manslaughter or a person who has been found guilty of involuntary manslaughter or assault of a law enforcement officer {in the second degree} AND in addition, two or more intoxication-related traffic offenses. §577.023. 1(2)

	offender" – Not more than **$1,000**; "persistent offender" – Not more than **$5,000**
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	In lieu of imprisonment, "Prior" Intoxicated/illegal per se offenses – **30 days**; "Persistent" Intoxicated/Illegal per se offenses – 60 days. §577.023.4
Restitution (e.g., 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
Other:	For a first intoxicated offense, the sentence may be suspended provided the defendant is placed on probation for a minimum of 2 years. §577.010.2 **Assault:** A person who injures another while driving either while intoxicated or illegal per se, commits assault in the second degree that is a Class C felony. The sanctions for this offense are imprisonment for not more than 7 years and a fine of not more than $5,000. §§558.011, 56.011 and 565.060
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes ≥.08 BAC/BrAC**[680] For Persons Under 21 Years Old **≥.02 BAC/BrAC** §§302.309.3(5)(i) and 302.500 et seq. First Violation– suspension **– 30 mandatory days**[681 and 682] with a limited license for an additional 60 days provided there has been no prior "alcohol related enforcement contact"[683] within 5 years. §§302.309.3(5)(h) and 302.525.2(1); Subsequent Violation **Revocation – 1 mandatory year**[684] (if there has been an "alcohol-related enforcement contact" within 5 years.) Restricted driving privileges may be granted pending the

[680] Standard: "Percent by weight" of alcohol in the blood. 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 and 577.037.2

[681] 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 and 577.012 offenses). The total license suspension/revocation period shall not exceed the longer of the two periods. §302.525.4

[682] 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)

[683] 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

[684] *Shelton v. Director of Revenue,* 861 S.W.2d 213 (Mo. App. W.D. 1993) and *Frieden v. Director of Revenue,* 864 S.W.2d 27 (Mo. App. S.D. 1993)

Probable cause: For administrative licensing action against a person <21 years old who was operating a motor vehicle with a BAC/BrAC ≥.02, it must be established that the original stop by law enforcement officers was based on "probable cause" that the driver committed a drunk driving offense under either §§577.010 (driving while intoxicated) or 577.012 (illegal per se BAC/BrAC ≥.08).

	outcome of a trial de novo in the courts on an admin. per se action. §302.535
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	Intoxicated offense, first offense – 8 points[685]; Per se offense, first offense – 8 points[686]; Intoxicated offense where there was a prior Illegal Per Se offense or an Illegal Per Se offense where there was a prior Intoxicated offense[687 – Revocation] (12 points); second offense (within 5 years) of violating the laws related to driving while intoxicated- **Revocation** (12 points); third and subsequent offenses of violating the laws related to driving while intoxicated/illegal per se – Revocation (12 points). §§302.302.1 (7), (8) and (9) and 302.060(9) and (10) For persons under 21 who are convicted of any DWI offense – first offense – **Suspension**; second or subsequent offense – **Revocation** §577.500 et seq.
Term of License Withdrawal (Days, Months, Years, etc.):	Intoxicated offense, first offense – **30 days** (plus 60 days restricted driving privileges)[688] §302.304.4; Per se offense, first offense – **30 days** (plus 60 days restricted driving privileges) §302.304.4; Intoxicated offense where there was a prior Illegal Per Se offense or an Illegal Per Se offense where there was a prior Intoxicated offense. – 1 year; second offense(within 5 years) of violating the laws related to driving while intoxicated[689] – 5 years §302.060(10); third and subsequent offenses of violating the laws related to driving while intoxicated – 10 years / **Permanent**[690] §302.060(9). For persons under 21 who are convicted of any DWI offense – first offense – Suspension **90 days**; second or subsequent offense – **Revocation – 1 year** §§577.500.5, and 577.510

[685] **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 and .5 Under §302.304. 3 and .4, different license suspension periods apply in the case of DWI offenders as opposed to other offenders who have accumulated points under §302.302.

[686] License suspension action would occur only if the defendant had at least 2 more points on the record from some other driving offense. I.e., a first illegal per se offense conviction alone would not result in a license suspension action. §§302.302, 302 and 302.304.4. However, if the defendant has accumulated sufficient points together with an illegal per se conviction, the license is suspended by the licensing agency for a mandatory 30-day period which may be followed by restricted hardship driving privileges for 60 days. §302.304.4

[687] I.e., a first Intoxicated Offense where the driver has had a previous conviction for an Illegal Per Se offense or a first Illegal Per Se offense where the driver has had a previous conviction for an Intoxicated Offense.

[688] Under §302.304.4, the licensing agency may grant restricted driving privileges for 60 days following the 30-day mandatory 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-day mandatory period.

[689] 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 years. 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)

[690] *Appleby v. Director of Revenue,* 851 S.W.2d 540 (Mo. App. W.D. 1993)

Mandatory Minimum Term of Withdrawal:

First Intoxicated offense – **30 days** First Per Se offense – **None.** Intoxicated offense where there was a prior Illegal Per Se offense or an Illegal Per Se offense where there was a prior Intoxicated offense – **1 year.** Second offense(within 5 years) of violating the laws related to driving while intoxicated – **2 years**. After 2 years, restricted driving privileges may be granted. After 5 years, driving privileges may be fully restored. Third and subsequent offense – **3 years/ 10years/ Permanent.** After 3 years, hardship driving privileges may be granted. After 10 years, a court may order the licensing agency to issue an offender a license provided the offender is no longer a threat to the public safety. Such an order can only be issued once. §§302.060(9) and (10), 302.304, sub. 6 and 302.309, sub. 3(6)
A person under 21 years old who is convicted of a DWI offense has the driver's license suspended for 90 days for a first offense and revoked for 1 year for a second or subsequent offense. A restricted license is available via §302.309. §§577.500 and 577.510
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 second 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)

Other:

Rehabilitation:

Alcohol Education:

Intoxicated offense, first offense – **Yes**; Per se offense – first offense – **Yes.** Required for persons under 21 years old who have committed an alcohol offense. §577.525

Alcohol Treatment:

Intoxicated offense, first offense – **Yes**; Per se offense, first offense – **Yes.**

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority:

Impoundment/Forfeiture. Under §82.1000, certain cities with populations over 100,000 may enact motor vehicle impoundment or forfeiture ordinances. I. A motor vehicle is subject to such action if (1) the driver has had one or more intoxicated related traffic offense convictions (including illegal per se) and (2) is operating the vehicle while on a suspended or revoked license either for an intoxicated related traffic offense or for involuntary manslaughter related to intoxicated

driving. II. A motor vehicle is subject to such action if the driver has had two or more intoxicated related traffic offense convictions (including illegal per se) and either has a BAC/BaAC ≥.08 (≥.02 if <21 years old) or refuses to submit to chemical test under the implied consent law. The above actions apply to the vehicle operated by the offender irrespective of its ownership.

Miscellaneous Sanctions Not Included Elsewhere: **DWI Enforcement Cost:** A court may require a person convicted of a DWI offense to "reimburse" either the State or local governments for the costs "associated" with the person's DWI arrest. §488.5334

Ignition Interlock: I. For either an intoxicated or illegal per se drunk driving offense, the court may, in the case of a first offender, and must, in the case of a second 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 month following license reinstatement. II. Such a requirement is mandatory as a condition for granting limited (hardship) driving privileges under §302.309 for subsequent offenders. §577.600

Other Criminal Actions Related to DWI:

Homicide by Vehicle: §565.024

State Has Such a Law: **Yes** (Class C felony) Involuntary Manslaughter where death is caused by operating a motor vehicle while in an intoxicated condition and with criminal negligence. §565.024

Sanctions:

Criminal Sanction:

Imprisonment (Term): Not more than **7 years** §558.011

Mandatory Minimum Term: **None**

Fine ($ Range): Not more than **$5,000** §56.011

Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: **Revocation** §302.060(10)

Length of Term of Licensing Withdrawal: **5 years** §302.060(10)

Mandatory Action--Minimum Length of License Withdrawal: **5 years** §302.060(10)

Other: Victim's compensation fund §595.010 et seq.

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

Sanctions: I. 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)

II. Even though the law is not clear, it would appear that if a person cannot obtain a license (full driving privileges after 10 years via court order), that person is ineligible for hardship driving privileges.

III. The Missouri Supreme Court has held that a person 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 "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). Two or more revocations for failure to submit to a chemical test also render a driver ineligible for a hardship license. §302.309.3(5)(f); *Williams v. Director* 69 S.W. 3d 919 (Mo. App 2002)

IV. For either a first or subsequent intoxicated/illegal per se conviction, the court must order a defendant to successfully complete an alcohol or drug education or rehabilitation program. §577.049

V. 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 ≥.15 §302.540.1

VI. Persons <21 years old who have been convicted of any DWI offense cannot have their driving privileges restored until they successfully complete an alcohol or drug education program. §577.520.1

VII. 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 ≥ .15. §§302.304.14 and 577.041.7.

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 mandatory year (3 years if transporting hazardous

materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC ≥.04, (2) is under the influence of alcohol or drugs or (3) refuses 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 years mand). In addition, a CMV operator who has any "measurable" amount of alcohol in the system must be placed "out-of-service" for 24 hours. Finally, it is a Class B misdemeanor to drive A CMV with either BAC/BrAC/UrAC ≥.04 or while under the influence of either alcohol or a controlled substance. 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 months and/or a fine of not more than $500. §§302.309.3(5)(g), 302.700.2(2), (6), (10), (13) and (14), 302.745, 302.750, 302.755 and 302.780

See Footnote Nos. [691] and [692]

Sanction:	
Criminal:	
Imprisonment (Term):	Not more than **1 year** (Class A misdemeanor) §§302.302, 302.321 and 558.011
Mandatory Minimum Term of Imprisonment:	**48 consecutive hours** (In lieu of imprisonment, the defendant may perform at least 10 days, with at least 40 hours of community service.) §302.321
Fine ($ Range):	Not more than **$1,000** §56.016
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Revocation.** Under the point system-12 points §302.302.1(5)
Length of Term of License Withdrawal Action:	**1 year** §302.304.7
Mandatory Term of License Withdrawal Action:	**None.** Restricted hardship driving privileges may be granted. This privilege, however, may only be granted once in 5 years. §302.309.3(5)

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	

[691] 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

[692] I. It is a Class A misdemeanor to operate a CMV during a CDL disqualification. The sanctions for this offense are imprisonment for not more than 1 year, a fine of not more than $1,000 and CDL license revocation for 2 years. An offender must serve either 48 con hours of confinement or 10 days (involving at least 40 hrs) of community service. §§302.725, 558.011.1(5) and 56.016.1(1). II. It is also a Class A misdemeanor 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 year, 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: first offense – 90 days; second offense (within 10 years) – 1 year; and third and subsequent offense (within 10 years) – 3 years. §§302.755, 302.756.1 558.011.1(5) and 56.016.1(1)

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 and 58.449
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**Yes**
Pedestrian:	**Yes**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §§311.310, 311.325, 312.400 and 312.407
Minimum Age (Years) Possession:	**21**[693] §§311.325 and 312.407
Minimum Age (Years) Consumption:	**None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes**[694] §537.053 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

[693] The appellate courts have held 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), and *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 years old. Secs. 311.325 and 312.407 respectively prohibit such persons from possessing "intoxicating liquor" and "non-intoxicating beer." Sec. 311.020 defines "intoxicating liquor" as a beverage with an alcoholic content of >0.5 percent alcohol by volume not including "non-intoxicating beer." Sec. 312.010(2) defines "non-intoxicating beer" as beer with an alcoholic content >0.5 percent by volume but ≤3.2 percent by weight.

[694] The law, §537.053.3, had a provision that provided 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 years 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) The *Kilmer* case overruled *Simpson v. Kilcher,* 749 S.W.2d 386 (Mo.banc 1988), which had upheld the constitutionality of this limitation. The provision has since been repealed and replaced with language setting the standard at "clear and convincing evidence that the seller knew or should have known that intoxicating liquor was served to a person under the age of 21 years or knowingly served intoxicating liquor to a visibly intoxicated person." 2002 Mo. H.B. 1532 enacted July 11, 2002

from a violation of a criminal statute (e.g., serving alcoholic beverages to a person under 21 years 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** 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), and *Shelter Mut. Ins. Co. v. White,* 930 S.W.2d 1 (Mo. App. W.D. 1996)

Other: An injured intoxicated patron may bring a cause of action for damages under the dram shop act (§537.053). Of course, the same pre-condition (i.e., a licensee's conviction for a liquor law violation) applies. *Von Ruecker v. Holiday Inns, Inc.,* 775 S.W.2d 295 (Mo. App. E.D. 1989), (cert. den. 493 U.S. 1075 (1990)).
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: **Misdemeanor** §§311.310, 311.720, 311.880, 312.400, 312.500 and 312.510

Term of Imprisonment: Not more than **1 year**

Fine ($ Range): **$50 to $1,000**

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Revocation** §§311.720 and 312.510

Length of Term of License Withdrawal: For licensees who sell alcoholic beverages over 3.2 percent alcohol by weight-Length of revocation is not specified in the statute; for licensees who sell non-intoxicating beer (over 0.5 percent but not more than 3.2 percent alcohol by weight) – **1 year revocation.**

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: **Misdemeanor** §§311.310, 311.880, 312.400, 312.500 and 312.510

Term of Imprisonment: Not more than **1 year**

Fine ($ Range):	**$50 to $1,000**
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes – Revocation** §§311.720 and 312.510
Length of Term License Withdrawal:	For licensees who sell alcoholic beverages over 3.2 percent alcohol by weight -Length of revocation is not specified in the statute; for licensees who sell non-intoxicating beer (over 0.5 percent but not more than 3.2 percent alcohol by weigh.) – **1-year revocation**
Anti-Happy Hour Law/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**No**
Anti-Consumption Law (Yes/No):	**Yes** Applies to persons while they are operating a vehicle. §577.017

STATE:	**MONTANA**
General Reference:	Montana Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §61-8-401(1)(a)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[695and696]61-8-406(1)(a) Between >.04 to < .08, no inference but may be considered as evidence. §61-8-401(4) b) < **.04 –** may be inferred that the person was not under the influence of alcohol. § 61-8-401(4) (a) **≥.04** if operating a CMV §61-8-406(1)(b) Persons Under 21 Years Old-**≥.02** §61-8-410
Presumption (BAC/BrAC):	**≥.08** §61-8-401(4)(c)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug, (2) a Dangerous Drug or (3) Alcohol and Any Dangerous or Other Drug §61-8-401(1)(b), (c) and (d).
Other:	

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes**[697] §§61-8-409 and 61-8-806(1)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §61-8-402(1) Due process requires that a driver be informed of the right to an independent test, which right must not be frustrated or unreasonably impeded by the police. *State v. Minkoff* ,42 P. 3d 223 (Mont 2002).However, a separate statute stipulates that PBT may be requested on the basis of police officer 'particularized suspicion' of DUI §61-8-409 (1). Refusal is 'sufficient cause' for 'suspension for up to one year'. §61-8-409(4)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §61-8-402(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §61-8-404(2)[698] and *Missoula v. Robertson,* 998 P. 2d 144 (Mont 2000).

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

Blood:	**Yes** §61-8-402(1)
Urine:	**No**
Other:	**None**

[695] 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 .08 or more or (2) a urine alcohol concentration of .08 or more. The .04 alcohol concentration for CMV operators does not apply to urine.

[696] The standards for "alcohol concentration" are (1) grams of alcohol per 100 milliliters of blood or (2) grams of alcohol per 210 liters of breath. §61-8-407

697 The results of a PBT test may be used as evidence in a drunk driving offense trial. §61-8-404

[698] This provision was held constitutional on both Federal and State grounds. *State v. Jackson,* 672 P.2d 255 (Mont. 1983)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No** {But a DWI offender is not eligible for pretrial diversion. §46-16-130(4)}
Anti-Plea-Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol Screening §61-8-732(2)[699 and 700]

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	61-8-409 Preliminary alcohol screening test.
Criminal Sanctions (Fine/Jail):	**No**
Administrative Licensing Action (Susp/Rev):	Suspension up to 1 year §61-8-409(3)
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	First Refusal – **Suspension – 6 months** (mand); second or subsequent refusals (within 5 years) – **Revocation – 1 year** (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 (5)[701]

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	I. Driving While Under the Influence Offenses (misdemeanor)[702] First Offense – **24 consecutive hours to 6 months**; second offense (within 5 years) – **7 days to 6 months**; third offense(within 5 years) – **30 days to 1 year**; fourth or subsequent offense(within 5 years) (felony) §§61-8-401, 61-8-711(1), 61-8-714, 61-8-731 and 61-8-734 II. Illegal Per Se Offenses (misdemeanor) first offense – Not more than **10 days**; second offense (within 5 years) – not less than **5 nor more than 30 days** {the first 5 days may not suspended or be home detention-§ 61-8-722 (2) ; third offense (within 5 years) – **not less than 10 days to 6 months**{the first 5 days may not suspended or be home detention-§ 61-8-722 (3); fourth or Subsequent offense within five years (felony) –

[699] A "chemical dependency assessment" is mandatory for any person convicted (first or subsequent offense) of either driving under the influence of alcohol under §61-8-401 or illegal per se (BAC/BrAC ≥.10) under §61-8-406. §61-8-732(1).

[700] Note: A pre-sentence investigation made if the crime carries a prison sentence of ≥**1 year** §46-18-111

[701] Sec. 61-8-402 clearly provides that no restricted probationary license can be issued following suspension/revocation 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

[702] Imprisonment term can be served in a "facility" other then a jail. §61-8-734(2)

revocation for a period of 5 years. A restricted probationary license may not be issued during the first 2 years of the revocation period. If the person's probation officer agrees, the last three years may be a restricted license with an interlock ignition. §§61-8-406, 61-8-711(1), 61-8-722, 61-8-731 and 61-8-734
For sentence enhancement purposes, a subsequent offense under either I or II above includes a prior offense of the other. §61-8-734(1)(c)
III. Negligent Vehicle Assault (misdemeanor)[703] **Not more than 1 year** §§45-2-101(41) and 45-5-205(1) and (2)
IV. Negligent Vehicle Assault (felony)[704] – Not **more than 5 years** §§45-2-101(22) and 45-5-205(3)

Mandatory Minimum Term:

I. Driving While Under the Influence Offenses: first offense – **24 consecutive hours**[705]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); second offense – **3 days 48 consecutive hours** 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); third offense – **10 days – 48 hours** must be served consecutively in the county jail and cannot be served as "home arrest"; fourth or subsequent offense [706](felony) §§61-8-714, 61-8-731 and 61-8-734
II. Illegal per se offenses: first offense – No**ne**; second and third offenses – **48 consecutive hours** must be served in the county jail and cannot be served as "home arrest"; fourth or subsequent offense (felony) §§61-8-722 , 61-8-731 and 61-8-734
III. Negligent Vehicle Assault (misdemeanor) – **None**
IV. Negligent Vehicle Assault (felony) – **None**

Fine Amount ($ Range):

I. Driving While Under the Influence Offenses: first offense – $**300 to $1000**; second offense (within 5 years) – **$600 to $1000**; third offense (within 5 years) – **$1000 to $5,000**; fourth or Subsequent offense within five years (felony) – **$1,000 to $10,000**

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[703] Negligent Vehicle Assault-A person commits a misdemeanor by causing bodily injury to another person while driving while under the influence of alcohol, a dangerous drug, any drug or any combination of these.
[704] Negligent Vehicle Assault – A person commits a felony by causing serious bodily injury to another person while driving while under the influence of alcohol, a dangerous drug, any drug or any combination of these
[705] 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 for the mandatory term of incarceration, the rest of the incarceration sanction may be suspended for up to 1 year upon the successful completion of these programs. In order to assure compliance with this requirement, the court retains jurisdiction to impose sentence for up to 1 year. §§61-8-714(1), (2) and (3) and 61-8-732(10).
[706] **Subsequent Offense:** The law provides that, for a fourth or subsequent offense, a person must be sentenced to a 13-month term in a residential alcohol treatment program and the prison term of not more than 5 years must be suspended. The suspended prison term is to run consecutively to the residential treatment. 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 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-month term is to be served on probation. §61-8-731(1)(a) and (b)

§§61-8-401, 61-8-711(1), 61-8-714, 61-8-731 and 61-8-734
II. Illegal Per Se Offense: first offense – **300 to $1000**; second offense(within 5 years) – **$600 to $1,000**; third offense (within 5 years) – **$600 to $1,000**; fourth or Subsequent offense within five years (felony) – **$1,000 to $5,000** §§61-8-722, 61-8-711(1), 61-8-731 and 61-8-734
III. Negligent Vehicle Assault (misdemeanor) – Not more then **$1,000** {or incarcerated in a county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution §46-18-241. §45-5-205(2)
IV. Negligent Vehicle Assault (felony) – Not to exceed **$10,000** §45-5-205(3).

Mandatory Min. Fine ($): **None**

Other Penalties:

Community Service: **Yes.** Imposed as part of deferred sentencing. §46-18-201(4)(j).

Restitution (e.g., Victim's Fund) **Yes.** (1) If a person has suffered a pecuniary loss as a result of the defendant's illegal actions, the court must order the defendant to pay restitution to such person. A defendant may be ordered to participate in community service if they are financially unable to pay restitution. §§46-18-201(5) and 46-18-241. (2) A victim also can receive compensation from the State's Victims' Compensation Fund. §53-9-101 et seq. (3) Persons convicted of serious bodily negligent vehicle assault shall be ordered to pay restitution as provided in §46-18-241. §45-5-205(2) and (3)

Other: **Surcharges:** The following surcharges are imposed: for any misdemeanor offense – $**15**; for any felony offense, **$20** or 10 percent of the fine imposed whichever is greater; and, in addition, for any drunk driving offense conviction under either §61-8-401 (the regular DWI offense) or §61-8-406(the illegal per se offense at .10) – **$25**. These surcharges are in addition to any fine sanction. §46-18-236(1)(a), (b) and (c) and (3)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: § 61-8-402 License seized immediately by arresting officer –replaced with temporary driving permit effective 12 hours after issuance and valid for 5 days following the date of issuance. {Suspension for 6 months with no provision for a restricted probationary license – § 61-8-402 (6) (a) (i)
Upon a second or subsequent refusal within 5 years – suspension of 1 year, with no provision for a restricted probationary license. § 61-8-402 (6) (a) (ii)

Other: Under §§61-5-206 and 61-5-208, a person's license can be suspended for not more than 1 year if involved in an accident resulting in a death, personal injury, or

serious property damage. Such action may be taken without a preliminary hearing.

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): All Drunk Driving Offenses[707and708:] first offense – **Suspension**[709]; second offense (within 5 years) – **Suspension**; third and subsequent offense (within 5 years) – **Revocation** Negligent Vehicle Assault – Revocation §§61-5-205(2) and (7) and 61-5-208.

Term of License Withdrawal (Days, Months, Years, etc.): All Drunk Driving Offenses: first offense – 1 year**; second** offense (within 5 years) – **1 year**; third and subsequent offense (within 5 years) – **1 year** Negligent Vehicle Assault – 1 year §§61-5-205(2) and (7) and 61-5-208.

Mandatory Minimum Term of Withdrawal: All Drunk Driving Offenses:[710] first offense – **None**; second and subsequent offense (within 5 years) – See Footnote Nos. [711]and [712] Negligent Vehicle Assault – **Ignition Interlock:** I. **Discretionary Action.** For a first offense, via an order, a court may restrict an offender to only operate motor vehicles that are

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[707] Includes illegal per se offenses.

[708] Under §61-11-203(2)(d), a person receives 10 points on the driving record for either a regular DWI or an illegal per se offense conviction.

[709] § 61-8-442. Driving under influence of alcohol or drugs – driving with excessive alcohol concentration – ignition interlock device. For a person convicted of a first offense who is granted probation, the court may restrict the person to driving only a motor vehicle equipped with a functioning **ignition interlock** device during the period that the person is granted a probationary license and require the person to pay the reasonable cost of leasing, installing, and maintaining the device. For a second or subsequent violation the court **shall order** that each motor vehicle owned by the person at the time of the offense be either:

(a) seized and subsequentjected to the **forfeiture** procedure provided under 61-8-421; **or**

(b) during the 12-month period beginning with the end of the period of driver's license revocation, equipped with a functioning **ignition interlock device** and require the person to pay the reasonable cost of leasing, installing, and maintaining the device

[710] Includes illegal per se offenses.

[711] A person whose driving privileges are suspended or revoked may be issued a restricted probationary license and have the suspension/revocation action stayed by participating in a driver rehabilitation or improvement program. Persons are eligible to participate in such a program if they meet the following conditions: (1) they are subject to suspension/revocation because of a violation of the traffic laws or (2) they have (i) completed 3 months of a 1 year revocation or (ii), for a second or subsequent drunk driving offense (any type), are in "compliance with the **ignition interlock**" restrictions, or (3) they have completed 1 year of a 3- year revocation. In addition, they must otherwise meet the requirements for "re-obtaining" a driver's license. §§61-5-208(2)(a) and 61-2-302 and Administrative Rules of Montana 23.3.231. 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).

[712] A court may recommend that a restricted probationary license be issued in lieu of a suspension on the condition that the person attends, if available, an alcohol treatment program. §61-11-101(2) and Administrative Rules of Montana 23.3.231

equipped with "ignition interlock devices" provided the defendant had a blood alcohol concentration ≥.18.
II. **Mandatory Action:** For either a second or subsequent offense, a defendant who is issued a "probationary license" is restricted to operating motor vehicles that are equipped with "ignition interlock devices". §61-5-208(2) In addition, for fourth 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. Licensing action against a person for a drunk driving offense is stayed while participating in the "ignition interlock" program. §61-5-208(3). The duration of this restriction is equal to the period of license suspension or revocation. §61-8-442

Other:

Rehabilitation:

Alcohol Education: **Yes First** and subsequent offenses – [713and714] **Mandatory** chemical education dependency course. §61-8-732
Under §61-5-208 (2), for second and subsequent offenses (within 5 years), a person's license is revoked for 1 year or until they complete an alcohol education/treatment program whichever is longer.

Alcohol Treatment: **Yes. First** offense – If an assessment indicates the need, an offender **must** be ordered to take a chemical dependency treatment program. Second or subsequent offenses – A chemical dependency treatment program is **mandatory.** §61-8-732.

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **Vehicle Forfeiture.** For a third or subsequent driving while under the influence offense or illegal per se

[713] Driving while under the influence and illegal per se offenses.

[714] 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)

Sanctions Against Persons Under 21 Years Old Who are Operating a Motor Vehicle with a BAC/BrAC ≥.02: first offense – A fine of not less than $100 nor more than $500 and license suspension for 90 days (30 days mand if the offender is <18 years old). Second offense – A fine of not less than $200 or more than $500; license suspension for 6 months (30 days mand if the offender was <18 years old); and, if the offender was >18 years old, an incarceration term of not more than 10 days. Third or subsequent offense – A fine of not less than $300 nor more than $500; license suspension for 1 year (30 days mand if the offender was <18 years old); and, if the offender was >18 years old, an incarceration term of not less than 24 con hours nor more than 60 days. 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.

Sanctions Against Persons Under 18 Years Old Who Violate Either the Driving Under the Influence or Illegal Per Se Laws: Under separate provisions of law, offenders <18 years old are subject to the following sanctions if they operate a motor vehicle either while under the influence of alcohol or drugs or with BAC/BrAC ≥.08 (illegal per se): (1) A fine may be imposed; this fine cannot exceed that which could be imposed on an adult. (2) Their licenses may be suspended/revoked; the period of suspension/revocation 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 years old cannot be incarcerated for these offenses. §61-8-723

	offense (within 5 years), the driver's vehicle must be forfeited. §61-8-733 **Vehicle Seizure:** The vehicle of a person convicted of driving with a revoked license due to a DWI conviction must be seized or rendered inoperable for 30 days. §61-5-212(3).
Miscellaneous Sanctions Not Included Elsewhere:	**Home Detention:** Except for the initial 24 hours of a first offense[715]or the initial 48 hours of a second or subsequent offense[716], 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 fourth or subsequent offenses, an offender, if financially able, must pay the expenses for such alternative incarceration. §61-8-734(2)
Homicide by Vehicle:	
State Has Such a Law:	**No.** But see Footnote No. [717]
Child endangerment:	Penalty for driving under influence of alcohol or drugs – first through third offenses {with one or more passengers under 16 years of age)§61-8-714.
First offense:	Penalty: imprisonment for not less than 48 consecutive hours not more than 20 days and a fine of not less than $600 or ≤$2,000. §61-8-714 (1)[718]
Second Offense:	Penalty: not less than 14 days[719] or more than 12 months and not less than $1,200 or more than $2,000 §61-8-714 (2).
Third Offense:	Penalty: not less than 60 days[720] or more than 12 months and by a fine of not less than $2,000 or more than $10,000 . §61-8-714 (3).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "suspended" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person either (1) has an "alcohol concentration" ≥.04, (2) is convicted of violating

[715] Driving while under the influence offenses.
[716] Includes all drunk driving offenses
[717] I. Even though this State does not have a vehicle homicide statute, it nevertheless provides for a **1-year** license revocation 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 months. After the mandatory term is over, 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 year;** Fine – not more than **$10,000.** §61-8-715(3).
[718] Except for the initial 24 hours of the imprisonment term, the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.
[719] First 5 days of the imprisonment sentence may not be suspended and at least 48 hours must be served consecutively.
[720] First 10 days of the imprisonment sentence may not be suspended, and at least 48 hours of the imprisonment term must be served consecutively.

the drunk driving laws (§§61-8-401 or 61-8-406), or (3) refuses to submit to a chemical test for an alcohol concentration. For a subsequent violation of operating a CMV with an "alcohol concentration" ≥.04, the "suspension" is for life with 10 years mandatory as may be allowed by Federal regulations. For a subsequent refusal to submit to a chemical test, the "suspension" is for life with 10 years mandatory 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 and 61-8-811. {A previous violation of the drunk driving laws (§§61-8-401 and 61-8-406) while operating a CMV is considered a prior offense for the purpose of determining license suspension action. §61-8-805(4).}

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnotes [721] and [722]
Sanction:	
Criminal:	
Imprisonment (Term):	**Misdemeanor –** Imprisonment for not less than 2 days or more than 6 months or a fine not to exceed $2,000, or both, and the court may order the person to perform up to 40 hours of community service .§61-5-212
Mandatory Minimum Term of Imprisonment:	Not less than 2 days.
Fine ($ Range):	Not more than **$2,000** §61-5-212 A surcharge of **$15** is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1)(a) and (3)
Mandatory Minimum Fine:	**None**
Type of Licensing Action (Susp/Rev):	**Suspension or revocation- (**suspension extended for an additional year §§ 61-5-212(2)and 61-2-302 (9) Second offense: required ignition interlock device or vehicle impoundment} § 61-8-733.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §61-11-201 et seq.
Grounds for Being Declared an Habitual Offender:	Accumulation of 30 points in a 3-year period. A DWI offense = 10 points. §61-11-203 (2)
Term of License Rev While Under Habitual Offender Status:	**Revocation 3 years.** If a driver participates in a driver rehabilitation and improvement program, a restricted probationary license may be issued after 1 year of the

[721] **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 II. A CMV operator who violates an out-of-service order is subject to the following CDL suspensions: first offense – 6 months (mand); second offense (within 10 years) – 1 year (mand); second offense (within 10 years) while transporting hazardous materials or more than 15 passengers-3 years (mand); and, third offense (within 10 years) – 3 years mand. §61-8-812

[722] A first offender who has had license suspended or revoked for any drunk driving offense must have the vehicle owned and operated by that person seized or rendered inoperable for 30 days.

	revocation period has passed. §§61-2-302 (2)(a)(ii) and (9), 61-11-211 and 61-11-212
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Misdemeanor** §§61-11-201 and 61-11-213
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not less than **14 days** nor more than **1 year**
Mandatory Minimum Term of Imprisonment:	**14 days**[723]
Fine ($ Range):	Not more than $1,000 A surcharge of **$15** is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1) (a)and (3)
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**Yes.** License revocation is extended for an additional period of 1 year. §61-11-213
Other State Laws Related To Alcohol Use:	
Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	
Vehicle Passengers:	
Pedestrian:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[724] §§16-3-301(3)(a) and (4) and 16-6-305(1) (a) and(b)
Minimum Age (Years) Possession:	**21**[725] §45-5-624(1)(b) There is an employment exemption.
Minimum Age (Years) Consumption:	**21**
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes** §27-1-710[726 and 727]
"Dram Shop Law" Concept Has Been	

[723] A 14-day jail sanction appears to be mandatory. However, the law is not specific on this point

[724] It is illegal for a minor to knowingly attempt to purchase an "intoxicating substance." §45-5-624(3). It is also a crime for a minor to "misrepresent" age in order to obtain alcoholic beverages. §16-3-301(4)

[725] 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.

[726] Licensees are liable for the injuries caused by patrons who are either under the legal drinking age (i.e., <21 years old) or "visibly intoxicated." Note: The dram shop law also applies to innkeepers. §70-6-513

[727] 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 .05 or more or (2) substantial, visible mental or physical impairment. §16-6-305 (1)(c)

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), and *Bissett v. DMI, Inc.,* 717 P.2d 545 (Mont. 1986) – Abrogated by §27-1-710.
Dram Shop Actions-Social Hosts:	**Yes – Limited** §27-1-710(5) A civil action may not be brought… unless: (a) the consumer was under the legal age and the furnishing person knew or should have known that the consumer was under age; or (b) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol while knowing that it did contain alcohol. (7) In any civil action brought pursuant to this section, the total liability for non-economic damages may not exceed $250,000; and (8) the total liability for punitive damages may not exceed $250,000.
<u>Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons</u>:	
Type of Criminal Action:	**Misdemeanor** §§16-3-301(3)(b), 16-6-304, 16-6-314 and 46-18-212
Term of Imprisonment:	Not more than **6 months**
Fine ($ Range):	Not more than **$500**[728]Note: A civil fine may be assessed by the licensing agency and such fine is not to exceed $1,500. §16-4-406(2)(e).
<u>Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons</u>:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension or revocation** §16-4-406
Length of Term of License Withdrawal:	This period of suspension may not be more than 3 months; the period of revocation is not specified.
<u>Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age</u>:	
Type of Criminal Action:	**Misdemeanor** 16-3-301(3)(a), 16-6-305, 16-6-314 and 46-18-212
Term of Imprisonment:	Not more than **6 months**
Fine ($ Range):	Not more than **$500**[729] Note: A civil fine may be assessed by the licensing agency and such fine is not to exceed $1,500. §16-4-406(2) (e).
<u>Administrative Actions Against Owners of Establishments That Serve Alcoholic</u>	

[728] A surcharge of **$15** is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1) (a) and (3)
[729] A surcharge of **$15** is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1) (a) and (3).

Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes. Suspension or revocation** §16-4-406
Length of Term License Withdrawal:	The period of suspension may not be more than 3 months; The period of revocation is not be specified in the statute.
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Limited** Driver and passengers[730] §16-3-106(2)
Anti-Consumption Law (Yes/No):	**Limited** Driver and passengers §16-3-106(2)

[730] The statute is as follows: (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway. (2) This section does not apply to an open alcoholic beverage container:

(a) in a locked glove compartment or storage compartment;

(b) in a motor vehicle trunk or luggage compartment or in a truck bed or cargo compartment;

(c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;

(d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger; or

(e) in the immediate possession of a passenger:

(i) of a motor vehicle, including a bus, taxi, or limousine, that is used for the transportation of persons for compensation and that includes the provision of a hired driver; or

(ii) in the living quarters of a camper, travel trailer, or motor home.

(3)(a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed $100.

(b) A violation of this section is not a criminal offense…and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation.

STATE:	**NEBRASKA**
General References:	Revised Statutes of Nebraska and Nebraska Administrative Code (NAC)
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of alcoholic liquor* §60-6,196(1)(a)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[731and732] §60-6,196(1)(b) and (c) Persons Under 21 Years Old-**BAC/BrAC ≥.02 but <.08** Traffic Infraction (Civil Offense) §§60-6,211.01, 60-6,211.02(3) and 60-672
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of **Any Drug** §60-6,196(1)(a)
Other:	
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** §§60-6,197(3) and 60-6,211.02(2) Any driver must submit to a preliminary test if the officer has reasonable grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident.
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[733] §60-6,197(2)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §60-6,197(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** §60-6,197(11) (Criminal Cases) and *State v. Romell,* 204 N.W.2d 573 (1973)
Refusal to Submit to Chemical Test After valid arrest is separate crime:	**Yes** A driver involved in a motor vehicle crash where there are reasonable grounds that the driver is DWI may be required to submit to a chemical test to determine if he/she has either alcohol or drugs in his/her system. Injury or death is not a prerequisite for this requirement. §60-6,197[734]

* 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).

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[730] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

[731] Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§60-6,196(1) and 60-6,211.01

[732] Probable cause (not an arrest) is needed prior to requesting a person under 21 years old to submit to a test for evidence related to a violation of §60-6,211.01 (driving with a BAC/BrAC ≥.02). §60-6,211.02(2)

[733] 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 the blood, breath or urine in order to determine the amount of alcohol or drugs in the body. The tests' results and the identity of the persons tested are considered public records and are subject to being disclosed. §§60-6,103 and 60-6,104.

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

Blood:	**Yes** §60-6,197(1)
Urine:	**Yes** §60-6,197(1)
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No.** Pretrial diversion of DWI cases is prohibited. §29-3604
Anti-Plea-Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes.**[735] Alcohol screening is required for either a first or subsequent offender. §60-6,196(8)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	Class V Misdemeanor: **$100 fine**, no imprisonment §§28-106 and 60-6,197(3)
Administrative Licensing Action (Susp/Rev):	Yes: immediate confiscation of license, one year revocation for refusal to take test. 90-day revocation if test failed. Revocation limited to 30 days with installation of ignition interlock §§60-498.01and 60-498.02
Other:	Persons Under 21 Years Old: A person under 21 years old who refuses to submit to a preliminary breath test to determine if he/she was driving with a BAC/BrAC ≥.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):	First offense (Class W misdemeanor) – Not more than **$500/60 days**; second offense within 12 years – (Class W misdemeanor) – Not more than **$500/90 days**; third offense within 12 years – (Class W misdemeanor) – Not more than **$600/1 year**; fourth or subsequent offense within 12 years – (Class IV felony) – Not more than **$10,000/5 years**. §§28-105, 28-106 and 60-6,197 **Mandatory Sanctions:** I. If probation is not granted: first offense – $**400/7 days**; second offense (within 12 years) – **$500/30 days**; third offense (within 12 years) – **$600/90 days**; fourth or subsequent offense (within 12 years) – **10 days** §§28-106 and 60-6,197(4) II. If probation is granted: first offense – $**400**; second offense (within 12 years) – **$500/5 days or 240 hours of community service**; third offense (within 12 years) – **$600/10 days or 480 hours community service**;

[734] "A court may order a pre-sentence investigation in any case." §29-2261 (2) and (3)

fourth or subsequent offense (within 12 years) – **$1,000/10 days or 480 hours community service** §§28-106 and 60-6,197(4).

Administrative Licensing Action (Susp/Rev):

I. The following revocations are mandatory if probation is not granted:[736] first offense – **Revocation 90 days (limited license available after 30 days)** ; second offense – **Revocation 1 year**; third and subsequent offense – **Revocation 15 years**[737] §§28-106 and 60-6,197
II. If probation is granted, the following revocations must be imposed: first offense – **Revocation 90 days,** with ignition interlock license possible after 30 days; second offense – **Revocation 1 year**; third and subsequent offense – **Revocation 1 year** [738]: §§28-106 and 60-6,197 and 60-498.02
III. Administrative action[739]: first and subsequent refusals- **Revocation 1 year** (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

Other:

Persons Under 21 Years Old: A person under 21 years old who refuses to submit to a chemical test to determine if he/she has BAC/BrAC ≥.02 but <.08 commits a Traffic Infraction. Sanctions: Jail – No**ne**; fine – first offense – Not more than **$100**, second offense (within 1 yr) – not more than **$200**, third and subsequent offense (within 1 yr) – not more than **$300.** Admin. Action. For either a first or subsequent offense – **90 days** license "impoundment" Restricted driving privileges for employment are available. §§60-672, 60-689, 60-6,211.02 and 60-6,211.03. The driver licensing record for this administrative action must be expunged after 120 days. §60-6,211.06(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment:
Term (Day, Month, Years): First offense (Class W misdemeanor) Not more than **60 days (minimum- 7 days)** ; second offense within 12 years – (Class W misdemeanor) – Not more than six months (30 day minimum); third offense within 12 years –

[735] These revocations are based upon a conviction under §60-6,197.
[736] Reduced to 7 years 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
[737] The license is suspended for this period of time. §60-6,197(2) (c) and (d)
[738] 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.

(Class W misdemeanor) – Not more than **1 year (90-day minimum)**; fourth and subsequent offenses within 12 years – (Class IV felony) – Not more than **5 years** §§28-105, 28-106 and 60-6,196 DWI with serious bodily injury – (Class IIIA felony) – Not more than **5 years** §§28-105 and 60-6,198

Persons <21 Years Old (≥.02 but <.08) – **None**

Mandatory Minimum Term: I. If probation is not granted: first offense – **7 days**[740]; second offense (within 12 years) – **30 days**; third offense(within 12 years) – **90 days**; fourth or subsequent offense (within 12 years) – **10 days** §§28-106 and 60-6,196(2)

II. If probation is granted: first offense – No**ne**; second offense (within 12 years) – **5 days** Third or subsequent offense(within 12 years) – **10 days** §§28-106 and 60-6,196(2) DWI with serious bodily injury – No**ne**

Fine:

Amount ($ Range): First offense – $**400- 500**; second offense(within 12 years) – **$500**; third offense (within 12 years) – **$600**; fourth and subsequent offenses (within 12 years) – **$10,000**; DWI w/serious bodily injury-(Class IIIA felony) – Not more than **$10,000** §§28-105 and 60-6,198

Persons Under 21 Years Old (≥.02 but <.08) – first offense – Not more than **$100; second** offense (within 1 yr) – Not more than **$200; third** and subsequent offense (within 1 yr) – Not more than **$300.** §60-689

Mandatory Min. Fine ($): I. If probation is not granted: first offense – $**400**; second offense (within 12 years) – **$500**; third offense (within 12 years) – **$600**; fourth or subsequent offense (within 12 years) – **None.** §§28-106 and 60-6,196

II. If probation is granted: first offense – $**400**; second offense – $**500**; third offense – $**600**; fourth or subsequent offense – $**1,000.** §§28-106 and 60-6,196(2)

DWI w/serious bodily injury – No**ne.**

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:

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[739] If an offender is not placed on probation, the mandatory minimum 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 intermittent sentences. 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), and *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 and 60-6,197. *State v. Soe,* 366 N.W.2d 439 (Neb. 1985), *State v. Schulz,* 378 N.W. 165 (Neb. 1985), and *State v. Stastny,* 395 N.W.2d 492 (Neb. 1986)

Second offense (within 12 years) – Not less than **240 hours** (mand); third or subsequent offense(within 12 years) – Not less than **480 hours** (mand) §60-196(2); DWI w/serious bodily injury – not less than **400** nor more than **6000** hours. §29-2279(4).
II. A criminal law violator may be sentenced to perform community service. However, community service cannot be used either as a substitute for mandatory jail or fine or in cases where there is serious bodily injury. §29-2278. See §29-2279 for the length of community service.

One or two prior convictions and .16 BAC as part of current violation: **Minimum 30-day sentence**, license revocation – 1 to 15 years, vehicles ignition interlocked for at least six months after license revocation., one-thousand-dollar fine and either 10 days jail or not less than 480 hours of community service.

Restitution
(e.g., 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: Offenders who have accumulated 12 or more points within 2 years must attend and successfully complete a driver's education program of at least 8 hours duration before any license may be reinstated. §60-4,183

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

Yes ≥.08 (BAC/BrAC §§60-6,197(4), 60-6,205 and 60-6,206 first violation – Revocation **90 days** (30 days mand) A person is eligible for employment (hardship) driving privileges after the 30-day mandatory period (but not for the operation of a CMV). Subsequent violation (within 12 years) – Revocation for **1 year**[741] (mand) 247 NAC §026[742]

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[740] Following the 30-day mandatory revocation 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-year revocation period is mandatory. §§60-4,118.06 and 60-6,206(2)

[741] Regulation 247 NAC §026 provides that subsequent violators are ineligible for a restricted (hardship) license.
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) cert denied 527U.S. 1249, 135 L.Ed. 2d 198, 116 S.Ct. 2509 (1996) and *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)

If DWI charges are not filed or if the driver is found not guilty of such charges, the administrative 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)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): **Revocation**[743] §§60-498 and 60-6,196 Persons Under 21 Years Old **≥.02 but <.08-Impoundment** §60-6,211.02(3)

Term of License Withdrawal (Days, Months, Years, etc.): First offense – **6 months (60 days with probation)**; second offense (within 12 years) – **1 year**; third and subsequent offense (within 12 years) – **15 years**[744]**(with probation – 1 year)** §60-6,196 DWI w/serious bodily injury– Class. IIIA felony-**15 years** §60-6,198(1) Persons Under 21 Years Old **≥.02 but <.08-30 days**[745] (Driving privileges are available for employment.) §§60-6,211.02(3) and 60-6,211.03(2)

Mandatory Minimum Term of Withdrawal: If probation is not granted: first offense – **6 months** second offense (within 12 years) – **1 year**; third and subsequent offense(within 12 years) – **7 years**[15]§60-6,196
If probation is granted: first offense – **60** days second offense (within 12 years) – **1 year**; third and subsequent offense (within 12 years) – **1 year**[746] §60-6,196 and *State v. Matthews,* 465 N.W.2d 763 (Neb. 1991). DWI w/serious bodily injury– Class. IIIA felony – 60 days §60-6,198(1)
Any period of revocation imposed for DWI conviction shall be reduced by any revocation period imposed for an administrative per se action. §60-6,196(5)

Other:

Rehabilitation:

Alcohol Education: **Yes.** In addition to any other sanction, a DWI offender may be required to attend an alcoholism or drug treatment program as a condition of probation, §60-6,196(8), and pay for it. *State v. Hynek,* 640 N.W. 2d 1 (Neb. 2002).

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[742] License revocation under the point system: first and second DWI offense – 6 points; third DWI offense – 12 points. Twelve or more points within a 2-year period from all traffic offenses requires revocation for at least 6 months (or longer as the court may direct). A person is eligible for employment or medical hardship driving privileges for the entire revocation period. §§60-4,129, 60-4,182 and 60-4,183

[743] Reduced to 7 years 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

[744] The driver licensing record for this offense must be expunged after 90 days. §60-6,211.06(1)

[745] The license is suspended for this period of time. §60-6,196(c) and (d).

Comment: Secs. 60-6,196(5) and 60-6,206(2) give persons who have been convicted of a first DWI offense a chance to obtain employment (hardship) driving privileges. These sections provide that a person who is also a first admin per se law violator is eligible for an employment driving permit after a 30-day revocation period.

Alcohol Treatment:	**Yes.**
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	**No.**
Terms Upon Which Vehicle Will Be Released:	
Other:	**Immobilization:** A person who has been convicted of either a second or subsequent drunk driving/implied consent refusal offense (within 12 years) must have **all** of the motor vehicles that person owns "immobilized" for not less than **5 days nor more than 8 months**. However, a co-owner of the vehicle may have the vehicle released to him or her 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) and (1)(b)(i) OR **Ignition Interlock:**[747] The court may order a person who has been convicted of either a second or subsequent drunk driving/implied consent refusal offense (within 12 years), as an alternative to vehicle immobilization, to have **all** of the vehicles owned and equipped with ignition interlock devices. This requirement must last for not less than **6 months** starting at the end of any license revocation

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, (1) has a BAC/BrAC/UrAC ≥.04, (2) is under the influence of alcohol or a controlled substance or (3) refuses 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, CMV operators 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 and 60-4,168.

Other Criminal Actions Related to DWI: (continued)	period. One year of the license revocation period must be completed before any ignition interlock devices can be installed. §60-6,197.01(2)
Homicide by Vehicle[748]:	

[747] (1) A person who unintentionally causes the death of an unborn child while engaged in the operation of a motor vehicle in violation of the law commits "motor vehicle homicide of an unborn child."
(2) Except as provided in subsection (3) of this section, motor vehicle homicide of an unborn child is a Class I misdemeanor.
(3) (a) If the proximate cause of the death of an unborn child is DUI {the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214}, motor vehicle homicide of an unborn child is a Class IV felony.
(b) Revocation for at least sixty days and not more than fifteen years that shall not run concurrently with any jail term imposed.
(c) If the proximate cause of the death of an unborn child is a DUI and the defendant has a prior DUI conviction, it is a Class III felony. §28-394

[747] A DWI or implied consent law offender 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 driving motor vehicles equipped with these devices. A first offender is eligible for such a license after 30 days of revocation have been completed. A second or subsequent offender is not eligible for such a license until at least 1 year of revocation has been completed. §§60-6,211.05.

State Has Such a Law:	**Yes.** (1) Class I Misdemeanor (unintentional death caused while operating a motor vehicle in violation of law) (2) Class IIIA felony (if homicide was the result of DWI, reckless driving or willful reckless driving); (3) Class III felony (death as a result of DWI where the defendant has had a prior DWI offense conviction) §§28-105, 28-106, and 28-306
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Class I Misdemeanor – not more than **1 year**; Class IIIA felony – not more than **5 years**; Class III felony – not more than **20 years**
Mandatory Minimum Term:	Class III felony – 1 year
Fine ($ Range):	Class I Misdemeanor – not more than **$1,000**; Class IIIA felony – not more than **$10,000;** Class III felony – not more than **$25,000**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Class I Misdemeanor – Revocation[749]; Class IIIA Felony – Revocation; Class III felony – Revocation (A person must also attend and successfully complete a driver's education course of at least 8 hours duration. §60-4,183). §§28-306(3)(b) and (c), 60-424, 60-4,182 and 60-4,183
Length of Term of Licensing Withdrawal:	(1) Class I Misdemeanor Offense – **6 months** from the date of revocation or after the date of release from confinement whichever is later. (2) Class IIIA felony Offense – **60 days -15 years** The revocation shall not run concurrently with any jail term. (3) Class III felony Offense – **60 days to 15 years.** The rev. shall not run concurrently with any jail term.
Mandatory Action--Minimum Length of License Withdrawal:	(1) Class I Misdemeanor Offense – No**ne.** An employment driving permit may be issued. §§60-4,129 and 60-4,183 (2). Class IIIA felony Offense – **60 days.** §28-306(3)(b) (3) Class III felony Offense – **60 days.** §28-306(3)(c)
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	See Footnotes [750] and [751] and the Comment below.

[748] 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 within a 2-year period results in a 6-month revocation. §§60-4,182 and 60-4,183

[749] A person commits a felony by operating a motor vehicle while the license is revoked if the basis for the revocation was three or more DWI or implied consent offense convictions. First offense (Class IIIA felony) – Imprisonment for not more than 5 years and/or a fine of not more than $10,000. Subsequent offense (Class III felony) – Imprisonment for not more than 20 years (1 year minimum) and/or a fine of not more than $25,000. §§28-105, 60-6,196(6) and 60-197(7)

[750] Sanctions for driving while revoked under the point system: Criminal sanctions– Class III Misdemeanor: Jail – not more than 3 months; fine of not more than $500. Admin Actions: (1) The license revocation as given under the point system must remain in effect for 1 year. (2) However, if the license revocation as given under the point system was a person's second revocation under such system within a 5-year period, such revocation must remain in effect for 3 years. But these revocation periods are not mandatory. A person is eligible for employment driving privileges. §§28-106,

Sanction:	
Criminal:	
Imprisonment (Term):	Driving While Suspended: first and subsequent offenses – Class III Misdemeanor – Not more than **3 months** Driving While Revoked: first and subsequent offenses – Class II Misdemeanor- Not more than **6 months**. §§28-106, 60-557, 60-4,108 and 60-4,109
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Driving While Suspended: first and subsequent offenses – Class III Misdemeanor – Not more than **$500** Driving While Revoked: first and subsequent offenses – Class II Misdemeanor- Not more than **$1,000**. §28-106
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	First and subsequent offenses – Driver ordered not to operate a vehicle. §60-4,108
Vehicle Confiscation/Impoundment:	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 or more than 30 days.
Length of Term of License Withdrawal Action:	Driving While Suspended: first and subsequent offenses – **1 year** Driving While Revoked: first offense – 1 year[752]; subsequent offense – **2 years** §60-4,108
Mandatory Term of License Withdrawal Action:	Driving While Suspended: first offense – **1 year** Driving While Revoked: first offense – 1 year;[753] subsequent offense – 2 years §60-4,108
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an	

60-4,129 and 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.

Comment: 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 months and/or a fine of not more than $500. §§28-106 and 60-4,141.01 A person convicted of violating an out-of-service order is subject to the following disqualification periods: first offense – 90 days (mand); second offense (within 10 years) – 1 year (mand); and, third or subsequent offense (within 10 years) – 3 years (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: first offense – 180 days (mand); and, subsequent offense (within 10 years) – 3 years (mand). §60-4,168.01.

[753] The court also orders revocation for the same period of time. §§60-4,108 and 60-4,109

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** §60-6,102
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** If dead within 4 hours of the accident.
Vehicle Passenger:	**No**
Pedestrian:	**Yes** If at least 16 years old and dead within 4 hours of the accident.

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21.** §§53-103(23), 53-180 and 53-18.01
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 ≥19 years old. §§53-103(23), 53-168.06 and 53-18.02
Minimum Age (Years) Consumption:	**21.** There are exemptions for consumption in a "permanent place of residence" or for religious purposes. §53-18.02

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:	**Class I Misdemeanor** §§53-180, 53-18.05 and 28-106
Term of Imprisonment:	Not more than **1 year**
Fine ($ Range):	Not more than **$1,000**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes. Suspension/Revocation**[754] §§53-116.02 and 53-1,104
Length of Term of License Withdrawal:	Not specified in the statute.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Class I Misdemeanor** §§53-180, 53-18.05 and 28-106
Term of Imprisonment:	Not more than **1 year**
Fine ($ 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 Suspension/Revocation**[755] §§53-116.02 and 53-1,104
Length of Term License Withdrawal:	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.

[753] In lieu of a suspension, the licensee may pay a "cash penalty" for each day of the suspension. For a first offense, the "cash penalty" is $50 per day; for second or subsequent offense (within 4 years), the "cash penalty" is $100 per day. §53-1, 104(2)

[754] In lieu of a suspension, the licensee may pay a "cash penalty" for each day of the suspension. For a first offense, the "cash penalty" is $50 per day and for a second or subsequent offense (within 4 years), the "cash penalty" is $100 per day. §53-14.01

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 §60-6,211.08
Anti-Consumption Law (Yes/No):	**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.}

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. **≥.08**[756and757] §§484.038 and 484.379(1)(b) and (c) II. **Certain Amounts of Prohibited Substances**[758]in the Blood or Urine §484.379(3)
Presumption (BAC):	**None**
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)(a) and (b) 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) (c)
Other:	

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes**[759] §484.382
Implied Consent Law:	
Arrest Required (Yes/No):	**No** §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 and Admin Actions) §484.389

Chemical Breath Tests for Alcohol Concentration:

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[755] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more. §484.038

[756] Standards: "Concentration of alcohol" is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§483.045, 484.038, 484.379(1)(a) and484.3792(8)(a)

[757] 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) marihuana 2, (h) marihuana 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) marihuana 10, (h) marihuana metabolite 15, (i) methamphetamine 500 or (j) phencyclidine 25. §484.1245 and 484.379(3)

[758] A law enforcement officer only needs "reasonable grounds to believe" a drunk driving offense was committed before requesting 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.

If a person fails to submit to a test, a blood sample may be obtained without consent (i.e., via force) if there are "reasonable grounds to believe" that the driver has been driving under the influence of alcohol or a controlled substance. §484.383(7)

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

Blood:	**Yes**[760] §484.383(1)
Urine:	**Yes-Limited**[761] §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.** 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 third or subsequent offenders and to offenders who have caused either an injury or death. §§176.135, 484.3792(1)(c) and 484.3796 II. Either a first offender who registers a BAC/BrAC ≥.18, or any second offender (within 7 years) must be administered an evaluation to determine if that person is an abuser of alcohol or drugs. §484.37943(1) III. A first offender who is <21 years old or a first or subsequent offender who is <18 years old must be administered an evaluation to determine if that person is an abuser of alcohol or drugs. §§62.020(1), 62.2275(1) and 484.37943(2) 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:

Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	If a person refuses to submit to a preliminary breath test where there are "reasonable grounds to believe"

[759] A person may be directed to submit to a 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 within 7 years. §484.383(4)(c)

[760] A urine test can only be requested under two conditions: (1) a driver arrested for an alcohol driving offense has hemophilia or a heart condition which would exempt him/her from a blood test, or (2) a driver has been stopped for driving under the influence of a controlled substance. §484.383(3), (5) and (6)

that person has committed a drunk driving offense, the law enforcement officer requesting such a test must seize the person's license, arrest that person, and take the person to a convenient place for the administration of a test pursuant to §484.383. §484.382(2)

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): **None**

Administrative Licensing Action (Susp/Rev): **None**

Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.): First and second DWI offenses are misdemeanors; third DWI or subsequent offenses are Category B felonies. §§193.120 and 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.
First offense – **2 days to 6 months**; second offense (within 7 years) – **10 days to 6 months** (or residential confinement with electronic monitoring in a treatment facility-**10 days to 6 months**); third and subsequent offense (within 7 years) – **1 to 6 years** (State prison) §§484.379 and 484.3792

Mandatory Minimum Term: First offense – **2 days. Second** offense (within 7 years) – **10 days** (with at least 48 con hrs §484.3792(4))
Third and subsequent offense (within 7 years) – **1 year** (with at least 48 con hours §484.3792(4))

Fine:

Mandatory Min. Fine ($):

Amount ($ Range): First offense – $**400 to $1,000**; second offense (within 7 years) – **$750 to $1,000**; third and subsequent offense(within 7 years) – **$2,000 to $5,000 Special Note:** first offense and second offense (within 7 years) – If rehabilitation is taken, the fine can be no more than the minimum fine indicated.

First offense – $**400**; second offense – $**750** Third and subsequent offense – $**2,000** §§484.3792(1) (a)(3), (1) (b)(2) and (1)(c)

Community Service: First offense – **48 (mand) to 96 hours** (alternative to imprisonment) or, if rehabilitation is taken, **48 hours** §§484.3792(1)(a)(2) and 484.3794(1)(c)(1); second offense (within 7 years) – Unless extenuating circumstances exist, **100 (mand) to 200 hours** (in addition to imprisonment) or, if rehabilitation is taken, **50 (mand) to 100 hours** §§484.3792(1)(b)(3) and 484.3794(1)(c)(2)
Important: See Special Note below.
Offenders <18 years old may be required to perform community service. §62.2275(3)(c)(2)

Restitution (e.g., 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 and 5.055 and (2) via a victims' compensation fund §217.010 et seq.

Other:

Residential Confinement: The court may order that the defendant be confined to home for a conviction of a misdemeanor offense. This sentence may be supervised by means of electronic devices. §§4.3762 and 5.076
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 that is imposed. These assessments may range from **$15 to $105** 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

Special Note: Either a first or second offender (within 7 years) who has been classified as an alcohol/drug abuser may have the sentence suspended by agreeing to participate in an alcohol or drug treatment program. A first offender must be placed in this program for 6 months and must serve 1 day in jail or perform 48 hours of community service. A second offender (within 7 years) must be placed in the program for 1 year and must serve 5 days in jail and perform not less than 50 (mand) nor more than 100 hours of community service. In addition, offenders must agree to pay any treatment program costs. A person is not eligible for this program if convicted of a drunk driving offense related either to injury or death. §§484.37937 and 484.3794.

Sanctions Following a Conviction for a DWI Offense:
(con't)

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

Yes ≥.08 (BAC/BrAC)[762] or a **Detectable Amount of a Prohibited Substance** in the Blood or Urine (Amphetamine, cocaine, cocaine metabolite, heroin or heroin metabolite (morphine/6-monoacetyl morphine), lysergic acid diethylamide, marihuana, marihuana metabolite or methamphetamine) – **Revocation 90 days** (45 days mand)[763] §§484.383, 484.384, 484.385 and 484.1245

[761] 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)
[762] Sec. 484.385 authorizes admin licensing action via a revocation against a person who operates a motor vehicle with a BAC/BrAC ≥.08 or a detectable amount of a "prohibited substance" his/her blood or urine. However, this section does not provide for a specific revocation period. Sec. 484.384(1) provides for a 90-day revocation if the driver has a

Persons Under 21 Years Old-**≥.02 but <.08** (BAC/BrAC) **Suspension 90 days** (45 days mand A restricted license may be issued after this mandatory period.) §§483.461, 483.462 and 483.464

Other: Under §§483.470, a person's license may be suspended if that person has "committed" an offense that usually requires license revocation (e.g., DWI). Such action may be taken without a preliminary hearing. The length of the revocation period is unclear.

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): First offense – **Revocation**; second offense (within 7 years) – **Revocation**; third and subsequent offenses (within 7 years) – **Revocation.** §483.460.

Term of License Withdrawal (Days, Months, Years, etc.): First offense – **90 days** (45 days mand.)[764]; second offense (within 7 years) – **1 year**; third and subsequent offense (within 7 years) – **3 years** (For a third or subsequent offense, the license revocation period does not "run" while the offender is under jail or residential confinement.) §483.460

Mandatory Minimum Term of Withdrawal: First offense – **45 days**; second offense (within 7 years) – **1 year**; third and subsequent offenses (within 7 years) – **1 1/2 years** (After a 1 year mandatory revocation, a restricted license may be issued if the person is allowed to use an ignition interlock.)

Ignition Interlock: I The court may or must require a defendant to install this device as a condition for restricted driving privileges as follows:

First offense – **3 to 6 months** (discretionary); second offense – (no requirement); and, third and subsequent offense – **12 to 36 months** (mandatory). §484.3943(1)

II. The court may 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)

Rehabilitation:

Alcohol Education: **Yes. First** offense – 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

Alcohol Treatment: **Yes**[765] first offense– Possible but mandatory if BAC/BrAC is≥.18; second offense – 1 year treatment mandatory for non-death/non-injury related offenses[766]

BAC/BrAC ≥.08 but it does not provide for a revocation period if the driver has a detectable amount of a "prohibited substance."

[763] After half of the revocation period has passed and the DWI offender has completed treatment in a treatment program, a restricted license may be issued. §§483.460(3) and 483.490(2). For a first offender, after 45 days a restricted license may be issued if that person has been allowed to participate in the ignition interlock program. §483.490(2)

[764] **Persons Under 18 Years Old:** I. Under separate provisions of law, a drunk driving offender who is under 18 years

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: first offense – A fine of not more than **$100** and/or driver's license suspension from 1 to 5 days; second offense – A fine of not more than **$300** and/or driver's license suspension from 6 to 20 days; and, third 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.
§§209.425 et seq., 484.3792(1)(a)(4) and (1)(b)(4) and 484.3794. Note: Under §209.425, an alcohol treatment program is available for incarcerated DWI offenders. Persons <18 years old may also be required to participate in a treatment program. §62.2275(3)(c)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **No**

Other Criminal Actions Related to DWI:

Terms Upon Which Vehicle
Will Be Released:

Other: **Vehicle Registration Suspension:** For a second or subsequent drunk driving (§484.379)/drunk driving related vehicle homicide (§484.3795) offense (within 7 years), the registrations of all of the vehicles owned by the offender must be **suspended for 5 days**. 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 and 484.37975
Child Endangerment: If a child less than 15 years 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) and 484.3795(4).

Other Criminal Actions Related to DWI:

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old is subject to a license revocation of 90 days. 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 and 483.490. II. Under general provisions of the law governing juvenile offenders (offenders <18 years old), a court has the authority to suspend such a person's license for 90 days to 2 years 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), 62.211(1)(h) and 483.490(2) III. Such an offender must compete an alcohol/drug treatment program if a alcohol/drug evaluation indicates that such treatment is needed. §62.2275

[765] An offender may be placed under "clinical supervision" for a period not to exceed 1 year. Such "supervision" may or may not include confinement in a treatment facility. §484.37945

Homicide by Vehicle:	
State Has Such a Law:	**Yes – vehicular homicide** is committed when a person who has previously committed at least three offenses of driving under the influence drives (during driving career), while under the influence in violation of law, proximately causes the death of another person. Category A felony – State prison for life with the possibility of parole or a definite term of 25 years, with parole eligibility after a minimum of 10 years[767.] (1) **Death caused by reckless driving or by a DWI where there is wanton disregard for the safety of others** causing the death or substantial bodily harm to another person, regardless of whether the person has previously been convicted of driving under the influence. -Category B felony; §§484.377 and 484.3795 Reckless Driving – 1 **to 6 years**; DWI related offenses[768]**-2 to 20 years**[769]. §§484.377 and 484.3795
Mandatory Minimum Term:	For a DWI-related death – 2 years[770]
Fine ($ Range):	Reckless Driving – Not more than **$5,000**; DWI related offenses **– $2,000 to $5,000**
Mandatory Minimum Fine:	For a DWI-related death – $**2,000**
Length of Term of Licensing Withdrawal:	For a DWI related death, **3 years.** 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 offense not noted above caused by vehicle operations, the driver's license is revoked for **1 year**. §483.460(1)(b)(1)
Mandatory Action--Minimum Length of License Withdrawal:	**1½ years** (Death-related DWI offenses.); **6 months** (Non-alcohol related death offenses.) §§483.460(1) and 483.490(1) and (2)
Repeat DWI felony offenders:	If a person has been convicted of a felony for operating vehicle while under the influence of alcohol or a controlled substance, any subsequent violation is treated as felony. § 484.3792
Other:	1) A person who has been convicted of DWI-related vehicle homicide may be required to serve a 10-year period of probation.

[767] A person imprisoned under felony DWI, insofar as practicable, must be segregated from offenders whose crimes were violent and assigned to an institution or facility of minimum security. §484.3795

[767] For DWI related vehicle homicide, the prosecuting attorney may not dismiss that charge unless it cannot be supported by probable cause or proved at the time of trial. §484.3795(2)

[768] This sanction also applies to a person who causes substantial bodily harm as a result of a DWI offense. §484.3795(1)

[770] This minimum sanction may not be suspended nor may probation be granted. §484.3795(2)

	2) A person must be evaluated for an alcohol or drug abuse problem. If a person has such a problem, that person is assigned to a treatment program. §§484.3796 and 209.425 et seq.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	
Imprisonment (Term):	**Misdemeanor 30 days to 6 months**[771] §483.560(2)
Mandatory Minimum Term of Imprisonment:	**30 days**[772]
Fine ($ Range):	**$500 to $1,000**
Mandatory Minimum Fine:	**$500**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	For driving on a suspended license– suspension**.** For driving on a revoked license – Revocation**.** §483.560(5).
Length of Term of License Withdrawal Action:	The original suspension period is extended for a like period. The original revocation is extended 1 year §483.560(5)
Mandatory Term of License Withdrawal Action:	See above. Note: The restricted license provisions of §483.490(2) may apply.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

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 months and/or a fine of

[770] **Alternative Sanctions:** Residential confinement from 60 days (mand) to not more than 6 months and a fine of $500 (mand) to not more than $1,000. §483.560(2)

[771] Under §483.560(3), any segment of imprisonment must consist of at least 24 hours.

not more than $1,000. Community service may be imposed in lieu of these sanctions. §§193.150, 483.530(7) and 483.620.

Other State Laws Related To Alcohol:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §484.394
BAC Chemical Test Is Given to the the following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**Yes**
Pedestrian:	**Yes**

Other State Laws Related To Alcohol:

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21.** §§202.020 and 202.055
Minimum Age (Years) Possession:	**21.** Applies to possession in a public place. §202.020. There are exceptions with regard to religious purposes, employment, medical prescriptions, and possession in the presence or parents or guardians. §202.020(5).
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[773]
"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), *Van Cleave v. Keitz-Mill Minit Mart,* 633 P. 2d 1220(Nev. 1981), *Bell v. Alpha Tau Omega,* 642 P.2d 161 (Nev. 1982), *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:	**No.**[774] §41.1305
Other:	A minor decedent's estate has no cause of action in negligence against a licensee who served alcoholic beverages to the minor even though the consumption of such beverages was a factor in the minor's death. *Snyder v. Viani,* 885 P.2d 610 (Nev. 1994)

[772] 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.

[773] 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.

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:	**N/A**
Fine ($ Range):	**N/A**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**N/A**
Length of Term of License Withdrawal:	**N/A**
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misdemeanor** §§193.150 and 202.055
Term of Imprisonment:	Not more than **6 months**[775]
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):	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 an alcoholic beverage while such person is driving or is in actual physical control of a motor vehicle upon a highway."

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.

[774] A person may be allowed to perform community service in lieu of all or part of the jail/fine sentence. §193.150

Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Lomas,* 955 P.2d 678 (Nev. 1998) **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. §483.908. Under 49 CFR §383.51, a person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, he/she (1) has a BAC/BrAC ≥.04 or (2) is 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. Note: If there are "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 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". §483.922(2). 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 months 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 not to exceed $10,000. §§483.904, 483.908, 483.922, 706.173, 706.756 and 706.771, NAC §706.247 and 49 USC 31301 et seq.

STATE:	**NEW HAMPSHIRE**
General Reference:	New Hampshire Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor[776] §§265:82, I(a)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[777,778] §265:82, I(b) Persons Under 21 Years Old-**≥.02**[779and780] §265:82, I(b)
Presumption (BAC):	**None.**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Controlled Drug** and (2) any Combination of Intoxicating Liquor and Controlled Drugs §265:82(I)(a)
Other:	I. An alcohol concentration **≥.08** is *prima facie* evidence of intoxication. §265:89 II. **Aggravated Driving While Intoxicated Offense:** Either (1) 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 ≥.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; or (2) Driving with a BAC/BrAC ≥.16. §265:82-a

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** Test results may be introduced into evidence in a court for any relevant purpose, but refusal to submit to the test is not a violation, and evidence of refusal is only admissible for the purpose of determining whether the officer had probable cause to arrest the person § 265:92-a.
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §265:84
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §265:84

[775] The term "intoxicating liquor" is defined to include all alcohol beverages containing more than one per cent alcohol by volume. §21:33

[776] 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 .08 or more. §259:3-b

[777] 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

[778] The sanctions for this offense (criminal and administrative) are the same as for any other drunk driving offense.

[780] Under §265:89, it is *prima facie* evidence that a person was not under the influence of intoxicating liquor per §265:82,I (a) BAC was .03 or less. Therefore, drivers <21 years old who are charged with driving while under the influence of intoxicating liquor are entitled to use §265:89 as a defense against this charge, if their BACs were .03 or less, even though other provisions of the law make it illegal per se for them to operate a motor vehicle with a BAC ≥.02. *State v. Clyde*, 766 A. 2d 350 (N.H. 2000). It should be noted that in the case cited, the court specifically cited that the *prima facie* defense only applies to the driving while under the influence of intoxicating liquor offense and not to the per se offenses

Chemical Breath Tests for Alcohol Concentration: (con't)

Refusal to Submit to Chemical Test Admitted into Evidence: **Yes** (Criminal and Civil Cases) §265:88-a and *State v. Parker,* 702 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.

Adjudication of DWI Charges:

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

Blood: **Yes** §265:84
Urine: **Yes** §265:84
Other: **None**
Mandatory Adjudication Law (Yes/No): **No**
Anti-Plea-Bargaining Statute (Yes/No): **No.** 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)** for third and subsequent offenses (within 7 years) §265:82-b, II(b)((2) Under §651:4, a pre-sentence investigation is not normally required in misdemeanor cases, except if the misdemeanor was violent and is a second offense within 1 year.

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): First refusal where there has been no previous DWI offense – **Suspension for 180 days** (mand); second refusal or a first refusal where there has been a previous DWI offense – **Suspension for 2 years** (mand) §§265:91-a, II(a) and 265:92 These revocations are not to run concurrently with any other suspension or revocation. §265:92, II

Sanctions for Refusal to Submit to a Chemical Test(con't)

Other:	A person holding an "at risk" probationary license whom police have reasonable cause to believe is driving with a BAC/BrAC ≥.03 and who refuses to take a chemical test shall have the license suspended for 90 days. §263:14-a (III).

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:[781]	
Term (Day, Month, Years, Etc.):	First offense – Violation – Not a crime§265:82-b, I(a) – **None** ; first offense – **Aggravated Driving While Intoxicated Offense** (except bodily injury offenses) Misdemeanor[782] – Not more than **1 year**; second offenses[783] (including Aggravated DWI non-injury offenses within 10 years) – Misdemeanor – Not more than **1 year**; third offense (including Aggravated DWI non-injury offenses within 10 years) – Misdemeanor – Not more than **1 year**; fourth or subsequent offenses (including Aggravated DWI non-injury offenses within 10 years) – felony. **Aggravated Driving While Intoxicated Offense with Serious Bodily Injury**– Class B felony – Not more than **7 years**[784] §§265:9, IV (A); 265:82-a; 265:82-b, I(b) and II and 651:2, I(c) In order for a defendant to receive enhanced sanctions for a subsequent DWI offense conviction, the DWI complaint must allege the prior convictions. §265:82-b, I(b)(1)
Mandatory Minimum Term:	Second and subsequent offense – all offenses including Aggravated DWI within 10 years – Misdemeanor-**10 consecutive days** The 10 consecutive days are to be served as follows: 3 consecutive 24-hour periods in the county house of corrections and 7 consecutive 24-hour periods in a State operated 7-day multiple DWI offender intervention detention center. §265:82-b, II(a)(3), (b), (c) and (d) Aggravated DWI-Serious Bodily Injury – No**ne.**

[781] **Gainful Employment and 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 days in jail. §651:6, I(l) and (m) and II.

[781] The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV (a)(2).

[782] For sentencing purposes, a prior offense includes a prior motor vehicle homicide offense related to drunk driving and an Aggravated DWI offense related to serious bodily injury. §265:82-b, II.

[783] A defendant may receive an extended term of imprisonment of from 10 to 30 years if that person has committed an Aggravated DWI involving serious bodily injury and either (1) has been convicted of 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) has been convicted of two prior DWI offense in New Hampshire or any other jurisdiction. §625:6, I(l) and (m) and II.

Fine:

Amount ($ Range):	First offense – $**350 to $1,000**; first offense – **Aggravated Driving While Intoxicated Offense** (except bodily injury offenses) – **$500 to $2,000**; second offense[785] (within 10 years) – **$500 to $2,000**; third offense (within 10 years) – **$500 to $2,000**; fourth or subsequent offenses (within 10 years) – **$500 to $4,000. Aggravated Driving While Intoxicated Offense with Serious Bodily Injury** – $**1,000 to $4,000** §§265:82-b, I and II and 651:2, VI(a)
Mandatory Min. Fine ($):	First offense – $**350**; first offense – Aggravated DWI – $**500**; second offense (within 10 years) – **$500**; third offense (within 10 years) – **$500**; fourth or subsequent offenses (within 10 years) – **$500**; **Aggravated Driving While Intoxicated Offense with Serious Bodily Injury** – $**1,000** §265:82-b, I and II.
Other Penalties:	The holder of a youth operator's license convicted of DUI shall not be eligible for re-issuance of a license prior to the age of 21 unless the person satisfies the director after an administrative hearing that the person will drive in a safe manner if the license is issued. The director may place such restrictions on any license so issued as the director deems in the best interest of public safety. §263:14 V. Any person who applies for re-issuance of the driver's license following revocation or suspension for DUI is an "at risk" driver; that person's license shall be probationary for at least 5 years following re-issuance. 263:14-a, I(a) For a felony or class A misdemeanor, a defendant may receive conditional discharge which may include 'uncompensated public service". §651:2, VI (a)
Restitution: (e.g., Victim's Fund)	I. Payment by the defendant to the victim.[786] §651:62 et seq. II. A victim may receive compensation for damages from a State fund. §21-M:8-g et seq.
Other:	**Penalty Assessment:** An offender must pay an assessment of either $2 or 20 percent of the fine

[784] All offenses including Aggravated DWI.
Comment: The sentencing provisions of the drunk driving law provide that a fourth or subsequent offense is a felony. However, this law does not specify or classify whether this is a 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. The incarceration sanctions for Class A and Class B felonies are respectively not more than 15 and 7 years and the fine sanction for either felony is not more than $4,000. §651:2, II and IV(a). The minimum mandatory sentences, fines and revocations listed shall not be suspended or reduced. §265:82-b
[11] The offender may be ordered to pay restitution to the victims' compensation fund. Such payments are used to reimburse the fund for any amounts that were awarded to victims of the offense. §21-M:8-l

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 hours 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. §§153-A:24

Special Sanctions for Certain Multiple Offenders: Any person who has completed a multiple DWI offender intervention program and who is subsequently convicted of a DWI offense shall be imprisoned for 30 con. 24-hour periods. In addition, they must complete, at their own expense, either a 28-day residential treatment program or "an intensive course of substance abuse treatment" before their license can be restored. §265:82-b, II-a.

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law: **Yes ≥.08** BAC/BrAC/UrAC (≥.02 for persons under 21 years old) first violation– suspension – **6 months** (appears mand); subsequent violation– suspension – **2 years** (appears mand) A subsequent administrative per se violation also includes a prior refusal or DWI offense. §265:91-a et seq.
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 and revocation time cannot exceed the longer of the two periods. §265:91-c

Other: Under §§263:56(I)(a) and 263:56(III), a person's license may be suspended/revoked for not more than 1 year if he/she has "committed" an offense that requires mandatory license revocation (e.g., DWI). A preliminary hearing is required before such action can be taken. **Comment:** Such action could occur prior to a conviction.

Post DWI Conviction Licensing Action:
Type of Licensing Action (Susp/Rev): First offense – **Revocation**; first offense – **Aggravated Driving While Intoxicated Offense** (except bodily injury offenses) – **Revocation**; second offense[787] (within 10 years) – **Revocation**; third offense (within 10 years) – **Revocation**; fourth or subsequent offenses (within 10 years) – **Revocation**; third or subsequent offenses (within 10 years) where there was a prior motor vehicle related negligent homicide offense – **Revocation**
§§263:65, 263.66 and 265:82-b.

Term of License Withdrawal

[786] All offenses including Aggravated DWI.

(Days, Months, Years, etc.):	First offense – **90 days to 2 years**; first offense – **Aggravated Driving While Intoxicated Offense** (except bodily injury offenses) – **1 to 2 years**; second offense[788] (within 10 years) – Not less than **3 years**; third offense (within 10 years) – For at least **5 years**; fourth or subsequent offenses (within 10 years) – **Indefinitely**; third or subsequent offenses (within 10 years) where there was a prior motor vehicle related negligent homicide offense – **Indefinitely** **Aggravated Driving While Intoxicated Offense with Serious Bodily Injury** – 1 **to 2 years** See Footnotes Nos. [789] and [790].
Mandatory Minimum Term of Withdrawal:	First offense – **90 days**; first offense – **Aggravated Driving While Intoxicated Offense** (except bodily injury offenses) – **1 year**; second offense (within 10 years) – **3 years**; third offense (within 10 years) – **5 years**; fourth or subsequent offenses (within 10 years) – **7 years**; third or subsequent offenses (within 10 years) where there was a prior motor vehicle related negligent homicide offense – **10 years** **Aggravated Driving While Intoxicated Offense with Serious Bodily Injury** – 1 year 265:82-b, II
Child Endangerment**:**	If the DWI offender was transporting a person under 16 years old at the time of the offense, the offender must have their driving privileges revoked for the maximum time period provided by law.[791] §265:82-b, VIII
Rehabilitation:	
Alcohol Education:	**Yes.** For any alcohol related driving offense, a defendant must complete an impaired driver intervention program before the license can be restored; except if the person has previously been

[787] All offenses including Aggravated DWI.

[788] If a second or subsequent offense (within 10 years) is not alleged in the complaint but such is found to be the case the defendant's license is suspended from 180 days to 3 years. The minimum 180 days appears to be mandatory. §265:82-b, III

[789] A second or subsequent offender (within 10 years) must successfully complete a 7-day residential intervention program before the license can be reinstated. §§172-B:2a and 263:64-a

Persons Under 21 Years Old: Offenders who are <21 years old must have their driving privileges revoked for not less than 1 year. §265:82-b, I-b.

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 year (3 years if transporting hazardous materials) if, while driving a CMV that person (1) is under the influence of alcohol with an alcohol concentration (BAC/BrAC/UrAC) ≥.04 or (2) is 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 years mand). If a person refuses to submit to a chemical test under the implied consent law while operating a CMV, the CDL is "revoked" for a first refusal for not less than 1 mandatory year and for a second or subsequent refusal for not less then 10 years. In addition, a CMV operator who has any alcohol in the 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 and 263:96

[791] Before an offender's license can be restored, the person must complete either a 7-day State-operated multiple DWI offender program or a 7-day alcohol and drug residential intervention program. §§172-B:2-b and 265:82-b, VIII

required to complete such a program, that person must complete multiple NH DWI offender intervention detention center program or an equivalent 7-day residential intervention program. §265:82-b

Alcohol Treatment:

Vehicle Impoundment/Confiscation: **None**

Authorized by Specific Statutory Authority:

Terms Upon Which Vehicle Will Be Released:

Other: **Vehicle Registration Revocation:**[792] For either (1) a second 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 re-issuance of their license following a drunk driving conviction is an "at risk" driver and whose license shall be probationary for 3 years. Such probationary license may be suspended from **90 to 180 days** if the driver operates a motor vehicle with a BAC/BrAC ≥.03. §263:14a(I) and (II) This suspension may not be mandatory.
Ignition Interlock: Aggravated DWI or subsequent DWI offenders <u>may</u> be required to install an ignition interlock device on the vehicles owned or regularly used for 6 months to 2 years following license reinstatement. DWI offenders <21 years old <u>may</u> be required to use this device for 12 months or until they reach 21 whichever is longer. §265:82-e
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

<u>Other Criminal Actions Related to DWI</u>:

<u>Homicide by Vehicle</u>:

State Has Such a Law: **Yes** I. Death (or serious bodily injury) caused by unlawful motor vehicle operation without intent (Vehicle Assault) – Class A misdemeanor. §265:79-a
II. Death caused by <u>negligent</u> operation of a motor vehicle (Negligent Homicide) – Class B felony §630:3, I

[791] 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 and 3003.16

III. Death resulting from the operation of a motor vehicle while DWI (Negligent Homicide) – Class A felony §630:3, II
IV. Death caused by the reckless operation of a motor vehicle (Manslaughter) – Class A felony §§625:9, III(a)(1) and 630:2, I

Criminal Sanctions:

Imprisonment (Term): I. Not more than **1 year** §651:2, II(c)
II Not more than **7 years** §651:2, II(b)
III. Not more than **15 years**[793] §651:2, II(a)
IV. Not more than **30 years** §630:2, II

Mandatory Minimum Term: **None**

Fine ($ Range): I. Not more than **$2,000** §651:2, IV(a)
II and III. Not more than **$4,000** §651:2, IV(a)
IV. The law is not specific but a fine of not more than **$4,000** may be possible. §§625:9, III (a)(1), 630:2 and 651:2, (IV(a)

Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: I, II, III and IV. **Revocation** §§263:56, I(g), 630:2, II and III and 630:3, III

Length of Term of Licensing Withdrawal: I and II. Up to **7 years** §§263:56, III(a) and 630:3, III
III. **Indefinitely**[794] §630:3, III
IV. **Indefinitely** §630:2, III

Mandatory Action--Minimum Length of License Withdrawal: I and II. **None**
III. **7 years** The use of an ignition interlock device may also be required for not more than 5 years following license reinstatement. §630:3, III
IV. **Indefinitely** §630:2, III

Other: **Vehicle Registration Revocation:**[795] For Negligent Homicide and Manslaughter offenses, the driver's

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[792] A defendant may receive an extended term of imprisonment of from 10 to 30 years if that person has committed a DWI vehicle homicide and either (1) has been convicted of 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) has been convicted of two prior drunk driving offenses in New Hampshire or any other jurisdiction. § 651:6(I)(l) and (m) and (II).

[793] **Persons Under 21 Years Old:** Offenders who are <21 years old must have their driving privileges revoked for not less than 1 year. A 1-year revocation appears to be mandatory. §265:82-b, I(b)

[794] 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 and 3003.16

Special Note: I. It appears to be a violation of the general provisions of the law which prohibit the operation of 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 and must have driving privileges revoked for not less than 1 year, or unconditional discharge or a fine of not more than $1,000. §§263:64, I and VII and 651:2, III and IV(a). A 1-year revocation appears to be mandatory. §265:82-b. II. A person who operates a motor vehicle while the license is either suspended or revoked commits a Class B felony (misd if they are <20 years old) if, as a result of a collision, that person causes 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) and (b). The sanctions for a Class B felony are imprisonment for not more than 7 years and a fine of not more than $4,000. The sanctions for a

vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. §261:180, III

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

Imprisonment (Term):	Misdemeanor (classified as a Class A misdemeanor) – Not more than **1 year** §§625:9, IV(a)((2), 263:64 and 651:2, II(c)
Mandatory Minimum Term of Imprisonment:	**7 consecutive 24-hour** periods §263:64, IV
Fine ($ Range):	Not more than **$1,000** §263:64, IV
Administrative Licensing Actions:	**Ignition interlock device** required on any vehicle registered to a person drives after a suspension or revocation resulting from a DWI offense §265:93 I-a, b Prohibits that person from driving a motor vehicle not equipped with this device. §265:93-b I.
Type of Licensing Action (Susp/Rev):	**Revocation** §263:64, IV
Length of Term of License Withdrawal Action:	**An additional 1 year** §263:64-a
Mandatory Term of License Withdrawal Action:	**An additional 1 year** §263:64-a

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	**Yes** §§259:39 and 262:18 et seq.
Grounds for Being Declared an Habitual Offender:	3 serious offenses (within 5 years), 12 moving violations (within 5 years), 1 serious offense and 8 moving violations (within 5 years), or a combination of 2 serious offenses plus 4 moving violations (w/in 5 years).
Term of License Rev While Under Habitual Offender Status:	Revocation **1 to 4 years** 262.19, III An habitual offender may have to successfully complete a "Driver Attitude Program" before the license is 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.

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misdemeanor (Class A misdemeanor) are incarceration for not more than 1 year and a fine of not more than $1,200. §651:2, II(b), II(c) and IV(a).

	Admin. Rules Saf-C 3001.01, 3003.01, 3003.03 and 3003.16
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**felony.** §262:23I{Class A misd – for those habitual offenders who have not committed any DWI or other criminal motor vehicle violations. §262:23, III.}
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Felony **1 to 5 years.** §§262:23, I and 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 year** if the person has been convicted of a misdemeanor 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 days in jail. §262:23, I and III
Fine ($ Range):	Possible fine of not more than **$4,000.** No fine is stated in §262:23. However, §651:2, IV(a) provides that a person convicted of a felony may be subject to a fine of not more than $4,000.
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** (Required) §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**[796] §§175:1, 179:5 and 179:6
Minimum Age (Years) Possession:	**21** There are employment exemptions. §§179:10 and 179:23
Minimum Age (Years) Consumption:	**None**
Dram Shop Laws and Related Legal Actions:	

[794] It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to "misrepresent" his/her age in order to obtain alcoholic beverages. §179:9(I)

State Has a Dram Shop Law (Yes/No): **Yes** §507-F:1 et seq.[797] 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 **No.** Case law abrogated by §507-F:1 et seq. with regard to licensees.

Dram Shop Actions-Social Hosts: **Yes.** *Hickingbotham v. Burke,* 662 A.2d 297 (N.H. 1995),[798] and *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 service of alcoholic beverages was reckless.

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

Type of Criminal Action: **Misdemeanor**[799] (For corporations-felony) §§179:5 and 179:58, I

Term of Imprisonment: Not more than **1 year** §651:2, I(c)

Fine ($ Range): Not more than **$2,000** §651:2, IV(a) (For corporations – not more than $100,000) §651:2, IV(b)

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Suspension/Revocation** §179:57

Length of Term of License Withdrawal: Time period is not specified in the statute for either suspension or revocation.
Administrative fine of $100 to $5,000 in lieu of a suspension/revocation. §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: **Misdemeanor**[800] (For corporations-felony) §§179:5, 179:6 and 179:58, I

Other State Laws Related To Alcohol Use:

Term of Imprisonment: Not more than **1 year** §651:2, I(c)

Fine ($ Range): Not more than **$2,000** §651:2, IV(a) (For corporations – not more than $100,000) §651:2, IV(b)

Administrative Actions Against Owners of

[795] 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.

[797] 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.

[798] The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

799 The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension/Revocation** §179:57
Length of Term License Withdrawal:	Time period is not specified in the statute for either suspension or revocation. Administrative fine of $100 to $5,000 in lieu of a suspension/revocation. §179:57
Anti-Happy Hour Laws/Regulations:	**No**[801]
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §§179:27-a, II and 265:81
Anti-Consumption Law (Yes/No):	**No**[802]

[800] However, the service of "free drinks" is prohibited except for wine tasting purposes. §179:44

[801] 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, or 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 and IV(a)

STATE:	**NEW JERSEY**
General Reference:	New Jersey Statutes Annotated
Basis for a DWI Charge:	See the Special Note below.
Standard DWI Offense:	Under the influence of intoxicating liquor §39:4-50(a)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[803,804 and 805] §39:4-50(a) Persons Under 21 Years Old-**≥.01** §39:4-50.14
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) A Narcotic (2) A hallucinogenic drug or (3) A Habit-Producing Drug[806] §39:4-50(a)
Other:	
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" seem to be required. However, under §39:4-50.4a, a driver's license can only be revoked when the refusal is based on an arrest.
Implied Consent Law Applies to Drugs (Yes/No):	**No**
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes.** (Criminal Cases) *State v. Stever,* 527 A.2d 408 (N.J. 1987) (cert denied 484 U.S. 954, 98L.Ed.2d 373, 108 S. Ct. 348(1987)).
Other Information:	(1) An "involuntary" blood (not breath) sample may be obtained from a person who has been arrested for a DWI offense; i.e., a blood sample may be taken by "force"[807.]

[803] Standard: "Percent by weight" of alcohol in the blood. §§39:4-50(a) and 39:4-50.14

[804] In *State v. Downie,* 569 A.2d 242 (N.J. 1990) (cert denied 498 U.S. 819, 112 L.Ed.2d 38, 111 S. Ct. 63 (1990)), the New Jersey Supreme Court held that breathalyzer results must be given "judicial notice." The court felt that this was is in keeping with the legislature's policy of measuring alcohol in the brain for the purpose of determining whether a person was DWI. {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.}

[805] *State v. Lentini,* 573 A.2d 464 (N.J. Super. A. D. 1990)

[806] "[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 isopropryl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrate or propyl nitrate 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)

[807] A forced test may be unreasonable and unconstitutional under the totality of the circumstances. *State v. Ravotto,* 777 A.2d 201 (NJ 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) and 32:1-154.19 It is

State v. Dyrl, 478 A.2d 390 (N.J. 1984), and *State v. Woomer,* 483 A.2d 837 (N.J. Super. A. D. 1984)
(2) Tests for alcohol shall be made on automobile drivers who survive traffic accidents fatal to others. §§2A:84A-22.5, 26:2B-24 and *State v. Figueroa,* 515 A.2d 242 (N.J. Super. A. D. 1986), cert. den. 526 A.2d 204 1987),

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 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 **School Property/Crossing**. Fine **$250 to $500** §39:4-50.4a
Administrative Licensing Action (Susp/Rev):	First Refusal – **Revocation 6 months**[808] (Mand); second refusal – **Revocation 2 years** (Mand); subsequent refusal – **Revocation 10 years** (Mand) §§39:4-50.2 and 39:4-50.4a(a)[809]. **Surcharge.** A surcharge of **$100.** §39:4-50.8 See **School Property/Crossing**[810].

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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).

[808] 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 ≥.04 or while under the influence of a controlled substance is subject (1) to a fine of $250 to $500, and (2) for a first refusal, mandatory license revocation (i.e., a loss of all driving privileges) for 6 months or, where there has been either a prior refusal or a prior drunk driving offense under any provisions of law, mandatory license revocation for 2 years. §§39:3-10.13 and 39:3-10.24(f)

[809] *State v. Hamm,* 577 A.2d 1259 (N.J. 1990) (cert den 499 U.S. 947, 113 L. Ed.2d 466, 111 S. Ct. 1413 (1990)) and *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).

[810] The only sanctions for driving w/a BAC ≥.01 but <.08 if <21 years old are community service and forfeiture of driving privileges.

School Property/Crossing: If the refusal occurred either (1) on property owned by or within 1,000 ft. of an elementary/secondary school, (2) while driving through a designated school crossing zone, or (3) while driving through a non-designated school crossing zone when juveniles are present, the following sanctions apply: for either a first or subsequent offense – a fine of **$500 to $1,000**; for a first offense – **license suspension for 1 year** (mand); for a second

Criminal Sanctions:	**Note:** A drunk driving offense is not a "crime".
Imprisonment:	
Term (Day, Month, Years, etc.):	First offense – .08 BAC to <.1BAC – at least 12 hours and not more than 30 days, .1 BAC or more- 12 hours – 48 hours plus not more than 30 days; second offense (within 10 years of a first off) – 48 consecutive hours-90 days; third and subsequent offenses (within 10 years of a second off) – Not less than 180 days. §39:4-50
Mandatory Minimum Term:	First offense .08 to < .01-**12 hours detainment**[811and812;]>. Second offense – **48 consecutive hours**; third and subsequent offenses – **90 days**[813]
Fine:	
Amount ($ Range):	First offense .08 to < .01 – $**250 to 400**[814]; **.1 BAC** or greater – $**300 to $500; second** offense (within 10 years of a first off) – **$500 to 1,000**; third and subsequent offenses (within 10 years of a second off) – **$1,000.** §39:4-50
Mandatory Min. Fine ($):	First offense .08 to < .01 – $**250,** .1 BAC or greater – $**300**; second offense (within 10 years of a first off) – **$500**; third and subsequent offenses (within 10 years of a second off) – **$1,000.** §39:4-50, *State v. Laurick,* 4 575 A.2d 1340 (N.J. 1990), and *State v. Hamm,* 577 A.2d 1259 (N.J. 1990)
Other Penalties:	
Community Service:	Second offense – 30 days[815; third] and subsequent offense – Not more than 90 days as an alternative to imprisonment; i.e. not more than 90 days of the 180-day sentence may be served performing community service. Persons Under 21 Years Old-BAC ≥.01 but <.08 -15 to 30 days community service, license suspension of 30 to 90 days.[816] §39:4-50.14

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offense – **license suspension for 4 years** (mand); and for a third or subsequent offense – **license suspension for 20 years** (mand). §39:4-50.4a(b)

[811] Municipalities may enact ordinance to hold DUI arrestees in protective custody until the person is no longer a danger to himself or others. The person is no longer a danger to himself or others when the person's blood alcohol concentration is less than .05 percent and the person is no longer under the influence of any intoxicating liquor or narcotic or hallucinogenic or habit-forming drug to the extent that the person's facilities are impaired. In no event shall a municipality hold a person in protective custody for a period of longer than eight hours without providing an appropriate hearing.

[812] **Work Release:** At the court's discretion, a defendant may be allowed to participate in a work release program. §39:4-51. {The law does not require that a minimum period of incarceration be served prior to participating in this program.}

[813] The law provides that the court may substitute no more than 90 days of the 180 days jail term for community service on a day-for-day basis. Consequently, a third or subsequent DWI offender would still be subject to a mandatory jail term of at least 90 days. §39:4-50(a)(3) and *State v. Laurick,* 575 A.2d 1340 (N.J. 1990)(cert denied 498 U.S. 967, 112 L.Ed.2d 413, 111 S. Ct. 429(1990)). The law requires some type of confinement for at least 90 days. *State v. George,* 608 A.2d 957 (N.J. Super. A.D. 1992)

[814] **Additional Fees and 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 added to any fine for the Body Armor Replacement Fund and $1 added for the N.J. Spinal Cord Research Fund. §39:5-41(d) and (e)

[815] May be mandatory and in addition to the minimum term of imprisonment.

[816] The community service and driver licensing sanctions against a person under 21 years old for operating a motor vehicle with a BAC ≥.01 but <.08 are in addition to any other penalties that may be imposed for a

Restitution	
(e.g., Victim's Fund)	**Yes.** (1) Paid by the defendant to a victim. §§2C:1-5(b), 2C:43-2, 2C:43-3 and 2C:44-2 (2) A victim is also eligible to receive payment from the State's Violent Crimes Compensation Board. §52:4B-11
Other:	
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	For an "alleged" DWI related injury or death (as well as for other serious driving offenses), the licensing agency may issue a preliminary suspension without a hearing. When the agency notifies the driver of the preliminary action, it also advises that person of any final licensing action to be taken. The driver may request a hearing prior to the final action. §§39:5-30(e) and 39:5-31
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	**Revocation** (probably). The statute uses the terminology "forfeit his right to operate a motor vehicle." §§39:4-50 and 39:4-50.14 **Special Note:** Under separate statutory authority, the licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30 (a)
Term of License Withdrawal (Days, Months, Years, etc.):	First offense.08 to < .1BAC- 3 months: first offense BAC .1 or more-**7 months to 1 year**[817]; second offense – **2 years**; third and subsequent offenses – 10 years Persons Under 21 Years Old-BAC ≥.01 but <.10-**30 to 90 days.** **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:	First offense – **3 months** .08 to < .1BAC, , BAC .1 or more-**7 months; second** offense – **2 years**; third and subsequent offenses – 10 years **.** Under 21 Years Old-BAC ≥.01 but <.08 – **30 days.**
Other:	
Rehabilitation:	
Alcohol Education:	**Yes** Persons Under 21 Years Old-BAC ≥.01 but <.08-**Yes.** §39:4-50.14

violation of any other DWI related law. §39:4-50.14

[817] For offenders <17 years old, license forfeiture through their 17th birthday plus the regular forfeiture period. §39:4-50

Alcohol Treatment:	First offense – **Yes**[818]; second offense – **Yes**[819]; third and subsequent offenses – **Yes.**[820] §39:4-50
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	**Yes**[821]
Terms Upon Which Vehicle Will Be Released:	
Other:	Vehicle Registration Revocation:[822and823]As an alterative to "ignition interlock usage", the registrations of ALL of the vehicles owned by the offender **must** be revoked as follows: second offense–**2 years**; third or subsequent offense – **10 years** §§39:3-40.1(a)(3) and 39:4-50(a)(2) and (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 that 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: first and second offenses – $**1,000** per year for 3 years for a total surcharge of **$3,000** for each conviction; and, third offense (within 3 years) – **$1,500** per year for 3 years 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: first Offense – $**75**; second Offense – $**100**. 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 fourth degree, if a violator of the drunk driving laws causes a bodily injury. The following sanctions apply: imprisonment – not more than 18 months; and a fine – not more than $10,000. II. A person commits assault by auto, a 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 mandatory year nor more than 3 years if transporting

[818] There appears to be a mandatory treatment of from 12 to 48 hours (spent during two consecutive days of not less than six hours each day) which is to be spent in an intoxicated driver resource center.
[819] The imprisonment term may be served in an intoxicated driver resource center.
[820] The imprisonment term may be served in an inpatient rehabilitation facility but not an intoxicated driver resource center.
[821] The vehicle operated by the offender shall be impounded for 12 or more hours following arrest. The offender (after this period) or another person (before the end of the period) may claim the vehicle if lawfully able to operate it.§39:4-50.23
[822] **Registration Revocation** may be imposed an alternative sanction to ignition interlock usage.
[823] 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."

hazardous materials if, while operating a CMV, that person (1) has a BAC/BrAC ≥.04, (2) is under the influence of

Other information: 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 revocation or suspension or continuation of revocation or suspension 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) intoxicating liquor or a controlled substance, (3) violates the drunk driving law (§39:4-50), (4) refuses to submit to a chemical test for an alcohol concentration, or (5) the CDL is 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 years 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.

School Property/Crossing: I. If the drunk driving offense occurred (1) on property owned by or within 1,000 ft. of an elementary/secondary school, (2) while driving through a designated school crossing zone, or (3) while driving through a non-designated school crossing zone when juveniles are present, the following sanctions apply: first offense -Jail – not more than **60 days**, fine **$500 (mand) – $800** and license suspension – 1 year **(mand) –2 years**; second offense – Jail – not more than **180 days** (w/96 con hrs mand), fine **$1,000 (mand) – $2,000**, community service – 60 days **(mand)** and license suspension – not **less than 4 years (mand)**; and third offense -Jail – 180 **days (mand)**, fine – $**2,000 (mand)** and license suspension **-20 years (mand)**. The license suspension period begins after the completion of any incarceration sanction. §39:4-50(g)

II. A person commits assault by auto, a second degree crime, by causing a serious bodily injury while violating the drunk driving laws and the offense occurred (1) on property owned by or within 1,000 feet of an elementary/secondary school, (2) while driving through a designated school crossing zone, or (3) while driving through a non-designated school crossing zone when juveniles are present. Sanctions: imprisonment **-5 to 10 years**; and a fine – not more than **$150,000**. §§2C:12-1(c)(3), 2C:43-3(a)(2) and 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 years old is guilty of a "disorderly persons offense". The sanctions for this offense are as follows: first offense -Jail-n**one**, fine – $**25 to $100**; subsequent offense -Jail – not more than **90**

days, fine – $**100 to $200.** For either a first or subsequent offense -community service for not more than **5 days** and license suspension for not more than **6 months**. §§39:5C-1 and 39:4-50.15
crime of the third degree, if a violator of the drunk driving laws causes a serious bodily injury. The following sanctions apply: imprisonment-**3 to 5 years**; and a fine – not more than **$15,000**. §§2C:12-1(c)(2), 2C:43-3(b)(1) and (2) and 2C:43-6(a)(3) and(4)
Drunk Driving on School Property or Within a School Crossing Zone (Designated or Not Designated): first offense -Jail not more than 60 days, fine $500 to $800 and license suspension 1 year (mand) to 2 years; second offense -96 consecutive hours (mand but may be reduced to 6 days with community service up to 90 days) to 180 days, community service 60 days, fine $1,000 to $2,000 and license suspension not less than 4 years (mand); and, third offense – Jail- 180 days, fine $2,000 and license suspension for 20 years (mand). For either a first or subsequent offense, license suspension is to commence upon the completion of any imprisonment sanction. §39:4-50(g)
Ignition Interlock: After the license suspension period has been completed, a person may be required to install an ignition interlock device on all of the motor vehicles he/she owns, leases or regularly operates. The device remains installed for the following periods: first offense – discretionary-**6 months to 1 year** (6 months required usage if ignition interlock use ordered); second or subsequent offense – mandatory ignition usage for **1 (mand) to 3 years** or mandatory vehicle registration revocation. §§39:4-50(a)(1),(2) and (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.[824] Death must have resulted from the reckless operation of a vehicle. "Death by auto." §2C:11-5

Sanctions:

Criminal Sanction:

Imprisonment (Term): **5 to 10 years** §2C:43-6(a)(2)

Mandatory Minimum Term: I. 85 percent of the sentence imposed. §2C:43-7.2(a),(b)and (d)(3)
II. If the offense was DWI related[825]-**3 years.**[826] §2C:11-5(b)(1)

[824] 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 year. *State v. Doyle,* 200 A.2d 606 (N.J. 1964) and *Kaplowitz v. State Farm Mutual Auto. Ins. Co.,* 493 A.2d 637 (N.J. Super. L. 1985).

Fine ($ Range):	Not more than **$150,000.** §2C:43-3(a)(2)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and	
Type of Action:	I. If the offense was related to DWI/Refusal – **Suspension.** §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 – **Suspension – 5 years 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 – **Suspension – 5 years** §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 first degree crime to commit vehicle homicide if the offense occurred (1) on property owned by or within 1,000 ft. of an elementary/ secondary school, (2) while driving through a designated school crossing zone or (3) while driving through a non-designated school crossing zone when juveniles are present. Sanctions are imprisonment-**10 to 20 years**; fine – not more than **$200,000**. Unless the offender's family would be subject to a serious hardship, the vehicle used in the offense must be **forfeited.** §§2C:11-5(b)(3) and (e), 2C:43-3(a)(1) and 2C:43-6(a)(1)
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	
Imprisonment (Term):	**10 to 90 days** §39:3-40(f)(2)
Mandatory Minimum Term of Imprisonment:	**10 days** may be mandatory. §39:3-40(f)(2)
Fine ($ Range):	**$500**[827] §39:3-40(a) and (f)(2)

[825] Or if the offender was driving while his/her license was suspended or revoked for a DWI or Refusal offense.
[826] The minimum sentence is either between one-third and one-half of the sentence imposed or 3 years whichever is greater.
[827] 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: second offense – $750; and, or subsequent offense – $1,000. §39-3-40(b) and (c)
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) and (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-

Mandatory Minimum Fine:	**$500** may be mandatory. §39:3-40(f)(2)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Suspension.** §39:3-40(f) Under separate law, the licensing agency has the discretion to suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws. §39:5-30 (a)
Length of Term of License Withdrawal Action:	An additional period of not less than **1 year** nor more than **2 years** §39:3-40(f)(2) For discretionary licensing actions under §39:5-30, the law does not specify the periods of suspension or revocation.
Mandatory Term of License Withdrawal Action:	**1 year**
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §39:5-30a
Grounds for Being Declared an Habitual Offender:	3 license suspensions for traffic offenses within 3 years §39:5-30a
Term of License Rev While Under Habitual Offender Status:	**Suspension** for not more than **3 years.** §39:5-30b. This suspension is not to run concurrently with any other suspension. §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 days** or **45 days** if the offense resulted in bodily injury. §39:5-30e
Mandatory Minimum Term of	

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service order, that person is subject to an imprisonment term of not more than 90 days 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). An offender injuring another person as a result of such illegal operation appears to be subject to a mandatory 90-day 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 injury or death, the following sanctions are imposed: (1) for bodily injury, imprisonment for **45 to 180 days**; (2) for serious bodily injury, Crime of the fourth degree, imprisonment for not **more than 18 months and a fine not more than $10,000** and an additional license suspension period of 1 year which is to begin after release from incarceration; and (3) for death of another person, Crime of the third degree, imprisonment from **3 to 5 years and a** fine **not more than $15,000** and an additional license suspension period of 1 year which is to begin after release from incarceration. §§2C:40-22, 2C:43-3(b)(1)and(2), 2C:43-6(a)(3) and(4) and 39:3-40(e).

School Property/Crossing: If the offense occurred either (1) on property owned by or within 1,000 feet of an elementary/secondary school, (2) while driving through a designated school crossing zone or (3) while driving through a non-designated school crossing zone when juveniles are present, the following sanctions apply: Imprisonment – first offense – **60 days to 90 days**; second offense – **120 days to 150 days**; and, third offense – **180 days –** fine – first and subsequent offenses – **$500** and an additional license suspension – 1 **year to 2 years**. The license suspension period begins after the completion of any incarceration sanction. §39:3-40(f)(3)

Imprisonment:	**30 days** if the offense resulted in bodily injury. §39:5-30e
Fine ($ Range):	**$1,000**[828] §39:5-30e
Mandatory Minimum Fine ($):	**$1,000** §39:5-30e
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:	
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** §§33:1-77 and 33:1-81
Minimum Age (Years) Possession:	**21**[829and830] §2C:33-15 There is an exemption for employment.
Minimum Age (Years) Consumption:	**21** §§2C:33-15, 9:17B-1 and 33:1-81(b). There is an exception for religious observances, ceremonies or rites. §2C:33-17
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**Yes**[831] §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. See *Salemke v. Sarvetnick,* 800 A.2d 177 (NJ App 2002)(cert denied 812 A.2d 1109 (N.J. 2002)).
"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.**[832]
Dram Shop Actions-Social Hosts:	**Yes.** §2A:15-5.5 et seq. These provisions provide the exclusive remedy against a social host who has "provided"

[828] One dollar ($1) is added 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) and (e)

[829] Possession or consumption in a public place.

[830] A municipality may enact an ordinance that prohibits a person <21 years old from either "knowingly" possessing or "knowingly" consuming alcoholic beverages on private property "without legal authority." §40:48-1 and Chapter 33 (P.L. 2000)

[831] 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.

[832] 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 loses which might have been incurred as a result of the patron's intoxication. *Hakimoglu v. Trump Taj Mahal Associates,* 70 F.3d 291 (third Cir. 1995)

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 include those alcoholic beverages that may have been brought by other guests. *Dower v. Gamba, 647*A.2d 1364 (N.J.Super. A.D. 1994) (cert denied 658 A.2d 299 (N.J. 1995)). Previous case law concerning "adult" guests appears to have been abrogated by these sections. *Kelly v. Gwinnell,* 476 A.2d 1219 (N.J. 1984)

Other: Under §2A:22A-5, a licensee may be held liable for the injuries sustained by an intoxicated patron. However, a social host is not liable for the injuries sustained by an adult social guest where such injuries were the result of the negligent service of alcoholic beverages to such guest. §2A:15-5.7 and *Kollar v. Lozier,* 669 A.2d 845 (N.J. Super. A.D. 1996) (cert denied 678 A.2d 714 (N.J. 1996) and *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. §§2C:1-4, 2C:1-5(b), 2C:43-1, 2C:43-3 and 2C:43-8[833] Regulation NJAC 13:2-23:1 which was promulgated under §33:1-39

Term of Imprisonment: Not more than **30 days** under §33:1-92; **None** under §33:1-12.37

Fine ($ Range): **Not more than $500** under §33:1-92; **$50-250** under §33:1-12.37

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Suspension/Revocation** §33:1-31

Length of Term of License Withdrawal: **Suspension –** Length of suspension is not specified in the statute; **Revocation** – first offense – **2 years**; subsequent offense – **Permanent revocation.** 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

[833] 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.

Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	Disorderly Person Offense §§2C:33-17, 2C:43-3(c), 2C:43-8, and 33:1-77
Term of Imprisonment:	Not more than **6 months**
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 Suspension/Revocation** §33:1-31
Length of Term License Withdrawal:	**Suspension –** Length of suspension is not specified in the statute; **Revocation** – first offense – **2 years**; subsequent offense – **Permanent revocation.** 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) This regulation does not per se regulate the price of "single" drinks. It does, however, prohibit the selling of an unlimited quantity of drinks at one price or the charging of one price for two or more drinks.
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes**[834] Driver and passengers §6 of Chapter 83 (P.L. 2000)
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers The law prohibits the consumption of alcoholic beverages by either a driver or passenger while the vehicle is being operated. There are exceptions for certain vehicles for hire. §39:4-51a

[834] 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 he/she has consumed alcoholic beverages. *State v. Moore,* 588 A.2d 889 (N.J Super. A.D. 1991)

STATE:	**NEW MEXICO**
General Reference:	New Mexico Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §66-8-102(A)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[835and836] §§66-8-102(C) and 66-8-110(E)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of **Any Drug** §66-8-102(B)
Other:	**Aggravated DWI Offense:** (1) driving with a BAC/BrAC ≥.16, (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)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §66-8-107
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §66-8-107
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes**[837] (Criminal and Possibly Civil Cases) *McKay v. Davis,* 653 P.2d 860 (N.M. 1982)
Other Information:	A driver may be required to submit to a chemical test based on a search warrant issued by a court upon probable cause that the driver has killed or greatly injured another person while operating a motor vehicle or where there is probable cause to believe that the driver committed a felony while under the influence of alcohol or a "controlled substance". §66-8-111 (A)

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

Blood:	**Yes** §66-8-107
Urine:	**No**
Other:	**None**

[834] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

[835] 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)

[836] Refusal to perform field sobriety tests can also be admitted into evidence. *State v. Wright,* 867 P.2d 1214 (N.M. App. 1993), (cert denied 869 P.2d 820 (N.M. 1994)).

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**[838] **Special Note:** A driver must be charged with a DWI offense if he/she has an alcohol concentration ≥.08. §66-8-110(C)
Anti-Plea-Bargaining Statute (Yes/No):	**Yes (Limited)** §§66-8-102.1 If a guilty plea is entered, it must be to one of the subsections of the DWI statute when alcohol concentration is ≥.08.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** DWI- PSI screening is required. §66-8-102(E) and (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):	**Revocation 1 year** (Mand) §§66-5-35(A)(2) and 66-8-111(B)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	DWI/Aggravated DWI Offenses: first offense – Not more than **90 days**; second and third offenses – Not more than **364 days**; fourth and subsequent offense (fourth degree felony) – **18 months.** §§31-18-15 and 66-8-102 Great bodily injury where the driver was under the influence of intoxicating liquor or drugs (third degree felony) – **3 years.**[839and840] §§31-18-15 and 66-8-101 See Footnote No. [841].

[837] An offender is not eligible for conditional discharge where the court finds the offender guilty of driving a motor vehicle while under the influence of intoxicating liquor or drugs.

[838] For any non-capital 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

[839] For each prior DWI offense conviction (within 10 years), the basic imprisonment sanction is increased by an additional 2 years.

[840] 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 and 31-18-15. The sentence is increased by 1 or 2 years if there is an intentional injury to a person 60 years 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 first offender includes persons who have had DWI charges dismissed via a deferred sentence. {Deferred sentencing is prohibited for some DWI offenses.} §§31-20-13(C), 66-1-4.6(C), 66-1-4.16(Q) and 66-8-102.

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

Mandatory Minimum Term:	DWI Offenses: first offense – **No**[842]; second offense **-72 consecutive hours**; third offense – **30 consecutive days**; fourth and subsequent offense – **6 months.** Aggravated DWI Offenses: first offense – **48 consecutive hours**; second offense – **96 consecutive hours**; third offense – **60 consecutive days**; fourth and subsequent offense – **6 months** (the sentence may not be suspended or deferred). §66-8-102. Great bodily injury where the driver was under influence of intoxicating liquor or drugs-third degree felony – 2 years.
Fine:	
Amount ($ Range):	DWI/Aggravated DWI Offenses: first offense – Not more than **$500**[843]; second and third offenses – Not more than **$1,000**; fourth and subsequent offense – Not more than **$5,000.** §§31-18-15 and 66-8-102. Great bodily injury where the driver was under influence of intoxicating liquor or drugs-third degree felony – Not more than **$5,000.** §31-18-15
Mandatory Min. Fine ($):	DWI/DWI Aggravated Offenses: first offense – **None**; second offense – $**500**; third offense – $**750**; fourth and subsequent offense – No**ne.** Great bodily injury where the driver was intoxicated – No**ne.**
Other Penalties:	
Community Service:	DWI/Aggravated DWI Offenses: first offense – **48 hours** (or a $300 fine); second offense – **48 hours** (mand)§66-8-102
Restitution (e.g., Victim's Fund)	**Yes** §31-17-1 Restitution is to be paid by the defendant.[844]
Other:	**BAC Test Fee:** A fee of **$65** is assessed against each defendant to defray the costs of chemical tests for DWI. §31-12-7(A) **DWI Program Fee:** A fee of **$75** is assessed to fund comprehensive DWI community programs. §31-12-7(B) **Screening and Treatment Costs:** In addition to all other fines and fees the court may order the defendant to pay the costs of any screening and treatment programs. §66-8-102(L).

Double Jeopardy: Based upon the same factual situation, a person who has been subjected to a 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)

[841] The only mandatory sanctions are either a fine or community service.

[842] As an alternative, an offender may be sentenced either to serve 48 hours of community service or pay a $300 fine. §66-8-102(E)

[843] Restitution appears to be required if a sentence is either suspended or deferred. §§31-17-1(B) and 31-20-6

Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	First Admin. Per Se Action-(1) For persons ≥21 years old who have a BAC/BrAC **≥.08 Revocation 90 days** (30 days mandatory followed by restricted driving privileges); and (2) For persons <21 years of age who have a BAC/BrAC **≥.02** – Revocation **6 months** (30 days mandatory, followed by restricted driving privileges[845]); Subsequent Admin Per Se Action (all persons) – **Revocation 1 year** (30 days mand).[846] §§66-5-35(B), 66-8-110(D), 66-8-111(C)(1), (2) and (3) and (D)
Other:	Under §§66-5-29, 66-5-30(A)(1) and 66-5-32(A), for certain first DWI offenses and all subsequent offenses, a person's license may be suspended for not more than 1 year if convicted of an offense that usually requires license revocation (e.g., DWI). Such action may be taken without a preliminary hearing.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	DWI/DWI Aggravated Offenses[847]: first offense – **Revocation**; second offense – **Revocation** §§66-5-29 and 66-5-32(B); third offense (within 10 years) – **Revocation.** §66-5-5(D)
Term of License Withdrawal (Days, Months, Years, etc.):	DWI/DWI Aggravated Offenses: first offense – 1 year; second offense – **2 years**; third offense (within 10 years) – 3 **years;** fourth offense – **for life** but subject to five-year reviews by District Court, as provided in §§ 66-5-5 and 66-8-102.
Mandatory Minimum Term of Withdrawal:	DWI/DWI Aggravated Offenses: first offense – 30 days with restricted license and ignition interlock; Second offense – **30 days** with restricted license and 2 years ignition interlock; third offense – **30 days** with restricted license and 3 years ignition interlock; §66-5-35(A)(3) and (C), § 66-5-29 C.

[844] 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)

[845] For subsequent admin actions, a restricted license may be issued after 30 days provided the licensee operates motor vehicles equipped with **ignition interlock** devices. §66-5-35(B)

[846] I. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:
has an alcohol concentration of sixteen one hundredths or more in the blood or breath while a vehicle within this state;
has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or
refused to submit to chemical testing, as provided for in the Implied Consent Act {§§ 66-8-105 to 66-8-112 NMSA}, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs. § 66-8-102D

II. For DWI great bodily injury offenses, there appears to be a mandatory 1 year license revocation 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) and (B) and 66-5-35(A)(4)

Ignition Interlock[848] Persons who have been convicted of a misdemeanor drunk driving offense shall be required, as a condition of probation, to operate only motor vehicles that are equipped with ignition interlock devices, as follows:
(1) a period of one year, for a first offender;
(2) a period of two years, for a second conviction;
(3) a period of three years, for a third conviction;
(4) for life for a fourth or subsequent conviction, except that five years from the date of conviction and every five years thereafter, the offender may apply to a district court for removal of the Interlock for good cause shown. 'Good cause' may include alcohol screening and proof from the interlock vendor that the person has not had violations of the interlock device. §66-8-102(N)

Rehabilitation:

Alcohol Education: For first offenders, the court either may order the defendant to attend a "DWI school" or other "rehabilitative services" or defer the DWI charges and place a defendant on probation, conditioned on attendance at alcohol education or rehabilitation and installation of ignition interlock. After the probation period, the court may dismiss the DWI charges. §§31-20-9 and 66-8-102 (E) and (H).

Alcohol Treatment: For subsequent DWI offenders, the court may order a defendant to complete an alcohol treatment program. §66-8-102. If an offender fails to complete any program, additional jail time is required. §66-8-102 (F).

Vehicle Impoundment/Confiscation: **None.** Except that §66-5-39(B) provides for a 30-day "immobilization" period for the vehicle the offender was driving with a revoked license, unless immobilization poses a danger to the family.

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 Misdemeanor** §66-8-7(A) However, if the driver was intoxicated-**third degree felony** §66-8-101(C), (D) and (F)

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 mandatory year (not less than 3 years if

[847] For subsequent offenses, a restricted license may be issued after a mandatory 30-day revocation period provided the offender is enrolled in a DWI school or an alcohol screening program, and operates vehicles that are equipped with **ignition interlock** devices. In addition, the person must present proof indicating the need for a limited license for the purpose of maintaining gainful employment, attending school or traveling to and from a "court-ordered treatment program." §66-5-35(A)(3), (C) and (D)

transporting hazardous materials) if, while driving a CMV, he/she (1) has a BAC ≥.04 but <.08 (Standard: Amount of alcohol in the blood), (2) is convicted of a drunk driving offense (§66-8-102) while operating a CMV, or (3) refuses 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 years mand). §§66-5-54, 66-5-68 and 66-5-68.1
Special Note: Municipal ordinances may provide for civil vehicle forfeiture. A city of Albuquerque ordinance provides for forfeiture in cases of driving while revoked for DWI or a third or subsequent DWI. *City of Albuquerque v. One 1984 Chevy,* 46 P. 3d 94 (N.M. 2002).

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

Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Misdemeanor – Not more than **90 days**; third degree felony-**3 years.**[849] §§31-18-15 and 66-8-7(B).
Mandatory Minimum Term:	Third degree felony – 2 years**.**
Fine ($ Range):	Misdemeanor – Not more than **$100**; third degree felony – Not more than **$5,000.**
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	Misdemeanor– suspension; third degree felony– suspension/**Revocation.** §§66-5-29 and 66-5-30(A)(2)
Length of Term of Licensing Withdrawal:	Misdemeanor – 1 year; third degree felony – 1 year**.**
Mandatory Action--Minimum Length of License Withdrawal:	Third degree felony – 1 year**.** No restricted driving privileges may be granted. §66-5-35(A)(4)
Other:	Misdemeanor-**Restitution**; third degree Felony-**Restitution.** Victim restitution is either via the offender or via a State reparations fund. §§31-17-1 and 31-22-1 et seq. (Repealed effective July 1, 2006.)
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	See Footnote Nos. [850], [851], [852] and [853].

[848] For each prior DWI offense conviction (within 10 years), the basic imprisonment sanction is increased by an additional 2 years.
[849] Plea bargaining is not allowed to another offense. §66-5-39(A)
[850] The motor vehicle used in the offense shall be immobilized for 30 days. 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)
[851] It is a misdemeanor 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 days and/or a fine of not more than $300. §§66-5-59(B) and 66-8-7
[852] 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) disqualification from operating a CMV as follows: first violation-a disqualification for not less than 90 days (mand) not more than 1 year; second violation (within 10 years) – not less than 1 year (mand) nor more than 5 years; and, third or subsequent violation (within 10 years) – not less than 3 years (mand) nor more than 5 years. 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: first violation-180 days (mand) to 2 years; and, subsequent violation (within 10 years) – 3 years (mand) to 5 years. §§66-5-68(F) and 66-5-71

Other Criminal Actions Related to DWI: (continued)

Sanction:	
Criminal:	
Imprisonment (Term):	**Misdemeanor. Less than 1 year** §§31-19-1(A) and 66-5-39(A)
Mandatory Minimum Term of Imprisonment:	**7 consecutive days** §66-5-39(A)
Fine ($ Range):	**$300 to $1,000** §66-5-39(A)
Mandatory Minimum Fine:	**$300** §66-5-39(A)
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Suspension/Revocation** §66-5-39(C)
Length of Term of License Withdrawal Action:	For driving while suspended – an additional suspension period equal to the original period. For driving while revoked – an additional revocation period of one (1) year. §66-5-39(C)
Mandatory Term of License Withdrawal Action:	The above suspension/revocation periods appear to be mandatory.
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ 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:

Special Note: I. The licensing agency has the authority to suspend a person's license for not more than 1 year, if he/she has been convicted of an offense related to a motor vehicle accident in which there was a death or a personal injury. §§66-5-30(A)(2) and 66-5-32(A) II. In addition, such agency must revoke a person's license for 1 year if he/she is convicted of either "manslaughter" or "negligent homicide" while operating a motor vehicle. §66-5-29(A)(1) and (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)

State Has Such a Law (Yes/No):	**Yes**[854] §24-11-6(B)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**[855]
Vehicle Passengers:	**Yes**
Pedestrian:	**Yes**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** §§60-3A-3(P) and 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. §60-7B-1(B).
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[856 ,857]
"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)
Dram Shop Actions-Social Hosts:	**Yes** §41-11-1(E)[858] Liability is based upon the host providing alcoholic beverages to the guest in reckless disregard of the rights of others including the
Other:	**None**
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Petty Misdemeanor**-for persons; **Misdemeanor**-for corporations §§31-19-1(A) and (B), 31-20-1(A), 60-7A-16 and 60-7A-25
Term of Imprisonment:	**Not more than 6 months.)** For corporations, not more than 1 year)

[853] But the information 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)

[855] 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 to that of gross negligence and reckless disregard

[855] 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), although the legal basis on which *Richardson* was decided was overruled by the same court in *Trujillo v. City of Albuquerque,* 965 P.2d 305 (N.M.1998). 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

[856] 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.

[857] **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: first offense – 30 hours; second offense -40 hours; and, third or subsequent offense – 60 hours. §60-7B-1(F)

Fine ($ Range):	**Not more than $500.** (For corporations, not more than $1,000)

Other State Laws Related To Alcohol Use:

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes.** §60-6C-1
Length of Term of License Withdrawal:	**2 years** §60-6C-8 An administrative fine of not more than $10,000 can also be imposed. §60-6C-1(A) See the Special Note and Licensed Servers below.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misdemeanor** §60-7B-1
Term of Imprisonment:	**None** Fine
($ 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**[859] §60-6C-1
Length of Term License Withdrawal:	**2 years** §60-6C-8 An administrative fine of not more than $10,000 can also be imposed. §60-6C-1(A). See the Special Note and Licensed Servers above.
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:	

[858] In addition, a person's license to sell alcoholic beverages under the Alcohol Server Education Act is suspended as follows: first violation – No suspension; second violation – 60-day suspension; and, third or subsequent violation – 1 year suspension. §60-7B-1(F) A license suspension/revocation is mandatory, with or without an administrative fine, if the licensee's employees or agents, "knowingly" serve alcoholic beverages in violation of the law and such violation was the second in 12 months. §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: first offense – an administrative fine of not more than $500 and/or server permit suspended for 30 days; second offense – server permit suspended for 1 year; and, third offense – server permit permanently revoked. §60-6E-8

Open Container Law (Yes/No):	**Yes** §66-8-138(B) and (C)
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §66-8-138(A)

STATE:	**NEW YORK**
General Reference:	McKinney's Consolidated Laws of New York Note: Most citations are to the Vehicle and Traffic Law (VandT Law).
Basis for a DWI Charge:	
Standard DWI Offense:	I. Ability to operate a vehicle is impaired by the consumption of alcohol VandT Law §1192(1) II. Operate a motor vehicle while in an intoxicated condition[860] VandT Law §1192(3)
Illegal Per Se Law (BAC):	≥ **.08**[861] VandT Law §1192(2)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	**A Controlled Substance**[862] VandT Law §§114-a and 1192(4) and Public Health Law §3306
Other:	A BAC > **.05** but ≤ **.07** is prima facie evidence that such person was not in an intoxicated condition, but is "relevant evidence" regarding impairment. VandT Law §1195(2)(b) and (c) **BAC** > **.07** is *prima facie* evidence of impairment. VandT Law §1195(2)(b) and (c)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** VandT 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 or has committed a traffic law violation. A violation could include other offenses as well as DWI.
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[863and 864] VandT Law §1194(2)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** VandT Law §1194(2)(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) VandT Law §1194(2)(f)
Other Information:	Under VandT Law §1194(3), a driver may be compelled via court order to submit to

[859] 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.

[860] Standard: "Percent by weight" of alcohol in the blood. V&T Law §§1192(2) and 1195(2)(b) and (c) "Percent by weight" 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), *and People v. McDonough,* 518 N.Y.S.2d 524 (A.D. 4 Dept. 1987) (App. denied 516 N.E.2d 1232 (N.Y. 1987))

[862] The law provides that no one shall drive while impaired by drugs as defined in the motor vehicle law.

[863] A DWI arrest is one basis for requiring a person to submit to an implied consent chemical test (VandT 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. VandT law §1194(2)(a)(2)

[864] A person under 21 years 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. VandT Law §1194(2)(a)(4)

Chemical Breath Tests for Alcohol Concentration:

(con't) a chemical test of their blood for either alcoholic or drug content if he/she has been involved in an accident related to a DWI offense and there has been a fatality or a serious physical injury or if a PBT indicates alcohol consumption and the person has been arrested and has refused to submit to a chemical test.

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

Blood:	**Yes** VandT Law §1194(2)(a)
Urine:	**Yes** VandT Law §1194(2)(a)
Other:	**Saliva** VandT Law §1194(2)(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**, but unconditional discharge for a DWI violation is prohibited. VT §1193(1)(e)
Anti-Plea-Bargaining Statute (Yes/No):	**Yes** Unless available evidence determines otherwise, plea bargaining is allowed only to another DWI offense. VandT Law §1192(10)(a) A person under 21 years old who has been charged with "driving while impaired" may satisfy such charge by agreeing to an administrative license suspension or revocation under VandT Law §1192-a. VandT Law §1192(10)(c)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**No** 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**[865] First Refusal: Jail – not more than **15 days**; fine – not more than **$150**; second Refusal (within 18 months): Jail – not more than **45 days**; fine – not more than **$300**; third Refusal (within 18 months): Jail – not more than **90 days**; fine – not more than **$450** VandT Law §1800(b)
Administrative Licensing Action (Susp/Rev):	
Other:	**None**
Refusal to Take Implied Consent Chemical Test	**None**
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**Revocation** for at least **6 months** (at least 1 year if

[864] *People v. Steves,* 459 N.Y.S.2d 402 (Sup. 1983)

under 21); **Revocation** for at least **1 year** for a second or subsequent refusal (within 5 years) or a first refusal where there has been a previous DWI offense conviction (within 5 years). These revocations are mandatory. VandT Law §1194(2)(d) See 15 NYCRR (New York Code Rules and Regulations) 13 and 139.4

Other: for a temporary license suspension prior to a hearing on a refusal. (1) Under VandT 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.[866]
(2) First refusal – **$300** ($350 if operating a CMV) Civil Penalty; second or subsequent refusal (within 5 years) or a first refusal where there has been a prior DWI offense (within 5 years) **$750** Civil Penalty VandT Law §1194(2)(d)(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.): I. "Impaired" alcohol status offenses VandT Law §§1192(1) and 1193(1)(a) – first offense (Traffic Infraction) – Not more than **15 days**; second offense[867] within 5 years – Misdemeanor – Not more than **30 days**; third and any subsequent offense within 10 years – Misdemeanor – Not more than **180 days**
II. Per Se and Intoxicated status offense[868] – first offense (misdemeanor) – Not more than **1 year** VandT Law §1193(1)(b); second offense[869] (within 10 years) Class E felony – Not more than **4 years**[870]; third offense (within 10 years) Class D felony – Not more than **7 years** VandT Law §§1192 and 1193(1)(c)

Mandatory Minimum Term: **None**. Penal Law §7.00(4) allows the court discretion to fix a definite sentence of 1 year or less in Class D and Class E felonies.

Fine:

Amount ($ Range): I. "Impaired" alcohol status offenses – first offense – $**300 to $500**; second offense (within 5 years) – **$500 to $750**;

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[866] 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. VT §1194(2)(d)(1)(b); VT §1194-a(3).

[866] A previous alcohol offense conviction (of any type) is considered a previous offense.

[867] Includes driving while impaired by drugs.

[868] A previous offense also includes vehicle assault (Penal Law §§12.03 and 12.04) and vehicle homicide (Penal Law §§125.12 and 125.13)

[869] Penal Law §§7.00 and 8.00

Mandatory Min. Fine ($):	Third and any subsequent offenses (within 10 years) – $**750 to $1,500** VandT Law §1193(1)(a) II. Per se and intoxicated status offense – first offense (misdemeanor) – **$500 to $1,000** VandT Law §1193(1)(b); second offense (within 10 years) Class E felony – $**l,000 to $5,000**; third offense (within 10 years) Class D felony – $**2,000 to $10,000** VandT Law §1193(1)(c)
Other Penalties:	
Community Service:	I. "Impaired" alcohol status offenses – first offense – $**300**; second offense (within 5 years) – $**500**; third and any subsequent offenses (within 10 years) – $**750** Per se and intoxicated offense¯ first offense (misdemeanor) – **$500**; second offense (within 10 years) Class E felony – $**l,000**[871]; third offense (within 10 years) Class D felony **– $2,000**
Restitution (e.g., Victim's Fund)	**Yes** As a condition of probation. Penal Law §65.10(2)(h) Effective 9/30/03, a second per se or intoxicated offense within 5 years requires either 5 additional days of jail, or 30 hours of public service, VT §1193 (1-a)(a), and a third per se of intoxication offense adds 10 days of jail or 60 hours of community service VT §1193(1-a)(b). **Yes** (1) The court may require restitution by a defendant to a victim. Penal Law §§60.27 and 65.10(2)(g) (2) A person may also receive compensation from the State's victims' compensation fund. Executive Law §620 et seq.
Other:	**Ignition Interlock** I. 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-l) II. Ignition interlock is required for 2d or 3d subsequent per se or intoxicated offenses during period of revocation and thereafter by court order. VT §1193(1-a)(c). **Surcharges**. Felony- Mandatory surcharge of **$210** plus a $10 crime victim assistance fee Misdemeanor- Mandatory surcharge of **$110** plus a $10 crime victim assistance fee Penal Law §60.35 VandT Law §1809 provides that for any offense there is a mandatory surcharge of $110 for misdemeanor and $200 for any felony charge.

School Bus Operators: A person, who operates a school bus with at least one student passenger, in violation of the drunk driving laws, is subject to the following sanctions. First Impaired status offense – (Class A

[870] 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 Class E felony, if they injure another in a criminally negligent manner while in violation of the DWI law. It is a Class 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 §§12.03 and 12.04

Misdemeanor) – Imprisonment for not more than 1 year and/or a fine of $500 to $1,500. VandT Law§1193(1)(d)(1-a) and Penal Law §§55.10(2)(b) and 70.15 License revocation for 1 year VandT Law §1193(2)(b) (4-a)(a) subsequent Impaired status offense within 10 years – (Class E felony) – Imprisonment for not more than 4 years and/or a fine of $1,000 to $5,000. VandT Law §1193(l)(d)(l-a) and (4) and Penal Law §7.00 License revocation for 3 years VandT Law §1193(2)(b)(4-A)(b) Per Se, Intoxicated and driving while impaired by drugs offenses – (Class E felony) – Imprisonment for not more than 4 years and/or a fine of $1,000 to $5,000. VandT Law §1193(1)(d)(4-a) and Penal Law §§7.00 and 8.00 License revocation for 1 year. (The law is not clear but a subsequent offender may receive a 3-year revocation.) VandT Law §1193(2)(b)(4-a) and (b)

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 mandatory year (three years mandatory if transporting hazardous materials) if, while operating a CMV they (1) had a BAC ≥ .04 (amount of alcohol in the blood), (2) violated any provision of the DWI law (VandT §1192, subds. 1, 2, 3 and 4) or (3) refused to submit to a chemical test for alcoholic/drug content. For either (1) a second violation or (2) a combination of two violations of any of the above listed items, there is a "disqualification" for at least 10 years. 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". VandT Law §§501-a, 510-a, 530(5), 1193(2)(b)(5), 1193(2)(e)(3), 1194(2)(d)(1)(c) and (d) and 1196(5) **Criminal Sanctions**: Infraction: A person commits an "infraction" if they operate a CMV with a BAC at or above **.04 but below .06** (a CMV Per Se Level I Offense VandT Law §1192, subd. 5). The sanctions for 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 .06 but below .08** (a CMV per Se Level II Offense VandT 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 years) or (2) for a first offense where there has been a previous DWI offense conviction (within five years), the sanctions are a fine of $500 to $1,500 and/or a jail term or not more than one year. A person commits a misdemeanor if they operate a CMV and violate the regular provisions of the DWI law (VandT §1192, subds. 1, 2, 3 and 4). The sanctions for this offense are a fine of $500 to $1,500 and/or a jail term or not more than one 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 within 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 within 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. VandT Law §1193(1)(d)(1), (2), (3) and (4) and Penal Law §§55.10(1)(b), 55.10(2)(b), 7.00 and 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 (VandT Law §1192, subds. 1, 2, 3 and 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 year; in addition, the license is revoked for 1 year. For a second offense within 10 years, a 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 third offense (within 10 years), a 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 years. VandT Law §§1193(1)(d)(l), (2), (3) and (4), 1193(2)(b)(4) and 1193(2)(e)(3) and Penal Law §§55.10(1)(b), 55.10(2)(b), 7.00 and70.15(1)(a) Note: Operating a vehicle weighing > 18,000 lbs while transporting flammable gas, radioactive materials or explosives and with Per Se, Intoxicated or driving while impaired by drugs offense is also a Class E felony with the criminal sanctions as noted above. VandT Law §1193(l)(d)(5)

Administrative Licensing

Actions:	
Pre-DWI Conviction Licensing Action:	Persons Under 21 Years Old. Operating a
Administrative Per Se Law:	motor vehicle "**after having consumed alcohol**" A person is only considered to have consumed alcohol if their **BAC is ≥ .02 but < .07**. VandT Law §1192-a first action – **Suspension – 6 months**[872] VandT Law §1193(2)(a) Subsequent Action – **Revocation – 1 year** or until they reach 21 years old whichever is the greater period (mand)[873] VandT Law §1193(2)(b)(7) and (9). A civil penalty of $125 shall also be assessed. VT §1194-1(2)
Other:	**Temporary suspension** is mandatory where a person is charged with a violation of VandT Law §1192(2), (3) and (4)[874] and he/she has a previous alcohol/drug driving conviction of any type within 5 years. VandT Law §1193(2)(e)[875] "Impaired" alcohol status offenses[876] – first offense – suspension (Revocation if person is under 21 years old); subsequent offense (within 5 years of one alcohol driving offense of any type or within 10 years of two alcohol driving offenses of any type) – **Revocation**
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	II. Per se and intoxicated offenses[877] – first offense – **Revocation**; Second and any subsequent offenses (within 10 years) – **Revocation** VandT Law §1193(2) See Footnote No. [878].

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[871] This suspension is not mandatory. A conditional license is available if the offender participates in an alcohol rehabilitation program. VandT Law §1196(4) and (7)

[872] This revocation is mandatory even if the offender participates in an alcohol rehabilitation program

[874] VandT Law §1193(2)(e)(7), the arraignment license suspension 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) cert. denied 519 U.S. 1009, 136 L.E.2d 402, 117 S Ct. 513 (1996). In addition, a person, who has been subjected to licensing action under VandT 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), and *People v. Malone,* 673 N.Y.S.2d 809 (Sup. App. Term 1997)

[875] A violation of VandT Law §1192(2), (3) and (4) must be based upon "reasonable cause" before the court can impose this suspension.

[875] 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). VandT Law §510-b(1)

Special Note: I. A person under 21 years old who is convicted of any alcohol driving offense shall for a first offense have his/her 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. VandT Law §1193(2)(b)(6), (7) and (9) II. In addition to the licensing sanctions given, VandT Law §510(2)(b)(v) provides for a 6-month suspension for persons who have been convicted (first or subsequent off) of violating VandT law §1192(4) (driving while their ability is impaired by certain defined drugs). This sanction is effective until October 1, 2002.

[876] Also includes driving while impaired by drugs under VandT Law §1192(4).

[877] **Bus/School Bus Operators (Disqualification).** A bus/school bus operator is disqualified from operating a bus/school bus for 5 years 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

Term of License Withdrawal (Days, Months, Years, etc.):	I. "Impaired" alcohol status offenses – first offense – **90 days**; subsequent offense (within 5 years of one alcohol driving offense of any type or within 10 years of two alcohol driving offenses of any type) – **6 months** II. Per se and intoxicated offenses – first offense – At least **6 months**; second and any subsequent offenses (within 10 years) – At least **1 year** VandT Law §1193(2)(a) and (b)
Mandatory Minimum Term of Withdrawal:	I. "Impaired" alcohol status offenses – subsequent offense (within 5 years of one alcohol driving offense of any type or within 10 years of two alcohol driving offenses of any type) – **6 months** Per se and intoxicated offenses – second and any subsequent offenses (within 10 years) – **1 year**[879] VandT Law §1193(2)(a) and (b) See Footnote No. [880].
Other:	
Rehabilitation:	
Alcohol Education:	
Alcohol Treatment:	**Yes** for all offenses VandT Law §1196
Vehicle Impoundment/Confiscation:	**Yes** for all offenses VandT Law §1196
Authorized by Specific Statutory Authority:	**Forfeiture**. A defendant's vehicle may be subject to forfeiture if he/she has been convicted of a felony drunk driving offense (e.g., a second or subsequent Per Se or Intoxicated offense within 10 years). This sanction is not mandatory. Civil Practice Law and Rules §1310(5) and 1311(1)(a) and *Holtzman v. Bailey,* 503 N.Y.S.2d 473 (Sup.1986)
Terms Upon Which Vehicle Will Be Released:	**N/A**
Other:	**Registration Suspension/Revocation**. The registration of a defendant's vehicle may be suspended/revoked. Registration suspension/ revocation periods are the same as the license suspension/revocation periods for DWI offense

law further provides that, if a person has had his/her 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 months. VandT Law §§509-c and 509-cc

[878] Under VandT Law §1193(2)(c), if a person is convicted of two violations of either driving while intoxicated or driving while impaired by drugs (VandT Law §1192(3) and (4) where a personal injury has resulted in each offense, his/her license is permanently revoked.

[879] 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, he/she has participated in such a program within a five-year period or (2) if he/she has been convicted of a subsequent alcohol driving offense within 5 years. Successful completion of the program shall satisfy any sentence of imprisonment and allow an offender to apply for reinstatement of the driver's license. VandT Law §1196(4) and (7)

convictions. Applies also to persons under 21 years old. VandT Law §1193(2)(a) and (b)

Miscellaneous Sanctions Not Included Elsewhere:

Victim Impact Program. A defendant may be required to attend a "victim impact program". This program consists of a single session in which prior DWI offenders discuss the impact that such an offense has had on them. VandT Law §1193(f)
Civil Penalty. A person < 21 years old who has had a license suspension/revocation for driving "after having consumed alcohol" is liable for a civil penalty of **$125**. VandT Law §1194-a (2)
Probation. A defendant may be placed on probation with conditions related to the offender's rehabilitation.[881] Penal Law §65.10(2)(1). Conditional discharge or probation must be accompanied by a sentence of a fine. VT §1193(1)(e)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law: **Yes** Vehicle Manslaughter in the second degree– Class D felony Death of another based on criminally negligent action while in violation of the DWI laws. Penal Law §125.12 See Footnote No. [882].

Sanctions:

Criminal Sanction: Not more than **7 years** Penal Law §7.00(2)(d)

Imprisonment (Term):

Mandatory Minimum Term: **None**

Fine ($ Range): Not more than **$5,000** Penal Law §8.00(1)(a)

Mandatory Minimum Fine: **None**

Administrative Licensing Action: **Revocation** VandT Law §510(2)(a)(i)

Licensing Authorized and

Type of Action: At least **6 months** VandT Law §510(6)

Length of Term of Licensing Withdrawal: **6 months** VandT Law §510(6)

Other: Persons convicted of either first or second degree Vehicle Manslaughter are not eligible for the shock incarceration program. Correction Law §§865(1), 866 and 867 VT §511(2)(a)(ii) and (iii) See Footnote No [883]. Stops that reveal a violation of

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[880] **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 he/she has 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), and *People* v. *McNair,* 665 N.E.2d 167 (N.Y. 1996)

[881] If a person kills another while operating a motor vehicle while his/her 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, he/she has committed Vehicle Manslaughter in the first degree which is a Class C felony. The sanctions for this offense are a jail sentence of not more than 15 years and/or a fine of not more than $5,000. Penal Law §§7.00(2)(c), 8.00(1)(a) and 125.13. If a person injures another under the same circumstances, that person commits vehicular assault in the first degree, a Class D felony. Penal Law §12.04

[882] If a person operates a CMV during either the suspension or revocation of his/her CDL, they appear to be subject the

	§511 must be legal to support any subsequent prosecution. *People v. Moya,* 648 N.W.S.2d 748 (County Ct 2002).
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	**Misdemeanor 7 to 180 days** VandT Law §511(2)(a)(iii) and (2)(b) See Footnote Nos. [884], [885] and [886]
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**$500 to $1,000** VandT 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:	

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sanctions given in VandT Law §511. Also, if a person violates an out-of-service order, his/her CDL is suspended for 90 days. VandT Law §510-a(3)(d)

[883] 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. VandT Law §511(2)(b) and (6) Also, under VandT §511-b, for a first or second 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.

[884] A person who operates a motor vehicle while DWI and with a suspended or revoked license 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 is subject to the following sanctions: Imprisonment – Not more than 4 years; 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. VandT Law §511(3) and (6) and Penal Code §7.00(2)(e) The defendant's vehicle may also be subject to forfeiture. Civil Practice Law and Rules §§1310(5) and 1311(1)(a)

[885] A person who operates a motor vehicle following either suspension or revocation not associated with a drunk driving offense is guilty of the misdemeanor 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 days 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). VandT Law §511(1)

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** County Law §674(3)(b)[887]
BAC Chemical Test Is Given to the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** (If 16 years or older)
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21**[888] Alcoholic Beverage Control Law §§65, 65-b and 82 and Penal Law
Minimum Age (Years) Possession:	**21**[889]
Minimum Age (Years) Consumption:	**21**
Dram Shop Laws and Related Legal Actions: State Has a Dram Shop Law (Yes/No):	**Yes** N.Y. Gen. Oblig. Law §§11-100 and 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. But *Berkeley* was soundly questioned by *Conrad v. Beck-Turek, Ltd.,* 891 F. Supp 962 (S.D.N.Y. 1995).
Dram Shop Actions-Social Hosts:	**Limited** Liability in situations where a person < 21 years old is served alcoholic beverages.[890and891] N.Y.

[886] The test shall not be made if there is reason to believe that the decedent is of a religious faith that is opposed to such test on religious or moral grounds. N.Y. County Law §674(3)(b)

[887] 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 his/her age that is "false" or "fraudulent" in order to obtain alcoholic beverages. Alcoholic Beverage Control Law §65-b

[888] 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 years 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 or guardian.

[889] 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'Tooles of Utica, Inc.,* 643 N.Y.S.2d 283 (A.D. 4 Dept. 1996). Also, one who is "more than an unknowing by-stander and who plays an indispensable role in the scheme to provide alcohol to underage guests can

	Gen. Oblig. Law §11-100 In general, a provider of alcoholic beverages is not liable for the injuries sustained by a intoxicated patron (even a minor) due to their voluntary consumption of alcohol.[892] *Sheehy v. Big Flats Community Day, Inc.,* 541 N.E.2d 18 (N.Y. 1989)[893]
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Class A Misdemeanor**[894and895] §§65 and 130(5) of the Alcoholic Beverage Control Law and §§55.10(2)(b), 70.15(1) and 8.05(1) of the Penal Law
Term of Imprisonment**:**	**Not more than 1 year**
Fine ($ Range):	**Not more than $1,000**[896] (For corporations, the fine is not more than $5,000.) §80.10(1)(b) of the Penal Law
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Suspension, cancellation, or revocation Alcohol Beverage Control Law §17(3)
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:	

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)

[890] The court found no social host liability at a party given by a business where alcoholic beverages 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)

[891] Nevertheless, under the dram shop law, a licensee, who serves alcoholic beverages to a minor child to the point of intoxication, is liable to the child's parents for any injuries sustained by the minor while in such an intoxicated condition. *Ray v. Galloway's Cafe,* 634 N.Y.S.2d 495 (A.D. 2 Dept. 1995)

[892] 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)

[893] 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.

[894] 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).

[895] For a second or subsequent off (within 5years), there is a civil penalty of not more than $500. Alcoholic Beverage Control Law §119(5)

Type of Criminal Action:	**Class A Misdemeanor** §§65 and 130 of the Alcoholic Beverage Control Law and §§55.10(2)(b), 70.15(1), 8.05(1), 8.05(2), 80.10(l)(b), 80.10(l)(c) and 260.20 of the Penal Law
Term of Imprisonment:	Not more than **1 year**
Fine ($ Range):	Not more than **$1,000** (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** Suspension, cancellation or revocation – Alcohol Beverage Control Law §§17(3), 119
Length of Term License Withdrawal:	Not specified in the statute
Anti-Happy Hour Laws/Regulations:	**Yes**[897] 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**[898] Driver and passengers VandT Law §1227
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers VandT Law §1227

[896] Prohibits the selling or delivering of an unlimited number of drinks during any set period of time for a fixed price.
[897] Does not apply to vehicles operating under certain certificates or permits issued by the U.S. Dept. of Tran. VandT 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[899] §§20-4.01(14a) and 20-138.1(a)(1)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[900and901] §20-138.1(a)(2) Persons Under 21 Years Old: Any Alcohol in the Body or a Controlled Substance in the Blood[902] §20-138.3.
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of Any Impairing Substance §§20 – 4.01(14a) and 20-138.1(a)(1)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes, limited.**[903] §§20-16.2(i), 20-16.3, 20-138.3(d), 20-138.2A and 20-138.2B
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[904] §20-16.2(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes**[905] §§20-16.2(a) and (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) and 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 may 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**
Urine:	**Yes**
Other:	**Yes**

[898] "Impairing substance" means alcohol, a controlled substance (under Ch. 20), any other drug or psychoactive substance. §20-4.01(14a)

[899] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

[900] Alcohol concentration means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §20-4.01(1b)

[901] This law does not apply in situations where the controlled substance was lawfully obtained and is taken in therapeutically appropriate amounts.

[902] 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 test may be administered and the results may be admitted into evidence. A refusal to submit to such a test may also be admitted into evidence. §§20-138.2A(b2) and 20-138.2B(b2)

[903] Arrest or if a criminal process for the DWI offense has been issued. §20-16.2(a1)

[904] A law enforcement officer shall "designate the type of chemical analysis to be administered." §20-16.2(a) and (b)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**No.** However, the law does require the prosecutor to explain a reduction or dismissal of a DWI charge. §20-138.4
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes**[906] §§20-179(f), (h), (i), (j) and (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):	**Revocation 12 months**[907] (with 30-day[908] immediate license revocation) §§20-16.2(d) and 20-16.5[909]

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): I. A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥.04, (2) is under the influence of an impairing substance, or (3) refuses 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 years mand but for third 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 ≥.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 and 395.13. These provisions provide, among other things, that a CMV operator be place "out-of-service" for 24 hours, if by general appearance or conduct, it appears the operator has consumed intoxicating beverages with the

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905 A person is eligible for restricted driving privileges upon completion of a substance abuse assessment. §20-179.3(b)(1)(e)

906 **Limited License:** There are two types of limited licenses that are available: I. A limited driving privilege license may be issued after 6 months of the revocation period provided the driver either (1) has not had a previous chemical test refusal (within 7 years), and (2) has not had a previous DWI offense conviction (within 7 years) 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 days** if the person does not have a conviction for an offense involving "impaired driving" and agrees to participate in a substance abuse training or treatment program. §20-16.5(p)

907 If the driver is late in surrendering or does not surrender his/her license to the court when ordered to do so, the immediate revocation period is 45 days. §20-16.5(f) Limited driving privileges may be granted after **30 days** if the person does not have a conviction for an offense involving "impaired driving" and agrees to participate in a substance abuse training or treatment program. §20-16.5(p)

908 For persons <21 years old a revocation for 1 year is mandatory. This revocation 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) and 20-13.2

preceding 4 hours. IV. Driving a CMV while consuming alcohol or while alcohol remains in the body (BAC/BrAC >.00): first offense (Class 3 misdemeanor) – $100 fine and disqualification for 10 days (mand); second or subsequent
offense (within 7 years) (misdemeanor) – Same criminal sanctions as for a DWI offense and CDL disqualification for 1 year (mand). An offender must have alcohol education/treatment prior to re-licensing. However, for a fourth offense, disqualification is for life (mand). Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.2A). §§ 20-4.01(0.2), (3d), (5a), (14a), (24a) and (25a), 20-17(2), 20-17.4(a), (a1), (b), (b1), 20-17.6, 20-19(f), 20-37.12, 20-138.2, 20-138.2A and 20-179.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	Level 1 Punishment-**30 days – 24 months**; Level 2 Punishment -**7 days-12 months**; Level 3 Punishment – **72 hours-6 months**[910]; Level 4 Punishment-**48 hours -120 days**; Level 5 Punishment – 24 hours **to 60 days.** §20-179 See Footnote No. [911]. Fourth offense or subsequent offense (within 7 years) (Habitual Impaired Driving) (Class F felony) – **≤59 months**[912] §20-138.5
Mandatory Minimum Term:	Level 1 Punishment-**30 days**; Level 2 Punishment-**7 days** §20-179(g) and (h) Fourth offense or subsequent offense (within 7 years) (Habitual Impaired Driving) (Class F felony) – **12 months.** §20-138.5(b)
Fine:	
Amount ($ Range):	Level 1 Punishment – Not more than **$4,000**; Level 2 Punishment – Not more than **$2,000**; Level 3 Punishment – Not more than **$1,000**; Level 4 Punishment – Not more than **$500**; Level 5 Punishment – Not more than **$200.** §20-179 Fourth offense or subsequent offense (within 7 years) (Habitual Impaired Driving) (Class F felony) – Fines are authorized but are not specified in the statute. §20-138.5.
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	Level 3 Punishment-**72 hours**; Level 4 Punishment **48 hours**; Level 5 Punishment – **24 hours.**

[909] 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, (2) perform the indicated community service, (3) have the license withdrawn for the period of time shown under Post-DWI Conviction Licensing Action, or (4) any combination of the above.

[910] 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)

[911] The sanctions for Habitual Impaired Driving are an imprisonment term from 12 to 59 months and a fine. The length of the imprisonment term above the minimum period of 12 months 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 and 20-138.5(b)

Special Note: The level of punishment given a DWI offender is determined by weighing aggravating factors (e.g., BAC ≥.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) and (e). However, the court must impose level 2 punishment (§20-179(h)) if (1) there has been a previous DWI conviction within a 7-year 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 have been two previous DWI offense convictions within 7 years (i.e., for a third 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 within 7 years 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) and *State v. Reid,* 559 S.E.2d 561 (N.C. App. 2002).
(continued)

Restitution (e.g., Victim's Fund)	**Yes** (1) Direct compensation by the defendant to a victim (§15B-24) (2) Also via a victims' compensation fund (§15B-1 et 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) and (h). **Community Service Fee:** Offenders who participate in community service are assessed a fee of $200. §20-179.4(c)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes. ≥.08 (>.00 for Persons Under 21 Years Old) BAC/BrAC**[913] **Revocation** for **30 days**[914] §20-16.5(b),

[912] For commercial motor vehicle operators, if the BAC/BrAC is **≥.04**. §20-16.5

[913] **Mandatory Licensing Action and Limited Driving Privileges:** Limited driving privileges may be granted after **10 days** (after 30 days for a 45 day revocation) if the person does not have a conviction for an offense involving "impaired driving" and agrees to participate in a substance abuse training or treatment program. For revocations pending final judgment, limited driving privileges may be granted after **30 days** (after 45 days if the license was not surrendered to the court). §20-16.5(p)
BAC Restricted Licenses: After an offender's license has been restored, a restriction is placed on the license prohibiting driving at or above certain BAC levels as follows: (1) for a first restoration-BAC≥.04; (2) for a second or subsequent restoration-BAC >.00; and (3) for a restoration following either (i) a DWI conviction in a CMV or (ii) a conviction if <21 years old of driving with any BAC/controlled substances in the body or (iii) a conviction of a vehicle homicide offense – BAC >.00 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 years; (2) if the offender was <21 years old and his/her license was restored following a conviction for driving with any BAC/controlled substances in the body, the restriction lasts until the person is 21 years old. In all other cases, the restriction lasts for 3 years. §20-19(c3)

(continued)

(1b), (e) and (f) Note: If the driver is late in surrendering or does not surrender the license to the court when ordered to do so, the revocation period is 45 days.[915] §20-16.5(f) In addition, if the driver already has a pending drunk driving offense and a probationary license as a result of a DWI offense, the license is revoked for the present offense until a final judgment (including all appeals) has become final. §20-16.5(e) and (f)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): First offense – **Revocation**; second offense (within 3 years) – **Revocation**; third offense (where the second off was within 5 years of the third) – **Revocation;** §§20-17, 20-19 and 20-179
Fourth or sub. offense (within 7 years) – **Revocation.** §20-138.5
Note: An offender who is required to participate in either an alcohol education or treatment program must complete such program before the license can be restored. §§20-17.6 and 122C-142.1

Term of License Withdrawal (Days, Months, Years, etc.): First offense – 1 year[916and917]; subsequent offense not covered by one of the following categories – 1 year; second offense (within 3 years) – **4 years**; third offense (where the second off was within 5 years of the third) – **Permanent**; fourth or sub. offense (within 7 years) – **Permanent.** §§20-19(c1), (d) and (e) and 20-138.5

Mandatory Minimum Term of Withdrawal: First offense – **None** Subsequent offense not covered by one of the following categories – 1 year; second offense – **2 years** (within 3 years) (after 2 years, a conditional license may be issued); third offense – **3 years (**where the second off was within 5 years of the third**)** (after 3 years, a conditional license may be

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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 >.00). First offense (Class 3 misdemeanor) – $100 fine and license suspension for 10 days (and). second or subsequent offense (within 7 years) – Same criminal sanctions as for a regular drunk driving offense and license revocation for 1 year. 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 and 20-179 Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.2B).

[914] **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)

[915] 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 within 7 years or a previous DWI injury related conviction and is subject to only levels 3, 4 or 5 punishment. This privilege is not effective until after the court-ordered license withdrawal period, if any, has been completed as a part of probation requirements.

[916] If a first offender is subject to either Levels 3, 4 or 5 Punishments and the court grants 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 **days**; Level 4 Punishment – 60 days; and, Level 5 Punishment-**30 days**. Under §20-17.2, if the court orders these licensing actions they must be imposed by the State licensing agency. §§20-17(2) and 20-19(c1).

issued); fourth or sub. offense (within 7 years) – **Permanent.**
§§20-19(d) and (e) and 20-138.5

Rehabilitation:
Alcohol Education: **Yes** §20-179(g), (h), (i), (j) and (k)
Alcohol Treatment: **Yes**
I. Regardless of the level of punishment, offenders placed on probation are required to participate in either an alcohol education or treatment program.[918] §20-179(g), (h), (i), (j) and (k)
II. Under §20-179.1, treatment may be ordered by the court as a condition of probation.
III. Under §29-179(k1), the court may order that a term of imprisonment imposed as a condition of probation be served in an inpatient alcohol treatment facility.

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: **Forfeiture:** [919] For a fourth or subsequent offense(within 7 years), the motor vehicle driven by the offender is subject to forfeiture. 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:
Ignition Interlock: I. Persons eligible for restricted driving privileges may be required to operate motor vehicles equipped with an ignition interlock device. II. This requirement is mandatory if the BAC was ≥.16 or if the person is a Second or subsequent offender (within 7 years).[920] III. Such use does not apply on employer-owned vehicles. §§20-17.8(a), (b) and (c) and 20-179.3(g3) and (g5)

Persons Under 21 Years Old: I. It is Class 2 Misdemeanor for persons under 21 years 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 days** 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 year. First offenders who are 18, 19 or 20 years old may receive limited driving privileges. However, such revocation is mandatory for subsequent offenses. §§20-13.2, 20-138.3, 20-176(c) and 15A-1340.23. II. Persons <21 years old who are convicted of a regular drunk

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[917] As part of the conditions for probation, the offender must participate in either alcohol education or treatment before the driving privileges can be restored. §20-179(g), (h), (i), (j) and (k)

[918] 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

[919] I. Required ignition interlock usage, after license restoration, is as follows: (1) 1 year if license revocation was for 1 year; (2) 3 years if license revocation was for 4 years; and (3) 7 years if the license was permanently revoked but can be restored. §20-17.8(c)
II. The following BAC requirements also apply while using an ignition interlock device: (1) If BAC was ≥.16, the person may not drive with a BAC ≥.04; and, for either a second or subsequent DWI offense, DWI in a CMV, DWI <21 years old after consuming alcohol/drugs or any vehicle homicide offense, the person may not drive with a BAC >.00. §20-17.8(b)(3)

driving offense are subject to a revocation for 1 year plus a regular DWI revocation. These revocationss, however, are to run concurrently. §§20-4.01(31a) and 20-13.2 but a first offender may be eligible for limited driving privileges. §20-179.3. 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 imposed cannot exceed the maximum punishment for a DWI offense (§20-138.1). §20-138.3(c). Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.3).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such a Law:	**Yes** Death by Vehicle I. **Class G felony** if death is DWI-related[921] §20-141.4 II. **Class 1 Misdemeanor** if death is not DWI related §20-141.4
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	I. Class G felony-**8 to 36 months**[922] §15A-1340.17 II. Class 1 Misdemeanor – 1 **to 120 days**[923] §15A-1340.23
Mandatory Minimum Term:	**None**
Fine ($ Range):	I. Class G felony-The fine amount is discretionary with the court. §15A-1340.17 II. Class 1 Misdemeanor-The fine amount is discretionary with the court. §15A-1340.23
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Revocation**
Length of Term of Licensing Withdrawal:	One year unless the trial judge issues limited driving privileges to the person convicted containing a condition that the defendant successfully complete a course of instruction at an Alcohol Drug Education

[920] Includes deaths that are related to CMV operation while in violation of §20-138.2.

[921] 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 and 15A-1340.17

[922] 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 his/her 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) and (e), 20-28.5 and 20-138.5(e).

Vehicle Registration Revocation: Except for certain innocent owners, the registrations of all vehicles owned by a person are revoked (until his/her license is restored) if that person has been convicted for a drunk driving offense while the 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 driving privileges are restored. §20-54.1

Traffic School.	If the defendant complies with these conditions, the license must be restored within 6 months. §§20-17 (1) and 29-19(c).
Mandatory Action--Minimum Length of License Withdrawal:	**None**
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:	§20-28.
Sanction:	
Criminal:	
Imprisonment (Term):	Driving While Revoked– Class **1 Misdemeanor** – 1 **to 120 days**[924] §§20-28(a) and (b) and 15A-1340.23
Mandatory Minimum Term of Imprisonment:	If a person's license has been permanently revoked and thereafter drives, **30 days** §20-28(b)
Fine ($ Range):	Discretionary with the court. §15A-1340.23
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Revocation**
Length of Term of License Withdrawal Action:	First offense – 1 year (90 days mand) revocation added to original revocation period; second offense – **2 years** (12 months mand) revocation added to original

[923] 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. Class 1 misdemeanor to operate a CMV during a CDL disqualification. For a first offense, there is an additional disqualification for a period equal to the original disqualification. For a second offense, there is an additional disqualification for a period equal to twice the original disqualification. For a subsequent offense, disqualification is for life. §§20-28(d). II. Class 3 misdemeanor to operate a CMV while under a CDL out-of-service order. For a first or subsequent offense, an offender is subject to an imprisonment term of 1 to 20 days. For a first offense, an offender is subject a fine of not less than $250. For a subsequent offense, an offender is subject a fine of not less than $500. Also, the following CDL disqualifications are imposed: first offense – 90 days; second offense (within 10 years) – 1 year; and, third or subsequent offense (within 10 years) – 3 years. The following disqualification periods are imposed if the offender was operating a CMV carrying hazardous materials: first offense – 180 days; and, second or subsequent offense (within 10 years) – 3 years. §§15A-1340.23(c), 20-17.4(g) and (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 that person 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) and *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 that person 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 necessary intent to commit the underlying felony in order to invoke this rule. *State v. Jones,* 538 S.E.2d 917 (N.C. 2000)

revocation period; third offense – **Permanent revocation** (3 years mand). §§20-28(a) and (c)

Mandatory Term of License Withdrawal Action: First offense – **90 days**; second offense – **12 months**; third offense – **3 years.** (The licensing agency may issue a new license with or without conditions after these terms of license withdrawal.) §§20-28(c)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No): **Limited.** Habitual Offender: §20-138.5 provides for a habitual impaired driving which is defined as 3 or more impaired driving offenses within 7 years.

Term of License Rev While Under Habitual Offender Status: **Revocation**

Type of Criminal off if Convicted on Charges of Driving While on Habitual Offender Status: **Class F felony**

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

Imprisonment (Term): **12-59 months**

Mandatory Minimum Term of Imprisonment: **12 months**

Fine ($ Range): **Not specified**

Mandatory Minimum Fine ($): **None**

Licensing Actions (Specify): **Permanent Revocation**

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** §§18B-302(a) and (b)

Minimum Age (Years) Possession: **21** §§18B-301(f)(4) and 18B-302(b) Employment exemption §18B-302(h)

Minimum Age (Years) Consumption: **21** §18B-301(f)(4)

Special Note: If a person is convicted of a DWI offense while driving with a license revoked for a previous DWI offense conviction (within 7 years), the Court must impose Level 1 punishment. §20-179(c).

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** §§18B-120 et seq.[925] Note: The law limits recovery to $500,000. §18B-123.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes.** *Estate of Mullis by Dixon v. Monroe Oil,* 505 S.E.2d 131 (N.C. 1998)[926] and *Smith v. Winn Dixie Charlotte, Inc.,* 542 S.E.2d 288 (N.C. App 2001)(review denied 548 S.E.2d 528 (N.C. 2001).
Dram Shop Actions-Social Hosts:	**Yes.** Under general negligence principles of common law, a social host may be held liable for the injuries caused by intoxicated guests. *Hart v. Ivey,* 420 S.E.2d 174 (N.C. 1992). **Comment:** Although the *Hart* case concerned injuries caused by intoxicated minors, language by the court indicates that liability could also result from injuries caused by intoxicated adult guests.
Other:	A licensee is not liable for the injuries sustained by a voluntarily intoxicated patron. *Sorrells v. M.Y.B. Hospitality Ventures,* 423 S.E.2d 72 (N.C. 1992)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Class 1 Misdemeanor** §§18B-102 and 18B-305
Term of Imprisonment:	**1 to 120 days** The length of the imprisonment term is determined in part by the number of prior criminal convictions. §15A-1340.23
Fine ($ Range):	The fine amount is discretionary with the court.[927] §15A-1340.23
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes.** Board's discretion as to whether to suspend or to revoke. §§18B-104 and 18B-305.
Length of Term of License Withdrawal:	**Suspension –** Not more than **3 years**. **Revocation** period is not specified in the statute.

[924] These statutory provisions create a Dram Shop type of liability in situations involving minors (those persons under 21 years 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." §18B-128. 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 injures (death) if the injured (dead) person "aided or abetted" the intoxicated individual by purchasing alcoholic beverages for him/her. *Estate of Darby v. Monroe Oil Co., Inc.,* 488 S.E.2d 828 (N.C. App. 1997)

[925] 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)), and *Chastain v. Litton Systems, Inc.,* 694 F.2d 957 (CA4, 1982) (cert. den., 462 U.S. 1106 (1983))

[926] Administrative fines may also be imposed on a permittee: first offense – up to $500; second offense – up to $750; third
offense – up to $1,000. §18B-104

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Class 1 Misdemeanor** §§18B-102, 18B-302 and 18B-302A
Term of Imprisonment:	**1 to 120 days** The length of the imprisonment term is determined in part by the number of prior criminal convictions.[928] §15A-1340.23
Fine ($ Range):	The fine amount is discretionary with the court. §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**[929] Left to the Board's discretion as to whether to suspend or to revoke. §§18b-104 and 18B-302
Length of Term License Withdrawal:	**Suspension** – Not more than **3 years. Revocation** period is not specified in the statute.
Anti-Happy Hour Laws/Regulations:	**Yes** (Regulation) T04: 02S.0232[930]
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)[931] and 20-138.7[932]
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §§18B-401(a) and 20-138.7

[927] I. If the court does not impose "active punishment," it must nevertheless impose the following sanctions: first offense – $250 fine and at least 25 hours of community service; and, subsequent offense (within 4 years) – $500 fine and at least 150 hours of community service. §18B-302A. II. The following administrative fines may also be imposed on a permittee: first offense – up to $500; second offense – up to $750; third offense – up to $1,000. §18B-104

[928] In lieu of either suspension or revocation, the permittee may agree to pay a penalty of not more than $5,000. §18B-104

[929] North Carolina Administrative Code

[930] 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)

[931] 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) and (a1)

STATE:	**NORTH DAKOTA**
General Reference:	North Dakota Century Code Annotated
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of intoxicating liquor[933]- §39-08-01(1)(b)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[934and935] §§39-08-01(1)(a) and 39-20-07(3) and (4)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug or Substance, (2) Any Combination of Drugs or Substances and (3) combined influence of alcohol and any drug or substance. §39-08-01(1)(c) and (d) {"drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving". §39-20-01
Other:	A person is "under the influence of intoxicating liquor" if that person has an alcohol concentration of at least .08 (if under 21 years old, this level is at least .02)[936] §39-20-07(3)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes**[937] §39-20-14 Refusal of the person to submit to a screening test may result in a revocation for up to three years unless the person provides a sufficient breath, blood, or urine sample for a chemical test requested {under section 39-20-01} for the same incident.
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §39-20-01{"A lawful arrest is a condition precedent to the administration of a chemical test."}
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §39-20-01
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) §39-20-08 and *State v. Murphy,* 527 N.W.2d 254 (N.D. 1995)[938]
Other Information:	In any accident in which there is either a death or a

[932] The term "intoxicating liquor" means and includes any beverage containing alcohol. §39-01-01(28)

[933] 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 .08 or more.

[934] Alcohol concentration is described as "percent by weight" 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)

[935] These alcohol concentrations must still be supported by physical evidence of intoxication. N.D. Atty. Gen. Opinion 98-01, 1/8/98

[936] Under §39-06.2-10.2(5), a CMV operator is deemed to have given consent to a PBT under §39-20-14.

[937] 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 *Miranda* warnings, statements made refusing to submit to a chemical test cannot be admitted into evidence at trial. However, the fact of refusal to submit to such a test is admissible. *State v. Beaton,* 516 N.W.2d 645 (N.D. 1994), and *State v. Satrom,* 524 N.W.2d 92 (N.D. 1994)

Chemical Breath Tests for Alcohol Concentration:
(cont)

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 or tests of the driver's blood, breath, saliva, or urine §39-20-01.1

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

Blood: **Yes** §39-20-01
Urine: **Yes** §39-20-01
Other: **Saliva, Breath** ("chemical test" or "chemical analysis" mean any test to determine the alcohol, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the State toxicologist §39-20-01)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**
Anti-Plea-Bargaining Statute (Yes/No): **No**
Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** Addiction evaluation is mandatory for 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): **No**
Administrative Licensing Action (Susp/Rev): First offense (within five years): **Suspension – one year**; Second Offense: **three years;** Third Offense – **Four years** §§39-20-04 and 39-20-14

Refusal to Take Implied Consent Chemical Test:
Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): First refusal – suspension -91 days, but 180 days if BAC > .18; second refusal[939] (within 5 years) **Revocation** – 1 year; third or subsequent refusal (within 5 years) **Revocation-4 years.** These license revocations are mandatory; however, a temporary restricted license may be issued under certain circumstances. §§39-06.1-11(2) and 39-20-04. There is no licensing action for a refusal if a person pleads guilty to a DWI offense. §39-20-04(2)
Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: .
Imprisonment:

[938] Previous DWI convictions are also considered as prior refusals.

Term (Day, Month, Years, Etc.):

First offense (Class B Misdemeanor) – none; second offense (within 5 years) (Class B Misdemeanor) – at least **5 days (48 hours consecutively) or 30 days community service**; third offense (within 5 years) (Class A Misdemeanor) – at least **60 days (48 hours consecutively)** ; fourth offense (within 7 years) (Class A Misdemeanor) -at least **180 days (48 hours consecutively)**; §39-08-01

Mandatory Minimum Term:[940]First offense – No**ne**; second offense (within 5 years) – **5 days** of which 48 hours must be served consecutively[941]; third offense (within 5 years) – **60 days** of which 48 hours must served consecutively[942]; fourth or subsequent offense (within 7 years) – **180 days** of which 48 hours must be served consecutively. §§39-08-01(4)

Mandatory Minimum Term:

Special Note: If an offender has been ordered to participate in an addiction treatment program and is 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): First offense – At least **$250**; second offense (within 5 years) – at least **$500**; third offense (within 5 years) – **$1,000**; fourth offense – Not more than **$1,000**;

Mandatory Min. Fine ($): First offense – $**250**; second offense (within 5 years) – **$500**; third offense (within 5 years) **$1,000**; fourth or subsequent offense (within 7 years) – **$1,000.**

Other Penalties:

Community Service: Second offense (within 5 years) – **30 days** as an alternative to imprisonment (does not apply to other subsequent offenses)

Restitution (e.g., Victim's Fund) **Yes.** By the defendant for all offenses (§§12.1-32-02 and 12.1-32.08) and via a victims' compensation fund (§54-23.4-01 et seq.).

Other: **Ignition Interlock:** The court or driver licensing agency may order a defendant to install an "ignition interlock" device on his/her vehicle. This requirement

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[939] If sentence is not more than 1 year of imprisonment, the offense is considered a misdemeanor. §12.1-32-02(9).

[940] "Imprisonment" includes house arrest with 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(5).

[941] **Alternative Mandatory Sentence:** Ten days of mandatory imprisonment on the condition that the offender undergoes and completes a drug/alcohol evaluation. Based on this evaluation, the court may place the offender on probation and require 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), and *State v. Storbakken,* 552 N.W. 78 (N.D. 1996)

applies to the issuance of temporary restricted driving privileges. §§39-06.1-11 and 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 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, (1) has a BAC/BrAC/UrAC ≥.04 (Standards: Grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters or breath or grams of alcohol per 67 milliliters of urine.), (2) is under the influence of alcohol or drugs, or (3) refuses 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 to 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 years mand). A person who operates a CMV with any "measurable or detectable amount of alcohol" in the system must be placed "out-of-service" for 24 hours. Note: It appears to be an infraction to operate a CMV with an alcohol concentration ≥.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, an offender who has been convicted of a prior infraction within 1 year of the present offense may be convicted of a Class B misdemeanor. The sanctions for this misdemeanor are an imprisonment term of not more than 30 days 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 and 39-07-06 and N.D. Admin. Code 37-10-01-01.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **Yes** (1) **≥.08** or (2) Persons Under 21 Years Old-**≥.02** (BAC/BrAC/UrAC §§39-06.1-11(2), 39-20-03.1, 39-20-04.1 and 39-20-07. First offense – **91 days suspension** -30 days mandatory, but a restricted license may be issued after this mandatory period.{80 days if BAC> .18; second offense[943] (within 5 years) – one year **suspension** (mand); third and subsequent offense or second with .18 BAC (within 5 years) – **2 year suspension** (mand); 3 years for third and subsequent offense and last offense exceeded .18 BAC.

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): See Alcohol Education/Treatment below. First offense – **Suspension**; second offense (within 5 years) – **Suspension**; third and subsequent offense (within 5 years) – **Suspension.** §39-06.1-10

Term of License Withdrawal (Days, Months, Years, etc.): First offense – **91 days unless BAC > .18, then 180 days; second** offense (within 5 years) – **365 days**; third and subsequent offense (within 5 years) – **2 years.** Second offense and violation is **.18 BAC – 2 years** §39-06.1-10(7). **Three years;** if third violation and violation is at least.18 BAC.

Mandatory Minimum Term of

[942] A previous violation also includes a previous DWI offense conviction or previous implied consent refusal.
Persons Under 18 Years Old: A person under 18 years old who commits a drunk driving offense must have his/her driving privileges canceled. Such a person is considered to never to have had a license and, after any period of suspension or revocation, he/she 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 and 39-06-01.1

Withdrawal: First offense – **30 days** (a temporary license may be issued after the 30 day mandatory period §39-06.1-11(2)); second offense (within 5 years) – **365 days**; third and subsequent offense (within 5 years) – **2 years.** §§39-06.1-10(3.1) (b)and 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 and 39-06.1-11(2)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment: **Yes** I. For a first, second or third DWI offense 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 the defendant furnishes a written statement from an approved treatment program either that he/she does not need alcohol education/treatment or that he/she has complied with the "attendance rules" of such program. §39-06.1-10 (3.1) (a)

II. For a fourth or subsequent offense (within 7 years), a defendant must complete an addiction treatment program and have no alcohol or drug related offense convictions within 2 consecutive years before his/her driving privileges can be restored. §39-06.1-10 (3.1) (b)

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **Forfeiture (Non-Mandatory):** For a second or subsequent DWI offense conviction (within 5 years), a defendant's vehicle may be subject to forfeiture. §39-08-01.3

Terms Upon Which Vehicle Will Be Released: **Impoundment:** License plates may be impounded following a conviction for an alcohol driving offense. They must be impounded upon a second or subsequent offense within 5 years; except that a court may grant a hardship exception to a person completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and co-owner of the motor vehicle, but not including the offender. The period of impoundment is for the same period of time as the defendant's license suspension period. §39-08-01(3)

Miscellaneous Sanctions

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 that 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 year** 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 days** imprisonment. §39-08-01.2

Child Endangerment: It is a Class A misdemeanor (imprisonment term for not more than 1 year and/or a fine of not more than $1,000) for a person ≥21 years old to commit a DWI offense while transporting a "minor". §§12.1-32-1 and 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 years old (e.g., §14-10-01).

Exemplary Damages: A person who, while operating a motor vehicle injures another person, (1) while BAC was ≥.08, (2) while under the influence of a controlled substance (except in cases where the substance was legally prescribed), (3) while under the influence of alcohol and refused to submit to a chemical test under the implied consent law, or (4) while under the influence of a volatile chemical listed in §19-03.1-22.1, may be liable for "exemplary damages" – not exceeding two times the amount of compensatory damages or $250,000, whichever is greater. §32-03.2-11 4.

Habitual Drunkard: defined as three or more DUI violations or three or more administrative suspensions within a 5-year period-- denied driver's license unless offender submits adequate proof of the removal of the habit which may include satisfactory completion of a licensed alcohol or drug treatment program. § 39-06-03 3.

Manslaughter: Even though this State does not have a vehicle homicide statute, it nevertheless provides for mandatory license rev from 30 days to 1 year for a conviction of manslaughter resulting from the operation of a motor vehicle. §39-06-31(1)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **No**
Sanctions:
Criminal Sanction:
Imprisonment (Term):
Mandatory Minimum Term:
Fine ($ Range):
Mandatory Minimum Fine:

Administrative Licensing Action:
Licensing Authorized and
Type of Action: **Revocation**

Length of Term of	
Licensing Withdrawal:	**30 days to 1 year**
Mandatory Action--Minimum Length of License Withdrawal:	**30 days**
Other:	
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	§39-06-42.
Sanction:	
Criminal:	
Imprisonment (Term):	First offense, second offense (within 5 years) and third offense (within 5 years) – **Class B Misdemeanor** Not more than **30 days;** Subsequent offense (within 5 years) – **Class A Misdemeanor** Not more than **1 year.** §§12.1-32-01(5) and (6) and 39-06-42
Mandatory Minimum Term of Imprisonment:	**4 consecutive days** §§39-06-42(2) and 39-08-01
Fine ($ Range):	First offense, second offense (within 5 years) and third offense (within 5 years) – Not more than **$1,000;** Subsequent offense (within 5 years) – **Class A Misdemeanor** Not more than **$1,000.** §12.1-32-01(5) and (6)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	I. For driving while license is suspended, the license suspension is extended for an additional period as follows: first offense – **at least 6 months** (90 days if the original license suspension was not DWI related); second offense (within 3 years) – **180 days**; third and subsequent offense (within 3 years) – **1 year.** §39-06-43 II. For driving while license is revoked, the license revocation is extended for and additional period of **1 year.** §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 and 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 suspension/revocation.

Special Note: It appears to be an infraction to operate a CMV during a CDL disqualification. Although the law is not clear, it may also be an infraction to operate a CMV while in violation of a CDL out-of-service order as prescribed by State regulations. A person who is convicted of committing an infraction is subject to a fine of not more than $500. However, under the Criminal Code, a defendant convicted of a prior infraction within 1 year of the present offense may be convicted of a Class B misdemeanor. The sanctions for this misdemeanor are an imprisonment term of not more than 30 days and/or a fine of not more than $500. §§12.1-32-01(7), 39-06.2-06(2), 39-06.2-10.9 and 39-07-06.

Other Criminal Actions Related to DWI: (continued)

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

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:
State Has Such a Law (Yes/No): **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** §§5-01-08, 5-01-09, 5-02-01.1(2)(d) and 5-02-06
Minimum Age (Years) Possession: **21**[944and945] §5-01-08
Minimum Age (Years) Consumption: **21** §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, or the intoxicated person, from bringing a dram shop cause of action.
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation): **No**

Dram Shop Actions-Social Hosts: **Yes**[946] §5-01-06.1
Other: **None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:
Type of Criminal Action: Class A Misdemeanor §5-01-09
Term of Imprisonment: Not more than **1 year** §12.1-32-01
Fine ($ Range): Not more than **$1,000** §12.1-32-01

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:
License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Revocation/suspension** §§5-02-10 and 5-02-11

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[943] There is an employment exemption for persons who are 19-20 years old. §5-02-06.
[944] There is an exception when an "underage" person is accompanied by a parent or legal guardian, and also one for religious services. §5-01-08.
[945] *Olson v. Griggs County,* 491 N.W.2d 725 (N.D. 1992) and *Born v. Mayers,* 514 N.W.2d 687 (N.D. 1994)

Length of Term of License Withdrawal:	Time period is not specified in the statute. §5-02-11
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Class A Misdemeanor** §§5-01-09 and 5-02-06
Term of Imprisonment:	Not more than **1 year** §12.1-32-01
Fine ($ Range):	Not more than **$1,000** §12.1-32-01
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Revocation/suspension** §§5-02-10 and 5-02-11
Length of Term License Withdrawal:	Time period is not specified in the statute. §5-02-11
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §39-08-18
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers. §39-08-18. The law states that "no person shall drink or consume alcoholic beverages ... in or on any motor vehicle when such vehicle is upon a public highway or in an area used principally for public parking."

STATE:	**OHIO**
General Reference:	Ohio Revised Code Annotated
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of alcohol §4511.19(A)(1)
Illegal Per Se Law (BAC/BrAC):	I. ≥.08 but <.17[947and948] §4511.19(A)(2), (3) and (4) II. ≥.17[949] §4511.19(A)(5), (6) and (7) Persons Under 21 Years Old ≥.02 but <.08[950] §4511.19(B)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) a Drug Abuse or (2) a Combination of Alcohol and a Drug of Abuse §4511.19(A)(1)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes §4511.191 (A)**
Implied Consent Law Applies to Drugs (Yes/No):	**Yes §4511.191(A)**
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) City of Westerville v. Cunningham, 239 N.E.2d 40 (Ohio 1968), and Maumee v. Anistic, 632 N.E.2d 497 (Ohio 1994)
Other Information:	A conscious person cannot be compelled to submit to a blood alcohol test. State v. Lampman, 612 N.E.2d 779 (Ohio App. 1992)
Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:	
Blood:	**Yes §4511.191(A)**
Urine:	**Yes §4511.191(A)**
Other:	**Probably No** "Other bodily" substance is applicable to §4511.19 but is not mentioned in the implied consent statute (§4511.191).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC ≥.04, (2) is under the influence of a controlled substance, (3) refuses to submit to a chemical test for the presence of either alcohol or controlled substances or (4) violates 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). A violation of any of these items appears to be a first degree misdemeanor; the sanctions for such a misdemeanor are an imprisonment for not more than 6 months and/or a fine of not

[947] 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) and (B) and 4511.191(F)
[948] Also, (1) for a breath alcohol concentration which is ≥.08 but <.17 or (2) for a urine alcohol concentration which is ≥.11 but <0.238.
[949] Also, (1) for a breath alcohol concentration which is ≥.17 or (2) for a urine alcohol concentration which is ≥0.238.
[950] Under §4511.19(B), a person under 21 years old shall not operate a vehicle with an alcohol concentration of ≥.02 up to .08 for blood or breath and ≥.028 up to .14 for urine.

more than $1,000. In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol or a controlled substance in the system must be placed "out-of-service" for 24 hours.
Under separate provisions of law, no person shall operate a CMV while alertness is impaired; such impairment includes the use of any drug that would adversely affect such alertness or ability to operate a CMV. The sanctions for violating this prohibition are for a first offense (minor misdemeanor) a fine of not more than $100 and for a second offense (fourth degree misdemeanor) jail for not more than 30 days and/or a fine of not more than $250. §§2929.21, 4506.01(A), (E), (G), (H) and (V), 4506.15, 4506.16(A) and (B), 4506.17(A), 4511.79 and 4511.99(C)

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):	First Refusal (minor misdemeanor) – Not more than $100; second refusal (within 1 yr) (fourth degree misdemeanor) – 30 days and not more than $250; third and subsequent refusals (within 1 year of first) (third degree misdemeanor) – not more than 60 days and not more than $500 §§4511.99(D) and 2929.21(B)
Administrative Licensing Action (Susp/Rev):	First Refusal – Suspension – 1 year (30 days mand); second Refusal (within 5 years) – Suspension – 2 years (90 days mand); third Refusal (within 5 years) – Suspension – 3 years (1 year mand); Subsequent Refusal (within 5 years) – Suspension – 5 years (3 years mand) Except as noted, occupational driving privileges may be granted after the mandatory period of license suspension has passed. Caution: Occupational driving privileges cannot be granted if the driver has had 3 prior refusals within 7 years or 3 or more drunk driving or vehicle homicide offense convictions within 7 years. §4511.191 (E), (I) and (K) I. A suspension for a refusal will not terminate if the driver is found "not guilty" of the related DWI offense. II. However, such suspension will terminate if the person is either found guilty of or pleads guilty to a related DWI offense. §4511.191(H)(2) and (K)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	Unless specifically noted, the criminal and administrative sanctions given apply to **ALL** of the various types of drunk driving offenses.

Imprisonment:

Term (Day, Month, Years, Etc.):	First offense and second offense within 6 years[951] – (first degree misdemeanor) – **Not more than 6 months; third** offense within 6 years – (misdemeanor)[952] – Not **more than 1 year**; fourth offense within 6 years(fourth degree felony)[5]**-6 to 30 months;** subsequent offenses within any time period – (third degree felony) – **1 to 5 years** §§2929.14, 2929.16, 2929.18(B)(3), 2929.19(C), 2929.21, 4511.19(G) and 4511.99(A) Offense for Persons Under 21 Years Old (≥.02 but <.08). First offense (fourth degree misdemeanor) – Not more than 30 days; second offense within 1 year) – (third degree misdemeanor) – Not more than 60 days §§2929.21, 4511.19(H) and 4511.99(N)(1)
Mandatory Minimum Term:	I. First offense – **3 consecutive days**[953and954] (3 con days is defined as 72 con hrs.) §4511.991); second offense (within 6 years) – **10 consecutive days** (Alternative: 5 con days in jail and not less than 18 con days "house arrest" with electronic monitoring[955]); third offense (within 6 years) – **30 consecutive days** (Alternative: 15 con days in jail and not less than 55 con days "house arrest" with electronic monitoring); subsequent offenses (within 6 years) – **60 consecutive days**[956]

[951] 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 ≥.02).

[952] A crime is classified as a misdemeanor if the imprisonment sanction is not more than 1 year. §2901.02(F)

[953] In lieu of this 3-day jail sanction, the court may place a defendant on probation and order attendance at a driver's intervention program for 3 consecutive days. §§4511.99(A)(1) and 3793.10

[954] For a first, second or third offense, a defendant may be given work release following the mandatory jail sentence. §4511.99(A)(5)(a) and (b)

[955] This alternative is imposed only when there are overcrowded jail conditions that prohibit the offender from commencing his/her term of imprisonment within 60 days of sentencing. §4511.99(A)(12)

[956] **Special Conditions for DWI Felony Offenses**. I. For a first DWI felony offense, the 60 consecutive days 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 mandatory 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 consecutive days 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 and 2929.23(3)(d)

Aggravated Vehicle Assault. A person commits "Aggravated Vehicle Assault" by causing serious injury to another person while DWI. First offense (third degree felony): Jail – 1 year to 5 years; fine – not more than $5,500; subsequent offense (or a first off where the defendant has previously been convicted of a vehicle homicide offense) (second degree felony): Jail-2 to 18 years; fine – not more than $15,000. §§2903.08 and 2929.11 "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) In addition, the court shall suspend a defendant's license for 2 – 10 years . 2903.07(B)(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. Gustafson,* 668 N.E.2d 435 (Ohio *1996), and Herbert v. Billy,* 160 F.3d 1131 (6th Cir. 1998)

	II. For illegal per se offenses with a BAC ≥.17: first offense – **3 consecutive days in jail with 3 consecutive days of a driver's intervention program or 6 consecutive days in jail; second**
(continued)	offense (within 6 years) – **20 consecutive days** (Alter- native: 10 con days in jail and not less than 36 con days "house arrest" with electronic monitoring**"**); third offense (within 6 years) – **60 consecutive days** (Alternative: 30 con days in jail and not less than 110 con days "house arrest" with electronic monitoring); subsequent offenses (within any time period) – **120 consecutive days** Offense for Persons Under 21 Years Old (≥.02 but <.08). **None**
Fine:	
Amount ($ Range):	First offense **– $250 to $1,000**; second offense (within 6 years**) – $350 to $1,500**; third offense (within 6 years**) – $550 to $2,500**; subsequent offenses **– $800 to $10,000** Offense for Persons Under 21 Years Old (≥.02 but <.08). First offense – Not **more than $250**; second offense (within 1 yr) – **Not more than $500**
Mandatory Min. Fine ($):	First offense **– $250**; second offense (within 6 years**) – $350**; third offense (within 6 years**) – $550**; subsequent offenses **– $800**[957] Offense for Persons Under 21 Years Old (≥.02 but <.08). **None**
Other Penalties:	
Community Service:	The law is not specific, but it appears that community service could be made a condition of probation. §2947.06
Restitution (e.g., Victim's Fund):	**Yes** (1) A victim may receive payment only for property damage directly from a defendant. §2929.21(E) and State v. Theuring, 546 N.E.2nd 436 (Ohio App. 1988). (2) A victim is also eligible for reparations from the State. §2743.51 et seq.
Other:	**Driver's Intervention Program**. §3720.66 **Ignition Interlock.** As a condition of probation by the court[958] §§2951 .02(G), 4507.16(C), 4511.83 and 4511.99(L)

[957] Ref: *State v. Cichy,* 480 N.E.2d 90 (Ohio App. 1984).
[958] If such a condition is imposed, offenders must obtain a specially marked driver's license indicating they may only operate a vehicle equipped with such a device. §2951.02(G)(2) and (3)

DWI Arrests: 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 days after the arrest. §§4511.191(D) and 4511.196 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.*

Fine In Lieu of Vehicle Forfeiture.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

≥.08 BAC/BrAC or ≥.11 UrAC (1) Suspension – 90 days (15 days mand) if the offender has no prior DWI, vehicle homicide or vehicle assault convictions. (2) **Suspension – 1 year** (30 days mand) if the offender has one prior DWI, vehicle homicide or vehicle assault conviction within 6 years. (3**) Suspension – 2 years** (180 days mand) if the offender has two prior DWI, vehicle homicide or vehicle assault convictions within 6 years. (4) **Suspension – 3 years** (mand) if the offender has three or more prior DWI, vehicle homicide or vehicle assault convictions within 6 years. 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. See State v. Gustafsen 668 N.E.2d 435 (Ohio 1994) Occupational driving privileges cannot be granted if the driver has had 3 or more drunk driving or vehicle homicide offense convictions within 7 years.

Ignition Interlock. For (1) and (2), a person may be required to use "ignition interlock" devices when operating a vehicle on an occupational license. For (3) and (4), a person must use these devices when driving on an occupational license.

A suspension for an administrative per se violation will terminate if the person is either (1) found "not guilty" or (2) pleads "guilty" to a related DWI offense.

§§4507.16 and 4511.191(F), (H)(2), (I)(4) and (K)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):

First offense – **Suspension**; second offense (within 6 years) – **Suspension**; third offense (within 6 years) – **Suspension;** subsequent offenses (within 6 years) – **Suspension/Revocation** DWI Related Aggravated Vehicle Assault – Revocation §§2903.08 and 4507.16(B)

Offense for Persons Under 21 Years Old (≥.02 but <.08).– suspension §§4507.16(E), (G) and (I)

Term of License Withdrawal

Hochhausler, 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 a court on appeal may 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).

(Days, Months, Years, etc.):	First offense – **6 months to 3 years**; second offense (within 6 years) – **1 to 5 years**; third offense (within 6 years) – **1 to 10 years**; subsequent offenses (within 6 years) – **Suspension for not less than 3 years or Permanent Revocation**[959] DWI Related Aggravated Vehicle Assault-**Permanent Revocation** Offense for Persons Under 21 Years Old (≥.02 but <.10) – **60 days to 2 years** §§4507. 16(E), (G) and (I)
Mandatory Minimum Term of Withdrawal:	First offense – **15 days**[960]; second offense (within 6 years) – **30 days**; third offense (within 6 years) – **180 days**; subsequent offenses (within 6 years) – **3 years** §4507.16(F) and (L) After these mandatory minimum suspension periods, occupational driving privileges may be granted. But occupational driving privileges cannot be granted if the driver has had 3 or more drunk driving or vehicle homicide offense convictions within 7 years. §4507.16(F) and (G) DWI-Related Aggravated Vehicle Assault-**Permanent Revocation** Offense for Persons Under 21 Years Old (≥.02 but <.08) – **60 days**
Other:	
Rehabilitation:	
Alcohol Education:	
Alcohol Treatment:	**Yes** I. A person, (1) charged with a misdemeanor offense, (2) 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 days. §2935.33(8)

[959] **Persons Under 18 Years Old.** I. Persons < 18 years old who violated any provision of the DWI law (§4511.19) have the license suspended for 6 months (appears mand). §4507.162(A) i.e., this suspension also applies to persons < 18 years old who violate §4511.19(B) by driving with a BAC/BrAC ≥.02 (UrAC ≥.028) but <.08 (UrAC <.11). II. Persons <18 years old who commit 3 or a combination of 3 violations as specified in §4507.162 within 2 years have their license suspended for 1 year (appears mand). These violations include refusal to submit to a chemical test; admin. per se and driving while suspended or revoked. §4507.162(A).

[960] For first and second offenses, the court may order a person to use **"ignition interlock"** devices when using an occupational license, for third and subsequent offenses, the court must require a person to use these devices when using an occupational license.

Point System. A license may be suspended via a point system under §4507.021(D), (G)(11) and (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-year period, the license may be suspended for 6 months. Also, 4 points are assessed for a .02 offense for persons under 21 years old.

Other Information: 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 also may suspend an offender's license for 6 months. An occupational license is available after the person has served the same mandatory license suspension periods noted above. §4507.169(B) and (E)

This alternate confinement of 3 days in lieu of jail per this program only applies to first but NOT to subsequent offenders. State v. Johnson, 491 N.E.2d 1138 (Ohio 1986)
II. For second offenses, the court may require a defendant to attend a treatment program. For third and subsequent offenses, the court shall require the defendant to attend a treatment program. §4511.99(A)

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: Second offense (within 6 years) – **Immobilization of and impoundment of the license plates of the vehicle used in the offense for 90 days**; third offense(within 6 years) – **Criminal Forfeiture of the vehicle used in the offense**; subsequent offense (within 6 years) – **Criminal Forfeiture of the vehicle used in the offense** §§4507.164, 4511.19, 4511.195 and 4511.99 See Footnote Nos. [961], [962], [963] and [964]

Terms Upon Which Vehicle Will Be Released:
Other: fourth or subsequent offense, motor vehicle registration prohibited for 5 years. §§4503.234(E) and 4507.021(C)(3)

Miscellaneous Sanctions Not Included Elsewhere: A person under 18 years old who violates the regular DWI law §4511.19(A) may be assigned to temporary custody of not more than 5 days (1) to a detention home, (2) to another similar institution for children or (3) to a school camp. §2152.21(A)(5)
Child Endangerment. It is a separate offense to operate a motor vehicle in violation of the drunk driving laws while carrying a passenger who is under 18 years old. First offense (first degree misdemeanor) – imprisonment for not more than 6

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[961] 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 first offense, (2) the first year of the license suspension period for a second offense, (3) the first year of the license suspension period for a third offense and (4) the first 3 years of the license suspension for a fourth or subsequent offense.

[962] A non-driver owner of the vehicle may avoid the forfeiture sanction by proving by a preponderance of the evidence that the non-driver neither knew nor 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 and 4511.99(A)(4)(b), 4511.19(G)(6)

[963] 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)

[964] I. A vehicle subject to immobilization/license plate impoundment may be operated with special license plates. §4503.231, §§4507.02(F)(2) and4507.164(F)
II The Ohio Supreme Court has held that the law providing for vehicle seizure and immobilization, without a prior hearing, violates U.S. Constitutional provisions concerning due process of law when it is applied against vehicle owners who were not operating the vehicle at the time of the drunk driving offense. *State v. Hochhausler,* 668 N.E.2d 457 (Ohio 1996)

months and/or a fine of not more than $l,000; first offense: where there has been serious physical harm to the child or subsequent offense (fifth degree felony) – imprisonment from 6 to 12 months and/or a fine of not more than $2,500; subsequent child endangerment offense 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 (fourth degree felony) – imprisonment from 6 to 18 months and/or a fine of not more than $5,000 In addition to the above, offenders are subject to not more than 200 hours of community service, which is not in lieu of community service that may be imposed via probation, and license suspension for 90 days, which is consecutive to any other licensing action. §§2919.22, 2929.14, 2929.18 and 2929.21
Confinement Costs. In some counties, offenders may have to pay the costs of confinement (workhouses). §§2929.35 et seq. and 2947.19

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **Yes** (1) Aggravated (Reckless) Vehicle Homicide-felony §2903.06(A)(2); (2) Aggravated (DUI) Vehicle Homicide – felony §2903.06(A)(1); (3) Vehicle (Negligent) Homicide – Misdemeanor §2903.06(A)(3) (l)

Sanctions:
Criminal Sanction:
Imprisonment (Term): Aggravated Vehicle Homicide (DUI): first offense (aggravated felony second degree) – 1 to 5 years; sub. offense (Aggravated felony first degree) – 2 to 8 years (2) Aggravated Vehicle Homicide (Reckless): first offense – (third degree felony), second or sub. offense (second degree felony) (3)Vehicle Homicide (Negligence): first offense (Misd first degree) – not-more than 6 months; sub. offense[965] or driving while suspended/revoked (felony fourth degree) – 6 to 18 months §§2929.14 and 2929.21[966]

Mandatory Minimum Term:
Fine ($ Range): (1) Aggravated Vehicle Homicide: first offense (aggravated felony second degree) – not more than $15,000; sub. offense (aggravated felony first

[965] A previous offense includes a §2903.06 offense, any other traffic-related homicide, manslaughter, or assault offense, 3 prior DUIs, or a second felony DUI, or if the death occurs while offender's license is suspended.
[966] For either type of offense; either a second offender or a first offender who has had a previous DWI conviction is not eligible for probation. §§2903.06(C)

"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 first degree (Jail-3 to 10 years; fine – not more than $20,000). If the death is misdemeanor-related, the offense is an aggravated felony third degree (Jail-l to 5 years; fine – not more than $10,000). §§2929.14 and 2929.18

degree) – not more than $20,000; (2) Vehicle Homicide (Negligence): first offense (Misd first-degree) not more than $1,000; sub. offense[19] or driving while suspended/revoked (felony fourth degree) – not more than $5,000 §§2929.18 and 2929.21

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and Type of Action: For either Aggravated Vehicle Homicide (DUI or Reckless) or Vehicle Homicide (Negligence) – Suspension or revocation §§2903.06(B), 4507.16(A), 4507.16(D), 4507.34 and City of Columbus v. Tyson. 484 N.E.2d 155 (Ohio App. 1983).

Length of Term of Licensing Withdrawal: For either Aggravated (DUI or Reckless) Vehicle Homicide or Vehicle Homicide (Negligence) – Suspension – 30 days to 3 years or revocation – not more than 1 year. 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 Vehicle Homicide (DUI or Reckless) or Vehicle Homicide (Negligence) – Suspension – 30 days §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 any 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 months if a person has accumulated 12 points within 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).

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense: §4511.192 See Footnote No. [967].

[967] Driving while suspended for an implied consent law violation (refusal) – first degree misdemeanor: Imprisonment – not more than 6 months; fine – not more than $1,000; and license revocation – not more than 1 year §§2929.21(B)(1) and (C)(1), 4511.192 and 4511.99(B). Aggravated vehicular assault during a suspension is a second degree felony-Aggravated Vehicular Homicide during a suspension is a first degree felony.

Sanction:

Criminal:

Imprisonment (Term): First offense (first degree misdemeanor) – not more than 6 months; second offense within 5 years – (misdemeanor) – 10 consecutive days to 1 year; third and subsequent offense within 5 years – (misdemeanor) – 30 consecutive days to 1 year §§2929.21, 4507.02(D)(2) and 4507.99(B)

Mandatory Minimum Term of Imprisonment: First offense – 3 consecutive days (Alternative: 30 con days of "house arrest" with electronic monitoring.[968]); second offense (within 5 years) – 10 consecutive days (Alternative: 90 con days of "house arrest" with electronic monitoring.); third and subsequent offense (within 5 years) – 30 consecutive days

Fine ($ Range): First offense – $250 to $1,000; second offense (within 5 years) – $500 to $2,500; third and subsequent offense (within 5 years) – $500 to $2,500

Mandatory Minimum Fine: First offense – $250; second offense (within 5 years) – $500; third and subsequent offense (within 5 years) – $500. [969]

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): **Suspension** [970] §4507.99(B)(4)

Length of Term of License Withdrawal Action: For first, second, third and subsequent offenses – not more than 1 year §4507.99(B)(4).

Mandatory Term of License Withdrawal Action: For first, second, third and subsequent offenses – not more than 1 year. §4507.99(B)(4)

Special Note: It is a first degree misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-or-service order. The sanctions for this offense are an imprisonment term of not more than 6 months 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; §§2929.21(B)(1) and (C)(1), 4506.04(A)(2) and 4506.99(A)

[968] This alternative is imposed only when overcrowded jail conditions prevent the offender from commencing the term of imprisonment within 60 days of sentencing. §4507.99(B)(6)

[969] Ref: *State v. Cichy,* 480 N.E.2d 90 (Ohio App. 1984).

[970] (1) The vehicle used in the offense shall be "immobilized" and the license plates "impounded" for the following mandatory periods: first offense – 30 days; second offense – 60 days and (2) for a third or sub. offense, the vehicle used in the offense will be subject to criminal forfeiture. §§4507.361(C), 4507.164(C) and 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 the non-driver neither knew nor 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 either been assigned or transferred, the defendant may be required to pay a fine that is equal to the value of the vehicle. §4507.99(B)(3)

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) and 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. (Under §4507.164(C), discretionary judicial authority also exists for such registration suspension.)

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

Grounds for Being Declared an Habitual Offender:
Term of License Rev While Under Habitual Offender Status:
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual
Sanctions Following a Conviction of Driving While on Habitual Offender (continued)
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(6)**
BAC Chemical Test Is Given to the Following Persons:
Driver: **Yes §313.13(8)**
Vehicle Passengers: **No**
Pedestrian: **No**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:
Minimum Age (Years) Sale/Purchase: **21**[971] §§4301.22(A)(1), 4301.63 and 4301.69
Minimum Age (Years) Possession: **21** §4301.69
Minimum Age (Years) Consumption: **21** §4301.69

Dram Shop Laws and Related Legal Actions:
State Has a Dram Shop Law (Yes/No): **Yes §§4399.01, 4399.02 and 4399.18**

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation): **Yes** Mason v. Roberts, 294 N.E. 2d 884 (Ohio 1973)[972] (for a history of the dram shop law prior

[971] It is illegal (1) for a licensee to sell to a person under 18 years old or (2) for a person under 18 years old to either purchase, possess or consume (unless accompanied by a parent, legal guardian or spouse who is over 18 years old) a low-alcohol beverage. §§4301.22(A)(2) and 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 percent 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)
[972] See also *Terry v. Markoff,* 497 N.E.2d 1133 (Ohio App. 1986).

	to codification, see Lesnau v. Andate Enterprises, 756 N.E.2d 97 (Ohio 2001)
Dram Shop Actions-Social Hosts:	**Yes Limited** A social host is not liable for the actions of an intoxicated adult guest. Settlemyer v. Wilmington Veterans Post No. 49. American Legion, Inc., 464 N.E.2d 521 (Ohio 1984). 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, but over the age of majority, does not have a cause of action against a licensee for injuries that patron 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 (Ohio App. 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 (Ohio App. 1 Dist. 1996). and Walker v. Capri Ent. Inc., 707 N.E.2d 1201 (Ohio App. 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 sustained by an intoxicated guest. Holman v. George, 713 N.E.2d 432 (Ohio App. 1998), and Estate of Valesquez v. Cunningham, 738 N.E.2d 876 (Ohio App. 5 Dist. 2000)
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	Third **Degree Misdemeanor** §§4301.22(B) and 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 Revocation/Suspension**[973] §§4301.25 and 4301.27

[973] For a first or second offense (within 2 years), a monetary forfeiture maybe imposed in lieu of a suspension: first violation – $100 to $200 for each day of the suspension; second violation – $200 to $400 for each day of the violation. §4301.252

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:	**Misdemeanor**[974] **First or third degree**
Term of Imprisonment:	First Degree Misdemeanor: **Not more than 6 months** §2929.21(B)(1); third degree Misdemeanor: **Not more than 60 days** §2929.21(B)(3)
Fine ($ Range):	First Degree Misdemeanor: **Not more than $1,000** §2929.21(C)(1); third degree Misdemeanor: **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:	See the Special Note below.
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Revocation/Suspension**[975] §§4301.25 and 4301.27
Length of Term License Withdrawal:	**Indeterminate**
Anti-Happy Hour Laws/Regulations:	**Yes** 4301:1-1-50 (regulation)[976]
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** §4301.62(B)(4) and (5)
Anti-Consumption Law (Yes/No):	**Yes Drivers and passengers** §4301.64 The law states that "[n]o person shall consume any beer or intoxicating liquor in a motor vehicle."

[974] A person may be charged with a misdemeanor of either the first or third degree. §§4301.22(A). 4301.69 and §4301.99

[975] For a first or second offense (within 2 years), a monetary forfeiture may be imposed in lieu of a suspension: first violation – $100 to $200 for each day of the suspension; second violation – $200 to $400 for each day of the violation. §4301.252

[976] This regulation prohibits the sale of alcoholic beverages (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 fourth degree misdemeanor if they sell a low-alcohol beverage to a person under 18 years old. The sanctions for this offense are a jail term of not more than 30 days and/or a fine of not more than $250. §§2929.21 (B)(4) and (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:	**OKLAHOMA**
General Reference:	Oklahoma Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	I. Under the influence of alcohol 47 §11-902(A)(2) II. Impaired by the consumption of alcohol (driving while impaired) 47 §761(A)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[977and978] 47 §§756(5) and 11-902(A)(1) Persons Under 21 Years Old-**Any Measurable Quantity of Alcohol in the Blood or Breath** 47 §6-106.4(A)[979]
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	I. Under the influence of (1) **Intoxicating Substances**[980] or (2) a Combination of These and Alcohol 47 §11-902(A)(3) and (4) II. **Impaired by Any Other Substance** 47 §761(A) III. Persons Under 21 Years Old-Under the influence of (1) any other intoxicating substance or (2) a combination of alcohol and any other intoxicating substance 47 §6-106.4(A)
Other:	I. A BAC/BrAC **≥.08** is also *prima facie* evidence that a person was under the influence of alcohol. 47 §756(A)(3) II. A BAC/BrAC **>.05 but <.08** is "relevant evidence" of Driving While Impaired. 47 §756(A)(2) III. Any measurable quantity of alcohol is *prima facie* evidence that a person <21 years old violated 47§11-906.4(A). 47§756(A)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** 47 §751(A)

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976 This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more. 47 §756(5)

977 Alcohol concentration is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 47 §756(B)

978 See **Persons Under 21 Years Old** for the sanctions for violating this provision.

979 A person who has been convicted of driving under influence/illegal per se and who has had a prior conviction for these offenses within 10 years 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)

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 mandatory year (3 years if transporting hazardous materials), if while operating a CMV, that person (1) has a BAC/BrAC ≥.04 , (2) is under the influence of alcohol or an intoxicating substance, or (3) refuses 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 years mand). Note: A conviction includes an un-vacated 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

Implied Consent Law Applies to Drugs (Yes/No):	**Yes** 47 §751(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) 47 §756(A)
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 test 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:	**Yes** For alcohol and intoxicating substances 47 §751(A)
Urine:	**Yes** For intoxicating substances only 47 §751(A)
Other:	**Saliva** For intoxicating substances only 47 §751(A)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** first offense – Driving While Under the Influence/Illegal per Se[981] and first or subsequent offenses – Driving While Impaired-Offenders are required to submit to alcohol and drug evaluation prior to sentencing and follow all recommendations made in the assessment and evaluation at the defendant's expense, with a minimum of twenty-eight days of residential or inpatient treatment, followed by thirty days of aftercare at the defendant's expense. However, no citizen shall be compelled to travel more than seventy miles from the citizen's place of residence to attend a course or evaluation program. Offenders must pay not more than $75 to cover the cost of the evaluation. 47 §§11-902(H) and 761(D

Sanctions for Refusal to Submit to a Chemical Test:

[980] "Other intoxicating substance" is defined as "any controlled dangerous substance" per Title 63 §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 DWI offense, a defendant may be placed on probation before judgment. Following the completion of the proscribed probation period (which cannot exceed 5 years) 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(B) and (C).

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):	First Refusal – **Revocation 180 days** (may be modified)[982]; second Refusal (within 5 years) – **Revocation 1 year mandatory** subsequent Refusal (within 5 years) – **Revocation 3 years** (1 year mandatory; may be modified after 1 year). 47 §§ 6-205.1, 6-211(I), 753, 754.1 and 755

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	I. Driving While Impaired – Not more than **6 months** 47 §761 II. Driving While Under the Influence/Illegal Per Se: first Offense (misdemeanor) – **10 days to 1 year**; second offense (within 10 years) (felony) – **1 to 5 years**; third offense (within 10 years) (felony) – **1 to 7 years)**; fourth and subsequent offense (within 10 years) (felony) – **1 to 10 years.** 47 §11-9024(c) III. Personal Injury Accident (Driving While Under the Influence/Illegal Per Se) – first Offense (misdemeanor) – **90 days to 1 year**; second or subsequent offense – (felony) – **1 to 5 years.** 47 §11-904(A) IV. Great Bodily Injury (Driving While Under the Influence/Illegal Per Se) – (felony) – **1 to 5 years.** 21 §9(B) and 47 §11-904(A)
Mandatory Minimum Term:	Driving While Under the Influence/Illegal Per Se- second offense (within 10 years) – **5 days** jail (or 5 days inpatient treatment); third or subsequent offense (within 10 years) – **10 days** jail (or 10 days inpatient treatment); fourth or subsequent offense (within 10 years) – **10 days** jail(or 28 days of inpatient treatment). 47 §11-902(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. *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 he had been **acquitted** of a drunk driving offense. Nevertheless, the court upheld the licensing action and held that there was no double jeopardy issue.

[981] This license revocation may be "modified" upon a showing that no other adequate means of transportation exists. As a condition of modification, the driver must agree, except in certain circumstances, to only operate motor vehicles that are equipped with an ignition interlock device. 47§§ 754.1(B) and 755.

Persons Under 21 Years Old: Persons <21 years old who violate 47 §6-106.4(A) are subject to the following sanctions: first offense – a fine of **$100 to $500** and at least 20 hours of community service; second offense – a fine of **$100 to $1,000,** at least 240 hours of community service, and, after mandatory revocation, use of an ignition interlock device for at least 30 days; and, third or subsequent offense – a fine of **$100 to $2,000,** at least 480 hours of community service, and, after mandatory revocation, use of an ignition interlock device for at least 30 days. For either a first or subsequent offense, a defendant may be required to complete a treatment program. 47 §6-106.4(B) and (C) An offender may also be prosecuted for a regular drunk driving offense. 47 §6-106.4(E).

Prior Offenses: "Any person who, within 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) (5).

Great Bodily Injury: Great bodily injury "means bodily injury that 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 convicted of driving under the influence with a BAC/BrAC **≥.15**. The following sanctions are imposed and such do not preclude other possible punishments: mandatory minimum treatment for 28 days (inpatient) with1 year aftercare; 480 hours of community service; and, **ignition interlock** use for a minimum of 30 days. 47 §11-902 (D).

Excessive User of Alcohol: No driver's license shall be issue to any person classified as an excessive user of alcohol, any other intoxicating substance, or a combination of alcohol and any other intoxicating substance, and inimical to public safety, until all requirements granting or reinstating driving privileges are met, including, but not limited to, abstinence from the use of alcohol, any other intoxicating substance, or any combination of alcohol and any other intoxicating substance for a minimum of twelve months immediately preceding application for or application for reinstatement of driving privileges; and proof of installation of ignition interlock device on vehicles operated by offender—to be continued for 12 months. Restricted license issued to offender upon payment of a restricted driver license fee of $50.

Sanctions Following a Conviction for a DWI Offense:

Fine: Amount ($ Range):	I. Driving While Impaired – $**100 to $500.** 47 §761 II. Driving While Under the Influence/Illegal Per Se: first Offense (Misd. **$150** to not more than **$1,000**; second offense (within 10 years – $**150** to not more than **$2,500**; third and subsequent offense (within 10 years) (felony) – Not more than **$150** to not more than **$5,000.** 47 §11-902 III. Personal Injury Accident (Driving While Under the Influence/Illegal Per Se) – first offense (misdemeanor) – Not more than **$2,500**; second offense (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 **$5,000.** 47 §11-904(B)
Mandatory Min. Fine ($):	For all offenses – $**150**. The minimum fine is deposited in the Public Safety Patrol Vehicle Revolving Fund. 47 §11-902(C)(8). In addition to any other penalty, $100 assessment to be deposited in the Drug Abuse Education and Treatment Revolving Fund.

Other Penalties:	Victims impact panel program-fee $15 to $25.
Community Service:	Driving Under the Influence/Illegal Per Se Felony Convictions- I. Third offense – **240 hours**; fourth or subsequent offense – **480 hours** following any aftercare treatment. 47 §11-902(C) II. A fine cannot be imposed in lieu of community service. 47 §11-902(M).
Restitution (e.g., Victim's Fund)	**Yes** The court may order a defendant to pay restitution to a victim. 22 §§991a(A)(1)(a) and 991f
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes** (1) **BAC/BrAC ≥.08** or (2) Persons Under 21 Years Old-**Any Measurable Quantity of Alcohol in the Blood or Breath**[983] First Action – Revocation 180 days (may be modified immediately to allow driving with an ignition interlock);[984] 2nd Action (within 5 years) – Revocation 1 year (mand, may not be modified)[985]; subsequent Action (within 5 years) – Revocation 3 years (1 year mand, may be modified thereafter) 47 §§6-205.1, 6-211(I), 754, 754.1, 755 and 756
Post DWI Conviction Licensing Action:	
Type of Licensing Action. (Susp/Rev):	Driving While Impaired – **Suspension.** 47 §761 Driving While Under the Influence[986]: first Offense – **Revocation**; subsequent Offense – **Revocation.** 47 §§6-205(A)(2) and 11-902
Term of License Withdrawal (Days, Months, Years, etc.):	Driving While Impaired – first offense – 6 months {**30 days minimum**}; second offense – **6 months**; third offense – **12 months.** 47 §761 Driving While Under the Influence/Illegal Per Se: first offense – **180 days**; second offense (within 5 years) – **Revocation 1 year**; subsequent offense (within 5 years) – **Revocation 3 years.** 47 §§6-205 and 6-205.1
Mandatory Minimum Term of Withdrawal:	Driving While Impaired: first offense – **30 days**; second offense – **6 months**; third offense – **12 months.** 47 §761 Driving While Under the Influence/Illegal Per Se: first Offense – No**ne**

[982] 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. Civil. App. 1999)

[983] 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 agree, except in certain circumstances, to only operate motor vehicles that are equipped with an ignition interlock device. 47§§ 754.1(B) and 755

[984] 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) and (4)

[985] The revocations 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 and 756. There are no specific licensing actions in 47 §11-904.

(licensing action may be modified); second Offense – 1 year; subsequent offense – **1 year** (licensing action cannot be modified); subsequent offense – **1 year** (licensing action may be modified after 1 year).
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's license was 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) and 761

Other: **Ignition Interlock –** A second or subsequent conviction within 5 years requires installation of ignition interlock for at least 6 months. §6-212.3 [987]

Rehabilitation:

Alcohol Education: **Yes First** and subsequent offenders (all types of DWI offenses) may be ordered by the court to participate in alcohol or drug substance abuse courses.[988] A first offender must successfully complete this course before license can be reinstated. 22 §§ 991a(A)(1)(p) and (A)(7) and 47 §6-212.2

Alcohol Treatment: **Yes** I. The court may order first offenders and shall order subsequent offenders (all types of DWI offenses within 10 years) to participate in alcohol or drug rehabilitation treatment programs. 22 §991a(A)(6); §11-902 J
II. Driving Under the Influence/Illegal Per Se-Treatment in lieu of incarceration: 2nd offense – 28 days[989]with 30 days aftercare; third offense – 28 days[990] with 90 days aftercare; fourth or subsequent offense – 28 days (inpatient)[991] with 1 year aftercare 47§11-902(C).

Special Note: In addition to the regular licensing sanctions for drunk driving, under separate provisions of law, an offender <18 years old who is convicted of a regular drunk driving offense is subject to having the license canceled or denied for one of the following periods: first offense – 6 months, 1 year, 2 years or until they reach 21 years old; and, second or subsequent offense – 2 years or until they reach 18 years old whichever is longer. Licensing action is not mandatory. A first or subsequent offender may obtain relief from this action upon a showing of hardship. 47 §§6-107.1 and 6-107.2

Persons Under 21 Years Old: Licensing sanctions for a violation of 47 §6-106.4(A). First offense – (1) for offenders 18, 19 or 20 years old, discretionary cancellation of driving privileges for 6 months, 1 year, 2 years or until the person is 21 years old and, (2), for **all** offenders <21 years old, license revocation for 180 days (may be "modified"); and, subsequent offense, for **all** offenders <21 years old, cancellation of driving

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[987] No person may physically disable, disconnect or wire around an ignition interlock device or intentionally fail to return an ignition interlock device when it is no longer required in the vehicle or upon request by the owner of the device. Violations punishable by a fine of not more than $500 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment. § 11-902a B and C

[987] If the person does not spend at least 5 days in inpatient care, that person must serve at least 5 days of incarceration

[989] 47 §11-902(C)(2)

[989] If the person does not spend at least 10 days in inpatient care, that person must serve at least 10 days of incarceration. 47 §11-902(C)(3)

[990] If the person does not spend at least 28 days in inpatient care, he/she must serve at least 10 days of incarceration. 47 §11-902(C)(4)

privileges for 2 years or until the person is 18 years old whichever is the longer cancellation period (hardship driving privileges are available) and license revocation for 1 year (mand) for a second offense or 3 years (1 year mand) for a subsequent offense. 47 §§6-107.1, 6-107.2, 6-205(A)(2), 6-205.1(A) and 11-906.4(D).
Comment: The law appears to provide for two independent licensing action schemes for these offenders.

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.[992] 47 §11-902b

Other:

Electronic Home Monitoring: A person, who has been convicted of a felony offense may be subject to court-ordered electronic home monitoring. 22 §991(A)(o) and (7)(e) and 47 §11-902(K). See IV under Ignition Interlock below.

Victim Impact Program: The court may order a defendant 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) and 991a(A)(m) and (A)(7)(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

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[991] 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 driving while under the influence/illegal per se, vehicle negligent homicide, or a DWI injury-related offense and has a prior conviction for one of these offenses (within 10 years); 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 following reinstatement of driving privileges. This requirement shall remain in effect for a period of time as the court deems proper. 22 §991a(A)(1)(n) and (7)(d).
II. As a condition of license modification for either an admin per se violation or a driving while under the influence conviction, the licensing agency must require persons to install ignition interlock devices on the vehicles they operate. 47 §§754.1 and 755.
III. For Driving While Under the Influence/Illegal Per Se Offenses: second or subsequent offense – After any mandatory period of license revocation, offenders must install an ignition interlock device on all of the vehicles they own or regularly operate. The court must order a person to operate vehicles with this device for not less than 6 months or more than 3 years. For a third or subsequent offense (felony), there is a mandatory minimum use period of 30 days. 47 §11-902(C) and (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).

with the defendant's criminal offense. There is an exception based on "manifest hardship" to the defendant. 22 § 991a (A)(4)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **Yes Negligent Homicide** Misdemeanor[993] 21 §§5 and 6 and 47 §11-903

Sanctions:
Criminal Sanction:
Imprisonment (Term): Not more than **1 year** in the county jail
Mandatory Minimum Term: **None**
Fine ($ Range): **$100 to $1,000**
Mandatory Minimum Fine: **$100**
Administrative Licensing Action:
Licensing Authorized and Type of Action: **Revocation**
Length of Term of Licensing Withdrawal: First offense – 1 year; subsequent offense (within 5 years) – **3 years** 47 §6-205(A)(1), (B) and (C)

Mandatory Action--Minimum Length of License Withdrawal: First offense – 1 year; subsequent offense (within 5 years) – **3 years**
Other: **Restitution:** The court may order a defendant to pay restitution to a victim. 22 §§991a(A)(1)(a) and 991f

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*: This statute refers to any mandatory revocation in addition to DWI. 47§6-303(C)

Sanction:
Criminal:
Imprisonment (Term): **Misdemeanor** Not more than **1 year** [994] 47 §6-303(B)
Mandatory Minimum Term of Imprisonment: **None**
Fine ($ Range): **$100 to $500** 47 §6-303(B)
Mandatory Minimum Fine: **None**
Administrative Licensing Actions:
Type of Licensing Action (Susp/Rev): **Suspension or revocation** 47 §6-303(C)

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[992] **Special Note:** The Oklahoma Courts have decided that if a vehicle homicide is proximately caused by an alcohol driving law offender, for a first offense, the charge may be Manslaughter 1, and for a second offense, the charge may be Murder II. See respectively paragraph 1 of section 711 of Title 21 (*Mc Connell v. State,* 485 P.2d.764 (1971) and *White v. State,* 483 P.2d 751 (1971)), and paragraph 2 section 701.8 of Title 21 (*Isom v. State,* 646 P.2d 1288 (1982)).

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

[993] I. It is a misdemeanor to operate a CMV during a CDL disqualification. The sanctions for this offense are an imprisonment term for not more than 1 year and/or a fine of not less than $100 and not more than $500. 47 §6-205.2(I). II. A person who violates an out-of-service order is subject to the following CDL disqualification periods: first violation – 90 days (mand); second violation (within 10 years) – 1 year (mand); and, third or subsequent violation (within 10 years) – 3 years (mand). If the offense involved the transportation of hazardous materials, the disqualification periods are as follows: first violation – 1 year (mand); and, second or subsequent violation (within 10 years) – 3 years (mand). 47 §6-205.2(G) and (H)

Length of Term of License Withdrawal Action:	Period of suspension/revocation extended for **3 months** 47 §6-303(E)
Mandatory Term of License Withdrawal Action:	Period of suspension/revocation extended for **3 months** 47 §6-303(E)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
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** 37 §§163.2(a), 241, 246(A) and 537(A)(1) and 528(C)(1).
Minimum Age (Years) Possession:	**21** 21 §1215[995] and 37 §246(A)[996]
Minimum Age (Years) Consumption:	**21**[997] 37 §§241(C) and 246

[994] Under 21 §1215, it is illegal for a person under 21 years old to possess alcoholic beverages (alcoholic beverages containing more than 3.2 percent alcohol by weight) "upon any public street, road, or highway or in any public building or place."

[995] 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 percent alcohol by volume but not more than 3.2 percent alcohol by weight) with the intent to consume such beverages in public.

[996] 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 percent alcohol by volume but not more than 3.2 percent alcohol by weight) in public. II. Under 37 §241(C), it is illegal for a licensee to allow a person under 21 years old to consume "low-point beer" on the

Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes.** *Brigance v. The Velvet Dove Restaurant,* et al., 725 P.2d 300 (Okla. 1986), *Tomlinson v. Love's Country Stores, Inc.,* 854 P.2d 910 (Okla. 1993) and *Bennett v. 2 Poor White Boys, Inc.,* 973 P.2d 896 (Okla. Civil. App. Div. 4 1998)[998]
Dram Shop Actions-Social Hosts:	**No.** *Troxell v. Bingham,* 774 P.2d 1073 (Okla. .App. 1989), *Battles v. Cough,* 947 P.2d 600 (Okla. Civil App Div 3 1997), *Teel v. Warren,* 22 P.3d 234 (Okla. Civil App Div 1 2001)(In this case, the court considered a fraternity as a social host.) and *McGee V. Alexander,* 37 P.3d 800 (Okla. 2001).
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 and 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 percent and above – **felony.** 37 §506(3), §537(A)(2) and §538(G) For low point beer half of 1 percent to 3.2 percent alcohol – **Misdemeanor.** 37 §247
Term of Imprisonment:	For felony offense – Not more than **1 year.** 37 §538(G) For misdemeanor offense – Not more than **6 months.** 37 §247
Fine ($ Range):	For felony offense – **$500 to $1,000.** 37 §538(G) For misdemeanor offense – 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 Revocation** 37 §§244, 247 and 528(C)(1) and (E)
Length of Term of License Withdrawal:	(1) For alcoholic beverages 3.2 percent and above – the period of revocation is not stated in the statute. Revocation periods are established via regulations.

licensed premises.

[997] The *Bennett* case concerned an action by an intoxicated passenger injured in an automobile accident against a licensee who served alcoholic beverages to the vehicle's driver and to the passenger. The driver's intoxication was the cause of the injury- resulting accident.

	The law provides that the revocation period shall be "increasingly severe" for subsequent offenses.[999] However, for a fourth offense within 24 months, there is a mandatory revocation. (2) For low point beer ½ of 1 percent to 3.2 percent alcohol – Revocation by the district court for **12 months.**
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 percent and above – **felony.** For low point beer ½ of 1 percent to 3.2 percent alcohol **Misdemeanor.** 21 §§10, 21 and 1220 and 37 §§163.1, 163.2, 163.11, 163.20(a) and 241
Term of Imprisonment:	For felony offense – Not more than **5 years.** For misdemeanor offense – Not more than **1 year.**
Fine ($ Range):	For felony offense – $**2,500 to $5,000.** For misdemeanor offense – Not more than **$500.**
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Revocation** 37 §§163.11(K)(3) and (L), 244, 528(C)(1), (D) and (E) and 538(F)
Length of Term License Withdrawal:	(1) For alcoholic beverages 3.2 percent or more alcohol- 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 fourth offense within 24 months, there is a mandatory revocation. (2) For low-point beer ½ of 1 percent to 3.2 percent alcohol- Revocation by the district court for 1 year. This revocation is mandatory for subsequent 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** Driver and passengers 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

[998] For package store licensees who "knowingly" sell alcoholic to persons under 21 years old, license revocation is mandatory. 37 §528(D)

public place." 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.

STATE:	**OREGON**
General Reference:	Oregon Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor[1000] §813.010(1)(b)
Illegal Per Se Law (BAC):	**≥.08**[1and1001] §813.010(1)(a)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) A Controlled Substance (2) an Inhalant[1002] or (3) Any Combination of Intoxicating Liquor, an Inhalant and a Controlled Substance[1] §813.010(1)(b) and (c)
Other:	A BAC of not less than **.08** constitutes being under the influence of intoxicating liquor. §813.300(2)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§813.100 and 813.131
Implied Consent Law Applies to Drugs (Yes/No):	**Yes**§813.131
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes**[1003] (Criminal and Civil Cases) §813.310
Other Information:	I. There is also an implied consent law on field sobriety testing.[5] §813.135 II. The Oregon Supreme Court has indirectly indicated that law enforcement officers are not authorized via statute to obtain a blood sample via force for BAC testing in DWI cases. However, such a sample may be forcefully obtained

[999] A person commits a DWI offense by driving "while under the influence of intoxicants." This offense is defined as illegal per se at a BAC ≥.08 or driving while under the influence of 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 ≥.08 or (2) while under the influence of alcohol or a controlled substance. *State v. King,* 852 P.2d 190 (Or. 1993), and *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)

[1000] 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.

[1001] 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

[1002] 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) and *State v. Rohrs,* 970 P.2d 262 (Or. App. 1998)

and tested for BAC (and possible drug content) for other criminal offenses related to motor vehicle operation (e.g., criminally negligent homicide or manslaughter). §§813.140, 813.320 and *State v. Milligan,* 748 P.2d 130 (Or. 1988)

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

Blood:	**Yes Limited**[1004and1005]
Urine:	**Yes Limited**[1006]
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**Yes** §813.170. There is a diversion program for offenders who have not been convicted of a DWI offense within 10 years and who meet other eligibility requirements. §§813.215 and 813.200 et seq.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol screening is required. §§813.020(1)(b) and 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:

Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	1. **Suspension – 1 year** if no previous suspensions for either a test refusal or a DWI offense (90 days are

[1003] 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)

[1004] 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) is unconscious (or otherwise in a 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,* 893 P.2d 569 (Or. App. 1995)

[1005] A law enforcement officer may request a person to submit to a chemical test of urine to determine the presence of a controlled substance. However, this requirement only applies if (1) a breath test disclosed an alcohol concentration <.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

Sanctions for Refusal to Submit to a Chemical Test (con't)	mandatory).[1007] 2. **Suspension – 3years** for either a previous test refusal or a previous DWI offense/admin per se violation based license suspension within 5 years (1 year mand). §§813.100, 813.130, 813.131, 813.132, 813.410, 813.420, 813.430 and 813.520
Other:	Consecutive license suspensions for refusals to submit to both breath and urine tests. §813.132
Sanctions Following a Conviction for a DWI Offense:	
Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	I. First, second or third offense – Class A Misdemeanor – Not more than **1 year** §§813.010(4) and 161.615(1) II. Fourth offense (w/3 prior offenses within 10 years) – Class C Felony – Not more than **5 years** §§813.010(5) and 161.605(3)
Mandatory Minimum Term:	**All** offenses – **48 consecutive hours**[1008] §813.020(2)
Fine:	
Amount ($ Range):	I. First, second or third offense – Class A Misdemeanor – Not more than **$5,000** §161.635(1)(a) II. Fourth offense (w/3 prior offenses within 10 years) – Class C felony – Not more than **$100,000** §§813.010(5) and 161.625(1)(c)
Mandatory Min. Fine ($):	**All** offenses – first offense – $**1,000**; second offense – $**1,500**; third offense – $**2,000** (**only** if the person is not sentenced to a term of imprisonment. §813.010(6)
Other Penalties:	
Community Service:	All offenses – Not less than **80 hours** nor more than **250 hours** (as an alternative to imprisonment) §§813.020(2) and 137.129(4)
Restitution (e.g., Victim's Fund)	**Yes** Direct compensation to victims by the defendant (§§137.106, 107 and 109) and also via a victims' compensation fund (§147.005 et seq.)
Other:	I. A **$130 fee** is charged in addition to any fine imposed. The fee is used to pay for diagnostic assessment, for intoxicated driver programs and for other purposes per §137.295. The court may waive this fee in whole or in part for indigent defendants. §§813.020(1)(a) and 813.030 II. **All** offenses – **A Unitary Assessment of $95**. §137.290(1)(c) III. **All** offenses – **A County Assessment** which is in addition to and which is based on the amount of fine

[1006] A restricted hardship license may be issued after this mandatory period. §813.520(1) and (3). This mandatory period is reduced by any mandatory suspension period that may be imposed for either a second or subsequent DWI offense conviction (within 5 years) based on the same occurrence. §813.520

[1007] 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) and *State v. Oary,* 829 P.2d 90 (Or.App. 1992).

they have to pay. The assessments vary in amount but are not more than **$59**. §137.309

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **Yes ≥.08 (Any BAC for persons under 21 years old)** 1. A **90-day suspension** (**30 days** are mandatory[1009]) if there has been no previous suspension for a chemical test refusal, an admin per se violation, or a DWI offense.
2. A **1-year suspension** (mandatory)[1010] if there has been a previous suspension for a chemical test refusal, an admin per se violation, or a DWI offense.
§§813.100(4), 813.130, 813.300(2) and (3), 813.410, 813.420, 813.430 and 813.520.

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): First Offense – **Suspension**; second and third offenses (within 5 years) – **Suspension;** fourth offense (w/ 3 prior offenses within 10 years) – **Revocation**.
See **Ignition Interlock** below.

Term of License Withdrawal (Days, Months, Years, etc.): First Offense – 1 year; second and third offenses (within 5 years) – **3 years;** fourth offense (w/3 prior offenses within 10 years) – **Permanent**. §§809.420(2) and 813.400(2)
Under §§809.260 and 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: first offense – Suspension for **1 year** or until the person reaches 17 whichever is the longer suspension period; second or sub. offense.– suspension for **1 year** or until the person reaches 18 whichever is the longer suspension period.
Persons Under 18 Years Old: Under §809.405(4), persons under 18 who have been convicted of a DWI offense must have their licenses suspended until they are 18 or are otherwise eligible for license reinstatement.

Mandatory Minimum Term of Withdrawal: First Offense – See Footnote No. [1011]; second offense (within 5 years) – **90 days**[1012]; third or subsequent offenses (within 5

[1008] A restricted hardship license may be issued after this mandatory period. §813.520(2)

[1009] This mandatory suspension is reduced by any mandatory suspension imposed for either a second or subsequent DWI offense (within 5 years) if based on the same occurrence. §813.520 **Special Note:** A Class 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)(review denied 913 P.2d 1384 (Or. 1996)).

[1010] A restricted hardship permit may be issued. §§807.240 and 813.520 Note: A 30-day suspension is mandatory if the defendant within the previous year has been convicted of a "traffic crime." §813.520(9)

[1011] A restricted hardship license may be issued after this mandatory period. §813.520(4) and (5). Note: This mandatory period is reduced by any mandatory suspension period imposed for an implied consent law test refusal or an admin per se law violation if based on the same occurrence. §813.520

Ignition Interlock: Persons convicted of DWI offenses shall have an "ignition interlock" device installed in their vehicles prior to being issued a hardship license. Offenders must operate motor vehicles equipped with ignition interlock

years) – permanent revocation of driving privileges, although a petition for restoration of the driving privilege may be filed with District Court **10 years** after release on parole or post-prison supervision. § 809.235. (1)(b) For persons under 17 but not younger than 13, first offense – **90 days**; second or subsequent offense – 1 year

Other:

Rehabilitation:

Alcohol Education: **Yes**

Alcohol Treatment: **Yes** I. An intoxicated offender must complete an appropriate treatment program for alcoholism or drug dependency. This requirement impacts an offender's eligibility for a hardship permit. This could include an alcohol/drug education program. §§813.020(1)(b), 813.021 and 813.500 {Screening fee for driving while under the influence of intoxicants diversion program – $150 §813.240 (2) }

II. Second or subsequent offenders 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 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: I. **Forfeiture (Discretionary):**[1013] A vehicle used in a drunk driving offense may be forfeited if within 3 years the offender had a prior drunk driving offense or has been convicted of 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:** second or subsequent DWI offenses or Driving While Suspended/Revoked – Not more than **1 year.**[1014] Applies to a vehicle by or used by the offender.

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devices for 6 months after the end of the license suspension ore revocation period. The court may require the use of an ignition interlock device as part of a diversion agreement. Note: There is an employment exception to the above requirements. §§813.602(1)(a), (1)(b) and (2) and 813.606.

[1012] The City of Portland has an ordinance that provides for vehicle forfeiture if a person is operating a motor vehicle while driving privileges have been suspended for a DWI offense.

[1013] An offender's vehicle's registration must be suspended for not more than 120 days. §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, such person (1) is convicted of a DWI offense (§813.010 offense), (2) has a BAC ≥.04, or (3) refuses to submit to a chemical test for alcohol concentration. For a first DWI conviction or a first violation of operating a CMV with a BAC ≥.04, the CDL is suspended for 1 year (mand); however, if the person was carrying hazardous materials, the suspension is for 3 years (mand). For a first refusal, the CDL is suspended for 3 years (mand); however, if the person was carrying hazardous materials, the suspension is for 5 years (mand). For a subsequent refusal, DWI conviction or violation of operating a CMV with a BAC ≥.04 or a combination of these, the

Applies to vehicles (1) either owned and used by the offender or (2) owned by 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) and (6)

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 be 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 suspended or revoked for (1) an implied consent law refusal, (2) an administrative per se law violation, (3) a DWI conviction, or (4) convictions for other traffic law offenses. This section further provides that for persons 17 years old or younger, an emergency includes the situation where the person has to use a vehicle to travel to and from school.

Special Note No. 2: In addition to the licensing sanctions in the DWI law for driving while under the influence of controlled substances, it appears under other sections, a driver's license can be suspended for six months for this offense. A hardship license cannot be issued. However, under "compelling circumstances" a court does not have to suspend a license. §§807.250(2), 809.265 and 809.280(9)

Special Note No. 3: The State issues special licenses to persons 14 to 17 years old for the purpose of attending educational institutions. The State can issue such licenses notwithstanding a DWI conviction and the mandatory licensing sanctions provided for such an offense if vehicle transportation is needed by the minor to attend such institutions. §§807.230, 809.420 and 813.400

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

Other: **Impoundment Following Arrest:** If there is probable cause of a drunk driving offense 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 valid driving privileges, (2) submits proof of financial responsibility, and (3) pays any fees associated with the impoundment. §809.720

Miscellaneous Sanctions: **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 mandatory 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) and 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)

CDL privilege is suspended for life (mand). A CMV operator must be placed "out-of-service" for 24 hours (1) if the person has any amount of alcohol in the blood or (2) has consumed alcohol or other intoxicating beverage within 4 hours of operating a CMV. §§813.050, 813.120, 813.130, 813.403, 813.404 and 813.410

Incarceration and Medical Costs: A city or county may seek reimbursement from an offender for the costs of medical care and incarceration. §§169.150 and 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 and Work Zone: If the offense occurred in either a school or work zone, there is a **minimum mandatory** fine which is equal to (1) **20 percent** of the maximum fine for a misdemeanor offense and (2) **2 percent** of the maximum fine for a felony offense. §§811.230 and 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 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), as have several other subsequent cases. *State v. Forrest,* 25 P.3d 392 (Or. App. 2001) and *State v. Rutherford,* 981 P.2d 386 (Or. App. 1999). Further, the *Lawrence* opinion was soundly criticized by the Oregon Supreme Court in *State v. Prickett,* 930 P.2d 221 (Or. 1997).

Other Criminal Actions Related to DWI:
Homicide by Vehicle:
State Has Such a Law: **No**[1015]

[1014] Even though this State does not have a vehicle homicide statute, it nevertheless provides for mandatory license revocation for 8 years 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 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 revocation (10 years mand) after release on parole or post-prison supervision). §809.235(1) and (2). Special Note: Sec. 807.240 on hardship occupational licenses applies only to persons who have had their

Sanctions:

Criminal Sanction:

Other Criminal Actions Related to DWI:

Imprisonment (Term):
Mandatory Minimum Term:
Fine ($ Range):
Mandatory Minimum Fine:
Administrative Licensing Action:
Licensing Authorized and
Type of Action:
Other:
Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense: See Footnote Nos. [1016], [1017] and [1018].
Sanction:
Criminal:
Imprisonment (Term): **Class A Misdemeanor –** Not more than **1 year** §§811.182(4)(k) and 161.615(1)
Mandatory Minimum Term of Imprisonment: **None**
Fine ($ Range): Not more than **$5,000** §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) and 137.309

Mandatory Minimum Fine: First offense – $**1,000**; second or subsequent offense – $**2,000.** §811.182(5)
Administrative Licensing Actions:
Type of Licensing Action (Susp/Rev): **None**
Length of Term of License Withdrawal Action:
Mandatory Term of License Withdrawal Action:
Other: **School and Work Zones:** If the offense occurred in either a school or work zone, there is a **minimum mandatory**

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licenses suspended not revoked. See especially §807.240(1).

[1015] It is a Class B felony (imprisonment for not more than 10 years and 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) and 811.182(3).

[1016] 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 mandatory suspensions of 90 days for a first violation and 3 years for a subsequent violation (within 10 years). However, if the CMV operator was either transporting hazardous materials or operating a vehicle designed to carry 16 or more persons, the mandatory suspension periods for a violation of an out-of-service order are 1 year for a first violation and 5 years for a subsequent violation (within 10 years) (regardless of the type of load or vehicle involved in the first violation). §§809.410(31),(32), (33) and (34), 813.050 and 813.052.

[1017] 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 years old who operate a motor vehicle after administrative suspension for driving with any alcohol in their blood). §811.182(4)(c).

fine which is equal (1) to **20 percent** of the maximum fine for a misdemeanor offense and (2) **2 percent** of the maximum fine for felony offense. §§811.230 and 811.235.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No): **Yes** §809.600 et seq.

Grounds for Being Declared an Habitual Offender: (1) Three serious traffic offenses (within 5 years) or (2) A combination of 20 minor and serious traffic offenses (within 5 years)

Term of License Rev While Under Habitual Offender Status: **5 years** Note: One-year probationary and renewable permit is available if certain conditions are met. §§807.270 and 809.650

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status **Class C felony** §811.182

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

Imprisonment (Term): Not more than **5 years** §161.605

Mandatory Minimum Term of Imprisonment: **None**

Fine ($ Range): 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) and 137.309

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): **Yes** §146.113

BAC Chemical Test Is Given to the the Following Persons:

Driver: **Yes** If over 13 years of age and within 5 hours of accident §146.113

Vehicle Passengers: **Yes** If over 13 years of age and within 5 hours of accident §146.113

Pedestrian: **Yes** If over 13 years of age and within 5 hours of accident §146.113

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§471.410 and 471.430

Minimum Age (Years) Possession: **21** Exception 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 and 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**[1019] §§471.565(2) and471.567 In order to be liable, it must be shown that the licensee provided alcoholic beverages either (1) to a "visibly intoxicated" patron[1020] 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**[1021]
Dram Shop Actions-Social Hosts:	**Yes** §§471.565(2) and 471.567. In order to be liable, it must be shown that the social host provided alcoholic beverages either (1) to a "visibly intoxicated" guest (adult or minor) or (2) to a minor guest where it can be demonstrated that a reasonable person would have requested identification.
Other:	A patron or guest who voluntarily consumes alcoholic beverages cannot bring a cause of action for injuries resulting from 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 served alcoholic beverages. This exemption does not apply to injuries or damages resulting from "negligent or intentional acts". §471.565(1). A licensee can also be held liable for the injuries of an intoxicated patron suffering a 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) (review denied 987 P.2d 510 (Or. 1999)). Note: This law indirectly abrogated the holding

[1018] 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 he was riding in was operated by an intoxicated minor. The minor passenger assisted in the purchase of alcoholic beverages which caused the driver's intoxication, and therefore, could not recover damages from the licensee where such beverages were purchased. *Smith v. Harms,* 865 P.2d 486 (Or. .App. 1993)

[1019] In addition, the injured party third party plaintiff must also prove that he/she did not "substantially contribute" to the intoxication of the injury-causing patron or guest by either (1) providing alcoholic beverages to him/her, (2) encouraging him/her to consume or purchase such beverages, or (3) facilitating the consumption of these beverages by him/her in "any manner." §471.565(2)(b).

[1020] 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).

	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:	**Class A Misdemeanor**[1022] §471.410(1) and (4)
Term of Imprisonment:	Not more than **1 year** §161.615
Fine ($ Range):	Not more than **$5,000** §§161.635 and 161.655 There is also a Unitary Assessment of $65 and a County Assessment of between $5 and $59. §§137.290(1)(b) and 137.309
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Canceled/Suspended** §§471.315(licenses) and 471.385 (server permits)
Length of Term of License Withdrawal:	The length of any cancellation/suspension is not specified in the statute.[1023]
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Class A Misdemeanor** §471.410(2) and (4)
Term of Imprisonment:	Not more than **1 year**[1024] §161.615
Fine ($ Range):	Not more than **$5,000** §§161.635 and 161.655 There is also a Unitary Assessment of $65 and a County Assessment of between $5 and $59. §§137.290(1)(b) and 137.309
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes. Server Permit Canceled/Suspended**[1025] §§471.315

[1021] It is a Class A Misdemeanor for a licensee to knowingly allow a patron to consume or to continue to consume alcoholic beverages if visibly intoxicated. §§161.555(3), 471.412 and 471.990. However, for the first 3 violations within 2 years, the only sanction is a letter of reprimand. §471.412(4)

[1022] A licensee who is subject to a suspension ≤30 days may also have an administrative monetary penalty imposed 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.

[1023] The following mandatory sanctions to persons who sell or serve alcoholic beverages to minors: first offense – a $350 fine; second offense – a $1,000 fine; and, third or subsequent offense – a jail sentence of 30 days and a fine of $1,000. Note: These mandatory sanctions do not apply to licensees. §471.410(4), (5) and (6)

[1024] I. In lieu of 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 cancelled/suspended 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

	(licenses) and 471.385
Length of Term of License Withdrawal:	The length of any cancellation/suspension is not specified in the statute
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes – Driver and Passengers** §811.170(1)(b) and (c)
Anti-Consumption Law (Yes/No):	**Yes – Driver and Passengers** §811.170(1)(a) Excludes passengers riding in a vehicle used to carry persons for hire.

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/altered 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.

STATE	**PENNSYLVANIA**
General Reference:	Pennsylvania Consolidated Statutes Annotated
Basis for a DWI Charge:	
Standard DWI Offense:	Driving After Imbibing Alcohol or Utilizing Drugs-General impairment: Imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving. **75 Pa.** § 3802(a)(1).
	Illegal Per Se Law (BAC): ≥.08[1026] **75 Pa. §** 3802(a)(2**); High rate of alcohol-> .01< .16** § 3802(b**); Highest rate of alcohol > .16** § 3802(c); Persons Under 21 Years Old. **≥.02**[1027] § 3802(e); Commercial vehicles – ≥.**04;** (≥**.02** for school buses. § 3802(f);
Type of Drugs/Drugs and Alcohol:	(1) Any amount of a **Controlled Substance**[*] or its **metabolite** (2) Under the **influence of a drug** or drugs;(3) or **alcohol and a drug** or combination of drugs; (4)or of a **solvent or noxious substance**. 75 Pa. § 3802(d)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** 75 §1547(k)
Implied Consent Law:	
Arrest Required (Yes/No):	**No**
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** 75 §1547(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) 75 §1547(e)
Other Information:	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) and *Com. v. Eisenhart,* 611 A.2d 681 (Pa. 1992)[1028and1029]

[1025] Standard: "Percent by weight" of alcohol in the blood. { 75 §3802} "Percent by weight" 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)

[1026] Only "reasonable grounds," not an actual arrest, is all that is needed. *Com. v. Urbanski,* 627 A.2d 789 (Pa. Super. 1993)(appeal denied 634 A.2d 221 (Pa. 1993)

[1027] **Special Note:** Under 75 §1547(a)(2), a person implicitly consents to a chemical test if he/she was 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 does 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)

[1028] The results of a chemical test (obtained via a warrantless search) showing an alcohol concentration are admissible into evidence at a DWI trial, 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. 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)

Exception to two-hour rule. – where alcohol or controlled substance concentration in an individual's blood or breath is an element of the offense, evidence of such alcohol or controlled substance concentration more than two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle is sufficient to establish that element of the offense under the following circumstances:

***"Controlled substance."** Any substance so defined or classified under:
(1) The act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act.
(2) of the Controlled Substance Act (Public Law 91-513,).
(3) Schedules I through V of 21 CFR Part 1308.
(4) Any revisions to paragraphs (2) or (3) which are published by the Department of Transportation as notices in the Pennsylvania Bulletin.

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

Blood:	**Yes** 75 §1547
Urine:	**Yes** 75 §1547
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**Yes Limited** The original DWI charge cannot be reduced at a preliminary hearing or arraignment.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol or drug screening is required. 75 § 3814 (1). Full assessment for alcohol and drug addiction if any of the following subparagraphs apply: second or subsequent DUI violation: the evaluation under paragraph (1) indicates there is a need for counseling or treatment: or the defendant's blood alcohol content at the time of the offense was at least .16 percent. 3814 (2).

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**

(1) where the Commonwealth shows good cause explaining why the chemical test could not be performed within two hours; and (2) where the Commonwealth establishes that the individual did not imbibe any alcohol or utilize a controlled substance between the time the individual was arrested and the time the sample was obtained. § 3802 (g)

Sanctions for Refusal to Submit to a Chemical Test:
(con't)

Administrative Licensing Action (Susp/Rev): **Suspension 12 months** (Mand) An occupational or probationary license is not available. 75 §§1547(b)(1), 1553(d)(7) and 1554(f)(9)

Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions- Three classes of impaired driving:

First offense – probation not to exceed six months, a fine of $300, attendance at highway safety school, and compliance with all drug and alcohol treatment requirements.
§ 3804(a)(1)

Second offense – imprisonment for at least five days nor more than six months, a fine at least $300 nor more than $2,500, attendance at highway safety school, and compliance with all drug and alcohol treatment requirements. § 3804(a)(2)

third or subsequent offenses – imprisonment for at least 10 days nor more than two years, fine of at least $500 nor more than $5,000, and compliance with all drug and alcohol treatment requirements. § 3804(a)(3)

(b)High rate of blood alcohol; minors; commercial vehicles and school buses and school vehicles; accidents

Except as set forth in subsection (c) immediately below, DUI violations where there was an accident resulting in bodily injury, serious bodily injury or death of any person, or damage to a vehicle or other property, or where the violator has a **BAC of .16**, or {**.02 BAC if a minor}**, or {**.04 BAC if CMV driver}** or **(.02 if school bus driver**), shall be sentenced as follows:

First offense -imprisonment of not less than 48 consecutive hours nor more than six months, a fine of not less than $500 nor more than $5,000, attendance at an alcohol highway safety school, and compliance with all drug and alcohol treatment requirements.

Second offense – imprisonment of not less than 30 days nor more than six months, a fine of not less than $750 nor more than $5,000, attendance at an alcohol highway safety school, and compliance with all drug and alcohol treatment requirements.

Third offense – imprisonment of not less than 90 days nor more than five years, a fine of not less than $1,500 nor more than $10,000, and compliance with all drug and alcohol treatment requirements.

Fourth or subsequent offenses – imprisonment of not less than one year nor more than five years, a fine of not less than $1,500 nor more than $10,000, and

compliance with all drug and alcohol treatment requirements.

c) Incapacity; highest blood alcohol; controlled substances.--Refused testing of blood or breath, BAC .16 or higher, presence of any controlled substances:

First offense – imprisonment of not less than 72 consecutive hours nor more than six months; a fine of not less than $1,000 nor more than $5,000, attendance at an alcohol highway safety school, and compliance with all drug and alcohol treatment requirements.

Second offense – imprisonment of not less than 90 days nor more than five years, a fine of not less than $1,500, attendance at an alcohol highway safety school, and compliance with all drug and alcohol treatment requirements.

Third or subsequent offense – imprisonment of not less than one year nor more than five years, a fine of not less than $2,500, and compliance with all drug and alcohol treatment requirements.

75 Pa. C.S.A. § 3804. Penalties

(d) Extended supervision of court --

If after the initial drug and alcohol assessment, a violator is determined to be in need of additional treatment, the judge shall impose a minimum sentence as provided by law and a maximum sentence equal to the statutorily available maximum. A sentence to the statutorily available maximum imposed pursuant to this subsection may, in the discretion of the sentencing court, be ordered to be served in a county prison.

Additional conditions – In addition to any other penalty imposed under law, the court may sentence a person who violates to any other requirement or condition consistent with the treatment needs of the person, the restoration of the victim to pre-offense status or the protection of the public. 75 § 3804(j)

Other Penalties: Mandatory $100 cost ($200 if BAC > .16) for Substance Abuse Education and Demand Reduction Fund. § 7508.1 (b).

Persons convicted three times of DUI within five-year period may not transfer or purchase firearms.

Accelerated Rehabilitation Disposition (ARD): A first-time DWI offender may be placed in ARD. Acceptance into and satisfactory completion program may lead to dismissal of the DWI charge. 2). Acceptance is determined by judge after hearing relevant facts of prosecutor, defendant and any victims. Judge also announces terms of ARD. Defendants are not eligible for ARD if any of the following is true:

Sanctions Following a Conviction for a DWI Offense:

(i)The defendant has been found guilty of DUI or accepted Accelerated Rehabilitative Disposition of a charge brought within 10 years of the date of the current offense.
(ii) An accident occurred in connection with the events surrounding the current offense and an individual other than the defendant was killed or suffered serious bodily injury as a result of the accident.
(iii) There was a passenger under 14 years of age in the motor vehicle the defendant was operating
The following conditions must be imposed on ARD defendants: costs for alcohol evaluation, education, treatment, or any other costs of ARD{including a full assessment for alcohol and drug addiction if initial evaluation indicates the likelihood that defendant is addicted to alcohol or other drugs, or defendant's BAC was at least .16 percent{ § 3807 (b) (2)}restitution but no license suspension if defendant's BAC was < .10; for 30 days if the defendant's blood alcohol concentration at the time of testing was at least .10 percent but less than .16 percent; and for 60 days if:
(i) the defendant's blood alcohol concentration at the time of testing was .16 percent or higher;
(ii) the defendant's blood alcohol concentration is not known; or
(iii) an accident which resulted in bodily injury or in damage to a vehicle or other property occurred in connection with events surrounding the current offense.
Restitution is paid by defendant to victim. 18 §1106 {Restitution is required under ARD. 75 § 3807. If the defendant is found by the judge to have violated ARD terms, the ARD program will be terminated and the prosecutor may proceed with the DWI charge(s.)
The current **Crime Victims Act** (18 §11.101 et seq.) now specifically includes victims of DWI in the definition of a crime. 18§11.103.
Important: ARD applies only to a first offense and acceptance of ARD is considered a first conviction for purposes of computing any subsequent violations. 75 Pa. C.S.A. § 3807
Other Penalties: mandatory $100 cost ($200 if > .16) for Substance Abuse Education and Demand Reduction Fund. § 7508.1 (b).
In addition to other penalties, the sentencing judge may impose up to 150 hours of community service.§ 3804 (f)

Laboratory Costs: A defendant may be required to pay a laboratory user fee that includes the costs associated with (1) laboratory services for BAC testing and (2) any court appearances by laboratory technicians. 42 §1725.3
Persons convicted three times of DUI within five-year period may not transfer or purchase firearms.

Ignition Interlock: All vehicles owned by offenders may for a first offense and must for a subsequent one be equipped with ignition interlock devices for at least 1 year following license reinstatement. 42 §7002 {"Ignition interlock system" defined as a system approved by the department which prevents a vehicle from being started or operated unless the operator first provides a breath sample indicating that the operator has an alcohol level less than .025 percent. (§ 3801. Definitions)}
Special Note: The DWI law would appear to mandate minimum imprisonment sentences for second and subsequent offenders. Prior to the enactment of these alternatives, the Pennsylvania Supreme Court 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 mandatory year (3 years if transporting hazardous materials) if that person is convicted of driving a CMV (1) with a BAC ≥.04 (amount of alcohol in the blood, or (2) while under the influence of alcohol or a controlled substance. For either (1) a subsequent conviction or (2) a combination of two or more convictions of any of the above listed items, the "disqualification" is for life (10 years mand). Title 75 §3802(f) makes it illegal to operate a CMV with a BAC ≥.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 year if, while operating a CMV, that person refuses 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 he/she has any amount of alcohol in the 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. School bus operators are assessed a $250 minimum fine. 75 §§1603, 1611, 1612, 1613

Administrative Licensing Actions

Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	**None**
Post DWI Conviction Licensing Action:	See Habitual Traffic Offender Law.
Type of Licensing Action (Susp/Rev):	**Suspension** 75 §§1532(b)(3) and 3731(e)(6)(ii)
Term of License Withdrawal	

(Days, Months, Years, etc.): **12 months**[1030] (first offenders in ARD program- no license suspension if defendant's BAC was < .10 75 Pa. C.S.A. §3804 (e) (2)

Persons Under 18 Years Old:[1031] For person under 18 years old, 6 months license suspension provided the offender is placed under "home supervision via a "consent decree". 42 §6340 and 75 §1532(b)(3)

Mandatory Minimum Term of Withdrawal: 12 months for first offenders; if accepted into ARD program, no suspension is possible.

Other:
Rehabilitation:
Alcohol Education: **Yes**[1032 and 1033]
Alcohol Treatment: **Yes**
Vehicle Impoundment/Confiscation:
Authorized by Specific Authority: **Yes (Discretionary).** A vehicle used in a DWI offense is subject to forfeiture under the "common law". *Commonwealth v. Crosby,* 568 A.2d 233 (Pa. Super. 1990) See 75§3742.1 (DWI accidents w/ injury).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law: **Yes**[1034] 18 §§1101, 1103, and 1104 and 75 §§3732 and 3735.
Sanctions:
Criminal Sanction:
Imprisonment (Term): Felony third degree (non-alcohol related death 75 §3732) – Not more than **7 years** (5 years will be added if the accident is in a work zone. 75§3732(B)(1)). 18 §1104(1); felony second degree (alcohol related death 75 §3735) – Not more than **10 years.** 18 §1103(2)
Mandatory Minimum Term: Felony third degree (non-alcohol related death) – **None**; Felony second degree (Alcohol related death) – **3 years.** 75 §3735(a) and (b) and 42 §9721(a.1)

[1029] If a second or subsequent offender does not apply for "ignition interlock" usage, that person is not eligible for license reinstatement for an additional 1-year period (i.e., the total suspension is 2 years.) 42 §7003(5).

[1030] If a court orders a person to attend a treatment program, the person must successfully complete such a program before his/her license can be restored. 75 §1541(d). A person will not be eligible for driving privileges even after the suspension period has expired until he/she completes the treatment program. Second and subsequent offenders are required to attend a treatment program via court order. 75 §1548(b) and (d).

[1031] **Junior Drivers:** Under separate provisions of law, a "junior driver" (a licensee 16 or 17 years old) is subject to a suspension of driving privileges until 18 years old or for a period not to exceed 90 days if convicted of **any** violation of Title 75. This licensing action is in addition to any other licensing action. 75 §1503(c)(3)

[1032] 1) Every convicted person must take and pass an approved alcohol highway safety class. 2) The 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 years. 3) If a convicted person is found to be a "chronic" abuser who represents a "demonstrated and serious" threat, he/she may be ordered (committed) into treatment at a DOH approved facility. 75 §1548

[1033] 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) and *Com. V. Samuels,* 778 A.2d 638 (Pa. 2001). II. A person can also be charged with involuntary manslaughter in situations where he/she has caused a death related to a drunk driving offense. *Com. v. Huckleberry,* 631 A.2d 1329 (Pa. Super. 1993)

Fine ($ Range):	Felony third degree (Non-alcohol Related Death) – Not more than **$15,000** 18 §1101(3); felony second degree (Alcohol related death) – Not more than **$25,000.** 18 §1101(1)
Mandatory Minimum Fine:	**None**
Type of Licensing Action	
Authorized :	Felony third degree (Non-Alcohol Related Death) – **Revocation**; felony second degree (Alcohol Related Death) – **Revocation** 75 §1532(a)(2) and (3)
Length of Term of Licensing Withdrawal:	Felony third degree (Non-Alcohol Related Death) – **1 year**; felony second degree (Alcohol Related Death) – **1 year** 75 §1532(a)(2) and (3)
Mandatory Action--Minimum Length of License Withdrawal:	Felony third degree (Non-Alcohol Related Death) – **1 year**; felony second degree (Alcohol Related Death) – **1 year.** An occupational or probationary license is not available. 75 §§1532(a)(2) and (3), 1553(a)(2) and 1554(f)(11)
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	
Imprisonment (Term):	Summary Offense – Not less than **90 days**[1035and1036] 75 §1543(b)
Mandatory Minimum Term of Imprisonment:	**90 days** 75 §§1543(b) and 42 §9721(A.1)
Fine ($ Range):	**$1,000**[1037] 75 §1543(b)
Mandatory Minimum Fine:	**$1,000** 75 §§1543(b)[1038]
Administrative Licensing Actions:	
Type of Licensing Action	

[1034] These sanctions also apply if a person drives in violation of either a suspension or revocation 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.

[1035] For a subsequent offense, there is a jail term of not more than 6 months and/or a fine of $200 to $1,000. A 6th or subsequent offense mandates a $1000 fine and at least 30 days in prison. 75 §6503.

[1036] For a subsequent offense, there is a jail term of not more than 6 months and/or a fine of $200 to $1,000. 75 §6503

[1037] *Com. v. Hill,* 549 A.2d 583 (Pa. Super. 1988), and *Com. v. Hoover,* 494 A.2d 1131 (Pa. Super. 1985) **CMV Note:** It is a summary offense either (1) to operate a CMV while under a CDL out-of-service order based on driving with alcohol in the body- a fine of $1,000, (2) to operate a CMV during an alcohol related disqualification- a fine of $500 for a first offense and a fine of $500 to $1,500 for a subsequent offense, or (3) to operate a CMV during an alcohol-hazardous materials related disqualification- an imprisonment term of 6 months and/or a fine of $1,000. 75 §1606(c) and (d)

Injury or Death: I. A driver who causes an accident which results in injury to another person while his/her license is either suspended, revoked or canceled commits a second degree misdemeanor and is subject to an imprisonment term of not more than 2 years 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 his/her license is either suspended, revoked or canceled commits a third degree felony and is subject to an imprisonment term of not more than 7 years 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) and (4), 1103(3), 1104(2) and 75 §3742.1.

(Susp/Rev):	**Revocation/Suspension** 75 §1543(c)
Length of Term of License Withdrawal Action:	If based on a suspension, original suspension extended an additional period of **1 year.** If based on a revocation, original revocation extended an additional period of **2 years.** 75 §1543(c)
Mandatory Term of License Withdrawal Action:	Same as above. An occupational or probationary license is not available. 75 §§1553(d)(15) and 1554(f)(12)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes**
Grounds for Being Declared an Habitual Offender:	Three convictions of any one or more of the following violations within a 5-year period: (1) Any violation of Subchapter B of Chapter 37 (relating to serious traffic offenses). (1.1) Any violation of Chapter 38 (relating to driving after imbibing alcohol or utilizing drugs) except for section 3808 (a) (1) and (b) (relating to illegally operating a motor vehicle not equipped with ignition interlock), and 3809 (relating to restriction on alcoholic beverages). (1.2) Any violation of section 1543 (b) (1.1) {relating to driving while operating privilege is suspended or revoked}. (2) Any violation of section 3367 (relating to racing on highways). (3) Any violation of section 3742 (relating to accidents involving death or personal injury). (3.1) Any violation of section 3742.1(relating to accidents involving death or personal injury while not properly licensed). (4) Any violation of section 3743 (relating to accidents involving damage to attended vehicle or property). 75 §1542
Term of License Rev While Under Habitual Offender Status:	**5 years;** for another offense committed within 5 years, an additional revocation period of 2 years. 75 §1542
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Second **Degree Misdemeanor** 75 §6503.1
Status:	
Imprisonment (Term):	Not more than **2 years** 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):

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 Blood or urine samples shall be taken.
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** If >15 years old and died within 4 hours of accident.
Vehicle Passengers:	**Yes** But only if the driver of the vehicle cannot be determined.
Pedestrian:	**Yes** If >15 years old and died within 4 hours of accident. § 3749 (b)

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** 1 §1991, 18 §6308 and 47 §4-493(1)
Minimum Age (Years) Possession:	**21** 18 §6308
Minimum Age (Years) Consumption:	**21** 18 §6308

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** 47 §4-497[1039and1040]
"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), and *Johnson v. Harris,* 615 A.2d 771 (Pa. Super. 1992)[1041]
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.[1042] See also *Klein v. Raysinger,* 470 A.2d 507 (Pa. 1983)[1043,] where the court found no social host liability for the actions of adult guests.[1044and1045]

[1038] 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)

[1039] 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; liability occurred even though the injury-causing minor received the alcoholic beverage from another minor who had purchased such beverages illegally from the licensee.

[1040] Negligence per se standard for a violation of 47, §4-493(1) which prohibits the service of alcoholic beverages to intoxicated patrons.

[1041] *Macleary v. Hines,* 817 F.2d 1081 (third Cir. 1987), and *Orner v. Mallick,* 527 A.2d 521 (Pa. 1987)

[1042] *Bemis v. Gumbeski,* 534 A.2d 1099 (Pa. Super. 1987), and *Sites v. Cloonan,* 477 A.2d 547 (Pa. Super. 1994)

[1043] 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)

[1044] Note: There is contrary case law as to whether a minor, a person under 21 years old, can be held liable as a social host where the injury causing guest is also a minor. *Kapres v. Heller,* 612 A.2d 987 (Pa. Super. 1992) (held against such

Other:	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) (appeal denied 735 A.2d 1269 (Pa. 1999).
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	**Misdemeanor** 47 §§4-493(1) and 4-494(a)
Term of Imprisonment:	**3 months to 1 year**
Fine ($ Range):	Not more than **$5,000**
Type of Criminal Action:	
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 $1,000. Third or sub. offense (within 4 years) – mandatory suspension or revocation 47 §4-471
Length of Term of License Withdrawal:	(1 year for structure unless ownership changes hands, including immediate family) 3 years if revoked; if suspended, indeterminate 47 §4-471
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Misdemeanor**[1046] 47 §§4-493(1) and 4-494(a)
Term of Imprisonment:	**3 months to 1 year**
Fine ($ 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. Third or sub. offense (within 4 years) – mandatory suspension/revocation 47 §4-471
Length of Term License Withdrawal:	**3 years** if revoked (1 year for structure unless ownership changes hands, including immediate family)
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic	

liability), and *Muntz v. Com., Dept. of Transp.,* 630 A.2d 524 (Pa. Cmwlth. 1993) (held in favor of such liability)

[1045] It is a third degree misdemeanor. to "knowingly sell" alcoholic beverages to a minor. 18 §6310.1. There are exceptions regarding private homes and religious activities. The sanctions for this offense are as follows: first offense – jail for not more than 1 year; fine $1,000 (mand); second or sub. offense – jail for not more than 1 year; fine – $2,500 (mand). 18 §§1101(5), 1104(3) and 6310.1(c)

Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):	**Yes** Driver and Passengers § 3809
Anti-Consumption Law[1047] (Yes/No):	**Yes** Driver and Passengers § 3809

[1047] § 3809. Restriction on alcoholic beverages
(a) General rule--Except as set forth in subsection (b), an individual who is an operator or an occupant in a motor vehicle may not be in possession of an open alcoholic beverage container or consume a controlled substance as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or an alcoholic beverage in a motor vehicle while the motor vehicle is located on a highway in this Commonwealth.
(b) Exception--This section does not prohibit possession or consumption by any of the following:
(1) A passenger in the passenger area of a motor vehicle designed, maintained or used primarily for the lawful transportation of persons for compensation. This paragraph includes buses, taxis and limousines. (2) An individual in the living quarters of a house coach or house trailer.

STATE:	**RHODE ISLAND**
General Reference:	General Laws of Rhode Island

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor* §31-27-2(a)
Illegal Per Se Law (BAC):	**≥.08**[1048] and **Any Blood "Presence" of a Scheduled Controlled Substance**[1049] §31-27-2(b)(1) and (2) Persons under 21 years old who have a BAC **≥.02 but <.10**[1050] are considered to have been driving "while impaired" which is not a criminal offense. §§31-27-2.5(d) and (g) and 31-27-2.7
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol"	Under the influence of (1) **Any Drug**, (2) Toluene, (3) any Controlled Substance or (4) Any Combination of These Substances and Intoxicating Liquor §31-27-2(a)
Other:	**DWI Serious Bodily Injury Offense:** Causing a serious bodily injury[1051] to a person while under the influence of any intoxicating liquor, toluene or any controlled substance. §31-27-2.6(a) For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §31-27-2.3
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[1052] §31-27-2.1
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §31-27-2.1
Refusal to Submit to Chemical Test Admitted into Evidence:	Note: There is no statutory or case law on this subject.
Other Information:	**None**

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 mandatory year (3 years if transporting hazardous materials) if that person is convicted of driving a CMV (1) with a BAC ≥.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

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[1047] 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.

[1048] **Comment:** The law does not appear to provide for an exemption for persons who are legally entitled to use a scheduled controlled substance.

[1049] Standard: Blood alcohol concentration based upon "percent by weight." §§31-27-2.5(d) and 31-27-2.7 There are no provisions in these sections that further define 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.

[1050] A "serious bodily injury" 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)

[1051] A request to submit to a chemical test based on "reasonable grounds" of driving while under the influence of intoxicating liquor. §31-27-2.1

alcohol or controlled substances or (3) of a refusal to submit to a chemical test. For a second violation of any of the above listed items, a person's privilege to operate a CMV is "revoked" for life (10 years mand). In addition, a CMV operator who has any alcohol in the system must "cease" to operate a CMV for 24 hours. Note: A CMV operator commits a "regular" DWI offense if that person should operate a CMV with a BAC ≥.04. §§31-10.3-3(9), (11), (13) and (28) and 31-10.3-31

***Legislative Oversight:** Section 31-27-2(d)(1) was amended in 2000 by Public Law Chapters 168 and 264 to provide a sanctioning scheme for first offenders based on blood alcohol concentrations (BACs). However, as a result, legislative oversight may have occurred as the law appears to provide sanctions ONLY for illegal per se violations; i.e., the law may not provide sanctions for a first offense for violating the standard DWI offense, driving while under the influence of intoxication liquor, where a BAC is NOT required.

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

Blood:	**Yes** However, there is an exception on religious grounds. §§31-27-2 and 31-27-2.1
Urine:	**Yes** §§31-27-2 and 31-27-2.1
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol Assessment (Not Mandatory) §31-27-2(d)(7)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	**None**
Other:	Administrative-fine – $**75** §§31-27-2.3(b) and 31-41.1-4(a)
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	First refusal – $**200 to $500** and **10 to 60 hrs of community service**; second refusal (within a 5 year period) – **$300 to $500**; third and subsequent refusal (within a 5 year 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

Sanctions for Refusal to Submit to a Chemical Test:

(Susp/Rev):	First Refusal – **Suspension 3 to 6 months** (3 months mand) (For persons under 18 years old-mandatory

suspension for 6 months §31-27-2.5(a)); second refusal (within 5 year period) – **Suspension 1 to 2 years** (1 year mand); third and subsequent refusal (within 5 year period) – **Suspension 2 to 3 years** (2 years mand). §31-27-2.1

Persons under 18 – A refusal by a person less than 18 years – suspension for a period of 6 months.

Other: First Refusal – Attendance at a DWI class or alcohol/drug treatment program; second refusal (within 5 year period) – Attendance at an alcohol/drug treatment program; third and subsequent refusal (within 5 year period) – Attendance at an alcohol/drug treatment program. **Special Note:** Attendance at these classes or programs is required.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.): A Non-Injury DWI Offense §31-27-2(b)(3): first offense – BAC ≥.08 but <.10-up to one year or 10 to 60 hours of public community restitution; first offense – BAC ≥.10 but <.15 (misdemeanor) – Not more than **1 year**; first offense (BAC ≥.15) (misdemeanor) – Not more than **1 year**; second offense (BAC ≥.08 but < .15 within any time period) or ANY second offense(within 5 years) (misdemeanor) – **10 days to 1 year**; second offense (within 5 years w/ BAC ≥.15) – **6 months to 1 year**; third and subsequent offenses (within 5 years) (felony) – **1 to 3 years**; third and subsequent offenses (within 5 years w/ BAC ≥.15) (felony) – **3 to 5 years.** §31-27-2(d)

DWI serious bodily injury offenses – felony: first offense – 1 **to 10 years**; second and subsequent offense(within 5 years) – **2 to 15 years.** §§11-1-2 and 31-27-2.

Mandatory Minimum Term: ANY first offense – No**ne**; second offense (either w/ BAC ≥.08 but <.10 or any second off within 5 years) – **10 days containing at least 48 consecutive hours**[1053]; second offense (within 5 years w/ BAC ≥.15) – **6 months**;

Third and subsequent offenses (within 5 years) – **1 year containing at least 48 consecutive hours**; third

[1052] 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)

Criminal Offender's Fees: Persons who are convicted of a criminal offense, whether violent or not, must pay the following fees, which fund the victims of violent crimes fund and are used to in part compensate victims of DWI related deaths or injuries: Misdemeanor – either $30 or 15 percent of the fine imposed which ever is the greater amount; felony (where imprisonment is <5 years) – either $90 or 15 percent of the fine imposed which ever is the greater amount; and felony (where imprisonment is ≥5 years) – either $150 or 15 percent of the fine imposed which ever is the greater amount. §12-25-28(a) and (b)

[1053] Awards are limited to $25,000 plus attorney's fees. §12-25-22(b)

	and subsequent offenses (within 5 years w/ BAC ≥.15) (misdemeanor) – **3 years.** §31-27-2(d) DWI serious injury offenses – No**ne**
Fine:	
Amount ($ Range):	A Non-Injury DWI Offense: first offense (BAC ≥.08 but <.10) (Civil Violation) – **$100 to $300**; first offense (BAC ≥.10 but <.15) (misdemeanor) – **$100 to $400**; first offense (BAC ≥.15) (misdemeanor) – **$500**; second offense (BAC ≥.08 but < .10 within any time period) or ANY second offense (within 5 years) or BAC unknown (misdemeanor) – **$400**; second offense (within 5 years w/ BAC ≥.15) – Not less than **$1,000**; third and subsequent offenses (within 5 years) (felony) – **$400**; third and subsequent offenses (within 5 years w/ BAC ≥.15) (felony) – **$1,000 to $5,000.** §31-27-2(d) DWI serious injury offenses: first offense – $**1,000 to $5,000**; second and subsequent offense (within 5 years) – **$3,000 to $10,000.** §31-27-2.6 See Criminal Offender's Fees below.
Mandatory Min. Fine ($):	A Non-Injury DWI Offense : first offense (BAC ≥.08 but <.10) (Civil Violation) – **$100**; first offense (BAC ≥.10 but <.15) (misdemeanor) – **$100**; first offense (BAC ≥.15) (misdemeanor) – **$500**; second offense (BAC ≥.08 but < .10 within any time period) or ANY second offense (within 5 years) (misdemeanor) – **$400**; second offense (within 5 years w/ BAC ≥.15) – not less than **$1,000**; third and subsequent offenses (within 5 years) (felony) – **$400**; third and subsequent offenses (within 5 years w/ BAC ≥.15) (felony) – **$1,000.** §31-27-2(d) DWI serious injury offense – No**ne**
Other Penalties:	
Community Service:	Non-Injury DWI Offense: first offense (BAC ≥.08 but <.10) – **10 (mand) to 60 hours**; first offense (BAC ≥.10 but <.15) – **10 (mand) to 60 hours**; first offense (BAC ≥.15) – **20 (mand) to 60 hours.** §§31-27-2(d)(1) and (i) and 31-27-21.
Restitution (e.g., Victim's Fund)	**Yes** Victim's compensation fund §12-25-17 et seq.[1054and1055] See **Criminal Offender's Fees**.
Other:	**Highway Assessment Fee:** In addition to the above fines, a defendant must pay a highway assessment fee of **$500**.[1056] §31-27-2(d)(5)(i) and an additional fee of $86.

[1053] Note: Citations are to the Criminal Injuries Compensation Act of 1996.

[1054] **School Bus Operator:** A person may have privileges to operate a school bus suspended for up to 5 years if 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)

[1055] A person convicted of driving while under the influence of a "controlled substance" shall have the license revoked

EMS Special Assessment: In addition to any fine, an offender must be assessed **$1**. §31-27-18.
Child Endangerment: An offender who is over 18 years old is subject to an imprisonment term of not more than 1 year if he/she was transporting a passenger under 13 years old at the time of the offense. §31-27-2(d)(4)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law: **None**

A license may be suspended for not more than 1 year if a person has "committed" an offense that requires revocation/suspension (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): **Suspension** for all non-injury DWI offenses. For DWI serious injury offenses – **Revocation** §§31-27-2(d) and 31-27-2.6

Term of License Withdrawal (Days, Months, Years)

Non-Injury DWI Offense: first offense (BAC ≥.08 but <.10) – Not more than 30 to 180 **days**; first offense (BAC ≥.10 but <.15) – **3 to 12 months**; first offense (BAC ≥.15) (misdemeanor) – **3 to 18 months**; second offense (BAC ≥.08 but < .10 within any time period) or ANY second offense (within 5 years) (misdemeanor) – **1 to 2 years**; second offense (within 5 years w/ BAC ≥.15) – **2 years**; third and subsequent offenses (within 5 years) – (felony) **2 to 3 years**; third and subsequent offenses (within 5 years w/ BAC ≥.15) (felony) – **3 years** after incarceration. §31-27-2(d)
Third and subsequent offenders may have their vehicle seize and sold at the discretion of the judge. §31-27-2(d)(3)(iii)
DWI serious injury offenses: first offense – up to **2 years**; second and subsequent offense (within 5 years) – up to **4 years.** §31-27-2.6

Sanctions Following a Conviction for a DWI Offense:

Mandatory Minimum Term of Withdrawal:

Non-Injury DWI Offense: first offense (BAC ≥.08 but <.10) – **None**; first offense (BAC ≥.10 but <.15) – **3 months**; first offense (BAC ≥.15) (misdemeanor) – **3 months**;
Second offense (BAC ≥.08 but < .10 within any time period) or ANY second offense (within 5 years) (misdemeanor) – **1 year**; second offense (within 5 years w/ BAC ≥.15) – **2 years**; third and subsequent

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for 1 year. §31-11-6(2)

offenses (within 5 years) – **2 years**; third and subsequent offenses (within 5 years w/ BAC ≥.15) (misdemeanor) – **3 years** after incarceration. §31-27-2(d) and (i)
DWI serious injury offenses: **None**

Other:
Rehabilitation:
Alcohol Education: A Non-Injury DWI Offense: first offense (BAC ≥.08 but <.10) – A course on driving while intoxicated or under the influence of controlled substances may be required; For ALL other first offenses, this course is REQUIRED §31-27-2(d) See **DWI Course Fees** below.

Alcohol Treatment: Second offense – **Yes** (Required); third offense – **Yes** (Required) §31-27-2(d)

First or subsequent DWI Serious Injury Offenses: A court may order a person to successfully complete an alcohol or drug treatment program. §31-27-2.6(c) and (d)

Vehicle Confiscation:
Authorized by Specific Statutory Authority: **Yes. Forfeiture (Discretionary)** Third or sub. DWI offense (within 5 years) – A person's vehicle may be forfeited (confiscated) by the State. §31-27-2(d)(3)(iii)

Terms Upon Which Vehicle Will Be Released:
Other: **Vehicle Registration Suspension:** A person whose license has been suspended or revoked for any reason may also have the registrations of any vehicles he/she owns suspended. However, such registrations are not suspended if financial responsibility is provided. §31-42-4(b)

Miscellaneous Sanctions Not Included Elsewhere: **DWI Course Fees:** A first offender must pay the following fees that are associated with attending an alcohol/drug education course: a reasonable tuition of not less than $25 and a fee of $175. §31-27-2(j)
Ignition Interlock: ANY second offender may be required to operate motor vehicles equipped with "ignition interlock" devices from one to two years. ANY third or subsequent offender may be required to use these devices for 2 years. These requirements begin following the completion of any incarceration period. §§31-27-2(d)(2) and (3) and 31-27-2.8
Shock Incarceration: Eighteen (18) to 28-year- old non-violent offenders who have never been incarcerated following a conviction are eligible to participate in a "shock incarceration" program. "The program shall include extensive physical regimentation, drug and alcohol abuse counseling, behavioral counseling and mandatory education

courses and community services." §12-19-2.2
Comment**:** This program does not appear to interfere with the mandatory jail sanctions that must be imposed on second and subsequent drunk driving offenders.
§12-19-23.2

Miscellaneous Sanctions Not Included Elsewhere:

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: first offense – a highway assessment fine of not more than $500, 10 to 60 hours of "public community restitution" (i.e., community service) and a 6 to 18-month license suspension (6 months mand); second and subsequent offense – confinement in a training school for not more than one year, a fine of not more than $500 and license suspension until the person is 21 (mand).
§31-27-2(d)(6)
Persons Under 21 Years Old with a BAC ≥.02 but <.10: There are two separate provisions of law providing sanctions against young persons who drive while impaired who drive with a BAC ≥.02 but <.10 but are **not** criminal offenses. §§31-27-2.5 and 31-27-2.7
I. For persons under 18 years old who have been found to have been driving while impaired (BAC ≥.02 but <.10), the following sanctions apply: for first and subsequentoffenses, 10-60 hours public community restitution" (i.e., community service) (§31-27-2.5(d)(1)), mandatory attendance at an alcohol or drug education or treatment program, the following licensing sanctions: first violation-6 to 18 month suspension (6 months mand) and a fine of no more than 500. Second or subsequent violation– suspension until the person is 21 years old (appears mand) and may be sentenced to the Rhode Island training school for a period of not more than 1 year and/or fine of not more than$500; third and subsequent violations – suspension until the person is 21 years old plus an additional 2-year suspension (appears mand).
§§31-27-2.5(d)(2), (3) and (4) and 31-27-21
II. **For persons under 21 but ≥18 years old** who have been found to have been driving while impaired (BAC ≥.02 but <.10), the following sanctions apply: first violation: a fine of not more than $250 and 30 hours of "public community restitution"; and, license suspension – 1- 3 months (1 month mand). § 31-27-2.7(1)and (2)
Second violation: 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 months (3 months mand). § 31-27-2.7(3)
Third and subsequent violations: driving license suspended for an additional 2 years.
§ 31-27-2.5 (d) (4)
For both first and subsequent violations, a person may be ordered by the court to participate in either and alcohol education or treatment program. §§31-27-2.7 and 31-27-21

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law: **Yes**

Criminal Sanction:

Imprisonment (Term): I. Death related DWI offenses – felony – first offense – **5 to 15 years**;

Second and subsequent offenses (within 5 years) – **10 to 20 years.** §§31-27-2.2 and 11-1-2
II. Non-DWI related driving causing death -felony – Not more than **10 years.** §§31-27-1 and 11-1-2

Mandatory Minimum Term: **None**

Fine ($ Range): I. Death related DWI offenses, first offense – $**5,000 to $10,000**; second and subsequent offense (within 5 years) – $**10,000 to $20,000.**
II. Non-DWI related deaths – **None**

Mandatory Minimum Fine: **None**

Administrative Licensing Action

Other Criminal Actions Related to DWI:

Licensing Authorized and Type of Action: I. Death-related DWI offenses, first offense – **Revocation**; second and subsequent (within 5 years) – **Revocation.**
II. Non-DWI related driving causing death- **Revocation** §31-11-6

Length of Term of Licensing Withdrawal: I. Death related DWI offenses, first and subsequent offenses (within 5 years) – **5 years**
II. Non-DWI related driving causing death-**3 years**

Mandatory Action--Minimum Length of License Withdrawal: I. Death related DWI offenses, first and subsequent offenses (within 5 years) – **5 years**
II. Non-DWI related driving causing death-**3 years**

Other: First or subsequent offenses: A court may order a person to complete an alcohol or drug treatment program. §31-27-2.2(b)(1) and (2)

Driving While License Suspended or Revoked Where the Basis Was

a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term): Where suspension or revocation is due to a DWI conviction, a refusal to submit to chemical test, reckless driving, motor vehicle manslaughter or 3 moving violations in one year:[1057] first offense (misdemeanor) – **10 days to 1 year**;

Imprisonment (Term): Second offense (within 5 years) (misdemeanor) – **6 months to 1 year**; third and subsequent offenses (within 5 years) (felony) – **1 to 5 years.** §§31-11-18.1, 31-27-13 and 31-27-14

Mandatory Minimum Term First offense – **10 days**; second offense (within 5 years) – **6 months**; third and subsequent offenses (within 5 years) – **1 year.** §31-11-18.1(d)

Fine ($ Range): First offense – $**500**; second offense (within 5 years) – **$500**;

Third and subsequent offenses (within 5 years) – **not more than $5,000.** §31-11-18.1, 31-27-13 and 31-27-14

Mandatory Minimum Fine: First offense – $**500**; second offense (within 5 years) – **$500**; third and subsequent offenses (within 5 years) – **$1,000.** §31-11-18.1(d)

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): **Suspension/Revocation** §31-11-18.1 See **Vehicle Impoundment/Confiscation**

Length of Term of License Withdrawal Action: For Driving While Suspended: first and second offense – An additional suspension period as the licensing agency **"deems proper"**; sub. offense – Revocation for an additional period of **1 year.** For Driving While Revoked: first and subsequent offense – Revocation for an additional period of **1 year.** §31-11-18.1

Mandatory Term of License

[1056] See §31-11-18 for sanctions related to driving after either suspension or revocation for other traffic law violations.

Special Note: I. The above 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 hours when required to do so commits a misdemeanor and is subject to a fine of $150 and CDL revocation for 3 months. §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: first violation-disqualification for 90 days (mand); second violation (within 10 years) – disqualification for 1 year (mand); and, third or subsequent violation (within 10 years) – disqualification for 3 years (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 subject to the following CDL disqualifications: first violation-disqualification for 180 days (mand);and, second or subsequent violation (within 10 years) – disqualification for 2 years (mand). In addition to the above disqualifications, the violator is subject to a "penalty" of $1,000. §31-10.3-31(i)

Withdrawal Action:	For Driving While Suspended: first offense – an additional period of **3 months**; second offense – an additional period of **6 months**; sub. offense – an additional period of **1 year.** For Driving While Revoked: first and subsequent offense – an additional period of **1 year.** §31-11-18.1
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §31-40-1 et seq.
Grounds for Being Declared an Habitual Offender:	Three or more convictions within 3 years for any of the following: 1) Motor vehicle manslaughter; 2) DWI (alcohol or drugs); 3) Driving while license suspended or revoked; 4) Willfully operating a motor vehicle without a license; 5) any felony offense using a motor vehicle; 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 equaled $150 or more; or 8) a combination of six traffic offenses where any one conviction could result in license suspension or revocation for 30 days or more. §31-40-2
Term of License Revocation While Under Habitual Offender Status:	**1 – 5 years** §31-40-7
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Felony** §11-1-2
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **5 years** §31-40-8
Mandatory Minimum Term of Imprisonment:	The **5-year** sentence may not be suspended except in cases where the defendant operated a vehicle in order to save life or limb. §31-40-8
Fine ($ Range):	**None**
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the Following Persons:	
Driver:	
Vehicle Passengers:	

Pedestrian:

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §§3-8-1, 3-8-5 and 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.[1058]
"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)[1059] and *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:	First offense – **Petty Misdemeanor**; second offense – **Petty Misdemeanor**; third and subsequent offenses – **Misdemeanor.** §§ 3-8-1, 3-8-5 and 11-1-2
Term of Imprisonment:	First offense – **3 months**; second offense – **6 months**; third and subsequent offenses – Not more than **1 year.**
Fine ($ Range):	First offense – Not more than **$200**; second offense – Not more than **$500**; third and subsequent offenses – Not more than **$750.**

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension/Revocation** §3-5-23
Length of Term of License Withdrawal:	**Suspension** – Length is not specified. §3-5-23; **Revocation – 5 years** (under §3-5-23)[1060]

Criminal Actions Against Owners or

[1057] Rhode Island's Dram Shop Law is similar to the Model Alcoholic Beverage Retail Licensee Liability Act of 1985.
[1058] The court held that there was no duty of care in a typical social host 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 caused by an intoxicated guest.
[1059] If the revocation is under §3-5-22, the length would be 1 year.

Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Violations**[1061] §§3-8-5 and 11-1-2
Term of Imprisonment:	**None**
Fine ($ Range):	First offense – $**250**; second offense – $**500**; third and subsequent offenses – $**750.** If no offense in three successive years, next offense shall be treated as a first 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):	**Yes Suspension/Revocation** §3-5-23
Length of Term License Withdrawal:	**Suspension –** Length is not specified. §3-5-23; Revocation – **5 years** (under §3-5-23)[1062]
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):	**Yes**[1063] §31-22-21.1
Anti-Consumption Law (Yes/No):	**No**

[1060] 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: first offense (petty misdemeanor) – imprisonment for not more than 3 months; a fine of not more than $200; second offense (petty misdemeanor) – imprisonment for not more than 6 months; a fine of not more than $300; third and subsequent offenses. (misdemeanor) – imprisonment for not more than 1 year; a fine of not more than $500. §§3-11-5 and 11-1-2.

[1061] If the revocation is under §3-5-22, the length would be 1 year.

[1062] 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; however, neither an operator nor a passenger under 21 years old shall possess an unsealed container of an alcoholic beverage in rented limousines or buses.

STATE:	**SOUTH CAROLINA**
General Reference:	Code of Laws of South Carolina Annotated
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of alcohol[1064]-- to the extent materially and appreciably impaired. §56-5-2930(1)
Illegal Per Se Law (BAC):	**≥.08**[1065and1066] -Driving With An Unlawful Alcohol Concentration -but defendant entitled to jury instruction: "totality of the evidence produced at trial may be used by the jury to determine guilt or innocence". §56-5-2933 {>.**02** under 21. §56-1-286}
Presumption (BAC):	**≥.08**[1067] ("inferred" instead of presumed) §56-5-2950(b)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug, (2) Any Combination of Drugs or Substances or (3) A Combination of Alcohol and Other Drugs or Substances §56-5-2930(2) and (3)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§56-5-2950(a) and 56-1-286(C)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §56-5-2950(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *State v. Miller,* 185 S.E.2d 359 (S.C. 1971) and *City of Columbia v. Ervin,* 500 S.E.2d 483 (S.C. 1998)[1068]
Other Information:	Violator must have his conduct at the incident site and the breath test site videotaped. §56-5-2953. (A) – if law enforcement vehicle is equipped with a videotaping device, and if breath test site is equipped with a videotaping device. §56-5-2953. (G) A person **must** submit to a chemical test if arrested or if there is probable cause that such person violated §56-5-2945{which makes it illegal to cause great bodily injury or death while in violation of the drunk driving law.[1069]} §56-5-2946

[1063] "Alcohol" is defined as any substance containing any form of alcohol (e.g., ethanol, methanol, propanol, and isopropanol). §56-1-10(17)

[1064] "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(18)

[1065] This State's illegal per se law also makes it an offense to operate a motor vehicle with an "alcohol concentration" of ≥.08 for other "bodily fluids" as determined by the South Carolina Law Enforcement Division. §§56-1-10(18) and 56-5-2933

[1066] ≥.08 if §1 of Art. VIII-A of the State's Constitution is amended with respect to the sale of certain alcoholic beverages. Act 97 of 1999

[1067] 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.

[1068] *State v. Mullins,* 489 S.E.2d 923 (S.C. 1997) abrogated by §§56-5-2946 (enacted in 1998) and 56-5-2950 (as

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

Blood:	**Yes**[1070] A breath sample test must be offered first. §56-5-2950(a)
Urine:	**Yes** 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**[1071]

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):	First refusal – **90 day suspension**; subsequent refusal[1072] (within 10 years) – **180 days.** §56-5-2951(A) {But a person may still be issued restricted driving privileges for either employment or college education purposes. §56-5-2951} Persons Under 21 Years Old (.02 violation): first refusal – **6 months mandatory suspension**; sub refusal (within 5 years) – **1 year mandatory suspension.** §56-5-286(B), (C) and (F) No suspension imposed is counted as a demerit or results in any insurance penalty for automobile insurance purposes if the person under 21 whose license is suspended had an alcohol concentration less than eight one-hundredths of one percent. §56-1-286(V)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

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amended in 1998).

[1069] Additional testing is not authorized if the driver has registered an alcohol concentration ≥.08. §56-5-2950(a).

[1070] However, an alcohol assessment is needed for license reinstatement. §56-5-2990)

[1071] This licensing sanction also applies if there has been a prior admin per se violation (for person under 21 years old, (including licensing action for a .02 violation)) or prior drunk driving offense within the period of time indicated. §§56-1-286(F) and 56-5-2951(K)(2)

Term (Day, Month, Years, Etc.):	
First offense (misdemeanor) – **None –**	$ 400 mandatory fine §56-5-2940(1); second offense within 10 years – (Class C Misdemeanor) – **Five days to 1 year or** public service employment for at least 30 days; third offense within 10 years – (Class A Misdemeanor) – **60 days to 3 years**; fourth and subsequent offense within 10 years – (Class F felony) – **1 to 5 years.** §§16-1-10, 16-1-20, 16-1-90(F), 16-1-100(A) and (C) and 56-5-2940 DWI where there is great bodily injury – **Class B felony, 30 days to 10 years** §§16-1-10(B) and 56-5-2945
Mandatory Minimum Term:	First offense – **none**; second offense – **48 hours**[1073]; third offense – **60 days**; fourth and subsequent offenses – 1 year**.** DWI where there is great bodily injury-**30 days**
Fine:	
Amount ($ Range):	First offense – $**400 {mandatory}**; second offense – $**2,000 to $5,000** {not to be suspended to less than $1000}; third offense – $**3,800 to $6,000**; fourth offense – No**ne.** DWI where there is great bodily injury – $**5,000 to $10,000**
Mandatory Min. Fine ($):	First offense – $**400**; second offense – $**1,000**; third offense – $**3,500**; fourth offense – **None.** DWI where is great bodily injury – $**5,000** §§56-5-2940 and 56-5-2945
Other Penalties:	
Community Service:	Non-Injury DWI Offenses: first offense – A minimum of **48 hours** in lieu of imprisonment[1074]; second offense – Not less than **10 days** in lieu of imprisonment
Restitution (e.g., Victim's Fund)	**Yes** Victims' Compensation Fund §16-3-1110 et seq.
Other:	**Motor vehicle immobilization:** for second or subsequent DUI violations, the violator's motor vehicles {owned or registered by him} must be 'immobilized' for a period of thirty days {unless the vehicle has been confiscated pursuant to Section 56-5-6240.} 'Immobilized' means suspension and surrender of the registration and motor vehicle license plate.[1075] § 56-5-2942 (A), (B), (C), and (D).

[1072] I. Sections 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; and (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 days, 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 and 24-13-1950.

[1073] Home detention may be ordered in lieu of community service. §24-13-1530

[1075] (F) An immobilized motor vehicle may be released by the department without legal or physical restraints to a person who has not been convicted of a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945, if that person is a registered owner of the motor vehicle or a member of the household of a registered owner. The vehicle must be released if an affidavit is submitted by that person to the department stating that:

(1) he regularly drives the motor vehicle subject to immobilization;

Child Endangerment: A person ≥18 years old who commits either a drunk driving offense under §56-5-2930 or a death or serious bodily injury drunk driving offense under §56-5-2945 (but NOT an illegal per se violation) while transporting a child <16 years 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, mandatory license suspension for 60 days. §56-5-2947

Mandatory Assessments: I. In general sessions court and municipal court, a defendant must pay respectively an assessment which is equal to 100 percent of the fine actually imposed (i.e., that part of the fine that has not been suspended). §§14-1-206(A) and 14-1-208(A). II. For ANY drunk driving offense, there is a mandatory **$100** surcharge obtained in general sessions court and a **$25** mandatory surcharge obtained in magistrate's and municipal courts. §14-1-211(A)(1). III. There is an additional mandatory **$100** 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:

≥.15 BAC – first violation-**30 day suspension**[1076]; subsequent violation[1077](within 10 years) – **60 day suspension** §56-5-2951(I) {But temporary restricted license is available for education or work -cost $100.} Persons Under 21 Years Old-**≥.02** BAC- first violation-**3-month mandatory suspension;** subsequent violation (within 5 years) – **6 month mandatory suspension** §56-1-286(A) and (G). A person must be attending or have competed an alcohol safety action program before license can be restored. §56-1-286(H)

Sanctions Following a Conviction for a DWI Offense:

Post DWI Conviction Licensing Action:

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(2) the immobilized motor vehicle is necessary to his employment, transportation to an educational facility, or for the performance of essential household duties;

(3) no other vehicle is available for the use of the person;

(4) the person will not authorize the use of the motor vehicle by any other person known by him to have been convicted of a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945;

(5) the person will report immediately to a local law enforcement agency any unauthorized use of the motor vehicle by a person known by him to have been convicted of a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. {§56-5-2942 (F)}

[1075] These suspensions are not mandatory as restricted driving privileges are available for either employment or college education purposes. §56-5-2951(J)

[1076] 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 years old, it also includes a prior violation of the .15 admin per se law. §§56-1-286(F) and 56-5-2951(K)(2)

Type of Licensing Action (Susp/Rev):	First offense[1078]– suspension; second offense (within 10 years) – **Suspension**; third offense (within 5 or 10 years) – **Suspension**; fourth and subsequent offenses (within 10 years) – **Revocation.** §56-5-2990. DWI offense with great bodily injury– suspension §56-5-2945
Term of License Withdrawal (Days, Months, Years, etc.):	First offense – **6 months**; second offense (within 10 years) – **1 year**; third offense (within 10 years) – **2 years**; third offense (within 5 years) – **4 years**; fourth and subsequent offenses (within 10 years) – **Permanent.** §56-5-2990. DWI offense causing great bodily injury – **Term of imprisonment plus 3 years** §56-5-2945
Mandatory Minimum Term of Withdrawal:	First offense – For a first DWI offense, a provisional license may be issued for the 6-month suspension period provided the defendant participates in an alcohol/drug education/treatment program. §§56-1-1320 and 56-1-1330; second offense (within 10 years) – **1 year**; third offense (within 10 years) – **2 years**; third offense (within 5 years) – **4 years**; fourth and subsequent offenses (within 10 years) – **7 years** (§56-1-385(A)(1)). DWI offense causing great bodily injury -**Term of imprisonment plus 3 years**
Other:	
Rehabilitation:	
Alcohol Education:	An offender whose license was suspended must successfully complete an Alcohol and Drug Safety Action Program prior to license reinstatement[1079] However, upon the recommendation by the Medical Advisory Board, an offender's license may be restored notwithstanding the fact that person has not successfully completed this program. §56-5-2990(b) and (d) Persons who have had the driving privileges permanently revoked must successfully complete an alcohol or drug treatment program before their licenses can be reinstated. §56-1-385(A)(3)
Vehicle Impoundment/Confiscation:	

[1077] Note: An offense is considered either a §56-5-2930, §56-5-2945 or other alcohol use and driving related law violation. §§56-1-1320 and 56-5-2990.

[1078] Notwithstanding the fact that they have not completed this program, persons who have had their driving privileges suspended via the administrative per se law must have such privileges restored after the suspension period has ended; however, they must continue to participate in the Alcohol and Drug Safety Action Program. §56-5-2951(L)

Temporary Driving Privileges (Temporary Alcohol Restricted Driver's License): At the time of arrest, a person who is subject to licensing action under either the implied consent or the admin per se laws may be granted temporary driving privileges until a hearing on the issues can be obtained. However, these driving privileges are conditioned on the person enrolling in an Alcohol and Drug Safety Action Program and requesting a hearing within 10 days of arrest (notice of suspension). If a person fails to satisfy either of these two items, that person waives the right to a hearing and to obtain a temporary driving privileges. §§56-1-286(M) and 56-5-2951(G)

Statutory Authority: **Yes.** For a third or subsequent DWI offense (within 10 years), 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)

Miscellaneous Sanctions Not Included Elsewhere:

Publishing of Offenders' Names: Under §56-5-3000, the licensing agency shall publish the names and addresses of persons whose licenses were suspended under §56-5-2990 (i.e., for DWI).
Ignition Interlock[1080]: A person (first or subsequent offender) who violates ANY drunk driving law **may** be required to install an ignition interlock device on the vehicle that person operates (either titled in the person's name or a family member's name). The duration of ignition interlock usage is discretionary with the court. §56-5-2941
Videotaping: The law requires that law enforcement officers videotape the conduct of persons who have been stopped for a drunk driving offense (when all breath test sites have been equipped with video cameras). §56-5-2953

Other Criminal Actions Related to DWI:

Causing great bodily harm or death

State Has Such a Law: **Yes.** §56-5-2945

Criminal Sanction: (1) a mandatory fine of not less than $5,100 nor more than $10,100 and mandatory imprisonment for not less than thirty days nor more than fifteen years when great bodily injury results. §56-5-2945.(A) (1) 'Great bodily injury' means 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. §56-5-2945(A)
(2) a mandatory fine of not less than $10,100 nor more than $25,100 and mandatory imprisonment for not less than one year nor more than twenty-five years when death results. §56-5-2945. (A) (2)[1081]
These mandatory sentences enumerated above may not be suspended, and probation may not be granted. §56-5-2945. (A)

[1079] **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

[1080] **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. (2) Also, 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

Licensing Action Authorized	**Suspension** §56-5-2945(B)
Length of Term of Licensing Withdrawal:	**Term of imprisonment plus 3 years** §56-5-2945
Mandatory Action--Minimum Length of License	
Withdrawal:	I. Class B felony offense – **Term of imprisonment plus 3 years** §56-5-2945 II. Class E felony – 1 year[1082] §56-5-2910
Other:	**Assessments:** I. In general sessions court, a defendant must pay an assessment which is equal to 100 percent of the fine actually imposed (i.e., the fine that has not been suspended). §14-1-206(A). II. There is a **$100** mandatory surcharge obtained in general sessions court and a **$25** mandatory surcharge obtained in magistrate's and municipal courts. §14-1-211(A)(1) **Persons Under 18 Years Old:** An offender who is <18 years old may have license suspended by the court until reaching 18th birthday. §20-7-1333(B)
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	
Imprisonment (Term):	First offense (misdemeanor) – **10 to 30 days**; second offense within five years – (misdemeanor) – **60 days to 6 months**; third and subsequent offense within five years – (Class A Misdemeanor) – **6 months to 3 years.** §§16-1-10(C), 16-1-20, 16-1-100(A) and 56-1-460(A)(2) and (B)
Mandatory Minimum Term of Imprisonment:	First offense – **10 days**[1083and1084]; second offense – **60 days**; third and subsequent offense – **6 months;** §56-1-460(A)(2)
Fine ($ Range):	First offense – $**200**[1085and1086; second] offense – $**500**; third and subsequent offense – No**ne** §56-1-460(A)(1)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action	

[1081] After 1 year, 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 employment or educational needs. Note: The court cannot grant 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)

[1082] An offender may be allowed to participate in out-of-jail **public service work** while serving an incarceration sentence. §24-13-660. Also, 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

[1083] If the case is decided in a magistrate's court, the court is prohibited from suspending the sentence and placing the offender on probation in lieu of incarceration. §22-3-800

[1084] **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

[1085] **Mandatory Assessments:** In general sessions court, a defendant must pay an assessment which is equal to 100 percent of the fine actually imposed (i.e., that part of the fine that has not been suspended). §14-1-206(A)

(Susp/Rev):	**Suspension or Revocation**[1087] §56-1-460(B)
Length of Term of License Withdrawal:	**Suspension** for a like period of time if the original suspension was for a definite period of time. If not, then a suspension for 3 months. If license was revoked, a new license shall not be issued for an additional **1 year** from the date such person would have otherwise been entitled to apply for a new license. §56-1-460(B) **Persons Under 18 Years Old:** An offender who is <18 years old may have the license suspended by the court until reaching the 18th birthday. §20-7-1333(B)
Mandatory Term of License Withdrawal Action:	**None**

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 year (not less than 3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC ≥.04 (Standard: Grams of alcohol per 100 milliliters of blood.), (2) has an alcohol concentration ≥.04 in "other bodily substances (fluids) as determined by the Law Enforcement Division, (3) is under the influence of alcohol, a controlled substance or a drug which impairs driving ability, or (4) refuses to submit to a chemical test for an alcohol concentration. Note: The disqualification section, §56-1-2110 (A)(5), appears to apply only 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 years mandatory). In addition, CMV operators who have any "measurable" amount of alcohol in their systems must be placed "out-of-service" for 24 hours. §§56-1-2030 (1), (6), (7), (8), (9), (18) and (20), 56-1-2110, 56-1-2120, 56-1-2130 and 56-5-6190.
Special Note: I. It is a misdemeanor to operate a CVM during a CDL disqualification. For a first offense, a person is subject to an imprisonment term for 30 days (mand) and a fine of $200 (mand). For a second offense, a person is subject to an imprisonment term for 45 consecutive days (mand) and a fine of $500 (mand). §§16-1-10(C), 56-1-460 and 56-1-2070(D). II. A person who operates a CMV while CDL is under an out-of-service order is subject to the following sanctions: first violation-disqualification for 90 days (mand) to 1 year; second violation (within 10 years) – disqualification for 1 (mand) to 5 years; and, third or subsequent violation (within 10 years) – disqualification for 3 (mand) to 5 years. In addition, first 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, that person is subject to the following sanctions: first violation-disqualification for 180 days (mand) to 2 years; and, second or subsequent (within 10 years) – disqualification for 3 (mand) to 5 years. In addition, first or subsequent offenders are subject to a civil penalty of $1,000 to $2,500. §56-1-2070(E)

Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §56-1-1010 et seq.
Grounds for Being Declared an Habitual Offender:	**3 or more serious convictions** or **10 or more violations rated at 4 points or more** under the point system within a period of 3 years §56-1-1020(a)and(b)
Term of License Rev While	

[1086] **Forfeiture:** For a fourth or subsequent offense (within 5 years), 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)

Under Habitual Offender Status:	**5 years** and until the court thereafter restores the driving privilege. After 1 year, this period may be reduced to 2 years upon a showing of "good cause." §56-1-1090(a) and (c)
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	**Felony** §56-1-1100
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **5 years**[1088] §56-1-1100
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**None**
Mandatory Minimum Fine ($):	**N/A**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §17-7-80
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** (16 years old or older)
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** §§20-7-8920, 20-7-8925, 61-4-50(A), 61-4-580(1), 61-6-1500 and 61-6-4080(A)
Minimum Age (Years) Possession:	**21** There are exceptions for home, education, religious ceremonies, and employment. The employment exception applies only to persons over 18 years old. §§20-7-320, 20-7-8920 and 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) and *Steele v. Rogers,* 413 S.E.2d 329 (S.C. App. 1992)[1089]

[1087] In this case, the court held that a seller of alcoholic beverages to an under-aged person could be held liable for the injuries caused by such minor while intoxicated.

[1088] A licensee can be held liable for the injuries caused by an intoxicated minor who consumed alcoholic beverages on

Dram Shop Actions-Social Hosts:	**No** *Garren v. Cummings and McCrady, Inc.,* 345 S.E.2d 508 (S.C. App. 1986)[1090], and *Hill v. Honey's, Inc.,* 786 F. Supp. 549 (D.S.C. 1992)
Other:	A patron may not bring a cause of action against a licensee for injures he/she has 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[1091and1092]-(misdemeanor) §61-6-1500 For non-intoxicating beverages-(misdemeanor) §§61-2-250 and 61-4-580(2)
Term of Imprisonment:	Alcoholic Beverages and Non-intoxicating Beverages: Not less than **3 months** §§62-2-250 and 61-6-4210
Fine ($ Range):	Alcoholic Beverages and Non-intoxicating Beverages: Not less than **$100** §§62-2-250 and 61-6-4210. .
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes, Suspension or Revocation**
Length of Term of License Withdrawal:	Alcoholic Beverages: first offense – Revocation for **1 year** or pay a penalty of $25000; sub. offense – Revocation for **2 years** or pay a penalty of $500. §61-6-4260 Note: Under §61-6-4270, an administrative fine of from $100 to $1,500 may be paid in lieu of suspension/revocation. Non-intoxicating Beverages: Suspension/Revocation under §61-4-580-Length of suspension/revocation is not specified or an administrative fine of from $25 to $1,000 may be paid in lieu of suspension/revocation. §61-4-250
Criminal Actions Against Owners or Employees of Establishments that Serve	

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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 the licensee violated a duty of care 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)

[1089] 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)

[1090] The term "non-intoxicating beverages" applies to beer not in excess of 5 percent alcohol and wine not in excess of 21 percent alcohol. §61-4-10. The term "alcoholic liquors" applies to all alcoholic beverages. §61-6-20(1)

[1091] Nonprofit organizations that are licensed to sell alcoholic liquors in mini-bottles are prohibited from selling such beverages to intoxicated persons. §61-6-2220. The sanctions for a violation of this prohibition are as follows: first offense – fine from $200 to $500 and/or license suspension for not more than 30 days; second offense within three years – fine from $200 to $500 and/or license suspension for not more than 180 days; and third offense within three years – fine not less than $500 and permanent license revocation. §61-6-2600. However, under §61-6-4270, an administrative fine of from $100 to $1,500 may be paid in lieu of suspension/revocation.

Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	Alcoholic Liquors: (misdemeanor); Non-intoxicating beverages-(misdemeanor)
Term of Imprisonment:	Alcoholic Beverages: **30 to 90 days** §§61-6-1500, 61-6-2600, 61-6-4080 and 61-6-4700 Non-intoxicating Beverages: **30 to 60 days** §61-4-50
	Fine ($ Range): Alcoholic Beverages: **$100 to $300** §§61-6-1500, 61-6-2600, 61-6-4080 and 61-6-4700 Non-intoxicating Beverages: **$100** §61-4-50
Anti-Happy Hour Laws/Regulations:	**Yes – Limited**[1093] §61-4-160 and 61-6-4550
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 §§61-4-110 and 61-6-4020
Anti-Consumption Law (Yes/No):	**Yes** – 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 to railroad dining/club cars or to commercial aircraft. §61-6-4720

[1092] 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 four and eight p.m.

STATE: **SOUTH DAKOTA**
General Reference: South Dakota Codified Laws

Basis for a DWI Charge:

Standard DWI Offense: Under the influence of an alcoholic beverage §32-23-1(2)
Illegal Per Se Law (BAC/BrAC): **≥.08**[1094] §32-23-1(1)
Persons Under 21 Years Old: **≥.02** or **Any Evidence of Marijuana or a Controlled Drug or Substance in the Body** §32-23-21
Presumption (BAC): **≥.08** §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) and (4)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law: **Yes** §32-23-1.2
Implied Consent Law:
Arrest Required (Yes/No): **Yes** §32-23-10
Implied Consent Law Applies to Drugs (Yes/No): **Yes** §32-23-10
Refusal to Submit to Chemical Test Admitted into Evidence: **Yes** §§19-13-28.1 and 32-23-1.1[1095]
Other Information: A chemical test is required for persons who have been arrested for a third or subsequent DWI offense (alcohol or drug related) that constitutes a felony. "Force" may be used to obtain a blood sample. §32-23-10, *State v. Heinrich,* 449 N.W.2d 25 (S.D. 1989), *State v. Lanier,* 452 N.W.2d 144 (S.D. 1990) and *State v. Hermann,* 652 N.W.2d 725 (S.D. 2002)

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

Blood: **Yes** §32-23-10
Urine: **No** §32-23-10
Other: "Other bodily substances" §32-23-10

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**
Anti-Plea-Bargaining Statute (Yes/No): **No** But 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 first offenders where the BAC is ≥.17, the court must require them to undergo an evaluation to

[1093] 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."
[1094] This statute was held constitutional in *South Dakota v. Neville,* 459 U.S. 553 (1981) and *State v. Hoenscheid,* 374 N.W.2d 128 (S.D. 1985).

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

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): Revocation **1 year**[1096] A restricted hardship license is available. §§32-23-11 and 32-23-18

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, First offense – Class 1 Misdemeanor – Not more than **1year** (county jail); second offense within five years – Class 1 Misdemeanor – Not more than **1 year** (county jail); third offense Class 6 felony (within 5 years) – Not more than **2 years** (State penitentiary); fourth and subsequent offense within five years – Class 5 felony – Not more than **5 years**[1097] (State penitentiary). §§22-6-1, 22-6-2, 32-23-2, 32-23-3, 32-23-4, 32-23-4.1 and 32-23-4.6. Vehicle Battery[1098] (Class 4 felony) – Not more than **10 years** (State penitentiary) §§22-6-1 and 22-16-42

Mandatory Minimum Term: **Limited**[1099]

[1095] 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.

[1096] A person convicted of a Class 5 or 6 felony may be sentenced to serve not more than 1 year in the county jail in lieu of the indicated incarceration period in the State penitentiary. §22-6-1.1

[1097] Vehicle Battery: Causing serious bodily injury (including to 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 Less Than 21 Years Old: A person under 21 years old who operates a motor vehicle with a BAC ≥.02 or with any evidence of marijuana or any controlled drug or substance in the body commits a Class 2 Misdemeanor. The criminal sanctions for this offense are a jail term of not more than **30 days** and/or a fine of not more than **$200**. In addition, persons under 21 are subject to the following licensing action: first offense – suspension for **6 months**; and, second or subsequent offense – suspension for **1 year**. These licensing actions are not mandatory. Restricted driving privileges are available for employment, education, or court ordered counseling programs. §§2-6-2 and 32-23-21

Subsequent Offenses: A subsequent offense is generally one committed within five years 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

[1098] Under §32-23-3, a second offender who was operating a motor vehicle without a license at the time of the offense is subject to a mandatory 3 days of imprisonment. Under §32-23-4, a third offender who was operating a motor vehicle without a license at the time of the offense is subject to a mandatory 10 days of imprisonment. Under §32-23-4.6, a fourth or subsequent offender who was operating a motor vehicle without a license at the time of the offense is subject to a mandatory 20 days of imprisonment.

Fine:	
Amount ($ Range):	First offense – Not more than **$1,000**; second offense (within 5 years) – Not more than **$1,000**; third offense (within 5 years) – Not more than **$2,000**; fourth and subsequent offense (within 5 years) – Not more than **$5,000.** Vehicle Battery – Not more than **$10,000.**
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	**Yes** Community service may be condition of probation. §23A-27-18.3
Restitution (e.g., Victim's Fund)	**Yes** §§22-6-1, 22-6-2 and 23A-28-1 et seq. Restitution is to be paid by the defendants to the victims.
Other:	**Costs of Confinement:** If they are financially able, offenders may be required to pay for the costs of their confinement in a county jail. §24-11-45
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	First offense – **Revocation**; second and subsequent offense – Revocation §§32-23-2, 32-23-3, 32-23-4 and 32-23-4.6 Vehicle Battery (Class 4 felony) – **Revocation** §22-16-42
Term of License Withdrawal (Days, Months, Years, etc.):	First offense – Not less than **30 days to 1 year**; second offense – Not less than **1 year**; third offense – For such a period as determined "by the court but in no event less than **one year** from the date sentence is imposed or one year from the date of discharge from incarceration, whichever is later;" fourth and subsequent offense – For such a period as determined "by the court but in no event less than **two years** from the date sentence is imposed or two years from the date of discharge from incarceration, whichever is later." (Under the point system suspension 1 year §32-12-47) Vehicle Battery (Class 4 felony) – **2 years** subsequent to release from incarceration §22-16-42
Mandatory Minimum Term of Withdrawal:	First offense – No**ne**[1100]; second offense – **1 year** (not mandatory in all situations)[1101]; third offense – **1 year**; fourth and subsequent offense –

[1099] A restricted hardship license is available for employment purposes and for attending court ordered counseling programs. §32-23-2

[1100] Upon the successful completion of an alcohol treatment program, the court may grant a second offender driving privileges for employment purposes and may place such conditions on this privileges as it sees fit. §32-23-3

Special Note and 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 that person has been convicted of an offense which requires mandatory licensing

2 years minimum, from the date the criminal sentence is imposed or two years from the date of discharge from incarceration, whichever is later.
§ §32-12-52.1, 32-23-1, 32-23-4.6.

Other: Vehicle Battery (Class 4 felony).

Rehabilitation:
Alcohol Education:
Alcohol Treatment: Upon successful completion of an alcohol or drug treatment program a second-time offender may be granted a restricted license. §32-3-3

Vehicle Impoundment/Confiscation:
Authorized by Specific

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 mandatory year (not less than three years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC ≥.04; (2) is under the influence of alcohol or a controlled drug or substance; or (3) refuses to submit to a chemical test for alcohol concentration. (Note: The "disqualification" provision, §32-12A-36(5), only applies to a refusal to submit a chemical test for alcohol concentration; however, the CMV implied consent provision, §32-12A-46, 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 years 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 .04 to .10 or more" is a Class 2 Misdemeanor; the sanctions for the offense are (1) a jail term 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 his/her system must be placed "out-of-service" for 24 hours. Note: Persons who have 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, 32-12A-1(5), (9) and (20), 32-12A-36, 32-12A-37, 32-12A-39, 32-12A-43, 32-12A-44, 32-12A-46 and 32-12A-51.

The State has also adopted by reference 49 CFR Parts 383 and 384. §32-12A-58. These parts contain the following disqualification and out-of-service requirements for CMV operators: Persons are "disqualified" from operating a CMV for 1 year (mand) (3 years if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC ≥.04, (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 years. 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 and 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 hours.

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

Statutory Authority: **None**
Terms Upon Which Vehicle
Will Be Released:

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action. However, §32-12-49.4, allows the Secretary to issue restricted licenses (for employment or educational purposes) to persons who have 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: For **any** offense 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, unless the owner provides and maintains proof of financial responsibility or the vehicle is a government vehicle. §§32-35-45 and32-45-46.

Miscellaneous Sanctions Not Included Elsewhere: **None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law: **Yes** Class 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): Not more than **15 years** §22-6-1

Mandatory Minimum Term: **None**

Fine ($ Range): Not more than **$15,000** §22-6-1

Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: **Revocation** §22-16-41

Length of Term of Licensing Withdrawal: "Such period of time as is determined by the court." §22-16-41

Mandatory Action--Minimum Length of License Withdrawal: **None**

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*: See Footnote No. [1102].

Sanction:

Criminal:

[1101] It is a Class 1 misdemeanor 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 year 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 year. However, for violating a CDL out-of-service order, the disqualification as follows: first violation – 90 days (mand); second violation within 10 years – 1 year (mand); and, third or subsequent violation within 10 years – 3years (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: first violation-180 days (mand); second violation within 10 years – 3years (mand); and, third or subsequent violation-5 years (mand). §§22-6-2, 32-12-66, 32-12A-8, 32-12A-52, 32-12A-53, 32-12A-54 and 32-12A-56. The State has adopted by reference 49 CFR Part 383. §32-12-124. This CFR part provides that a person operating a CMV while under an out-of-service order is subject to the following disqualification periods: first violation – 90 days (mand) to 1 year; second violation within 10 years – 1 year (mand) to 5 years; and, third or subsequent violation within 10 years – 3 years (mand) to 5 years. 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: first violation-180 days (mand) to 2 years; and, subsequent violation within 10 years – 3 years (mand) to 5 years. 49 CFR 383.51.

Imprisonment (Term):	For driving while revoked, Class 1 Misdemeanor – Not more than **1 year**; For driving while suspended, Class 2 Misdemeanor – Not more than **30 days.** §§22-6-2, 32-12-65 and 32-12A-8.
Mandatory Minimum Term of Imprisonment:	A second 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. [1103]
Fine ($ Range):	For driving while revoked, Class 1 Misdemeanor – Not more than **$1,000**[1104] For driving while suspended, Class 2 Misdemeanor – Not more than **$200**
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Suspension** – if the conviction was based on driving while suspended; **Revocation** – if the conviction was based on driving while revoked. §32-12-66.
Length of Term of License Withdrawal Action:	If the conviction was based on driving while suspended, an additional suspension period equal to the original period of suspension. If the conviction was based on driving while revoked the original revocation period extended for **1 year**. §32-12-66
Mandatory Term of License Withdrawal Action:	If the conviction was based on driving while suspended, an additional suspension period equal to the original period of suspension.[1105] §32-12-66
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	

[1102] 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.

[1103] **Costs of Confinement:** If they are financially able, offenders 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.

[1104] Mandatory licensing withdrawal actions apply only to the offense of driving while suspended. There is no additional mandatory licensing action (i.e., 1 year additional revocation period) for driving while revoked.

Mandatory Minimum Term of Imprisonment:
Fine ($ Range):
Mandatory Minimum Fine ($):
Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No): **Yes** §34-25-22.1

BAC Chemical Test Is Given to the the Following Persons:

Driver: **Yes**
Vehicle Passengers: **Yes**
Pedestrian: **Yes**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§35-4-78, 35-9-1 and 35-9-2
Minimum Age (Years) Possession: **21**[1106] §§35-4-78, 35-9-1 and 35-9-2. There is an employment exception. §35-4-79.
Minimum Age (Years) Consumption: **21** §§35-4-78, 35-9-1 and 35-9-2

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **No** Liability is prohibited via statutory law. §§35-4-78 and 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. §35-11-1.

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 Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action: **Class 1 Misdemeanor** §§22-6-2 and 35-4-78
Term of Imprisonment: Not more than **1 year** (county jail)

Fine ($ Range): Not more than **$1,000**
Note: If they are financially able, offenders may be required to pay for the costs of their confinement in a county jail. §24-11-45

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

[1105] There is an exception for either the possession or the consumption of alcoholic beverages by persons under 21 years of age for religious ceremonies or medical purposes.

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Revocation/Suspension** §35-2-10
Length of Term of License Withdrawal:	**Revocation – 1 year** or **Suspension** – not more than **60 days**[1107] §§35-2-20 and 35-2-21
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Class 1 Misdemeanor** Licensees who sell alcoholic beverages to persons under 21 years old §§22-6-2 and 35-4-78[1108and1109]
Term of Imprisonment:	Not more than **1 year** (county jail)
Fine ($ Range):	Not more than **$1,000** Note: If they are financially able, offenders may be required to pay for the costs of their confinement in a county jail. §24-11-45
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Revocation/Suspension**[1110] §35-2-10

[1106] 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

[1107] I. Under §35-9-1, it is Class 1 misdemeanor 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 Class 2 misdemeanor 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 §§35-9-1.1 and35-9-2, a person is also subject to the following action: For a first violation, driving privileges must be revoked for 30 days to 1 year (restricted driving privileges may be granted for reasons of employment or education). For a second or subsequent violation, driving privileges must be revoked for 60 days (mand) to 1 year. §35-9-7

II. It is a Class 2 misdemeanor 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 Class 2 misdemeanor are imprisonment of not more than 30 days (county jail) and/or a fine of not more than $200. §22-6-2

[1109] **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" with an ownership interest in the business ≥10 percent. Nevertheless, such a person may be assessed an administrative fine as follows: first violation – $500; second violation (within 2 years) – $700; and, third violation (within 2 years) – $1,000. §§35-4-78.1, 35-4-78.2, 35-4-78.3 and 35-4-78.4

[1110] A license cannot be suspended/revoked 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 within 12 months. §35-2-10.1; *License Suspension of Cork 'n Bottle, Inc.,* 654 N.W.2d 432 (S.D. 2002).

Length of Term License Withdrawal: **Revocation – 1 year** or **Suspension** – not more than **60 days** §§35-2-20 and 35-2-21

Anti-Happy Hour Laws/Regulations: **No**

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

Open Container Law (Yes/No): **Yes** §35-1-9.1

Anti-Consumption Law (Yes/No): **Yes** §35-1-9.1

STATE:	**TENNESSEE**
General Reference:	Tennessee Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	I. Under the influence of any intoxicant[1111] (e.g., alcohol) §55-10-401(a)(1) II. Adult Driving While Impaired (Persons ≥21 Years Old) §55-10-418(a)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[1112and1113] §55-10-401(a)(2) Persons ≥16 but <21 Years Old-**>.02** (Underage Impaired Driving Offense) §55-10-415(a)(1)(A)
Presumption (BAC/BrAC):	**≥.08**[1114] §55-10-408(a) and (b)
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[1115] §55-10-401(a)(1) II. Adult Driving While Impaired (Persons ≥21 Years Old) §55-10-418(a)
Other:	Arrests without warrants authorized for drivers leaving the scene of an accident apprehended within four hours of the accident when the officer has probable cause to believe the driver drove under the influence. §40-7-103 (a)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §55-10-406(a)(1)
Implied Consent Law Applies to	

[1110] **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 aged 16 or over but under age 21. This offense consists of (1) driving with an alcohol concentration >.02 (Based on percent of alcohol in the blood, (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 misdemeanor; for persons >16 but <18, this offense is a "delinquent act." §55-10-415(d) and (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 years old commits an "adult driving while impaired" offense if operating a motor vehicle or being in physical control of any vehicle while the 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); §55-10-603(2)(A), (viii)

[1111] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

[1112] Standard: Percent or "percent by weight" of alcohol in the blood. §§55-10-401(a)(2) and 55-10-408(a) and (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) 843 S.W.2d at 415. See also *State v. McKinney,* 605 S.W.2d 842 (Tenn. Cr. App. 1980).

[1113] A lower BAC presumptive level for repeat offenders does not violate the constitutional protection of equal protection of the laws. *State v. Robinson,* 29 S.W.3d 476 (Tenn. 2000)

[1114] 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 phenolethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit of internal use." §55-10-401(b)

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), and *State v. Frasier,* 914 S.W.2d 467 (Tenn. 1996)
Chemical Tests of Other Substances for Alcohol Concentration That Are Authorized Under the Implied Consent Law:	
Blood:	**Yes** §55-10-405(5)
Urine:	**Yes** §55-10-405(5)
Breath:	**Yes** §55-10-405(5)
Adjudication of DWI Charges:	
Mandatory Adjudication Law (Yes/No):	**Yes** §55-10-403(b)(1)[1116]
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):	(1) **Revocation – 1 year** with no prior DWI, Vehicle Homicide or Vehicle Assault convictions (2) **Revocation – 2 years** with a prior DWI, Vehicle Homicide or Vehicle Assault conviction, or (3) **Revocation – 2 years** if person is involved in an accident causing serious bodily injury; (4) **Revocation – 5 years** 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[1117]:	

[1115] Pre-trial diversion is prohibited until the minimum sentence is served. §55-10-403(b)(1), §55-10-418(g) and *State v. Washington,* 866 S.W.2d 950 (Tenn. 1993)

[1117] If appropriate for the offense and if not themselves an essential element of the offense, the court shall consider, but is not bound by, the following advisory factors in determining whether to enhance a defendant's DUI felony sentence: (1) The defendant has a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range; (2) The defendant was a leader in the commission of an offense involving two or more criminal actors; (3) The offense involved more than one victim; (4) A victim of the offense was particularly vulnerable because of age or physical or mental disability; (5) The defendant treated or allowed a victim to be treated with exceptional cruelty during the commission of the offense; (6) The personal injuries inflicted upon, or the amount of damage to property, sustained by or taken from the victim was particularly great; (7) The offense involved a victim and was committed to gratify the defendant's desire for pleasure or excitement; (8) The defendant, before trial or sentencing, has failed to comply with the conditions of a sentence involving release into the community; (9) The defendant possessed or employed a firearm, explosive device, or other deadly weapon during the commission of the offense; (10)

Criminal Sanctions:	
Imprisonment:	
Term (Day, Month, Years, Etc.):	First offense (Class A misdemeanor) – **48 hours**[1118] **to 11 months 29 days**; second offense (within 10 years) (Class A misdemeanor) – **45 days to 11 months 29 days**[1119; third] offense (within 10 years)

The defendant had no hesitation about committing a crime when the risk to human life was high; (11) The felony resulted in death or serious bodily injury or involved the threat of death or serious bodily injury to another person and the defendant has previously been convicted of a felony that resulted in death or serious bodily injury; (12) During the commission of the felony, the defendant intentionally inflicted serious bodily injury upon another person, or the actions of the defendant resulted in the death of or serious bodily injury to a victim or a person other than the intended victim; (13) At the time the felony was committed, one of the following classifications was applicable to the defendant: (A) Released on bail or pretrial release, if the defendant is ultimately convicted of such prior misdemeanor or felony; (B) Released on parole; (C) Released on probation; (D) On work release; (E) On community corrections; (F) On some form of judicially ordered release; (G) On any other type of release into the community under the direct or indirect supervision of any State or local governmental authority or a private entity contracting with the State or a local government; (H) On escape status; or (I) Incarcerated in any penal institution on a misdemeanor or felony charge or a misdemeanor or felony conviction; (14) The defendant abused a position of public or private trust, or used a professional license in a manner that significantly facilitated the commission or the fulfillment of the offense; (15) The defendant committed the offense on the grounds or facilities of a pre-kindergarten through grade twelve public or private institution of learning when minors were present; (16) The defendant was adjudicated to have committed a delinquent act or acts as a juvenile that would constitute a felony if committed by an adult… §40-35-114.

(a) At the conclusion of the sentencing hearing, the court shall first determine the appropriate range of sentence.

(b) To determine the specific sentence and the appropriate combination of sentencing alternatives that shall be imposed on the defendant, the court shall consider the following:

(1) The evidence, if any, received at the trial and the sentencing hearing;

(2) The pre-sentence report;

(3) The principles of sentencing and arguments as to sentencing alternatives;

(4) The nature and characteristics of the criminal conduct involved;

(5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in Sections 40-35-113 and 40-35-114;

(6) Any statistical information provided by the administrative office of the court as to sentencing practices for similar offenses in Tennessee; and

(7) Any statement the defendant wishes to make in the defendant's own behalf about sentencing.

(c) The court shall impose a sentence within the range of punishment determined by whether the defendant is a mitigated, standard, persistent, career, or repeat violent offender. In imposing a specific sentence within the range of punishment, the court shall consider, but is not bound by, the following advisory sentencing guidelines:

(1) The minimum sentence within the range of punishment is the sentence which should be imposed because the general assembly set the minimum length of sentence for each felony class to reflect the relative seriousness of each criminal offense in the felony classifications.

(2) The sentence length within the range should be adjusted as appropriate by the presence or absence of mitigating and enhancement factors set out in Sections 40-35-113 and 40-35-114.

(d) The sentence length within the range should be consistent with the purposes and principles of this chapter.

(e) When the court imposes a sentence, it shall place on the record orally or in writing what enhancement or mitigating factors it considered, if any, as well as the reasons for the sentence in order to ensure fair and consistent sentencing.

(f) A sentence must be based on evidence in the record of the trial, the sentencing hearing, the pre-sentence report, and the record of prior felony convictions filed by the district attorney general with the court as required by Section 40-35-202(a). § 40-35-210.

[1118] The court may substitute 48 hours roadside cleanup in lieu of the 48-hour confinement. §55-10-403 (s) (3) Each offender ordered to remove litter pursuant to this subsection shall be required to wear a blaze orange or other distinctively colored vest with the words "I am a DRUNK DRIVER" stenciled or otherwise written on the back of such vest in letters no less than four inches (4") in height. When considering sentence,

[1118] I. The court may order a second 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 second 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

(Class A misdemeanor) – **120 days to 11 months 29 days**; fourth and subsequent offense within 10 years – (Class E felony) – **1 to 6 years** §55-10-403 Vehicle Assault[1120]
(Class D felony) – **2 to 12 years.** §§39-13-106and 40-35-111(b)(4) and (5)
Persons ≥16 but <21 Years Old (Underage Impaired Driving) – No**ne**

Mandatory Minimum Term: First offense – **48 hours**[1121] (If BAC/BrAC ≥0.20 – **7 con days**); second offense within 10 years – **45 days**; third offense within 10 years – **120 days**; fourth and subsequent offense within 10 years – **150 con days.** Vehicle Assault – **None**

Fine:

Amount ($ Range): First offense – **$350 to $1,500**[1122]; second offense within 10 years – $**600 to $3,500**; third offense within 10 years – $**1,100 to $10,000**; fourth and subsequent offense within 10 years – $**3,000 to $15,000**
§55-10-403 Vehicle Assault – Not more than **$5,000.** §40-35-111(b)(4)
Persons ≥16 but <21 Years Old (Impaired Driving) – **$250** §55-10-415(d)

Mandatory Min. Fine ($): First offense – $**350**; second offense within 10 years – $**600**; third and subsequent offense within 10 years – $**1,100.** Note: These fines are mandatory unless a judge determines that a defendant is indigent.
§55-10-403(b)(2) Vehicle Assault – No**ne**
Persons ≥16 but <21 Years Old (Underage Impaired Driving) – $**250.**
For sanction enhancement purposes for subsequent drunk driving offenses, a prior offense includes a previous vehicle homicide or assault offense related to drunk driving. §55-10-403

Other Penalties: **Adult Driving While Impaired Offense:** first offense (Class B Misdemeanor) – The **only** sanction is a fine of **$500**. §55-10-418(d)(1) 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)) for a second, third, fourth or subsequent offense. §55-10-418(d)(3). A person is considered a first offender only if that person has not had a previous drunk driving offense of any

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use, (2) not to operate a motor vehicle, (3) to remain incarcerated when not at work and (4), if financially able, to pay the cost of incarceration or treatment. §41-2-128(c)

[1119] 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.

[1120] DWI offenders who are allowed to serve imprisonment sentences on non-consecutive days must, nevertheless, spend the first 48 hours of such a sentence in a consecutive manner. §40-35-216

[1121] Impaired Drivers Trust Fund: The State has established a three-year pilot program to financially assist persons in need who have suffered "traumatic brain 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 and 55-10-403(i)

	kind. If there has been one or more prior drunk driving offense convictions and the person is convicted of this offense for the first time, that person is sentenced as a second or subsequent "driving while under the influence of an intoxicant" offender. §55-10-418(e)
Community Service:	I. In metropolitan areas with a population of over 100,000, the court is authorized to sentence a first offender to perform 200 hours of community service in lieu of the 48 hours minimum jail term. §55-10-403[1123] II. After serving the minimum sentence, a judge may order the defendant to remove litter from various public areas or work in a recycling center or "other appropriate location" for any period of time in lieu of or in additional to other penalties. The community service work may be accomplished during non-working hours. §55-10-403(a)(1) III. **Persons ≥16 but <21 Years Old** (Underage Impaired Driving). The court may impose "public work" service. §55-10-415(d)
Restitution (e.g., Victim's Fund):	**Yes** (1) A defendant may be "sentenced" to pay compensation directly to a victim. §§39-11-118, 40-35-104 and 40-35-304 or (2) A victim's compensation fund §§29-13 101 et seq. and 40-24-107(a)(3) But a victim who knew or should have known that the operator was intoxicated and who is injured while riding with a DWI offender is not entitled to compensation. §§29-13-119 and 40-24-107(e). (3) Also, the defendant shall be ordered to pay restitution as a condition of probation if defendant can afford it. Probation may commence only after minimum jail sentence has been served. §55-10-403(c)(3)
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.[1124] §55-10-412.

[1122] 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), limiting drunk driving work release programs for second 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

[1123]The use of such devices could be required for up to one year after a person's license is no longer suspended or revoked. §55-10-412(d) For a second 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 suspension/restriction period or after such suspension/restriction period has expired. §§55-10-412(i) and 50-10-4039 (d)(4)(B).

The law uses various terms to describe the licensing action to be taken against DWI offenders. Under §55-10-403, the courts "prohibit" the offender from driving. However, §55-50-501 provides that the licensing agency shall "revoke" the

	Addiction Treatment Fee: Offenders will be assessed $100 for each conviction. §55-10-403(R).
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**None**
Other:	Under §55-50-502(a), the licensing agency can suspend a person's license if that person has "committed" an offense that requires mandatory license revocation.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	**Revocation**[1125and1126] §§55-10-403, 55-7-501(a)(2) and 55-7-502 **Persons ≥16 but <21 Years Old (Underage Impaired Driving). Suspension** §55-10-415(d) Vehicle Assault-The court prohibits a person from operating a motor vehicle. §39-13-106
Term of License Withdrawal (Days, Months, Years, etc.):	The following action is by the courts: first offense – **1 year**; second offense within 10 years – **2 years**; third offense within 10 years – **3 to 10 years** fourth and subsequent offense within 10 years – **5 years** §§55-10-403 and 55-50-501 **Persons ≥16 but <21 Years Old** (Underage Impaired Driving) – **1 year** Vehicle Assault – first offense – **1 year**; second offense – **2 years**; third offense – **3 years**; fourth and subsequent offense – **5 years** §39-13-106
Mandatory Minimum Term of Withdrawal:	First offense – **None** (1 year if injury/death-related) Second Offense – **2 years**; third offense – **3 years**; fourth and subsequent offense – **5 years** §55-10-403(d)(2) and (3)

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offender's license.
Under §§55-50-501(a)(2) and 55-50-502(f)(1), the licensing agency may take the following action against a DWI offense: first offense – revocation for 6 months; sub. offense – revocation for 1 year.
Under §55-50-502(e)(4), if this is the defendant's first license revocation, it appears that person may apply for a new license after only 6 months.

[1124] See Alcohol Treatment.

[1125] Hardship license for employment, college/university education (only full time students), an alcohol safety program or ignition interlock monitoring is available following a first conviction only if no one was killed or seriously injured as a result of the DWI offense. §55-10-403(d)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's CDL is suspended for 1 mandatory year (3 years mandatory if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC ≥.04 or (2) is under the influence of alcohol (with a BAC ≥.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 years mandatory). A commercial motor vehicle operator who drives a CMV with a BAC ≥.04 violates the regular DWI laws (§55-10-401). §§55-50-102(12), 55-50-405(a) and 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).

Persons ≥16 but <21 Years Old (Underage Impaired Driving) – **1 year** {The law is not clear on whether this licensing action is mandatory}.
Vehicle Assault – first offense – **1 year**; second offense – **2 years**; third offense – **3 years**; fourth and subsequent offense – **5 years.** §39-13-106

Under separate statutory authority, the court can impose the following additional licensing sanctions for DWI offense convictions: first offense – Prohibit driving for up to and including 6 months; second offense – Prohibit driving for up to and including 3 years; third and subsequent offense – Prohibit driving for up to and including 10 years. §55-10-412(a)

Rehabilitation:

Alcohol Education: **Yes**

Alcohol Treatment: **Yes** Participation in an alcohol safety DWI program is required as part of probation. {This may consist of a court-ordered outpatient alcohol or drug treatment program. §55-10-403(d)(1)(A)(iv)(e)} Probation can begin only after serving the min. imprisonment term. §55-10-403(c)(1) For second and subsequent convictions, a condition of probation is participation in a rehab. program treatment facility. §55-10-403(c)(2) Under §55-50-502(c), the licensing agency, prior to reissuing a license to persons following a second or subsequent DWI conviction, must require them to complete an alcohol or drug abuse education or treatment program.

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **Forfeiture (Appears to be Mandatory):**[1127] The vehicle used in the offense is subject to forfeiture for a second or subsequent DWI offense conviction.[1128] §55-10-403(k)(1)

Miscellaneous Sanctions Not Included Elsewhere: **Child Endangerment:** I. A person incurs a sentence enhancement by committing a DWI offense "accompanied" by a child under 18 years old: Jail -30 days mandatory; fine – $1,000 mandatory. II. If the child was seriously injured at the time of the offense, the person commits a Class D felony: Jail -2 to 12 years; fine – not more then $5,000. III. If the child was killed at the time of the offense, the person commits a Class C felony: Jail- 3 to 15 years; fine – not more than $10,000. §§40-35-111(b)(3) and 55-10-403 (a)(1)(B): (B) In addition, violators are subject to investigation for suspected child abuse or neglect. §37-1-403(d)(2)

[1127] 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).

[1128] One prior offense must occur either on or after 1/1/97 and a second within 5 years after the first. §55-10-403(k)(2).

Homicide by Vehicle:

State Has Such a Law:	**Yes** I. Class C felony §39-13-213(a) II. If DWI-related- Class B felony §39-13-213(a) and (b) III. Aggravated Vehicle Homicide[1129]- Class A felony §39-13-218
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	I. Class C felony – **3 to 15 years** §40-35-111(b)(3) II. Class B felony-**8 to 30 years** §40-35-111(b)(2) III. Class A felony-**15 to 60 years** §40-35-111(b)(1)
Mandatory Minimum Term:	**None**
Fine ($ Range):	I. Class C felony – Not more than **$10,000** §40-35-111(b)(3) II. Class B felony – Not more than **$25,000** §40-35-111(b)(2) III. Class A felony – Not more than **$50,000** §40-35-111(b)(1)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Revocation** §§39-13-213 and 55-50-501(1)
Length of Term of Licensing Withdrawal:	There are two separate driving privilege withdrawal schemes which could apply to all vehicle homicide offenses: (1) the licensing agency can revoke the offender's license for a period of time **equal to the term of the sentenced received**[1130]. §55-50-501(a)(1); or (2) the court can prohibit the offender from operating a motor vehicle from **3 to 10 years**. §39-13-213
Mandatory Action--Minimum Length of License Withdrawal:	**3 years** §39-13-213

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

Sanction:	
Criminal:	
Imprisonment (Term):	I. If based on driving while revoked for a first DWI offense[1131]-**2 days to 6 months** §55-50-504(a)(1). II. If based on a second or sub. DWI offense[1132]-**45 days to 1 year**. §55-50-504(a)(2).

[1129] 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 ≥0.20 and a previous DWI or vehicle assault conviction. It is a Class A felony. §39-13-218

[1130] If paroled, defendants may have their licenses reissued upon satisfactory completion of a licensing exam and on petition of the defendant's parole officer. §55-50-501(a)(1)

[1131] Or a first vehicle assault or vehicle homicide offense. §55-50-504(a)(1).

[1132] Or a second or subsequent vehicle assault or vehicle homicide offense. §55-50-504(a)(2).

Mandatory Minimum Term of Imprisonment:	I. If based on driving while revoked for a first DWI offense – **2 days** §50-55-504(a)(1) and (f) II. If based on a second or sub. DWI offense – **45 days** §50-55-504(a)(2) and (f)
Fine ($ Range):	I. If based on driving while revoked for a first DWI offense – Not more than **$1,000.** §55-50-504(a)(1) II. If based on a second or sub. DWI offense – Not more than **$3,000.** §55-50-504(a)(2).
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Revocation**[1133]-If the conviction was based on driving while revoked. §55-50-504(b)
Length of Term of License Withdrawal Action:	The original revocation period extended **1 year**. §55-50-504(b)
Mandatory Term of License Withdrawal Action:	The original revocation period extended **1 year**. §55-50-504(b)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §§55-10-601 to 55-10-618
Grounds for Being Declared an Habitual Offender:	I. Three or more serious traffic offenses[1134]within 3 years. II. Three or more serious traffic offenses within 5 years. III. Five or more serious traffic offenses within 10 years. §55-10-603.
Term of License Rev While Under Habitual Offender Status:	**3 years**[1135]§55-10-615
Type of Criminal Off if Convicted on Charges of Driving While on Habitual Offender Status	**Class E felony** §55-10-616
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**1 to 6 years** §§40-35-111(b)(5) and 55-10-616
Mandatory Minimum Term of Imprisonment:	**1 year**[1136]§55-10-616
Fine ($ Range):	Not more than **$3,000** §§40-35-111(b)(5) and 55-10-616

[1133] For driving while suspended, the suspension period is extended for an additional mandatory like period. §55-50-504(b).

[1134] 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.

[1135] 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 suspended/revoked but where the underlying suspension/revocation was not one of the serious offenses listed in §55-10-603(2)(A).

[1136] One year of imprisonment is mandatory unless the habitual offender operated a motor vehicle in order to save life or limb. §55-10-616

Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**
Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Discretionary** §38-7-109
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Discretionary**
Vehicle Passengers:	**Discretionary**
Pedestrian:	**Discretionary**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** §§1-3-113, 57-3-406(d), §57-4-203(b)(1) and (2)(A) and 57-5-301(a) and (d)(1)
Minimum Age (Years) Possession:	**21** There are exceptions for employment and religious services. §§1-3-113, 57-3-412 (a)(3), 57-4-203(b)(2)(A) and (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):	**Limited** §57-10-101 et seq.[1137 and 1138] 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,* 393 S.W.2d 755 (Tenn. App. 1964)
Dram Shop Actions-Social Hosts:	**No** §§57-10-101 and 57-10-102
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Class A Misdemeanor** §§40-35-111, 57-3-406(c), 57-3-412(a)(1), 57-4-203(c) and 57-4-203(j)(1)
Term of Imprisonment:	I. Package sales of alcoholic beverages (Except beer containing less than 5 percent alcohol) – **11 months, 29 days.** II. On premises consumption of alcoholic beverages- **11 months, 29 days**

[1137] Before a commercial server can be held liable for the actions of his/her intoxicated patrons, the following must be proven "beyond a reasonable doubt," the sale of alcoholic beverages was the proximate cause of the injury sustained and such beverages were sold either to a person under 21 years old or to an obviously intoxicated person whose consumption was the direct cause of the injury.

[1138] Under the dram shop law, a licensee may be 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). However, 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) (appeal denied 1996)

Fine ($ Range): I. Package sales of alcoholic beverages (Except beer containing less than 5 percent alcohol) – $**2,500.** II. On premises consumption of all alcoholic beverages – $**2,500**

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

Withdrawn (Yes/No): **Yes Suspension/Revocation** §§40-35-111, 57-3-104(c)(1)(A), 57-3-214, 57-3-215(a), 57-4-202(a) and 57-4-203(j)(3)

Length of Term of License Withdrawal: I. Package sales of alcoholic beverages (Except beer containing less than 5 percent alcohol) – Suspension length not specified; Revocation – **1 year.** II. On premises consumption of all alcoholic beverages – first offense – Length of suspension/revocation is not specified; second offense – **Permanent revocation**

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 Misdemeanor** §§40-35-111, 57-3-406(d), 57-3-412(a)(1), 57-4-101(a), 57-4-203(b)(1), (j)(1) and (4), 57-5-101, 57-5-301(a) and 57-6-102(1)

Term of Imprisonment: I. Package sales of alcoholic beverages (Except beer containing less than 5 percent alcohol) – **11 months 29 days** II. On premises consumption of all alcoholic beverages- **11 months 29 days**

Fine ($ Range): I. Package sales of alcoholic beverages (Except beer containing less than 5 percent alcohol) – **$2,500** II. On premises consumption of all alcoholic beverages – $**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 Suspension/Revocation** §§57-3-104(c)(1)(A), 57-3-214, 57-3-215(a), 57-4-202(a), 57-4-203(j)(4), 57-5-109(c) and (k) and 57-5-303(c)

Length of Term License Withdrawal: I. Package sales of alcoholic beverages (Except beer containing less than 5 percent alcohol) – Suspension – length not specified; Revocation- **1 year** II. On premises consumption of all alcoholic beverages – first offense – Length of suspension/revocation is not specified; second offense – **Permanent revocation**

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[1139] §55-10-416
Anti-Consumption Law (Yes/No):	**Yes** Drivers only §55-10-416

[1139] However, a municipality may enact an open container/anti-consumption ordinance that applies to passengers. §55-10-416(c)

STATE:	**TEXAS**
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:	Intoxicated while driving[1140] Penal Code §§49.01(2)(A) and 49.04
Illegal Per Se Law (BAC/BrAC):	**≥.08** Penal Code §§49.01(2)(B) and 49.04 Persons Under 21 Years Old-**>.00**[1141] Alcoholic Beverage Code §§106.01 and 106.041(a)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	**Intoxicated** while driving Penal Code §§49.01(2)(A) and 49.04
Other:	It is illegal for a person to operate a motor vehicle if "addicted to the use of alcohol or a controlled substance." Tran. Code §§521.201 and 521.319
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** Tran. Code §724.011(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** Tran. Code §724.011(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) Tran. Code §724.061 and *Jamail v. State,* 787 S.W.2d 380 (Tex. Cr . App. 1990)[1142] (cert denied) 498 U.S. 853, 112 L.Ed.2d 115, 111 S. Ct. 148 (1990)) and *McClain v. State,* 984 S.W.2d 700 (Tex. App. – Texarkana 1998).
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

[1139] 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" ≥.08. Penal Code §49.01(2) (A) and (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 ≥.10.) 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. Penal Code §49.01(1)

[1140] It is illegal for a person <21 years old to operate a motor vehicle while having any detectable amount of alcohol in his/her system. Alcoholic Beverage Code §§106.01 and 106.041(a)

[1141] 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)

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

Blood:	**Yes** Tran. Code §724.011(a)
Urine:	**No**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**No**[1143]
Pre-Sentencing Investigation Law (PSI)(Yes/No):	**Yes**[1144] Second or subsequent offense (within 5 years) – 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 – **Suspension 180 days.** II. Refusal where there has been a prior "alcohol-related or drug- related enforcement contact" – **Suspension – 2 years.** Tran. Code §§724.035 **Occupational License:** If a person has not had a prior "alcohol-related or drug-related enforcement contact,"[7] an occupational license may be issued at any time based on essential need. If a person had had a prior "alcohol-related or drug-related enforcement contact", such a license is not available until the person's license has been suspended for 90 days. An occupational license is only available once in a 10-year period.

[1142] For persons ≥21 years old, there is no "deferred adjudication or disposition" for a drunk driving offense. Code of Criminal Procedure Art. 42.12, §5(d). For persons <21 years old, there is no "deferred adjudication" for a drunk driving offenses committed under the Penal Code and for a third or subsequent offense of driving with any detectable amount of alcohol in the system. Family Code §53.03(g). Note: Under "deferred disposition," a defendant is placed on probation and, after the probation period has been successfully completed, the charges against the defendant are dismissed.

[1144] I. There is a general pre-sentence investigation law which has been codified as §9 of Art. 42.12 of the Code of Criminal Procedure.

II. The law appears to allow a court to 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. Tex. Code of Crim. Proc. Art. 45.051(b), (3), (4). (5), and (6). III. Before the court can assign a drunk driving offender to community supervision (probation), the offender is required to submit to an alcohol and drug evaluation. Code of Crim. Proc. Art. 42.12, §13(f)

Tran. Code §§521.251, 521.242, 521.245, 521.251, and 724.045

Other: If a driver is acquitted of a DWI offense associated with a license suspension based on a refusal, such suspension must not be imposed or must be rescinded. Tran. Code §724.048(c)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: See Footnote No. [1145].

Imprisonment:

Term (Day, Month, Years, Etc.): First offense (Class B Misdemeanor) – **72 hours to 180 days**; second offense (Class A Misdemeanor) – **30 days to 1 year**; second offense where there has been a prior Intoxication Manslaughter offense **or third** offense (third degree felony) – **2 to 10 years** Penal Code §§12.21, 12.22, 12.34, 49.04 and 49.09 Penal Code §12.42 provides for increased imprisonment sanctions for repeat felony offenses.
Persons Under 21 Years Old (BAC >.00) – first offense – No**ne**; subsequent offense – Not more than **180 days** Alcoholic Beverage Code §106.041(b) and (c)

Mandatory Minimum Term: First offense (Class B Misdemeanor) – **72 hours**[1146] (It appears the court may allow a DWI offender to participate in community supervision without first having to complete a mandatory period of confinement.); second offense (Class A Misdemeanor) – **30 days** (if community supervision is granted, either (1) not less than 3 days of confinement in the county jail or (2) not less than 5 days of confinement in the county jail if "ignition interlock" usage is required); second offense where there has been a prior Intoxication Manslaughter offense **or third** offense third degree felony – **2 years** (not less than 10 days of continuous confinement if community supervision is granted). Penal Code §§49.04(b) and 49-09 andCode of Criminal Procedure Art. 42.12, §13(a). Note: Under Penal Code §12.44, a third degree felony offender may receive the imprisonment sanction of a Class A Misd.

[1144] A person commits Intoxication Assault, a third degree felony by causing "serious bodily injury" while DWI. The sanctions for this offense are incarceration from 2 to 10 years and/or a fine of not more than $10,000. If community supervision is granted, the defendant must serve 30 days of continuous confinement. Penal Code §§12.34 and 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 Crim. Procedure Art. 42.12, §§3 and 3g)) and on the duration of an offender's incarceration period before eligible for parole. *Rachuig v. State,* 972 S.W.2d 170 (Tex.App.- Waco 1998)

[1146] If a first offender had in immediate possession an open container of an alcoholic beverage, the minimum term of confinement is 6 days. Penal Code §49.04(c)

Persons Under 21 Years Old (BAC >.00) – first offense – **N/A**; subsequent offense – No**ne** Alcoholic Beverage Code §106.041(b) and (c)

Fine:

Amount ($ Range): First offense (Class B Misdemeanor) – Not more than **$2,000**; second offense (Class A Misdemeanor) – Not more than **$4,000**; second offense where there has been a prior Intoxication Manslaughter offense **or third** offense (third degree felony) – Not more than **$10,000** Penal Code §§12.21, 12.22, 12.34, 49.04 and 49.09
Persons Under 21 Years Old (BAC >.00) – first offense (Class C Misdemeanor) – Not more than **$500**; subsequent offense – **$500 to $2,000** Alcoholic Beverage Code §106.041(b) and (c) and Penal Code §12.23

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. Second Class felony- 240 to 800 hours; third Class felony- 160 to 600 hours; Class A Misd- 80 to 200 hours; and, Class B Misd- 24 to 100 hours. Code of Criminal Procedure Art. 42.12, §16 and *Mills v. State,* 799 S.W.2d 447 (Tex. App. – Corpus Christi 1990)
Persons Under 21 Years Old (BAC >.00) – first offense (Class C Misdemeanor) – **20 to 40 hours**; subsequent offense – **40 to 60 hours** Alcoholic Beverage Code §106.041(d)

Restitution (e.g., Victim's Fund) **Yes.** I. As a condition of community supervision.- Code of Criminal Procedure Art. 42.12, §11.
II. A victim of a DWI offense can receive payments from a State victims' compensation fund via the State attorney general. Code of Crim. Procedure Art. 56.31 et seq.

Other: **Ignition Interlock – 2nd or subsequent offenses or >.15 B.A.C.:** The court must order these offenders to install ignition interlock devices on all of the motor vehicle they own for 1 year following a period of license suspension. If there is a conflict between this requirement and the one related to community supervision, this provision "controls". Penal Code §49.09(g)
Costs Attendant to Intoxication Convictions: DWI offenders shall pay the following costs: (1) $15 if a video camera was used in the arrest; (2) costs of evaluation; and (3) the cost of any emergency accident response necessitated by the DWI not to exceed $1,000. Code of Crim. Proc. Art. 102.018.
Treatment Alternative to Incarceration: An alcohol/drug treatment program may 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. Govt. Code §76.017

Ignition Interlock: I. Ignition Interlock (community supervision): For a first DWI, Intoxicated Assault and Intoxication Manslaughter, in situations where a defendant has been placed on community supervision, the court may require that the offender install an "ignition interlock" device on the vehicle. For second and subsequent DUI, or if the defendant had a B.A.C. of .15 or more, Intoxicated Assault and Intoxication Manslaughter in situations where a defendant has been placed on community supervision, the court must require that the offender install an "ignition interlock" device. An offender may obtain an exemption from using an ignition interlock device if the person is required to operate a motor vehicle as part of employment and if the vehicle to be used is owned by the employer. Code of Criminal Procedure Art. 42.12, §13(i) andTran. 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 first offender and must require subsequent offenders within 10 years to only operate vehicles that are equipped with ignition interlock devices. An offender may obtain an exemption from using an ignition interlock device if required to operate a motor vehicle as part of employment and if the vehicle to be used is owned by the 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. For subsequent offenders within five years who are subject to the ignition interlock requirement, the time period of device usage is 1 year. Tran. Code §521.246. An offender who does not have a prior record of 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 (within 5 years) must wait 90 days to obtain such a license. Likewise, an offender who has had a prior DWI offense conviction (within 5 years) must wait 180 days 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 release from confinement, to only operate vehicles that are equipped with ignition

interlock devices. Code of Criminal Procedure Art. 17.441

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **≥.08** BAC/BrAC/UrAC.[1147]

I. Admin Per Se Action– suspension **– 90 days**[1148] II. Admin Per Se Action where there has been a previous DWI offense conviction – **Suspension – 1 year**

Occupational License: If a person has not had a prior "alcohol-related or drug-related enforcement contact" [1149], an occupational license may be issued based on essential need. If a person had had a prior "alcohol-related or drug-related enforcement contact" within five years, such a license is not available until the person's license has been suspended for 90 days. An occupational license is only available once in a 10 year period; and 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 and 524.022(a)

Persons Under 21 Years Old-**>.00** BAC[1150] – first Admin. Per Se Action – Suspension 60 days (30 days mand); second Admin. Per Se Action– suspension 120 days (90 days mand); Subsequent Admin. Per Se Action- Suspension 180 days (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) and (c)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): **Suspension** Tran. Code §521.344

Term of License Withdrawal (Days, Months, Years, etc.): I. The following suspensions must be based on a conviction that resulted from the introduction of alcohol into the body. First offense – **90 to 1 year** (365

[1146] See the definition of "alcohol concentration" in Penal Code §49.01. Tran. Code §524.001(1)

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 years old who are driving with any detectable amount of alcohol in his/her systems) 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

[1147] The law specifically provides that a suspension based on an admin per se action cannot be "probated." Tran. Code §524.021(b)

[1148] "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).

[1149] 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)

days)[1151and1152]; subsequent offense – **180 days to 2 years**; subsequent offense within five years – **1 to 2 years**[1153] Tran. Code §521.344(a) and Code of Crim. Proc. Art. 42.12, §13(k)
II. Intoxicated Assault- first offense – **90 days to 1 year**; subsequent offense within five years – **1 year** Tran. Code §§521.344(a).

Mandatory Minimum Term of Withdrawal:

DWI Offenses: first offense – **None**; subsequent offense with required ignition interlock usage- **1 year.** Intoxicated Assault: first offense – **None;** subsequent offense – **1 year.**
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 issued an occupational license within the past 10 years for a prior DWI offense conviction. Tran. Code §§521.242(b)(2) and (d) and 521.244
II. First offenders 21 years old or older 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) and (j)

Rehabilitation:
Alcohol Education:

Yes. For any DWI offense, including Intoxication Assault and Intoxication Manslaughter as a condition of community supervision, an offender is required to complete an alcohol education program. This requirement may be waived upon a showing of good

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[1150] **DWI Offenders Under 21 Years Old:** License suspension for 1 year. Except as noted, the licensing agency must suspend the offender's license regardless of whether the offender has been placed on probation and ordered to complete an alcohol education program. A person's license is not subject to suspension if that person is placed under community supervision and required to operate only motor vehicles equipped with **ignition interlock** devices. Tran. Code §521.342. An occupational license is available. Tran. Code §§521.241 et seq. and 521.342(c) Notwithstanding other provisions of law, offenders who are placed on community supervision must have their licenses suspended for 90 days, which must begin at the time the offenders are 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 days 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) and (d)

[1151] I. Except for subsequent DWI offenders (within 5 years) 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) and Code of Criminal Procedure Art. 42.12, §§4 and 13(g). II. Except for subsequent DWI offenders (within 5 years) who are subject to required ignition interlock usage, an offender's license cannot be suspended if that person is required to attend an alcohol education program as part of probation. However, if a person has been previously convicted of a DWI offense, regardless of the time period between offenses, if that person has previously attended an alcohol education program as part of probation, that person's license must be suspended. The suspension periods, including any mandatory suspension period, are the same as for DWI. Tran. Code §521.344(d), Code of Criminal Procedure Art. 42.12, §13(k), and *Texas Dept. of Public Safety v. Duarte,* 809 S.W.2d 611 (Tex.App. -Corpus Christi 1991).

[1152] 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 suspension for 180 days. Tran. Code §§521.371 and 521.372. A person is eligible for occupational driving privileges based on an essential need to drive. Tran. Code. §§521.241 et seq. and 521.377(b).

cause by the offender. Code of Criminal Procedure Art. 42.12, §13(h) and (j)
Persons Under 21 Years Old (BAC->.00) – first offense – An offender **must** attend an alcohol awareness course; subsequent offense – An offender **may** be
required to attend an alcohol awareness course. Alcoholic Beverage Code §§106.041(d) and 106.115

Alcohol Treatment: **Yes.** Felony offenders (third or sub. DWI offenses, Intoxication Assault and Intoxication Manslaughter) may be confined in a substance abuse treatment facility in lieu of imprisonment from 6 months to 1 year. Code of Criminal Procedure Art. 42.12, §14(a).

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: **Forfeiture (Not 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

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: Persons who 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) and (c)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law: **Yes.**[1154] **Intoxication Manslaughter**[1155] (DWI related death) second degree felony Penal Code §49.08

Sanctions:

Criminal Sanction:

Imprisonment (Term): Second Degree Felony- **2 to 20 years** Penal Code §12.33

Mandatory Minimum Term: **120 days** if community supervision is granted. Art. 42.12, §13(b) Code of Criminal Procedure

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[1153] 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), and *Hall v. State,* 935 S.W.2d 852 (Tex. App. – San Antonio 1996)

[1154] There is no deferred adjudication for this offense. Code of Criminal Procedure Art. 42.12, §5(d)

Fine ($ Range):	Second Degree Felony- Not more than **$10,000.** Penal Code §12.33
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Suspension** Tran. Code §521.344(b)
Length of Term of Licensing Withdrawal:	First offense – 180 **days to 2 years; second** or subsequent offense (within 10 years) – **1 to 2 years**. Tran. Code §521.344(b). For persons under 21 years old – **Suspension 1 year** (appears to be mand) Tran. Code §521.342(b).
Mandatory Action--Minimum Length of License Withdrawal:	First offense – **None; second** or subsequent offense (within 10 years) – **1 year.** Tran. Code §521.344(b). For persons under 21 years old, for either a first or second or subsequent offense, 1-year suspension appears to be mandatory. Tran. Code §521.342(b). But an offender may be issued an occupational (restricted) license with an ignition interlock requirement based on "essential need".[1156] Tran. Code §521.241 et seq. .
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked. Tran. Code §521.457.
Sanction:	
Criminal:	
Imprisonment (Term):	First offense – not less than **72 hours** nor more than **6 months**; second and subsequent offense (Class A Misdemeanor) – not more than **1 year** Tran. Code §521.457 and Penal Code §12.21
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	First offense – not less than **$100** nor more than **$500**; second and subsequent offense – not more than **$4,000** Tran. Code §521.457 and Penal Code §12.21.
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Suspension** Tran. Code §521.292(a)(1)
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 year.

[1155] **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 days and require that such offenders only operate motor vehicles equipped with ignition interlock devices. Code of Criminal Procedure Art. 42.12, §13(m)

Mandatory Term of License Withdrawal Action	**None.** An occupational license may be issued based on essential need. Tran. Code §521.241 et seq. {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.}
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** Tran. Code §521.292(b)
Grounds for Being Declared an Habitual Offender:	"Any person with 4 or more convictions arising out of different actions in a consecutive period of 12 months, or 7 or more convictions arising out of different actions within a period of 24 months...." Tran. Code §521.292(b)
Term of License Rev While Under Habitual Offender Status:	**Suspension** for not more than **1 year** Tran. Code §521.292(a)(3). An occupational license may be issued on a showing of "essential need". Tran. Code §521.241 et seq.
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**None**
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has an alcohol concentration ≥.04 (Standards: 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.), (2) is under the influence of alcohol or a controlled substance or (3) refuses 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 years mand). In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol in his/her system must be placed "out-of-service" for 24 hours. Tran. Code §§522.003(1), (2), (5), (9) and (23), 522.081, 522.082, 522.085, 522.086, 522.101 and 522.102.

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:	**Discretionary**
Vehicle Passengers:	**No**
Pedestrian:	**No**

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** Alcoholic Beverage Code §§106.01, 106.02 and 106.03[1157]
Minimum Age (Years) Possession:	**21** Alcoholic Beverage Code §§106.01 and 106.05. Exemptions for employment or while in the presence of a parent or guardian.
Minimum Age (Years) Consumption:	**21** Alcoholic Beverage Code §§106.01 and 106.04. Exemption for a minors' 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.**[1158 and1159] 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 he was 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. See *F.F.P. Operating Ptnrs, L.P. v. Duenez,* 69 S.W.3d 800 (Tex. App. – Corpus Christi, 2002) review granted 2002 TEX.LEXIS 210 (Tex. 2002).
"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.**
Dram Shop Actions-Social Hosts:	**Yes-Limited.** *Graff v. Beard,* 858 S.W.2d 918 (Tex. – San Antonio 1995)[1160,] *Smith v. Merritt,* 940 S.W.2d

[1156] A justice of the peace may order that a blood specimen be taken from a deceased person if there is evidence to indicate that such person was driving while intoxicated. Code of Criminal Procedure Art. 49.10(j)

[1157] 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 a 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. [4]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* 1999)
[1158]*Cooking Team,* 25 S.W.3d 818 (Tex. App. – Houston [14th Dist.] 2000)

[1159] 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 liability under general common law for injuries caused by such a minor. Likewise, the court held that there was no negligence per se cause of action against a social host for damages resulting from a violation of the alcoholic beverage control law which prohibits the service of alcoholic beverages to persons <21 years old. Note: This decision by the Texas Supreme Court reversed, in part, the Texas Court of Appeals in *Smith v. Merritt,* 929 S.W.2d 456 (Tex. App. – Tyler 1995)
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 years old per Alcoholic Beverage Code §106.01) who had consumed alcoholic beverages at a party given by the host.

	602 (Tex. 1997)[1161]. *Kovar v. Krampitz,* 941 S.W.2d 249 (Tex. App. – Houston [14 Dist.] 1996) and *Dorris v. Price,* 22 S.W.3d 42 (Tex. App. – Eastland 2000)
Other:	Under the Dram Shop Law, a licensee may be held liable for injures sustained by an intoxicated patron subject to comparative negligence theories that may apply. *Smith v. Sewell,* 858 S.W.2d 350 (Tex. 1993) Under common law negligence, an employer may be liable for 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), and *Whitney Corp. v. George Distributors,* 950 S.W.2d 82 (Tex. App. – Amarillo 1997) (no liability). See also *D. Houston, Inc. v. Love,* 92 S.W.3d 450 (Tex. 2002) where the plaintiff-exotic dancer was required to drink by her employer-licensee, became intoxicated and was injured driving home.
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misdemeanor** Alcoholic Beverage Code §101.63
Term of Imprisonment:	First offense – Not more than **1 year**; second offense – Not more than **1 year** Alcoholic Beverage Code §§101.63(b) and 101.63(c)
Fine ($ Range):	First offense – Not less than **$100 nor more than $500**; Subsequent offense – Not< **$500 nor >$1,000.**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes**[1162]
Length of Term of License Withdrawal:	Suspended – not more than 60 days, 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 Persons	

[1160] In *Kovar*, the court held that, since a social host did not provide alcoholic beverages to a minor guest, he was 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 negligence as "as a matter of law." This case was reversed in *Reeder v. Daniels,* 61 S.W.3d 359 (Tex. 2001) in which such liability was disallowed by legislation and the court rejected social host liability via a negligence theory. 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.

[1161] 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.

Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	**Class A Misdemeanor**[1163]
Term of Imprisonment:	Not more than **1 year.**[1164] Alcoholic Beverage Code §§106.01 and 106.03
Fine ($ Range):	First offense – Not less than **$100 nor more than $500**; Subsequent offense – **$500 to $1,000** Alcoholic Beverage Code §106.03
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes.**[1165] Alcoholic Beverage Code §§106.13 and 61.71(a)(5)
Length of Term License Withdrawal:	First offense – cancel or suspend for not more than **90 days**; second offense – cancel or suspend for not more than **6 months**; third offense – cancel or suspend for not more than **12 months.**
Anti-Happy Hour Laws/Regulations:	**Yes.** Rule 06.09.04.001 (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, driver and passenger**[1166] Penal Code §49.031
Anti-Consumption Law:	**No**

[1162] The sale to a minor must be with criminal negligence. §106.03(a) of the Alcoholic Beverage Code

[1163] Applies to both a first and subsequent offense.

[1164] 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.

[1165] 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).

STATE:	**UTAH**
General Reference:	Utah Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §41-6-44(2)(a)(ii)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[1167and1168] §41-6-44(2)(a)(i) **≥.05** if offender is 21 years of age or older, has a passenger under 16 years of age and has a prior DUI conviction within 10 years. §41-6-44(2)(iv) – class B misdemeanor, or a Class A misdemeanor if the person has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner; §41-6-44(3)(c) or a third degree felony if the person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner. §41-6-44(3)(b) **Any Measurable Controlled Substance** in the Body[1169] §41-6-44.6
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) **Any Drug** or (2) a Combination of Any Drug and Alcohol §41-6-44(2)(a)(ii)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §41-6-44.10(2)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §41-6-44.10(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) §41-6-44.10(8)
Other Information:	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) and 76-5-207(6)

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

[1166] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.
[1167] 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)
[1168] Unless the driver was using the controlled substance via a valid prescription or involuntarily digested the substance.

Blood:	**Yes** §41-6-44.10 (1)(a)
Breath	**Yes** §41-6-44.10 (1)(a)
Urine:	**Yes** §41-6-44.10 (1)(a)
Oral fluids:	**Yes** §41-6-44.10 (1)(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No –** But a Magistrate may not grant diversion in a DWI case. §77-2-9
Anti-Plea-Bargaining Statute (Yes/No):	**Yes – under specified circumstances:** 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 offense. §41-6-44(10) If the defendant has a prior conviction within the previous 10 years for alcohol, any drug, any combination of alcohol and any drug, reckless driving, vehicle homicide, or causing serious bodily injury, a plea held in abeyance for any of the above crimes may only be accepted if approved by one of the following: district attorney, deputy district attorney, county attorney, deputy county attorney, attorney general, or assistant attorney general. Whichever official approves the plea in abeyance must have felony jurisdiction over the case. §41-6-43.8(3)(b) Beginning on July 1, 2006, pleas in abeyance for driving under the influence violations may not be granted. §63-55b-177
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes:** Substance abuse assessment is required, including screening, assessment, education series and subsequentstance abuse treatment. §§ 17-43-201(4)(m), 41-6-44(1)(c), (4)(c)(i), (5)(c)(i), (6)(c) and (8)(a) and 53-3-231(10)(a)

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	Designated an "alcohol restricted driver" – 5- or 10-year prohibition of driving{depending on the person's prior driving history} with any measurable or detectable amount of alcohol in the person's body § 41-6a-524 (3) and (4).

18 months[1170] **Revocation** mandatory. If the driver has had a previous refusal, admin per se action or DWI offense conviction within the past 10 years. – **24-month Revocation** mandatory §41-6-44.10(2)(e), (f) and (h)and (I)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: [1171]
Imprisonment:
Term (Day, Month, Years, Etc.): First and second offense (within 6 years) – Class B misdemeanor – not more than **6 months**; third offense (within 10 years) – third degree felony[1172] – not more than **5 years** §41-6-44(3), (6) and (7)
First or second DWI offense – where there (1) is an injury related to negligent action or (2) a passenger is under 16 years old (**child endangerment**) or (3) the driver ≥ 21 years old driving with a passenger <18 years old – Class A misdemeanor- not more than **1 year** §§41-6-44, 76-3-203(3) and 76-3-204
Any Measurable Controlled Substance in the Body– Class B misdemeanor – not more than **6 months** §§41-6-44.6 and 76-3-204

Mandatory Minimum Term: First offense – **48 consecutive hours**[1173]; second offense (within 6 years) – **240 consecutive hours**; third offense (within 10 years) – **Important:**
Any Measurable Controlled Substance in the Body – **None**

[1169] This sanction also applies to persons under 21 who refuse to submit to a chemical test to determine if they have violated §53-3-231(2). Sec. 53-3-231 provides for administrative licensing actions against such persons who drive a vehicle with any amount of alcohol in their bodies.

[1170] A vehicle homicide offense is a prior DWI offense. §41-6-44(1)(a)(iv)

[1171] **Third Degree Felony Offenses:** A person commits a third degree felony by committing (1) a third drunk driving offense within 10 years 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).

[1172] These minimum mandatory sanctions apply also to DWI offenses related to injury and child endangerment.

Special Note: In third degree felony 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 hours and (3) order the person to participate in an alcohol or drug dependency program which provides intensive care, inpatient treatment and long-term care. §41-6-44(6)(b) and (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. §41-6-44(6)(d) and (13 If a third degree felony offender is not placed on probation, the offender is eligible for a parole hearing after serving a minimum of 90 days 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.

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 (Utah App. 1996) (cert denied 916 P.2d 909 (Utah 1996)), and *City of Odem v. Crandall,* 760 P.2d 920 (Utah App. 1988)

Fine:

Amount ($ Range): First and second offense (within 6 years) – Class B misdemeanor – not more than **$1,000**; third offense (within 10 years) – third degree felony not more than **$5,000** §76-3-301
A first or second DWI offense – where there (1) is an injury related to negligent action or (2) is a passenger under 16 years old (**child endangerment**) or (3) is a driver ≥ 21 years old is driving with a passenger < 18 years old – Class A misdemeanor- not more than **$2,500**[1174] §§41-6-44 and 76-3-301
Any Measurable Controlled Substance in the Body– Class B misdemeanor – $700 to not more than **$1,000** §§41-6-44.6 and 76-3-301

Mandatory Min. Fine ($): First offense – **$700**; second offense (within 6 years) – **$800**; third offense (within 10 years) – Any Measurable Controlled Substance in the Body – No**ne**

Other Penalties:[1175and1176]

Community Service: First offense – Not less than **24 hours** in lieu of imprisonment (24 hrs mandatory); second offense (within 6 years) – Not less than **240 hours** in lieu of imprisonment (240 hours are mandatory); third offense (within 10 years) – **None** §41-6-44(4), (5) and (6)

Restitution (e.g. Victim's Fund): **Yes.** Either via a Victims' Compensation Fund (§63-25a-401 et. seq.) or via direct payment by the defendant to the victim (§76-3-201 and §77-38a-301).

Other: **Ignition Interlock:** I. In addition to any other sanctions that may be imposed for a DWI alcohol offense, an offender may be required, as a condition of probation, only to operate motor vehicles that are equipped with ignition interlock devices.[1177] This requirement is mandatory if the offender is under 21 years old. §41-6-44.7(2)(a) and (b)
If the defendant had a **BAC of .16** or higher, the court shall order the following {or describe on record why the order or orders are not appropriate}: Treatment and one or both of the following: ignition interlock system as a condition of probation; and home confinement through the use of electronic monitoring. §41-6-44(15).
II. The court **must** require a person who has been convicted of a subsequent drunk driving offense (a

[1173] The provisions of the drunk driving law may have limited this fine to $1,000. §41-6-44
[1174] In addition to the above fines, under §62A-15-502, the Court may impose other assessments that fully compensate agencies for the costs of treating DWI defendants.
[1175] Under §63-63a-1, a 85 percent 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(2) In addition, a mandatory "traffic mitigation surcharge" of **$10** is imposed on all offenders. §63-63b-101
[1176] The court must give reasons on the record if this sanction is not imposed and the offender had a **BAC ≥.16.** §41-6-44

§41-6-44 offense) (within 10 years), to install an ignition

interlock device on all of the vehicles registered in the offender's name and/or operated by that person for 3 years from the date of conviction. §41-6-44.7(2)(c): III. There is an exemption from ignition interlock usage for employer owned vehicles. §411-6-44.7(8).

Other:

Electronic Home Monitoring[1178]: As an alternative to either imprisonment or community service for either a first 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) and (13)(d)(ii)

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

Yes.[1179] I. (1) **BAC/BrAC ≥.08,** or (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) – first admin. Action – Mandatory **Suspension for 90 days**; second and subsequent admin actions- Mandatory **Suspension for one year**. §§53-3-222 and 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 the body is subject to the following admin licensing actions- first violation- "Denial"- **90 days**; second or sub. violation (within 3 years) – Suspension – **1 year.** §53-3-231

III. For the administrative per se actions in I and II above, a person's license cannot be reinstated until that person has completed any required alcohol or drug education or treatment program. §§41-6-44(8)(b) and 53-3-231(11)(b)(i)

[1177] The court must give reasons on the record if this sanction is not imposed and the offender had a BAC **≥.16.** §41-6-44(14).

[1178] 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 the body.

Special Note: The licensing actions listed under Post DWI Conviction are those 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 90 days, 180 days or 1 year. 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)

Other:	Under §53-3-221(1)(a) and (8)(a), a person's license may be suspended for not more than 1 year if that person has committed an offense usually requiring license revocation (e.g., second or sub. DWI). Such action may be taken without a preliminary hearing and may occur prior to a conviction.
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	First offense (for either injury or non-injury related offenses) – **Suspension**; subsequent DWI offense within 10 years)(for either injury or non-injury related offenses) – **Revocation** §§41-6-44(11), 53-3-220 and 53-3-221 Any Measurable Controlled Substance in the Body – first offense – **Suspension**; subsequent DWI offense (within 6 years) – **Revocation** §41-6-44.6(6)
Term of License Withdrawal (Days, Months, Years, etc.):	First offense for either injury or non-injury related offenses – **90 days**[1180]; subsequent offense[1181] (within 10 years for either injury or non-injury related offenses) – **1 year** §41-6-44(11)(a) Any Measurable Controlled Substance in the Body – first offense – **90 days**; subsequent offense (within 6 years) – **1 year** §41-6-44.6(6)
Mandatory Minimum Term of Withdrawal:	First offense for either injury or non-injury related offenses – **90 days**; subsequent offense (within 10 years – either injury or non-injury related offenses – **1 year** §41-6-44(11)(a) No hardship license may be issued. §53-3-220(4)(a)(ii) Any Measurable Controlled Substance in the Body – first offense – **90 days**; subsequent offense (within 6 years) – **1 year** §41-6-44.6(6) No hardship license may be issued. §53-3-220(4)(a)(ii)
Other:	
Rehabilitation:	
Alcohol Education and Treatment :	**Yes:** Substance abuse assessment is required, including screening, assessment, education series and subsequentstance abuse treatment.[1182] §§ 17-43-201(4)(m), 41-6-44(1)(c),

[1179] 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) and 41-6-44.6(6)(c)

[1180] The court must give reasons on the record if this sanction is not imposed and the offender had a BAC **≥.16.** §41-6-44

[1182] An offender's driving privileges cannot be restored until that person has (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) and 41-6-44.6(7).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Persons are "disqualified" from operating a CMV for one mandatory year. (three mandatory years if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥.04 (Standards: 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.), (2) are under the influence of either alcohol, drugs or a controlled substance or (3) refuse to submit to a chemical test for

(4)(c)(i), (5)(c)(i), (6)(c) and (8)(a) and 53-3-231(10)(a)

Note: The above programs are also required for persons who have been convicted of driving with "any measurable controlled substance in the body" under §41-6-44.6. §41-6-44(8)(a)(i) and (ii)

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority: **Yes.** §41-6-44.30

Terms Upon Which Vehicle Will Be Released:

Other: A vehicle used in a drunk driving offense will be released to the registered owner under certain circumstances. §41-6-44.30(2)

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 and 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 suspended or revoke a person's license for 90 days, 180 days or 1 year following a conviction under §41-6-44. §41-6-44(12)

No Alcohol Conditional License: A person who has been convicted of any drunk driving offense within 10 years (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 the license reinstated with a "no alcohol condition". This condition prohibits such a person from driving with **any amount of alcohol** in the body. For a first violation, this requirement lasts for **2 years**; for a second or subsequent violation, it lasts for **10 years**. §53-3-232(2) A person who violates this condition commits a Class B Misdemeanor (jail for not more than **6 months** and/or a fine of not more than **$1,000**) and is subject to a mandatory license revocation of **1 year**. §§53-3-220(1)(a)(xiv), 53-3-225(1)(a), 53-3-232, 76-3-204(2) and 76-3-301(1)(d)

Serious Bodily Injury DWI Offenses: A person commits a third degree felony by causing serious

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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 years mand). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in his/her 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 and 53-3-418.

bodily injury[1183] related to a DWI offense. The sanctions for this offense are an imprisonment term of not more than **5 years** and/or a fine of not more than **$5,000**. If the court suspends sentence and grants probation, it must still impose the following mandatory sanctions: Jail for 1,500 hours; a fine of $1,500; and, alcohol or drug treatment (w/substance abuse screening). §§41-6-44(3)(b) and (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) and (11).
Probation with BAC ≥ .16: An offender with a BAC ≥ .16 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 manner while DWI or with an alcohol concentration ≥.08 – third degree felony §76-5-207(1) and (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 ≥.08 – second degree felony §76-5-207(2) and (3)

Criminal Sanction:

Imprisonment (Term): Simple Negligent Homicide – Not more than **5 years.** §76-3-203(3)
Criminally Negligent Homicide – **1 to 15 years.** §76-3-203(2)

Mandatory Minimum Term: **None**

Fine ($ Range): Simple Negligent Homicide – Not more than **$5,000.** §76-3-301(1)(b)
Criminal Negligent Homicide – Not more than **$10,000.** §76-3-301(1)(a)

Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: For both offenses – **Revocation** §53-3-220(1)(a)

Length of Term of Licensing Withdrawal: For both offenses – **1 year.** §53-3-225

Mandatory Action--Minimum Length of License Withdrawal: For both offenses – **1 year.** No hardship license may be issued. §53-3-220(4)(a)(i)

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

Sanction:

[1182] A "serious bodily injury" is defined as a "bodily injury that creates or causes serous 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)

Criminal:	
Imprisonment (Term):	Class B Misdemeanor[1184] **Not more than 6 months** §§41-6-44, 53-3-227(3)(a) and 76-3-204(2)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	**Not more than $1,000.** §76-3-301(1)(d)
Mandatory Minimum Fine:	**$750**[1185]
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	For driving while suspended because of an alcohol-related violation – **Suspension**; For driving while revoked – **Revocation** §53-3-220(2) Actions taken immediately-53-3-227 (4)(a)(i)(B)
Length of Term of License Withdrawal Action:	An additional like period of suspension or revocation of one year for each subsequent occurrence. §53-3-220(2)(b)
Mandatory Term of License Withdrawal Action:	The above licensing action is mandatory (i.e., no "limited" employment license can be issued) if the original revocation/suspension was for a DWI offense or for vehicle homicide. §53-3-220(4)(a)(iii)
Other penalties:	Jail of not less than 48 consecutive hours, compensatory service work program for not less than 48 hours, and a fine of not less than $750 {Class B misdemeanor} §53-3-227(4)
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	

[1183] It is a Class B misdemeanor 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 ≥.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 months and/or a fine of not more than $1,000 (with mandatory minimum of $750). It is a Class C misdemeanor to operate a CMV during either a CDL disqualification which is not DWI related or a CDL out-or-service order. The sanctions for this offense are an imprisonment term of not more than 90 days 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 extended for a like period. An offender driving a CMV while under a CDL out-of-service order is subject to the following CDL disqualification periods: (1) For a first violation, 90 days to 1 year; (2) for a second violation (within 10 years), 1 to 5 years; and, (3) for a third or subsequent violation (within 10 years), 3 to 5 years. If the out-of-service order violation involved 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 first violation, 180 days to 2 years; and, (2) for a second or subsequent violation (within 10 years), 3 to 5 years. The minimum periods of disqualification appear to be mandatory. §§53-1-116, 53-3-220(2)(a), 53-3-227(1), (2) and (3), 53-3-404, 53-3-414(7), 76-3-204(2) and (3) and 76-3-301(1)(d) and (e).

[1184] The fine shall be in an amount not less than the maximum fine for a Class C misdemeanor, §§ 53-3-227(3)(b) and 76-3-301(1)(e)

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

Other Criminal Actions Related to DWI:

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(2)(q)
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) and 32A-12-209 There is an exception for medicinal purposes for parents, physicians, or dentists. §32A-12-203(3).
Minimum Age (Years) Possession:	**21** §32A-12-209
Minimum Age (Years) Consumption:	**21** §32A-12-209

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes.** §32A-14a-102(1)(a)[1186] Damages are limited to $500,000 per person and $1,000,000 per occurrence[1187.] §32A-14a-102(6) **Important:** The Dram Shop Law does not apply to either general food stores or other businesses that are

[1185] Liability under the Dram Shop Act is subject to the principles of comparative fault under §§78-27-37 through 40. *Red Flame, Inc. v. Martinez,* 996 P.2d 540 (Utah 2000)

[1186] 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 years 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-102(9)} but that statutory preemption was not raised as an issue.

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)(cert denied 531 U.S. 1011, 148 L.Ed.2d 485, 12 S. Ct. 566 (2000)).

Dram Shop Actions-Social Hosts: **Yes (Limited)** under the Dram Shop Law.[1188] §32A-14a-102(2)(b) Also possible under common law.[1189]

Other: **None**

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

Type of Criminal Action: Class B **Misdemeanor** §§32A-4-106(10), 32A-12-104, 32A-12-204, 76-3-204(2), 76-3-301(1)(d) and 76-3-302(3)

Term of Imprisonment: Not more than **6 months**

Fine ($ Range): Not more than **$1,000** for individuals and not more than **$5,000** for 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. Suspension** or **Revocation** §32A-1-119

Length of Term of License Withdrawal: **Suspension**: Time period not specified in the statute. **Revocation**: At least **3 years** §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:

[1187] A social host 21 years old or more 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)

[1188] **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. 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)

Type of Criminal Action:	Class A **Misdemeanor** §§32A-4-106(10), 32A-12-104, 32A-12-203, 76-3-204(1), 76-3-301(1)(c), and 76-3-302(2)
Term of Imprisonment:	Not more than **1 year**
Fine ($ Range):	Not more than **$2,500** for individuals and not more than **$10,000** for 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):	**Yes.**[1190] **Suspension** or **Revocation** §32A-1-119(5).
Length of Term License Withdrawal:	**Suspension**: Time period not specified in the statute. **Revocation**: At least **3 years** §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(4)(a)
Anti-Happy Hour Laws/Regulations:	(1) Liquor must be sold at prices established by the State and (2) mixed drinks and wine cannot be sold at discount prices. §32A-4-106(11)(a) and (b). The law also provides that a patron cannot have more than one alcoholic beverage at a time. A single beverage is restricted to 1 ounce primary liquor, 5 ounces of wine, or 1 liter of heavy beer.[1191] §32A-4-106(2)(c), (2)(d), (12) and (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)

[1189] 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 determined by the commission.

[1190] "Heavy beer" is defined as a fermented alcoholic beverage containing more than 4 percent alcohol by volume. §32A-1-105(18)

STATE:	**VERMONT**
General Reference:	Vermont Statutes Annotated
Basis for a DWI Charge:	
Standard DWI Offense:	Under the influence of intoxicating liquor[1192] 23 §1201(a)(2)
Illegal Per Se Law (BAC/BrAC):	**≥.08 (≥.02 if operating a school bus)**[1193and1194] 23 §1201(a)(1) Persons Under 21 Years Old-**≥.02**-A Civil Traffic Violation 23 §1216(a)
Presumption (BAC/BrAC):	**≥.02** within 2 hours of incident is a "rebuttable presumption" that a person <21 years old committed a Civil Traffic Violation. 23 §1216(e)
Types or Drugs/Drugs and Alcohol:	Under the influence of (1) **Any "Regulated" Drug**[1195] or (2) a **Combination of Any "Regulated" Drug and Alcohol** 23 §1201(a)(3)
Other:	A BAC/BrAC **≥.08** is a "permissive inference" of a DWI offense. 23 §1204(a)(2)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** 23 §1203(f). Results are admissible in a DWI proceeding against persons under 21. 23§1216(d).
Implied Consent Law:	
Arrest Required (Yes/No):	**No**[1196] 23 §1202(a)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes**[1197] 23 §1202(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes.** (in Criminal Cases) 23 §1202(b). Also, a refusal to submit to a Horizontal Gaze Nystagmus test also can be admitted into evidence. *State v. Blouin,* 716 A.2d 826 (Vt. 1998). 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 are reasonable grounds to believe that alcohol or "other drugs" was in person's system is subject to the implied law; i.e., that person is required to submit to a chemical test of breath or blood for alcoholic content and, if the test is refused,

[1191] Includes all alcoholic beverages. 23 §1200(4)

[1192] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 (.02 if operating a school bus) or more.

[1193] 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)

[1194] "Drug" means regulated drugs as defined in 18 §4201. 23 §1200(2)

[1195] 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

[1196] 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) and *State v. Greenia,* 522 A.2d 242 (Vt. 1987)

the driver's license is suspended or revoked. 23 §1202(a). This requirement also exists for drivers who previously have been convicted of DWI where there are reasonable grounds to believe the driver is DWI. 23§1201(b).
II. A driver involved in an accident that resulted in a bodily injury or death to another 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.[1198] 23 §1202(f)

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

Blood:	**Yes**
Urine:	**No**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**
Anti-Plea-Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** Alcohol assessment screening is mandatory for second or subsequent offenders, and discretionary for first offenders. 23 §§4(52), 1209a 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 the BAC/BrAC ≥.02 is subject to a **mandatory six-month licensing suspension.** 23 §1216(d)

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	First refusal – mandatory **6-month Suspension;** second refusal – mandatory **18-month suspension**; third or subsequent refusal – **Suspension for life** (3 years mandatory) 23 §1205(a) and (m)

[1197] **Comment:** The legislature 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. 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).

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:	
Term (Day, Month, Years, Etc.):	First offense (misdemeanor) – Not more than **2 years**; second offense (misdemeanor) – Not more than **2 years**; third and subsequent offense (felony) – Not more than **5 years**; serious injury related DWI offense (felony) – **1 to 15 years** 13 §1 and 23 §1210
Mandatory Minimum Term:	Second DWI offense – **60 consecutive hours**; third or subsequent DWI offense – **100 consecutive hours** 23 §1210(c) and (d)
Fine:	
Amount ($ Range):	First offense – Not more than **$750**; second offense – Not more than **$1,500**; third and subsequent offense – Not more than **$2,500**; serious injury related DWI offense – Not more than **$10,000** 23 §1210.
Mandatory Min. Fine ($):	**None**
Other Penalties:	
Community Service:	First DWI offense -Possible; 13 §7030; second DWI offense – at least **200 hours** mandatory in lieu of imprisonment; third or sub. DWI offense – at least **400 hours** mandatory in lieu of imprisonment. 23 §1210(c) and (d)
Restitution (e.g., Victim's Fund):	**Yes.** The court may order a defendant to pay restitution to a victim. 13 §7043

Criminal Refusal: A vehicle operator commits "Criminal Refusal" by refusing to submit to a blood or breath evidentiary test under the following circumstances: (1) the person has had a previous drunk driving offense violation and there are reasonable grounds to believe that person 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 are reasonable grounds to believe that that person had alcohol in the system. 23 §1201(b) and (c). Sanctions: The sanctions for "Criminal Refusal" are the same as for a drunk driving offense. However, for a first criminal refusal, the license suspension is for **6 months** with appropriate rehabilitation. 23 §§1206, 1208 and 1210.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥.04 ; (2) is under the influence of either "intoxicating liquor" or drugs (or under the combined influence of alcohol and any drug); or (3) refuses 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 (may be reduced to 10 years). If a CMV out-of-state operator holds a CDL from a State that does not have a reciprocal disqualification agreement with Vermont, the CDL privileges in Vermont are "suspended" as above for operating a CMV either with a BAC/BrAC of ≥.04 or while under the influence of alcohol/drugs. In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in the system must be placed "out-of-service" for 24 hours. 23 §§4 (59), 1218, 1219, 4103(5) and (12), 4116 and 4116A.

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

Other:	**Surcharges:** In addition to any fine, an offender must pay the following surcharges: **$60,** used to fund the Health Department's Laboratory Services Special Fund; **$50,** used to fund public defenders special fund; and **$50,** used to fund drunk driving law enforcement. 23 §§1205 and 1210(h), (i) and (j)
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes. ≥.08** BAC/BrAC See Rebuttable Resumption below. First action – **Mandatory Suspension – 90 days**; second action- **Mandatory Suspension – 18 months**; third or sub. Action – **Suspension for life** (3 years mandatory). See Footnote Nos. [1199] and [1200]. 23 §1205
Post DWI Conviction Licensing Action:	
Type of Licensing Action (Susp/Rev):	First offense – **Suspension**; second offense – **Suspension**; third or subsequent offenses – **Revocation.** 23 §§1206 and 1208
Term of License Withdrawal (Days, Months, Years, etc.):	First offense – **90 days**; second offense – **18 months**. If a person was involved in a serious accident or was previously convicted of DWI and refused to take a test – **6 months.** 23§1206(c).
Mandatory Minimum Term of Withdrawal:	First offense – **90 days**; second offense – **18 months**; third or subsequent offense – **Life (but maybe reinstated after three years abstinence.** Where there is a fatality- **1 year**; where there is a serious accident or previous convictions, **6 months.** 23§1206. Persons Under 21 Years Old (Civil Traffic Violation- BAC/BrAC ≥.02): first violation- **Suspension -6 months** plus an alcohol and alcohol program {unless

[1198] Under 23 §1205(o), suspensions for admin per se actions and for DWI convictions are to run concurrently.
[1199] Title 23 §1205(m) creates a rebuttable presumption that a person's alcohol concentration was ≥.08 at the time of operating a motor vehicle if .08 BAC was within two 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), and *State v. Becker,* 669 A.2d 548 (Vt. 1995).
A person under 21 years old who is charged with a Civil Traffic Violation for operating a motor vehicle with a BAC/BrAC ≥.02 cannot be assessed a fine or points. 23 §1216(f).
Rebuttable Presumption: If a person's alcohol concentration within 2 hours of driving is ≥.08, there is a rebuttable presumption that the person was operating a motor vehicle at or above this level. 23 §1205(n).

diversion program discussed below is applicable}. Following this, a person must complete alcohol

screening and any needed treatment program; second or sub. violation – **Suspension 1 year or until the person reaches age 21,** whichever is longer (1 year mandatory). 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 and 1216(a)(1) and (2)

Diversion Program for Persons Under 21 Years Old Anyone under the age of 21 who receives a notice of violation for underage drinking, {if the person has not previously been adjudicated in violation of drinking laws}, within 15 days after receiving a notice of violation, shall contact the diversion board in the county where the offense occurred and register for the teen alcohol safety program. The person is required to complete all conditions imposed by the diversion board, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both. If the person satisfactorily completes the requirements imposed by the diversion board, no penalty shall be imposed and the person's operator's license will not be suspended. But if the person does not satisfactorily complete the program and is found guilty of the violation, that person shall be assessed a penalty of $30.00, the person's driver's license will be suspended for 90 days, and the person's automobile insurance rates may increase substantially.

Alcohol Education: **Yes**

For a first 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 and 1209a(a)(1)

For a second 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 show substantial progress in completing a therapy program prior to license reinstatement. 23 §§1205, 1206, 1208 and 1209a(a)(2)

For a third or subsequent suspension based on refusals, admin .per se actions or DWI off convictions, a defendant has to complete or show substantial progress in completing a therapy program prior to license

reinstatement. 23 §§1205, 1206, 1208 and 1209a(a)(3) If a person has had the license suspended/revoked (1) for at least 3 years or (2) for life as a result of a refusal, admin per se action, a DWI conviction, or for driving with a BAC/BrAC ≥.02 if under 21 years old, the license may be reinstated if the person abstains from the consumption of alcohol for 2 or 3 years, respectively. 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)

Vehicle Impoundment/Confiscation:

Immobilization: second or subsequent offense – the vehicle operated by the offender may be immobilized for 18 months or when that person obtains a valid license, whichever comes first. This action is discretionary. 23 §1213a.
Forfeiture: Third or subsequent offense – the vehicle operated by the offender may be forfeited. This action is discretionary. 23 §1213b
Special Assessment: A defendant is assessed a mandatory **$20.50** fee; $13.50 of this fee is deposited into an account that is used to assist/compensate victims of crimes. 13 §7282.

Other Criminal Actions Related to DWI

Homicide by Vehicle:

State Has Such a Law: **Yes.** There are two vehicle homicide laws. The first applies to death caused by motor vehicle operation in violation of law. 23 §1091(b)(3). The second applies to death caused by DWI. 23 §1210(e). Both of these offenses are felonies and the criminal sanctions for a conviction under either section are the same.

Sanctions:

Criminal Sanction:

Imprisonment (Term): **1 to 15 years.** {These penalties do not foreclose the option of tougher penalties for manslaughter (homicide) convictions.} 13 §1 and 23 §§1091(c) and 1210(e)

Mandatory Minimum Term: **None**

Fine ($ Range): Not more than **$10,000**

Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: If death is related to DWI – **Suspension**[1201] 23 §1210(e)

If death is not DWI-related. **Suspension** 23 §1091(b)(3) 23 §§1206(b), 1210(e) and 1091(c)

Length of Term of

[1200] Before a defendant's license is reinstated, that person must complete an alcohol and driver education program. 23 §§1206(b) and 1209(a).

Licensing Withdrawal:	If death is DWI-related – **1 year**; If death is not DWI related – **1 year** plus any other suspension period required under the point system. See 23 §§2505and2506
Mandatory Action--Minimum Length of License Withdrawal:	If death is DWI-related – **1 year**; If death is not DWI related – **1 year** plus any other suspension period

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

Sanction:

Criminal:

Imprisonment (Term):	**Misdemeanor** – Not more than **2 years.**[1202] 13 §1 and 23 §674(b)
Mandatory Minimum Term Imprisonment:	First offense – **48 hours** (Note: This 'mandatory' sanction does not apply if (1) the license suspension has "run" and (2) the offender has completed alcohol education or treatment or other requirements under 21 §1209a. Second offense – **96 hours**; third offense – **8 consecutive days**; fourth and subsequent offense – **16 consecutive days.** 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,** used to fund drunk driving law enforcement. 23 §674(g)
Mandatory Minimum Fine:	**None**

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):	**Suspension** 23 §2506
Length of Term of License Withdrawal Action:	(1) first offense – **30 days**; second offense – **90 days**; third and fourth offenses – **6 months** or (2) suspension under the point system, whichever is greater.[1203] 23 §2506

[1201] Under 23 §674(d), if a person is convicted of both a violation of 23 §674 and DWI (23 §1201), any penalty or suspension/revocation for these offenses shall be consecutive (not concurrent).

[1202] A person commits only a traffic violation, with a fine of not more than $175, if that person drives while suspended or revoked but after 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) and 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 misdemeanor and is subject to an imprisonment of not more than 2 years and/or a fine of not more than $5,000. II. Under 23 §§4107(b) and 2302(a)(5) and (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: first offense – 90 days (mand); second offense (within 10 years) – 1 year (mand); and, third or subsequent offense (within 10 years) – 3 years (mand). The following disqualification periods apply if the out-of-service order conviction was the result of driving a CMV which was either transporting

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense (con't)

Mandatory Term of License Withdrawal Action:	**None**
Other:	I. **Community Service:** first offense – **40 hours**; second offense – **80 hours**; third offense – **120 hours.** These sanctions are in addition to incarceration. 23 §674(b) II. **Immobilization:** second or subsequent offense – the vehicle operated by the offender may be immobilized for 18 months or when the person obtains a valid license, whichever comes first. This action is discretionary. 23 §674(h) III. **Forfeiture.** third or subsequent offense – the vehicle operated by the offender may be forfeited. This action is discretionary. 23 §674(h)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** 23 §673a
Grounds for Being Declared an Habitual Offender:	8 or more convictions based on moving violations, (with 6 points or more assessed for DWI offenses, within 5-year period
Term of License Rev While Under Habitual Offender Status:	**2 years** 23 §673a
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	**None**
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	
Mandatory Minimum Fine ($):	
Licensing Actions (Specify):	

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
BAC Chemical Test Is Given to the	

hazardous materials or 15 or more persons: first offense – 180 days (mand); and, second or subsequent offense (within 10 years) – 2 years (mand).

the Following Persons:
Driver:
Vehicle Passengers:
Pedestrian:

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages*:

Minimum Age (Years) Sale/Purchase:	**21**[1204] 7 §§2(26), 238, 656, 657 and 658
Minimum Age (Years) Possession:	**21** 7 §§2(26), 656 and 657 There is an employment exemption.
Minimum Age (Years) Consumption:	**21** 7 §§2(26), 656 and 657

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**Yes** 7 §501[1205]
"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)[1206] 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.[1207] *Langle v. Kurkul,* 510 A.2d 1301 (Vt. 1986) 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

[1203] Students who are 18 years old or older and who are enrolled in post secondary education culinary arts program are exempt from the drinking age limit law. 7 §3

[1204] 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)

[1205] 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."

[1206] 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 participated in the serving of such beverages to the driver. The court held that, under these circumstances, the defendant landowners could not be held liable in negligence for the death of the passenger. *Knight v. Rower,* 742 A.2d 1237 (Vt. 1999).

the court in this case seems to indicate that a social host may be liable for the injuries sustained by a minor guest.

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**[1208]

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: **Misdemeanor**[1209and1210] 7 §658 and13§1. See Footnote No. [1211] for an exception.

Term of Imprisonment: **2 years** 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

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[1207] However, an establishment's liquor license can be revoked if it violates 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)

[1208] 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).

[1209] A person commits a felony if he/she sells or furnishes 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 years and/or a fine of not more than $10,000. 7 §658(d) and 13 §1

[1210] **Exception:** A second Class licensee employee who violates this requirement during a law enforcement "compliance check" is subject to the following sanctions: for a first offense, a civil penalty of not more than $100; for a second offense (more than 1 year after the first offense), a civil penalty of $100 to $500; for a second offense (within 1 yr) or a third or subsequent offense (within 3 years), an employee is subject to the criminal sanctions noted. 7 §658(c)

Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension/Revocation** 7 §236(a) {An "administrative penalty" of not more than $2,500 may be imposed on a licensee in lieu of suspension/revocation.} 7 §236(b)
Length of Term License Withdrawal:	**Indeterminate** 7 §236(a)
Anti-Happy Hour Laws/Regulations:	**No**
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:	
Open Container Law (Yes/No):	**Yes** Drivers and passengers. 23§1134(b) and 23§1134a(a)
Anti-Consumption Law (Yes/No):	**Yes** Drivers and passengers. 23 §1134(a) and 23§1134a(a)

STATE:	**VIRGINIA**
General Reference: Admin. Code (VAC)	Code of Virginia Annotated and Virginia
Basis for a DWI Charge[1212]:	
Standard DWI Offense:	Under the influence of alcohol §18.2-266
Illegal Per Se Law:	≥**.08**[1213and1214] (BAC/BrAC) 18.2-266 or Driving after ingesting any amount of illegally possessed Schedule I and Schedule II drugs is a violation of the DUI statute. § 18.2-266 Persons Under 21 Years Old: ≥**.02 but <.08**[1215] §18.2-266.1(A)
Presumption (BAC/BrAC):	≥**.08** §18.2-269(A)(3)
Types of Drugs/Drugs and Alcohol:	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 or (5) any of the following substances ≥ (a) .02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) .01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood. § 18.2-266 (v). §18.2-266
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:	
Arrest Required (Yes/No):	**Yes** §18.2-268.2
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §18.2-268.2
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** Evidence of an "unreasonable refusal" may be admitted to explain the absence of a chemical test result but not as evidence of guilt.[1216] §18.2-268. 10(C)
Other Information:	Incoherence or unconsciousness does not constitute a refusal. *Goodman v. Commonwealth* 558 S.E.2d 555 (Va. App. 2002)

[1212] DUI article applies to all motor vehicles, including mopeds. § 18.2-266.

[1213] This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

[1214] 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) and 46.2-391.2

[1215] 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 ≥.02 but <.08 while driving, that person has committed such an offense. §18.2-266.1(A)

[1216] 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)

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**[1217]
Anti-Plea-Bargaining Statute (Yes/No):	**No**
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes** An alcohol/drug screening/assessment mandatory via the Alcohol Safety Action Program prior to any treatment. §§18.2-271.1(A) and 19.2-299.2(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**
Refusal to Take Implied Consent Chemical Test[1218]:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Susp/Rev):	First refusal{civil violation}– suspension **– 1 year**[1219] This suspension appears to be mandatory. §18.2-268.4 There is also a mandatory 7-day suspension under §46.2-391.2. Second refusal within 10 years –{criminal violation – Class 2 misdemeanor} **Suspension – 3 years;** third refusal within 10 years – { criminal violation – Class 1 misdemeanor} **Suspension – 3 years**[1220] §18.2-268.3.
Sanctions Following a Conviction for a DWI Offense:	
Criminal Sanctions:	
Imprisonment:	

[1217] A person who has been charged with either a first or second drunk driving offense may enter an Alcohol Safety Action Program prior to trial. §18.2-271.1(A) The law is not specific as to whether this acts as probation before judgment {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)

[1218] First violation of the refusal statute: civil offense; but subsequent violations are criminal offenses. Law-enforcement officers only have to read the refusal form to persons who refuse to take a blood or breath test. 18.2-268.3.

[1219] The court may dismiss a refusal suspension action if the defendant pleads guilty to a DWI offense. §18.2-268.4

[1220] In addition, the violator also considered a repeat violator if within 10 years he was guilty of any of the following: a violation of this section, a violation of Section 18.2-266, or a violation of any offense listed in subsection E of Section 18.2-270. This suspension period is in addition to the suspension period provided under Section 46.2-391.2.

Term (Day, Month, Years, Etc.):	First offense (Class 1 Misdemeanor) – Not more than **12 months**[1221]; second offense within 5 years <.15 BAC (Class 1 Misdemeanor) – **l month to 1 year (20 days mandatory –** §18.2-270 B 1**)**; third and subsequent offense within 10 years (Class 6 felony) – **1 to 5 years imprisonment (minimum 90 days confinement)or not more than 12 months in jail;** fourth or sub. offense within 10 years – **minimum 1 year.** §§18.2-10(f), 18.2-11(a) and 18.2-270 Offense for Persons Under 21 Years (≥.02 but <.08): **None**
Mandatory Minimum Term:	First offense – No**ne**[1222]; second offense (within 10 years) – **10 days;**; second offense (within 5 years) – **20 days**; third offense (within 10 years) – **90 days**; third offense (within 5 years) – **minimum 6 months**; fourth and subsequent offense (within 10 years) – **minimum 1 year**
Fine:	
Amount ($ Range):	First offense **– $250 minimum** – not more than **$2,500**[1223]; second offense (within 10 years) – not less than **$500**; third and subsequent offense (within 10 years**) – $1000 minimum** – not more than **$2,500** Offense for Persons Under 21 Years (≥.02 but <.08): Not more than **$500** §18.2-266.1(B)
Mandatory Min. Fine ($):	First offense – $**250**; second offense – $**500**; third offense – **$1000**; §18.2-270(A)
Other Penalties:	
Community Service:	**None**
Restitution	

[1221] A court may place a defendant on probation, grant a restricted license (with installation of an ignition interlock system for six months if a second offense within five years), and allow any period of imprisonment to be served via electronic home monitoring. §§53.1-131.2 and 18.2-271.1(A)

[1222] First offense: (l) BAC ≥.15 but <0.20-mandatory jail for 5 days; (2) BAC >0.20-mandatory jail for 10 days second offense within 10 years: (1)BAC ≥.15 but <0.20-mandatory jail for additional 10 days; (2) BAC >0.20-mandatory jail for an additional 20 days; third offense within 5 years – minimum 6 months; fourth offense within 10 years – minimum 1 year. §18.2-270(A) and (B)(3)

DWI Injury Offenses. It is a Class 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 years** and/or a fine of not more than **$2,500**. §18.2-10(f) Licensing Sanctions: **10-year revocation.** However, after 3 years, 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 operate only motor vehicles equipped with **ignition interlock** devices. After 5 years upon a showing of "good cause," the offender may obtain "full" driving privileges. §§18.2-51.4(A) and 46.2-391(B) and (C)

DWI While Suspended or Revoked. Driving while DWI and while license is suspended/revoked for a DWI offense is a felony. The sanction for this offense is either 1 to 5 years imprisonment or 12 months in jail. Mandatory confinement for 1 year except for a first offense where driving was necessary to save life or limb, §46.2-391(D) and (E) No fine is specified for this offense

[1223] A person required to enter the Virginia Alcohol Safety Action Program under §18.2-271.1 must pay a fee of not less than $250 but not more than $300. §18.2-271.1(a1).

(e.g., Victim's Fund): **Yes** Compensation may be obtained from two sources: (1) A victims' compensation fund (§19.2-368.1 et seq.); (2) direct compensation by a defendant to a victim. §19.2-305

Laboratory Fee. A DWI offender is required to pay a $100 fee for any forensic laboratory analysis that was performed by the State in connection with the prosecution of the DWI offense. §18.2-264.01. Repealed eff. July 1, 2003.

Child Endangerment.[1224] A person convicted of a DWI offense while carrying a person 17 years old or younger is subject to the following additional sanctions: a fine of $500 (mand) to $1,000 and mandatory minimum period of confinement of 5 days; sub.offense – fine of $500 (mand) to $1,000 and community service of 80 hours (mand) benefiting children. §18.2-270(D)

EMS/Enforcement Costs. Counties, cities and towns may enact ordinances that make an offender liable in a civil action for the expenses of responding to <u>any</u> DWI offense. Liability is limited to $1,000. §15.2-1716

Dismissal of dual charges. Whenever any person is charged with a violation of section 18.2-266 {driving under the influence of drugs or intoxicants} … and with reckless driving {in violation of Section 46.2-852} growing out of the same act or acts and is convicted of one of these charges, the court shall dismiss the remaining charge.

Administrative Licensing Actions:

<u>Pre-DWI Conviction</u> Licensing Action:

Administrative Per Se Law: **Yes ≥.08** BAC/BrAC .

First offense: **Suspension -7 days** (mand) §46.2-391.2; second offense: **Suspension – 60 days; third** or sub. offense: **Suspension** "until the day and time of trial of the criminal offense charged".

<u>Post DWI Conviction</u> Licensing Action: See Footnote No. [1225].

Type of Licensing Action (Susp/Rev): First <u>offense –</u> **Revocation**; second <u>offense</u> (within 10 years) – **Revocation**; third <u>or subsequent offense</u> **Revocation** §§18.2-271, 46.2-389 and 46.2-391

[1224] A drunk-driving law offender who operates a motor vehicle while transporting a child < 18 years 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).

[1225] For either a first offense or second <u>offense</u> (within 10 years), a person's license cannot be reinstated until completion of an Alcohol Safety Action Program. §§46.2-389(B) and 46.2-391(A)

	Offense for Persons Under 21 Years (≥.02 but <.08): **Suspension** §18.2-266.1(B)
Term of License Withdrawal (Days, Months, Years, etc.):	First offense – 1 year; second offense (within 10 years) – **3 years**; third or subsequent offense (within 10 years) – **10 years** Offense for Persons Under 21 Years (≥.02 but <.08): **6 months** (A restricted license may be issued.) §18.2-266.1(B) Persons under 18 years old[1226]: If a DWI charge is deferred, the following licensing action must be taken – first offense – 1 year **denial** or until the person reaches 17 whichever is the longer suspension period (90 days mand); second and subsequent offense – 1 year **denial** until the person reaches 18 whichever is the longer suspension period (1 year is mandatory). A restricted hardship license may be issued to a first offender after 90 days. §16.1-278.9
Mandatory Minimum Term of Withdrawal:	First offense[1227]; second offense (within 5 years) – **1 year**[1228]; second offense (within 10 years) – **4 months**; third or subsequent offense (within 10 years) – **3 years**[1229] Offense for Persons Under 21 Years (≥.02 but <.08): **None**
Rehabilitation:	
Alcohol Education:	First offense – **Yes**[1230]; second offense (within 10 years) – **Yes**; third and subsequent offense – Not eligible to participate in VASAP under §18.2-271.1(A). §18.2-271(C)
Alcohol Treatment:	First offense – **Yes**; second offense (within 10 years) – **Yes**; third and subsequent offense – Not

[1226] These actions also apply to persons under 18 years old who have refused to submit to a chemical test under the implied consent law.
[1227] A restricted license may be issued if the defendant participates in a rehabilitation program. §18.2-271.1(E)
[1228] A restricted license may be issued after the minimum period of license withdrawal (1 year or 4 month 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) *and. Com. v. Meadows,* 440 S.E.2d 154(Va. App. 1994)
[1229] For a third offense, if a person at the time of the DWI conviction was dependent on alcohol, either (1) the license may be restored after 5 years or (2) a restricted license for employment purposes may be issued after 3 years provided the person has been cured of dependency and is 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 its recommendations, driving privileges are not automatically restored after 5 years. Instead, the offender might be granted restricted driving privileges not to exceed 5 years. Offenders are given credit for any period of license revocation imposed under the habitual offender law, §46.2-391(c).
[1230] Unless "good cause" is shown, a first or second offender is required, as a condition of probation, to participate in the Va Alcohol 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 and 18.2-271.2 and 24 VAC 35-20-20 *and* 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)

eligible to participate in VASAP under §18.2-271.1(A). §18.2-271(C)
Offense for Persons Under 21 Years (≥.02 but < .08): An offender is eligible to participate in the Va Alc Safety Action Program (VASAP). §18.2-266.1(B)

Vehicle Impoundment/Confiscation Authorized by Specific Authority:

Any motor vehicle administratively impounded or immobilized {under the provisions of Section 46.2-301.1} may, in the discretion of the court, be impounded or immobilized for an additional period of up to 90 days upon conviction of an offender for driving while the driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked for a DUI-related offense. {Sections 18.2-36.1, 18.2-51.4, 18.2-266, Section 46.2-341.24 or 46.2-391.2}
A third or subsequent offense shall constitute a Class 1 misdemeanor punishable by a mandatory minimum term of jail of 10 days. Sec. 46.2-301C
If the person was driving during a period of suspension or revocation not specified for a definite period of time, the court shall suspend the person's license to drive for an additional 90 days. §.46.2-301D

Terms Upon Which Vehicle Will Be Released:

N/A

Other:

Registration Suspension. Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked (e.g., DWI, vehicle homicide, driving while license is either suspended or revoked), shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspend such registration if the person maintains proof of financial responsibility.

Miscellaneous Sanctions Not Included Elsewhere:

Interdiction Order. The court may issue an order prohibiting 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
Ignition Interlock. I. For a first offense, the court may require and, for a second offense, the court must require a DWI offender who has been granted either restricted driving privileges or full driving privileges on condition to operate only motor vehicles (registered in their name) that are equipped with ignition interlock devices. This

usage must last at least 6 months. §§18.2-270.1, 18.2-270.2, 46.2-360 and 46.2-391

II. **Ignition Interlock Usage with VASAP.** A second or subsequent offender (within 5 years) who is required to participate in either the Va Alcohol Safety Action Program (VASAP) or a treatment program (via an assessment indicating a substance abuse problem) may obtain restricted driving privileges permitting only operation of motor vehicles equipped with ignition interlock devices.

III. **Points**. A person who has either been convicted of a drunk driving offense or, if under 21 years old, found in violation of driving after "illegally consuming alcohol" has 6 points assigned to their driving record. §46.2-492(D)(1)

IV. **Probation**.[1231] Unless modified by the court, an offender must be placed on probation for the same period of time as the license suspension but, in no case, more than 3 years. §18.2-270

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 and 18-2-36.1 A person can be convicted of both involuntary manslaughter and DUI even if DUI is a lesser included offense, because the legislature intended to permit multiple punishment under such circumstances. *Goodman v. Comm.* 558 S.E.2d 555 (Va. App. 2002) and *Dale v. Comm.* 554 S.E.2d 705 (Va. App. 2001) Confirmed 570 S.E.2d 840 (Va. 2002).

Sanctions:

Criminal Sanction:

Imprisonment (Term): **1 to 10 years**[1232]§18.2-10(e)

Mandatory Minimum Term: **None**[1233]

Fine ($ Range): **None**

Mandatory Minimum Fine: **N/A**

Administrative Licensing Action:

Licensing Authorized and Type of Action: **Revocation** §§18.2-36.1(C), 46.2-389 and 46.2-391(B)

Length of Term of Licensing Withdrawal: **10 years**[1234] §§18.2-36.1(C), 46.2-389 and 46.2-391(B)

[1231] The law is not clear but this probation requirement appears to apply to both first and subsequent offenders.

[1232] Alternative Sentence: Jail for not more than 12 months and/or pay a fine of not more than $2.500. §18.2-10(e)

[1233] If the defendant's conduct indicated "reckless disregard for human life," that person is guilty of "aggravated involuntary manslaughter" and is subject to an imprisonment term of 1 year (mand) to 20 years. §18.2-36.1(B)

[1234] After 3 years, a restricted license for employment purposes may be issued. The offender is required to undergo

Mandatory Action--Minimum Length of License Withdrawal:	**3 years** §46.2-391(C)(2)
Other:	I. See "Registration Suspension" under DWI Vehicle Impoundment/Confiscation. 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.[1235] §8.01-44.5 **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 suspensions or revocations that resulted from 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. {This relief does not apply to CDL disqualifications. §46.2-410.1}

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): I. A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥.04, (2) is under the influence of alcohol or any narcotic drug, self-administered intoxicant or other drug or (3) refuses 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 years mandatory). II. It is a Class 3 Misdemeanor to operate a CMV with a BAC ≥.04; the sanction for this offense is a fine of not more than $500. III. It is a Class 1 Misdemeanor to operate a CMV either with a BAC/BrAC ≥.08 or while under the influence of either alcohol or drugs. The sanctions for this offense are as follows: first offense – Jail for not more than 12 months and/or a fine sanction of not more than $2,500; second offense (within 10 years) – Jail from 1 month to 1 year and/or a fine of $200 to $2,500. If the second offense was within 5 years of a previous offense, there is a mandatory jail sanction of 5 days. Third offense (within 10 years) – Jail from 2 months to 1 year and/or a fine of $500 to $2,500. A 30-day jail sentence is mandatory if the third or sub. offense occurred within 5 years and a 10-day jail sentence is mandatory if the third or sub. offense occurred within 10 but more than 5 years. IV. In addition, a person who operates a CMV with any alcohol in the 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) and (c), 18.2-271.1(I), 46.2-113, 46.2-341.4. 46.2-341.17, 46.2-341.18, 46.2-341.24, 46.2-341.25, 46.2-341.26:1 to 46.2-341.26:11, 46.2-341.27, 46.2-341.28, 46.2-341.29 and 46.2-341.31

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evaluation via the Va. Alcohol Safety Action Program and may be required to operate only motor vehicles that are equipped with **ignition interlock** devices.

[1235] "Willful or wanton behavior" may be shown by proving either of the following: (1) when the incident occurred, the defendant's BAC/BrAC was ≥.15, the person consumed alcoholic beverages intending to operate a motor vehicle, and the intoxication was the proximate cause of an injury or a death or (2) the person unreasonably refused to submit to a chemical test, the incident occurred while the driver was intoxicated and intended to operate a motor vehicle and the intoxication was the proximate cause of the injury or death. §8.01-44.5

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense: [1236]	
Sanction:	
Criminal:	
Imprisonment (Term):	First and second offense (Class 1 Misdemeanor) – Not more than **12 months**; third and subsequent offenses (Class 1 Misdemeanor) – Not more than **12 months** §§18.2-11 and 46.2-301[1237]
Mandatory Minimum Term of Imprisonment:	First and second offense – No**ne**; for third and subsequent offense – **10 days** (except in cases of extreme emergency)
Fine ($ Range):	First offense – Not more than **$2,500**; third and subsequent offense – Not more than **$2,500**
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	See Footnote No. [1238] below.
Type of Licensing Action (Susp/Rev):	**Revocation** or **Suspension** §§46.2-301, 46.2-391(B) and 46.2-394
Length of Term of License Withdrawal Action:	I. An additional suspension/revocation for the same period for which the license has been previously suspended or revoked; if the original period was not specified, then the additional suspension or revocation is not to exceed 90 days.
Mandatory Term of License	

[1236] 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 first violation, CDL disqualification for 180 days (mand) and, for a subsequent violation (within 10 years), CDL disqualification for 3 years. §46.2-341.21

[1237] Suspension/revocation for 30 days or more (Under separate provisions of the State's criminal code, it is a Class 1 Misdemeanor for a person to operate a motor vehicle if the privilege to do so has been "forfeited." §18.2-272)

[1238] **Registration Suspension.** Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked, shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspend such registration if the person maintains proof of financial responsibility.

Other information: I. The following sanction also may be imposed if the original licensing action was for (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 (if 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 days. The owner of the vehicle may obtain a release from this action based upon a showing that it is the only vehicle owned and its impoundment or immobilization would cause a substantial hardship. §46.2-301.1(A)

II. A person is not subjected to double jeopardy if prosecuted for driving on either a suspended or revoked license after the vehicle driven was impounded under §46.2-301.1. *Wilson v. Cam.,* 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 the action and may refer such person to a driver improvement clinic. §46.2-355.1

Withdrawal Action:	An additional suspension/revocation for the same period for which the license has been previously suspended or revoked; if the original period was not specified, then the additional suspension or revocation is not to exceed 90 days. Third offense (within 10 years) – **Revocation 3 years**[1239] fourth offense – **Revocation 5 years**
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No** §§46.2-351 et seq. §§46.2-351-355 were repealed by acts 1999, cc. 945, 987 and procedure
Grounds for Being Declared An Habitual Offender	laid out in §§46.2-358-361 However, *Varga v. Comm.* 536 S.E.2d 711 (Va. 200), in a footnote states that while the legislature did away with the status of habitual offender as of July 1, 1999, "the status of persons declared habitual offenders prior to that date was not affected by the repeal."
Term of License Revocation While Under Habitual Offender Status:	**10 years**[1240and1241]§46.2-356.
Type of Criminal Offense if Convicted on Charges of Driving While on	

[1239] Restricted driving privileges are available after 3 years and full driving privileges may be granted after 5 years. 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)(l) and (2)

[1240] The license may be restored in less than 10 years under several conditions. (1) Except as provided in (3), (4) and (5){immediately below}, after 5 years, 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 years (or after 3 years, 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-year and 5-year revocation periods, the offender is given credit for any period of time the 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 unrestricted driving privileges restored after 5 years. Instead, the offender may be allowed only restricted driving privileges not to exceed 5 years. (4) Except in situations where a DWI offense was involved, if one of the offenses concerned driving while suspended or revoked 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 years. If a DWI 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 those costs, fines, judgments or failures are satisfied. §§46.2-358, 46.2-359, 46.2-360 and 46.2-361 If habitual offender status is based on failure to pay uninsured motorist fees, the license may be restored if fines or other costs associated with these violations are paid and the person furnishes proof of financial responsibility.

[1241] **Registration Suspension**. Under §46.2-391.1, the State, upon receiving a notice of a conviction of a person for which a license must be either suspended or revoked, shall also suspend the registration(s) of any vehicle(s) owned by the person. However, the licensing agency shall not suspend such registration if the person maintains proof of financial responsibility

Habitual Offender Status:	First offense: – **Misdemeanor** If driving did not endanger life, limb or property of another. Second or sub. offense **– felony** If driving either (1) did endanger life, limb or property of another or (2) takes place while the offender was in violation of the DWI laws (irrespective of whether life, limb or property was endangered). §§18.2-8 and 46.2-357
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	**Misdemeanor** – Not more than **90 days Felony – 1 to 5 years** §46.2-357(B)(1) and (2)
Mandatory Minimum Term of Imprisonment:	**Misdemeanor – felony – 1 year** [1242]§46.2-357(B)(2)
Fine ($ Range):	**Misdemeanor** – Not more than **$2,500** §46.2-357(B)(1) **felony – None**
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

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

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

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §§4.1-304 and 4.1-305
Minimum Age (Years) Possession:	**21** – A special exemption to minors, for employment reasons, and at the order of a parent. §4.1-305
Minimum Age (Years) Consumption:	**None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	**No**
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No** – For a case denying liability, see *Williamson v. Old Brogue. Inc.* 350 S.E.2d 621

[1242] 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).

(Va. 1986), and *Robinson v. Matt Mary Moran, Inc.* 525 S.E.2d 559 (Va. 2000)[1243]

Dram Shop Actions-Social Hosts: **No** (No Cases)[1244]

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

Type of Criminal Action: **Class 1 Misdemeanor** §§4.1-304, 18.2-11(a) and 18.2-12

Term of Imprisonment: No more than **12 months**

Fine ($ Range): Not more than **$2,500**

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes – Revocation or suspension**[1245and1246] §§4.1-225(1)(k)

Length of Term of License Withdrawal: Time period is not specified in the statute.

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

Type of Criminal Action: **Class 1 Misdemeanor** §§4.1-304, 18.2-11(a) and 18.2-12

Term of Imprisonment: Not more than **12 months**

Fine ($ Range): Not more than **$2,500**

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes – Revocation or suspension** §§4.1-225(1)(k)

Length of Term License Withdrawal: Time period not specified in the statute.

Anti-Happy Hour Laws/Regulations: **Yes** 3VAC 5-50-160

[1243]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).

[1244] 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.

[1245] In lieu of either suspending a license or any portion thereof, a civil penalty may be imposed as follows: first off – Not more than $2,500; and, subsequent offense – not more than $5,000. §4.1-227(B) Also, under separate provisions the Board may impose a civil penalty in lieu of license suspension or revocation. First violation: $2,500; subsequent violations: $5,000. §4.1-227(B) or the Board may accept an offer in compromise from the licensee to pay a civil charge of $5,000 in lieu of revocation §4.1-227(c)

[1246] This administrative action is based on 'reasonable cause to believe' the licensee sold alcoholic beverages to a minor or an intoxicated person. §4.1-225

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** {But the presence of an open container creates a rebuttable presumption the driver violated the anti-consumption law.} §18.2-323.1(B)
Anti-Consumption Law (Yes/No):	**Yes** – Drivers only §18.2-323.1

STATE:	**WASHINGTON**
General Reference:	Revised Code of Washington Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of or affected by intoxicating liquor[1247] §§46.61.502(1)(b) and 46.61.504(1)(b)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[1248and1249] §§46.61.502(1)(a) and 46.61.504(1)(a) Persons Under 21 Years Old-**≥.02 but <.08** §46.61.503
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of or affected by (1) Any Drug or (2) a Combination of Intoxicating Liquor and Any Drug §§46.61.502(1)(b) and (c) and 46.61.504(1)(b) and (c)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**No**
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes**[1250] §46.20.308
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §46.20.308(1

[1246] 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)

[1247] 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 ≥.08 within 2 hours 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), *State v. Robbins,* 980 P.2d 725 (Wash. 1999) and *State v. Crediford,* 927 P.2d 1129 (Wash. 1996).

[1248] Alcohol concentration means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §46.04.015

[1249] 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 the officer has made an arrest and has "reasonable grounds to believe" that the young person was operating a motor vehicle with an alcohol concentration ≥.02 but <.08 under §46.61.503. A person under 21 years old commits an offense by occupying a motor vehicle in a public place "while exhibiting the effects of having consumed liquor," unless the person is in the presence of a parent or guardian The sanctions for a first offense are a jail term of not more than 2 months and/or a fine of not more than $500. The sanction for a second offense is a jail term for not more than 6 months. The sanction for a third or subsequent offense is a jail term for not more than 1 year. If the offender is under 18 years old, for a first offense, the driving privileges are revoked for 1 year (90 days mand) and, for a second or subsequent offense, the driving privileges are revoked for 2 years (1 year mand). §§13.4.020(14), 13.40.265, 46.20.265, 66.44.180, 66.44.270(2)(b) and 66.44.365 There is no licensing sanction for this offense if the offender is over 18 but under 21 years old. In addition, there appears to be no fine sanction for a second or subsequent offense.

Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) §46.61.517, *State v. Long,* 778 P.2d 1027 (Wash. 1989) and *State v. Baldwin,* 37 P.3d 1220 (Wash App 2001)(review denied 60 P.3d 92 (2002)).
Other Information:	A person may be administered either a breath or blood test without consent if arrested for (1) vehicle homicide, (2) vehicle assault, or (3) any DWI offense related to an accident where there was a serious bodily injury. §46.20.308(3)[1251] and *State v. Schulze,* 804 P.2d 566 (Wash. 1991). Detention of a person at outdoor music venues for investigation of consumption or possession of illegal drugs and alcohol authorized for a 'reasonable time' not to exceed one hour.

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

Blood:	**Yes – Limited**[1252]
Urine:	**No**
Other:	**None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**[1253]
Anti-Plea-Bargaining Statute (Yes/No):	**No** But as a condition of granting a deferred prosecution petition on any alcohol-dependency based case, the court shall order the installation of an ignition interlock.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	**Yes.** Alcohol evaluation is mandatory. §§46.61.5055(5) and 46.61.5056(2)

[1251] 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.

[1252] The implied consent law provides for a blood test only in situations where a person has been arrested for either (1) vehicle homicide, (2) vehicle assault or (3) a DWI offense where the offense involved an accident in which a serious bodily injury occurred to another person. §46.20.308(3)

[1253] **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. §1.05.010 et seq. The offender's license is placed on probationary status for 5 years. §1.05.060. 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. §1.05.140. A deferred prosecution is treated as a prior offense for purposes of sanction enhancement for subsequent offenses. §1.05.120.

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):	First refusal – **Revocation/Denial 1 year** (mand)[1254; second] or subsequent refusal[1255] (within 7 years) – **Revocation/Denial 2 years** or until the person reaches 21 years old whichever is longer (mand). §§46.20.308 and 46.20.3101 In situations involving second or subsequent refusals (or a first refusal where there has been one or more previous admin per se violations within 5 years) 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:	A DWI offense is a gross misdemeanor. §§46.61.502(5) and 46.61.504(5)
Imprisonment: Term (Day, Month, Years)	I. An offense where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – 1 **day to 1 year.** §46.61.5055(1)(a) II. An offense where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **2 days to 1 year.** §46.61.5055(1)(b) III. An offense where there has been a prior offense[1256] within 7 years and where

[1253] Sec. 46.20.391, concerning the issuance of occupational driving privileges, applies only to situations where licensing action is based on traffic offense convictions. Such provision does not apply to licensing actions for refusal to take a breath teat. *Burnett v. Dept. of Licensing,* 832 P.2d 1321 (Wash App 1992).
[1254] Or a first refusal where there has been one or more previous admin per se violations within 5 years.
[1255] A prior offense includes any type of prior drunk driving offense. §46.61.5055(9)

the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **30 days to 1 year.** §46.61.5055(2)(a)
IV. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **45 days to 1 year.** §46.61.5055(2)(b)
V. An offense where there has been two or more prior offenses within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **90 days to 1 year.** §46.61.5055(3)(a)
VI. An offense where there has been two or more prior offenses within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **120 days to 1 year.** §46.61.5055(3)(b)
Vehicle Assault – (1) Reckless driving, (2) driving while under the influence of liquor or drugs, or (3) driving with disregard for the safety or others and causing substantial bodily harm to another person. §46.61.522. (Drunk driving related injury Class B felony) – Not more than **10 years.** §§9A.2.021(1)(b) and 46.61.522

Mandatory Minimum Term:

I. An offense where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **24 con hours** or, as an alternative, not less than **15 days 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).
II. An offense where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **2 consecutive days**[1257] or, as an alternative, **not less than 30 days of electronic home monitoring**[1258] which may include a restriction on the amount of alcohol the

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[1256] May be suspended only if jail would impose a risk to defendant's physical or mental well-being.
[1257] Under the sentencing guidelines grid, the presumptive sentence is 3 to 84 months. §§9.94A.510 and 9.94A.515.

offender can consume while on home monitoring. §46.61.5055(1)(b).
III. An offense where there has been a prior offense[1259] within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **30 days** and **60 days of electronic home monitoring**[1260] 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[1261] within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **45 days** and **90 days 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(2)(b).

Sanctions Following a Conviction for a DWI Offense:

V. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **90 days** and **120 days 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(3)(a).
VI. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **120 days** and **150 days 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(3)(b).

Fine:
Amount ($ Range):

I. An offense where the offender's BAC/BrAC is <.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).

[1258] May be suspended only if jail would impose a risk to defendant's physical or mental well-being.
[1259] **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(9). II. The total time served in jail and on electronic home monitoring cannot exceed 365 days. The jail sentence has to be served first. §46.61.5055
[1260] A prior offense includes any type of prior drunk driving offense. §46.61.5055.

II. An offense where the offender's BAC/BrAC is ≥.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 within 7 years and where the offender's BAC/BrAC is <.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 within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test – $**750 to $5,000.** §46.61.5055(2)(b).
V. An offense where there have been two or more prior offenses[1262] within 7 years and where the offender's BAC/BrAC is <.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 have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test – $**1,500 to $5,000** §46.61.5055(3)(b).

Vehicle Assault (Drunk Driving related injury Class B felony) – Not more than **$20,000.** §9A.2.021(1)(b).

Mandatory Min. Fine ($):

I. An offense where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – $**350.**[1263] §46.61.5055(1)(a).
II. An offense where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test – $**500.** §46.61.5055(1)(b).
III. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – $**500.** §46.61.5055(2)(a).
IV. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is ≥.15 or there was

[1261] A prior offense includes any type of prior drunk driving offense. §46.61.5055(9)
[1262] Unless the defendant is indigent.

a refusal to submit to the implied consent test – $**750.** §46.61.5055(2)(b).
V. An offense where there has been two or more prior offenses within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – $**1,000.** §46.61.5055(3)(a).
VI. An offense where there has been two or more prior offenses within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test – $**1,500.** §46.61.5055(3)(b).

Other Penalties:
Community Service: Possible for <u>any</u> misdemeanor. §9.94A.680.

Restitution (e.g., Victim's Fund) **Yes.**[1264] Payment via a State compensation fund. §7.68.020 et seq.

Ignition Interlock: I. For a first offense (BAC <.15 with no previously alcohol-related deferred prosecution and no refusal to submit to a chemical test) and no children in the vehicle less than age 16, 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 (1) a first offense (BAC ≥.15 or a refusal to submit to a chemical test) or (2) any subsequent drunk driving offense (within 7 years), or (3) an offense following a previous deferred

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[1263] Also, the court may order the defendant to pay direct compensation to a victim. For felony offenses (e.g., Vehicle Assault), the court must order a defendant to pay restitution directly to a victim except in unusual circumstances. §§9.94A.505(7), 9.94A.750 and 9.94A.753.

Negligent Driving: A person commits first degree Negligent Driving, a misdemeanor, if (1) by operating a motor vehicle in a negligent manner likely to endanger persons or property and (2) exhibiting 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 days 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) and (2) 9A.2.010(2), 9A.2.021(3), 46.61.050 and 46.61.5249

Persons <21 years old commit a misdemeanor if they operate a motor vehicle with a BAC/BrAC ≥.02 but <.08. §46.61.503. The sanctions for this offense are an imprisonment term of not more than 90 days and/or a fine of not more than $1,000. §§9A.04.040(2), 9A.2.021(3) and 46.64.050

alcohol offense prosecution, or (4) a child under age 16 was in the vehicle, the court, after the license suspension or revocation period, **MUST** require an offender to operate only motor vehicles that are equipped with an ignition interlock device. If there has been no previous ignition interlock use, the usage period is not less than 1 year; if there has been one previous restriction, the usage period is not less than 5 years; and, if there have been two previous restrictions, the usage period is not less than 10 years. {Note: if child less than 16 in vehicle, ignition interlock ordered for an additional 60 days.}
§46.20.720(2) and (3) and §46.61.5055(1)(b)(iii).

Deferred prosecution: As a condition of granting a deferred prosecution petition on any alcohol-dependency-based case, the court shall order the installation of an ignition **interlock.**
RCW 46.20.380

Any person convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, may submit to the department an application for a temporary restricted driver's license if his or her vehicle is equipped with an interlock, and that person:

(i) Is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle;

(ii) Is undergoing continuing health care or providing continuing care to another who is dependent upon the applicant;

(iii) Is enrolled in an educational institution and pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion;

(iv) Is undergoing substance abuse treatment or is participating in meetings of a twelve-step group such as Alcoholics Anonymous that requires the petitioner to drive to or from the treatment or meetings;

(v) Is fulfilling court-ordered community service responsibilities;

(vi) Is in a program that assists persons who are enrolled in a Work First program to become gainfully employed and the program requires a driver's license;

(vii) Is in an apprenticeship, on-the-job training, on welfare-to-work program; or

(viii) Presents evidence that he or she has applied for a position in an apprenticeship or on-the-job training program for which a driver's license is required to begin the program, provided that a license granted under this provision shall be in effect for no longer than fourteen days; and

(c) The applicant files satisfactory proof of financial responsibility {under chapter 46.29 RCW}. RCW 46.20.391

Penalty Assessment: A defendant who is convicted of drunk driving offense under §46.61.502 or 46.61.504 is required to pay an assessment used to support the victim's compensation fund. There is an assessment of **$250** for a first or subsequent misdemeanor and **$500** for a first or subsequent gross misdemeanor or felony. For juvenile offenders, there is an assessment of **$75** for a first or subsequent misdemeanor and **$100** for a first or subsequent gross misdemeanor or felony. §7.68.035(1)(a) and (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 suspend 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).

$100 fee for an **occupational** or temporary restricted **driver**'s license.

Summary Impoundment: If arrested for DUI, Vehicle Homicide and Assault {RCW 46.61.502} or while ‘found to be an Habitual Offender ordered not to drive {RCWA 46.65}, the vehicle is subject to summary impoundment pursuant to the

terms and conditions of an applicable local ordinance or State agency rule. RCWA 46.55.113 (1)

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

Yes ≥.08 BAC/BrAC first violation– suspension **– 90 days** (30 days mandatory – an occupational driver's license may be issued after mandatory period.). Second or Subsequent Violation (within 7 years) – **Revocation/Denial- 2 years**[1265] (mandatory). §§46.20.308, 46.20.355(2), 46.20.391(1) and 46.20.3101.
But this licensing action may be stayed 45 to 90 days if the offender is deferred prosecution treatment program. §46.20.308(10).

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

Persons Under 21 Years Old-**≥.02 but <.08 BAC/BrAC** first violation– suspension **90 days** (30 days mandatory. An occupational driver's license may be issued after this mandatory period.). Second or Subsequent Violation (within 7 years) – **Revocation/Denial 1 year** or until the person reaches 21 whichever is longer. This revocation appears to be mandatory. §§46.20.308, 46.20.391(1) and 46.20.3101.

Post DWI Conviction Licensing Action:
Type of Licensing Action

(Susp/Rev):

I. An offense where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **Suspension** §46.61.5055(6)(a)(i).
II. An offense where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **Revocation** §46.61.5055(6)(b)(i).
III. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **Revocation** [1266] §46.61.5055(6)(a)(ii).

[1264] A prior offense includes any type of prior drunk driving offense. §46.61.5055
[1265] The revocation is "tolled" during any period of incarceration. §46.20.285
A DWI offender's driving privileges cannot be reinstated until that person is enrolled in and is participating in an approved alcoholism treatment program. §46.20.311.

IV. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **Revocation** §46.61.5055(6)(b)(ii).
V. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **Revocation** §46.61.5055(6)(a)(iii).
VI. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test – **Revocation** §46.61.5055(6)(b)(iii).
Veh Assault- **Revocation** §§46.04.480 and 46.20.285.

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

I. An offense where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **90 days.** §46.61.5055(6)(a)(i).
II. An offense where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **1 year.** §46.61.5055(6)(b)(i).
III. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **2 years.** §46.61.5055(6)(a)(ii).
IV. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **900 days.** §46.61.5055(6)(b)(ii).
V. An offense where there have been two or more prior offenses[1267] within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **3 years.** §46.61.5055(6)(a)(iii)

VI. An offense where there have been two or more prior offenses[1268] within 7 years

[1266] A prior offense includes any type of prior drunk driving offense. §46.61.5055
[1267] The revocation is "tolled" during any period of incarceration. §46.20.285

and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **4 years.** §46.61.5055(6)(b)(iii)
Vehicle Assault- **1 year.** §§46.04.480 and 46.20.285

Mandatory Minimum Term of Withdrawal:

I. An offense where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **30 days.**[1269] §§46.20.391 and 46.61.5055(6)(a)(i)
II. An offense where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test – **30 days.** §§46.20.391 and 46.61.5055(6)(b)(i)
III. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **2 years.**[1270] §46.61.5055(6)(a)(ii)
IV. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **900 days.** §46.61.5055(6)(b)(ii)
V. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **3 years.** §46.61.5055(6)(a)(iii)
VI. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **4 years.** §46.61.5055(6)(b)(iii)
Vehicle Assault- **1 year.** §§46.04.480 and 46.20.285

Other:
Rehabilitation:
Alcohol Education: **Yes –** for all offenses §46.61.5056(1)
Alcohol Treatment: **Yes –** for all offenses §46.61.5056(1)
A court-ordered assessment will determine whether an offender will be required to

[1268] Under §46.20.391(1), a first offender is eligible for occupational driving privileges after 30 days
[1269] An offender is not eligible for an occupational license. §46.20.391(3)(b)

	attend either an alcohol education course or treatment. §46.61.5056
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	**Forfeiture:** the vehicle used in the offense, in which a second or subsequent DWI offender (within 7 years) has a financial interest, is subject to forfeiture. This action is not mandatory. §46.61.5058 A law enforcement officer may take custody and remove to a safe place a vehicle involved in a DWI offense. §46.55.113.
Terms Upon Which Vehicle Will Be Released:	**Mandatory Probation:** For any drunk driving offense, if the court imposes <1 year in jail, it shall suspend but not defer a period of confinement ≤5 years and place offenders on probation with the following minimum conditions: (1) They cannot operate a vehicle unless they have valid licenses and maintain proof of financial responsibility; (2) They cannot operate a motor vehicle with BAC/BrAC **≥.08;** and, (3) they must submit to implied consent tests. If an offender violates (1) in combination with either (2) or (3), that person is subject to a mandatory 30-day jail term and a license suspension for 30 days. **Vehicle Assault -Community Placement:** A person who has been convicted of Vehicle Assault must be sentenced to "community placement" for at least 2 years. §9.94A.120(9)(b).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Persons are "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥.04, (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 years mand). The implied consent provisions for CMV operators allow 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, CMV operators must be placed "out-of-service" for 24 hours if they have any amount of alcohol in their systems. A person commits a gross misdemeanor by operating a CMV with any amount of alcohol in the system: Jail – not more than 1 year; fine – not more than $5,000. §§9.92.020, 46.25.010(2), (6), (8) and (15), 46.25.090, 46.25.110, 46.25.120 and 46.25.170 . Note: A motor carrier or employer who employs drivers who operate commercial motor vehicles and who is required to have a testing program conducted under the procedures established by 49 C.F.R. 40, must report a refusal by a commercial motor vehicle driver to take a drug or alcohol test; or a motor vehicle driver's verified positive drug test or a positive alcohol when: (i) The driver's employment has been terminated or the driver has

resigned; (ii) any grievance process, up to but not including arbitration, has been concluded; and (iii) at the time of termination or resignation the driver has not been cleared to return to safety-sensitive functions. §46.25.123

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) (review denied 10 P.3d 1073(2000)).

In addition, the court may order an offender to only operate motor vehicles that are equipped with an "ignition interlock" device. §46.61.5055(8).

Probationary License: After either the suspension or revocation period, DWI offenders' driving privileges or must be placed on probationary status for 5 years. §§46.20.355(2) and 46.61.5055.

Home Detention: Incarceration may include "home detention". See §§9.94A.030(23) and 9.94A.190(1).

Special Education Program: A person convicted of a DWI offense may be required to attend an educational program that focuses on the emotional, physical and financial suffering of DWI victims. §46.61.5152.

EMS Cost. A defendant is liable for up to **$1,000** of the cost of an emergency response related to the DWI offense. §38.52.430.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law: **Yes –** Class A felony, where death is caused by the operation of a vehicle (1) while under the influence of intoxicating liquor or any drug[1271], (2) in a reckless manner, or (3) with disregard for the safety of others. §46.61.520

Sanctions:

Criminal Sanction:

Imprisonment (Term): **Life Imprisonment.**[1272] §9A.2.021(1)(a)

Mandatory Minimum Term: **None.** The sentencing guidelines grid would appear to require a period of incarceration.

Fine ($ Range): Not more than **$50,000.** §9A.2.021(1)(a)
A Penalty Assessment of **$500.**[1273] §7.68.035(1)(a)and (2)

[1270] 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)

[1271] Under the sentencing guidelines grid, the presumptive sentences are as follows: Vehicle homicide related to a drunk driving offense – 31 to 144 months with 2 years added for each prior drunk driving offense; vehicle homicide related to reckless driving-21 to 116 months; and, vehicle homicide related to vehicle operation with disregard for the safety of others-15 to 102 mos. §§9.94A.510(1) and (7), 9.94A.515 and 46.61.520(2)

Mandatory Minimum Fine:	**None.** But the Penalty Assessment is mandatory.
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Revocation** §46.20.285
Length of Term of Licensing Withdrawal:	**2 years**[1274] §46.20.285
Mandatory Action--Minimum Length of License Withdrawal:	**2 years** No occupational license is available. §46.20.391 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.505(7), 9.94A.750 and 9.94A.753. (2) 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 years. §9.94A.505(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
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	§46.20.342.
Sanction:	
Criminal:	
Imprisonment (Term):	**Gross Misdemeanor**[1275] **–** Not more than **1 year** §§9.92.020, 9A.2.021 and 46.20.342(1)[1276]
Mandatory Minimum Term of Imprisonment:	**None**

[1272] 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 percent of any fine imposed. The second is equal to 50 percent of the first. §3.62.090(1) and (2)

[1273] The revocation is "tolled" during any period of incarceration. §46.20.285

[1274] It is a gross misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-or-service order. The sanctions for this offense are an imprisonment term of not more than 1 year and/or a fine of not more than $5,000. §§9.92.020, 46.20.342(1) and 46.25.050(2). If a person operating a CMV while under an out-of-service order is subject to the following disqualification periods: first violation – 90 days (mand) to 1 year; second violation (within 10 years) – 1 year (mand) to 5 years; and, third or subsequent violation (within 10 years) – 3 years (mand) to 5 years. 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: first violation-180 days (mand) to 2 years; and, subsequent violation (within 10 years) – 3 years (mand) to 5 years. §46.25.090(6)(d).

[1275] The vehicle used in this offense may be impounded as follows: first offense – Not more than **30 days**; second offense (within 5 years) – Not more than **60 days**; and, third and subsequent offense – Not more than **90 days**. 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) and (b).

Fine ($ Range):	Not more than **$5,000.** §§9.92.020 and 9A.2.021
Mandatory Minimum Fine:	**None**
Type of Licensing Action (Susp/Rev):	**Suspension** or **Revocation** §46.20.342(2)
Length of Term of License Withdrawal Action:	An additional suspension/revocation period of 1 year. §46.20.342(2)(b)
Mandatory Term of License Withdrawal Action:	The suspension/revocation shall not be extended if the court recommends against such extension and the driver has already obtained a valid license. §46.20.342(2)(c)
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**Yes** §46.65.020
Grounds for Being Declared an Habitual Offender:	Three serious offenses within 5 years or a combination of 20 minor and/or serious offenses within 5 years provided that 3 minor offenses must have been committed within the period of 360 days for this alternative to apply.
Term of License Revocation while Under Habitual Offender Status:	**7 years**[1277] maximum. But there is a special stay of revocation if based on DWI offenses and person is attending an alcohol treatment program. In addition, after 4 years a license may be issued upon "good and sufficient showing".§§46.65.060,46.65.070and 46.65.080
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	**Gross Misdemeanor** §46.20.342(1)(a)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	First offense – **10 days to 1 year**; second offense – **90 days to 1 year**; third and subsequentoffense – Not less than **1 year.** §§9.92.020, 9A.2.021 and 46.20.342(1)(a)
Mandatory Minimum Term of Imprisonment:	First offense – **10 days** (if the offender has also committed a DWI offense – **90 days**); second offense – **90 days**; third and subsequent offense – **180 days.** §46.20.342(1)(a)

[1276] After this 7-year period, the revocation remains in effect until the offender petitions and receives a new license from the State licensing agency. §46.65.100.

Fine ($ Range):	Not more than **$5,000.** §§9.92.020 and 9A.2.021
Mandatory Minimum Fine ($):	**None**
Licensing Actions (Specify):	The original revocation for being an habitual violator is extended for an additional period of 1 year. The court may recommend against such an extension. §46.20.342(2)(a) and (c)
Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** § 46.52.065
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** §§66.44.270(1) and 66.44.290
Minimum Age (Years) Possession:	**21** §66.44.270(2) Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons and for religious services.
Minimum Age (Years) Consumption:	**21** §66.44.270(2) Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons and for religious services.
Dram Shop Laws and Related Legal Actions:	
State Has a Dram Shop Law (Yes/No):	**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** *Purchase v. Meyer,* 737 P.2d 661 (Wash. 1987)[1278]
Dram Shop Actions-Social Hosts:	**No.** *Reynolds v. Hicks,* 951 P.2d 761 (Wash. 1998)[1279] **Comment:** This case

[1277] 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) and *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 underage person who in turn provided such beverages to the injury causing minor. *Rinks v. Bearss,* 921 P.2d 558 (Wash. App. Div. 1 1996).

[1278] Nothwithstanding the *Reynolds* decision, an adult social host was held liable for the death of an

	concerned social host liability resulting from injuries caused by a minor guest to a third party. There is no social host liability resulting from injuries suffered by or caused by an adult guest to a third party. *Burkhard v. Harrod,* 755 P.2d 759 (Wash. 1988).
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). 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:	**Misdemeanor/Gross Misdemeanor** §§9A.2.010(2), 66.44.180 and 66.44.200
Term of Imprisonment:	First offense (misdemeanor) – Not more than **2 months**; second offense (gross misdemeanor) – Not more than **6 months**; third and subsequent offenses (gross misdemeanor) – Not more than **1 year.**
Fine ($ Range):	For individuals: first offense – Not more than **$500**[1280; second] and subsequent offense – No**ne** For corporations: first offense – Not more than **$5,000**; second and subsequent offenses – Not more than **$10,000** (and/or forfeiture of its corporate license.).
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes. Suspension/Cancel (Revocation)** §§66.24.010 and 66.44.200
Length of Term of License Withdrawal:	Not specified in the statute

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intoxicated minor guest on a violation of a statutory duty theory. *Hansen v. Friend,* 824 P.2d 483 (Wash. 1992). 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, citing *Young v. Caravan Corp.,* 663 P.2d 834 (Wash 1983). And, in another case, the court held that an employer may be 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).

[1279] There is an assessment of **$250** for a first or subsequent misdemeanor and **$500** for a first or subsequent gross misdemeanor. For juvenile offenders, there is an assessment of **$75** for a first or subsequent misdemeanor and **$100** for a first or subsequent gross misdemeanor. §7.68.035(1)(a) and (b).

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 Misdemeanor** §66.44.270(1)
Term of Imprisonment:	Not more than **1 year.** §9A.2.021(2)
Fine ($ Range):	Not more than **$5,000.** §9A.2.021(2
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes. Suspension/Cancel /Revocation**
Length of Term License Withdrawal:	Not specified in the statute. §§66.24.010 and 66.44.180.
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 and Passengers §46.61.519(2)[1281 and 1282]
Anti-Consumption Law (Yes/No):	**Yes** Driver and Passengers §46.61.519(1) Under §66.44.100, "no person shall open the package containing liquor or consume liquor in a public place", although the law allows exceptions for licensed establishments.

[1280] A violation is a traffic infraction.

[1281] Does not apply to passengers in commercially chartered vehicles or in the living quarters of a motor home or camper.

STATE	**WEST VIRGINIA**
General Reference:	West Virginia Code
Basis for a DWI Charge:	
Standard DWI Offense: §17C-5-2	Under the influence of alcohol
Illegal Per Se Law (BAC/BrAC):	**≥.08**[1283] §17C-5-2 Persons Under 21 Years Old **≥.02** but <.08 §17C-5-2(h)
Presumption (BAC/BrAC):	**≥.08** §17C-5-8
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug, (2) Controlled Substance or (3) a Combination of Alcohol and Any Other Controlled Substance or Any Other Drug §17C-5-2 Habitual users of narcotic drugs, amphetamine or any derivative thereof §17C-5-2
Other:	An alcohol concentration ≥.08[1] is also *prima facie* evidence of driving under the influence of alcohol. §17C-5-8 An alcohol concentration >.05 but <.08 is "relevant evidence" (but not *prima facie* evidence) of driving while under the influence of alcohol. §17C-5-8
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**Yes** §§17C-5-4 (b), 17C-5-5 and 17C-5-6a(a)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§17C-5-4 and 17C-5-6a(b)
Implied Consent Law Applies to Drugs (Yes/No):	**No**
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *State v. Cozart,* 352 S.E.2d 152 (W.Va. 1986)
Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:	
Blood:	**Yes** §§17C-5-4 and 17C-5-6a(c)

[1303] The standard for alcohol concentration is "percent by weight" of alcohol in the blood. §§17C-5-2, 17C-5-8 and 17C-5A-1. However, this standard is based upon a formula of (1) grams of alcohol per 100 cubic centimeters of blood, (2) grams of alcohol per 210 liters of breath, (3) grams of alcohol per 67 milliliter of urine, and (4) grams of alcohol per 86 milliliters of serum. §17C-5-8.

Urine:	**Yes** §§17C-5-4 and 17C-5-6a(c)
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):	**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):	First Refusal – 30 days revocation plus additional 9 months of mandatory ignition interlock; second refusal[1284] -9 months revocation plus 18 months mandatory ignition interlock; third refusal – 18 months revocation plus 2 years mandatory ignition interlock.
Other:	Under §17C-5-6a(c), a child (a person under 18 years old per §§49-5 – 1 and 49-5-8) may be taken into custody if a law enforcement officer has reasonable grounds to believe that person has been operating a motor vehicle with any amount of alcohol in their body. The law requires the child be warned that a refusal to submit to the implied consent test could result in a license suspension.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Persons are "disqualified" from operating a CMV for not less than 1 mandatory year (not less than 3 years if transporting hazardous materials) if, while driving a CMV, they (1) have an alcohol concentration ≥.04 (Standards: 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.), (2) are under the

[1304] A previous admin per se violation is also considered a prior refusal for licensing sanction enhancement purposes. §17C-5-7(b).
Note: Certain subsequent violators are not eligible for Ignition Interlock program. For information on eligibility requirements regarding repeat offenders, see "Ignition Interlock Program."

influence of either alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. (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 years 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 the 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 the system is subject to the following sanctions: first offense – jail-none; fine not more than $100; second offense – jail – not more than 30 days; fine-
$100 to $300; third and subsequent offense – jail – 24 hours to 30 days; fine – $500 to $1,000; and (2) a person who operates a CMV with any a BAC/BrAC/UrAC ≥.04 is subject to the following sanctions: first offense – jail – 24 hours to 6 months; fine – $100 to $500; second and subsequent offense (misdemeanor) – jail-6 months to 1 year; fine – $1,000 to $3,000. §§17E-1-3, 17E-1-13, 17E-1-14, 17E-1-15 and 17E-1-25.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.): DWI not related to death or bodily injury, first offense – 24 hours to 6 months; second offense – 6 months to 1 year; third and subsequent offenses[1285 – 1] to 3 years; DWI resulting in death where there is reckless disregard of the safety of others – 1 to 10 years. DWI resulting in death where there is an illegal act or a failure to perform a legal duty, first offense – 90 days to 1 year; second offense – 6 months to 1 year; third and subsequent offenses – 1 to 3 years. DWI resulting from bodily injury where there is an illegal act or a failure to perform a legal duty, first offense – 1 day[1286] to 1 year; second offense – 6 months to 1 year; third and subsequent offenses – 1 to 3 years. §17C-5-2.

Mandatory Minimum Term: The minimum jail sentences are mandatory.

Fine:

Amount ($ Range): DWI not related to death or bodily injury, first offense – $100 to $500; second offense – $1,000 to $3,000; third and subsequent offenses – $3,000 to $5,000. DWI resulting in death where

[1305] Felony

[1306] Actual confinement of not less than 24 hours

there is reckless disregard of the safety of others – $1,000 to $3,000; DWI resulting in death where there is an illegal act or a failure to perform a legal duty, first offense – $500 to $1,000; second offense – $1,000 to $3,000; third and subsequent offenses – $3,000 to $5,00. DWI resulting from bodily injury where there is an illegal act or a failure to perform a legal duty, first offense – $200 to $1,000; second offense – $1,000 to $3,000; third and subsequent offense – $3,000 to $5,000. §17C-5-2

Mandatory Min. Fine ($): The above minimum fine sentences are mandatory. §17C-5-2(p)

Other Penalties:

Community Service: **Yes** 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) 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, or charitable or other nonprofit organizations which have been approved by the court. §62-11A-1a(a) and (c)(1).62-11A-1a (a)(3).[1287]and[1288]

[1307] It is a misdemeanor for a person to drive a vehicle if an habitual user of narcotic drugs, an amphetamine or any derivative thereof. The sanctions for this offense are as follows: imprisonment from 1 day to 6 months with actual confinement of not less than 24 hours and/or a fine of from $100 to $500. §17C-5-2(e).

[1308] Sec. 17C-5-2(p) provides that the DWI sanctions are mandatory and are not subject to either suspension or probation; i.e., the minimum imprisonment sanction, it appears, must be served. However, this section does provide that, for jail sentences of one year 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. Yoak,* 504 S.E.2d 158 (W.Va. 1998). Likewise, §§17C-5-2(p) and 62-11B-1 et seq. provide for participation in a **"community corrections program"** for certain drunk driving law offenders in lieu of confinement in wither a jail or the State penitentiary.

Child Endangerment: A person who violates the drunk driving law while transporting a child <16 years old, commits a misdemeanor and is subject to a jail term of 2 days to 12 months (with 48 hours of actual

Restitution (e.g. Victim's Fund):	**Yes**. Victims' Compensation Fund. §14-2A-1 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 of "electronically monitored home confinement" in lieu of incarceration for a drunk driving offense. *State v. Kerns,* 394 S.E.2d 532 (W.Va. 1990), and *State v. Yoak,* 504 S.E.2d 158 (W.Va. 1998). **Assessments:** A fee of 20 percent of the fine imposed is assessed against each DWI offender. Felony offenders are also assessed a fee of $75. These assessments are deposited into the Crime Victims Compensation Fund. §§14-2A-4 and 62-5-10.
Administrative Licensing Actions:	
Pre-DWI Conviction Licensing Action:	
Administrative Per Se Law:	**Yes.** ≥.08 (BAC/BrAC/UrAC or Driving While Under the Influence of Alcohol[1289], a Controlled Substance or Other Drugs: Admin actions where there is neither a death nor a bodily injury: first action – 6 months revocation (30 days mand, then ignition interlock for 5 months); second action within 10 years – 10 years revocation (Nine months mandatory if the person participates in the ignition interlock); subsequent action within 10 years – Revocation for life (Eighteen months mandatory if the person participates in the ignition interlock program) [1290].

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confinement mandatory) 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 **≥.02 but <.08**, are subject to the following sanctions: first offense (misdemeanor) – jail – No**ne**; fine – $**25 (mand) to $100.** A first offender may have the charges dismissed and record expunged if that person successfully completes an alcohol safety/treatment and interlock program. subsequent offense (misdemeanor) – jail – 24 hours (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).

[1309] An alcohol concentration >.05 but <.08 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 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), and *Dean v. W.Va. Dept. of Motor Vehicles,* 464 S.E.2d 589 (W.Va. 1995).

[1310] §17C-5A-3a(c)(4). Although the ignition interlock law does not provide for it, the regulations that

Admin actions where there is a death and the driver has acted in reckless disregard for the safety of others: first action – 10 years revocation (5 years mand), subsequent action within 10 years – Revocation for life (10 years mand). Admin actions where there is a death of a person but no recklessness on the part of the driver: first action – 5 years revocation (2 1/2 years mand); subsequent action within 10 years – Revocation for life (10 years mand). Admin actions where there is bodily injury: first action – 2 years' revocation (1 year mand); second action within 10 years – Revocation (5 years mand) subsequent action within 10 years – Revocation for life (10 years mand). §§17C-5A-1, 17C-5A-2 and 17C-5A-3
I. Vehicle operation by a habitual user of a narcotic drug, an amphetamine or any derivative thereof: first action – Revocation 6 months; second action – Revocation 10 years; subsequent action – Revocation for life. §17C-5A-2(i).
II. A previous implied consent refusal is also considered a prior admin per se action for licensing sanction enhancement purposes. §17C-5A-2(n)(3)
III. For an admin per se action based on driving while under the influence of alcohol where there was no alcohol concentration evidence, see *W.Va. Div. of Motor Vehicles v. Cline,* 423 S.E.2d 882 (W.Va. 1992).
IV. For cases upholding mandatory 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).
The minimum mandatory license revocation periods above apply only if the person is participating in an alcohol/drug treatment program. Otherwise, the person has driving

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implement the ignition interlock program provide that if a person has had more than 3 admin per se or drunk driving offense related revocations, the license must be revoked for an additional 6 months "for each offense greater than three" before becoming eligible to participate in this program. §91-9-3.4.5 (regulation).

privileges revoked for the entire revocation period. §17C-5A-3.
Persons under 18 years old who have 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)} except there is only a 1-year mandatory revocation if the person under 21 years old participates in the ignition interlock program. §17C-5A-3a(c)(3) and §91-9-3.4.5 (Regulation 91 CSR 9)
Under §§17B-3-6 and 17B-3-8, license suspension for not more than 1 year if a person has "committed" an offense that requires mandatory license revocation (e.g., DWI). Such action may be taken without a preliminary hearing.
Admin per se actions taken against persons under 21 years old who operate a vehicle with an alcohol concentration ≥.02 but <.08 (BAC/BrAC/UrAC first action – 60 days suspension (mand), 30 days (mand) if the person participates in the ignition interlock program. For persons under 18 years old, suspension for 60 days (mand) or until they reach 18, whichever is the longer suspension period. Subsequentaction – 1-year revocation (mand) or revocation until the person's 21st birthday whichever is the longer revocation period.
Admin actions where there is a death and the driver has also acted in reckless disregard for the safety of others: first violation – 10 years revocation (5 years mand); subsequent action within 10 years – Revocation for life (10 years mand). Admin actions where there is a death of a person but no recklessness on the part of the driver: first action – 5 years revocation (2 1/2 years mand); subsequent action within 10 years – Revocation for life (10 years mand).
Admin actions where there is bodily injury: first action – 2 years revocation (1 year mand); second action within 10 years – 10 years revocation (5 years mand); subsequent action within 10 years – Revocation for life (10 years mand). §§17C-5-2(h), 17C-5A-1, 17C-5A-2 and 17C-5A-3.

Child Endangerment: A person who violates the admin per se law while transporting a child <16 years old is subject to a 1-year revocation (mand). If the person has had a previous admin per se license suspension or revocation (within 10 years), the revocation period is 10 years (mand). If the person has more than one previous admin per se license suspension or revocation (within 10 years), the revocation period is for life (mand). §17C-5A-2(m).

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: **Yes**.[1291] After (1) the period of mandatory revocation 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: **Yes**

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **No**

Terms Upon Which Vehicle Will Be Released:

Other: **None**

Miscellaneous Sanctions Not Included Elsewhere: **None**

[1311] A person who has refused to submit to a chemical test must successfully complete an alcohol education or treatment program before the 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 involved in either death- related admin per se or DWI law violation. The law stipulates 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 committed an injury- related admin per se or drunk driving offense are also excluded from the program. §91-3-3.6 (regulation).

If the person has been involved in a violation of the implied consent, admin per se or DWI laws while participating in the program, or has previously been in the program. First admin per se violation/DWI offense: The ignition interlock must be used for 5 months. First refusal: The ignition interlock must be used for 9 months. Second admin per se violation or DWI offense: The ignition interlock must be used for 18 months. Subsequentadmin per se violation or DWI offense and second or subsequent refusal: The ignition interlock must be used for 2 years. {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 three admin per se, refusal, or drunk driving offense related revocations, that person must use an ignition interlock for an additional 1 year "for each offense greater than three." §91-9-3.4.5 (regulation)}.

Post DWI Conviction Licensing Action:
(con't)

Persons <21 years old-vehicle operation with an alcohol concentration ≥.02 but <.08: The law appears to require that the ignition interlock be used for six months. First time participants have their driver licensing records expunged. §17C-5A-3a(c),(e) and (f) and §91-9-3 (Regulation 91 CSR 9).

Homicide by Vehicle:

State Has Such a Law:	**Yes. Misdemeanor**:[1292] Negligent homicide §17C-5-1
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	Not more than **1 year** §17C-5-1(b)
Mandatory Minimum Term:	**None**
Fine ($ Range):	**$100 to $1,000** §17C-5-1(b)
Mandatory Minimum Fine:	**None**
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Revocation** §§17B-1-1(q), 17B-3-5 and 17C-5-1(c)
Length of Term of	

[1312] This offense is a misdemeanor via §17C-18-1(a).

Licensing Withdrawal:	**1 year**
Mandatory Action--Minimum Length of License Withdrawal:	**1 year**
*Driving While License Suspended or Revoked Where the Basis – DWI Offense:[1293]	
Sanction:	
Criminal:	
Imprisonment (Term):	First offense (misdemeanor) – 6 months[1294]; second offense (misdemeanor) – 1 year; third and subsequent offenses (felony) – 1 to 3 years (penitentiary). §17B-4-3(b)
Mandatory Minimum Term of Imprisonment:	First offense – 6 months; second offense – 1 year; third and subsequent offenses – 1 year.
Fine ($ Range):	First offense – $100 to $500; second offense – $1,000 to $3,000; third and subsequent offenses – $3,000 to $5,000. §17B-4-3(b)
Mandatory Minimum Fine:	First offense – $100; second offense – $1,000; third and subsequent offenses – $3,000.
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	**Suspension/Revocation**
Length of Term of License Withdrawal Action:	**1-year extension** of the original licensing action. §17B-4-3(c)
Mandatory Term of License Withdrawal Action:	**Same as above.**
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Grounds for Being Declared an	

[1313] I. It is a misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. For a first offense, a person is subject to an imprisonment term for not more than 6 months and/or a fine of $100 to $1,000. For a second offense, a person is subject to an imprisonment term of 6 to 9 months and/or a fine of $500 to $2,000. For a third or subsequent offense, a person is subject to an imprisonment term of 9 months to 1 year and/or a fine of $1,000 to $2,500. §§17E-1-7(b) and 17E-1-25. II. A person who violates an out-of service order is subject to the following mandatory CDL disqualifications: (1) first offense – 90 days; second offense (within 10 years) – 1 year; and, third or subsequent offense (within 10 years) – 3 years. 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: first offense – 180 days; and, second or subsequent offense – 3 years. §7E-1-13(f)

[1314] Home detention may be used as an alternative to incarceration. §17B-4-3(e)

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

Other State Laws Related to Alcohol Use:

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

State Has Such a Law (Yes/No):	**Yes** §17C-5B-1
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes**
Vehicle Passengers:	**No**
Pedestrian:	**Yes** (Adult pedestrians)

Special Note: A person under 21 years old who operates a vehicle after his/her license has been either suspended or revoked for driving with an alcohol concentration ≥.02 but <.08 commits a misdemeanor and is subject to a jail term of 24 hours (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.

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	**21** §§11-16-18(a)(3), 11 -16-19(a) and 60-3-22(a)
Minimum Age (Years) Possession:	**21** §§11-16-19(a), 60-3A-24(A) and 60-8-20a(a)
Minimum Age (Years) Consumption:	**21** §§11-16-19(a), 60-3A-24(A) and 60-8-20a(a)

Dram Shop Laws and Related Legal Actions:

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

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**Yes.** *Bailey v. Black,* 394 S.E.2d 58 (W.Va. 1990), *Anderson v. Moulder,* 394 S.E.2d 61 (W.Va. 1990), and *Walker v. Griffith,* 626 F. Supp. 350 (W.Va. 1986)
Dram Shop Actions-Social Hosts:	**No*** *Overbaugh v. McCutcheon,* 396 S.E.2d 153 (W.Va. 1990)
Other:	A licensee may be liable for the injuries sustained by an intoxicated patron (adult or minor). *Bailey v. Black,* 394 S.E.2d 58 (W.Va. 1990), and *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:	**Alcoholic Liquor**[1295]: Private Package Retail Sales[1296]-30 days to 1 year; Special Licensees[1297]-30 days to 1 year; Private Clubs[1298] – not more than 1 year; Wines[1299]-30 days to 6 months. **Non-intoxicating Beer:** Class A and B Licensees-30 days to 6 months. * 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

[1315] Alcoholic Liquor-all alcoholic beverages except non-intoxicating beer; non-intoxicating beer-all cereal malt beverages and malt coolers containing at least 0.5 percent alcohol by volume but not more than 4.2 percent alcohol by weight or 6 percent by volume whichever is greater. §§11-16-3 and 60-1-5.

[1316] 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.

[1317] Special Licensees: 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.

[1318] Private Clubs, which are not open to the public, may be licensed to sell alcoholic liquor by the drink. §60-7-1 et seq.

[1319] 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. §60-8-3 et seq.

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.

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

Fine ($ Range): **Alcoholic Liquor**[1300]: Private Package Retail Sales – $100 – $5,000; Special Licensees – $50 to $500; Private Clubs – $500 to $1000; Wines – $25 to $500. **Non-intoxicating Beer**[1301]: Class A and B Licensees – $25 to $500.

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes.** Discontinued, suspended or revoked.

Length of Term of License Withdrawal: Alcoholic Liquor: Private Package Retail Sales (also, a civil penalty of not more than $1,000); Special Licensees – Revocation time period is not specified but normal licensing period is one year; Private Clubs- Revocation/Suspension – Licenses are usually revoked for up to one year (in lieu of revocation, a monetary penalty of not more than $1,000); Wines – Revocation/suspension time period is not specified in the statute. Non-intoxicating Beer: Class A and B Licensees Revocation/Suspension – If the license is revoked, no new license shall be issued for two 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.

Anti-Happy Hour Laws/Regulations: **No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages

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[1320] Alcoholic Liquor-citations: Private Package Retail Sales-§§60-3A-25, 60-3A-26 and 60-3A-27; Special Licensees-§§60-3-22, 60-4-1, 60-4-1 and 60-6-8; Private Clubs-§§60-7-12 and 60-7-13; Wines-§§60-8-18, 60-8-20 and 60-8-25

[1321] Non-intoxicating Beer-citations: §§11-16-9, 11-16-18, 11-16-23 and 11-16-25. 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.

<u>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):	**Yes** Driver and passengers §60-6-9(a)(3)

STATE:	**WISCONSIN**
General Reference:	Wisconsin Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an intoxicant §346.63(1)(a) and (2)(a)(1)
Illegal Per Se Law (BAC/BrAC):	I. Illegal for them to operate a vehicle with a "prohibited alcohol concentration" **≥.08** {**≥.02** with 3 or more prior convictions}[1302] II. If the person has a **detectable amount of a restricted controlled substance** in his or her blood. §**346.63(1)(AM)** Restricted controlled substance means a controlled substance included in schedule 1 under Ch. 961 other than tetrahydrocannabinol. 2. A controlled substance analog, as defined in Section 961.01 (4m), of a controlled substance described in subd. 1. 3. Cocaine or any of its metabolites. 4. Methamphetamine. 5. Delta-9-tetrahydrocannabinol §23.33 (1) (jo) {'Defenses.'- a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol. §23.33 (4c) (a) 5.} 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" **≥.02**. §§34.01(46m), 343.307(1), 346.63(1)(b) and (2)(a)(2) Persons Under 21 Years Old. Alcohol Concentration **>.00 but <.08** §346.63(2m) {Suspension for 3 months, 6 months if there was a passenger under 16.}
Presumption (BAC):	≥.08 is prima facie evidence of influence of an intoxicant and is prima facie evidence of alcohol concentration of .08 B.A.C. or more. § 885.235 (1g) (c)

[1282] "Prohibited alcohol concentration" or "alcohol concentration" based either on "percent by weight" of alcohol in the blood or on grams of alcohol in 210 liters of breath, means one of the following:
(a) If the person has 2 or fewer prior convictions, suspensions, or revocations – an alcohol concentration of .08 or more.
(c) If the person has 3 or more prior convictions, suspensions or revocations – an alcohol concentration of more than .02. §§ 34.01(46m) and 346.63(2m). {These standards also apply to the administrative per se law.}

Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug, (2) an Intoxicant, (3) a Controlled Substance, (4) a Combination of an Intoxicant and a Controlled Substance or (5) a Combination of an Intoxicant and Any Other Drug §§346.63(1)(a) and (2)(a)(1), 45.01(10) (definition of the term "drug") and 885.235(5)(b) and (c) Persons Under 21 Years Old. Under §885.235(1)(1m), an alcohol concentration >.00 but <.08[1] is *prima facie* evidence under the influence of an intoxicant.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	**Yes** §§343.303 and 343.305(3)(am) (CMV operators)
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §343.305(3)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §343.305(2)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal Cases) *State v. Bolstad,* 370 N.W.2d 257 (Wis. 1985) However, if the implied consent law's provisions are not followed, a refusal cannot be admitted into evidence. *State v. Algaier,* 478 N.W.2d 292 (Wis. App. 1991)
Other Information:	In a case concerned with 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.[1303] *State v. Bolhing,* 494 N.W.2d 399 (Wis. 1993)(cert denied 510 U.S. 836, 126 L.Ed.2d 78, 114 S. Ct. 112 (1993)). .See also *State v. Krajewski,* 648 N.W.2d 385 (Wis. 2002)(cert denied 174 L. Ed. 2d 634, 123 S. Ct. 704 (2002)).

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

Blood:	**Yes**
Urine:	**Yes**
Other:	**None**

[1283] 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."

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	**No**[1304]
Anti-Plea-Bargaining Statute (Yes/No):	**No** 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 or more DWI offenses within 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) and 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):	First refusal[1305] – **1 year revocation**, after 30 days of the revocation period, the driver is eligible for an occupational license; second refusal (within 10 years) – **2 year revocation**, after 90 days of the revocation period, the driver is eligible for occupational license (if 2 or more refusals occur within 5 years, occupational license is available after 1 year.); third and subsequent refusal – **3 year revocation**, after one year of revocation period, the driver is eligible for an occupational license. Previous DWI convictions and admin per se actions are considered to be prior refusals. §§343.10, 343.305(9) and (10) and 343.307(2)
Other:	I. If a person under 21 years old has been arrested for a violation of §346.63(2m),

[1284] Deferred prosecution for DWI offenders is generally prohibited. §§967.055(3) and 971.39. {Deferred prosecution is only available in counties having a population of less than 100,000. §971.39.}

[1285] **Child Endangerment:** If the driver was transporting a person <16 years old at the time of the drunk driving arrest and refusal, the minimum and maximum license revocation periods are doubled. §343.305(10((b)(4m)

driving with an alcohol concentration >.00 but <.08, and refuses to submit to a chemical test, the license is revoked for six months.
Child Endangerment: 12-month revocation if the driver was transporting a person <16 years old). After the first 15 days of this revocation period have passed, an occupational license can be issued.
I. 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) and 346.63(2m)
II. (1) For a second or subsequent refusal (within 5 years), a person's vehicle must be immobilized, forfeited or equipped with an ignition interlock device. These actions are for not less than 1 year or more than the maximum period of license revocation. Immobilization begins on the day the revocation starts whereas ignition interlock usage starts 1 year after the revocation period. {Immobilization is prohibited in hardship situations.}
(2) For a third 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 situation. §§343.301(1) and (2), 343.305(10m) and 346.65(6)
III. A person is required to submit to an alcohol assessment and comply with a driver safety plan. §343.305(10)(d)

Sanctions Following a Conviction for a DWI Offense:

Imprisonment:
Term (Day, Month, Years, Etc.):

Non-injury related DWI offense: first offense – **None**[1306]; second offense – **5 days to 6 months**; third offense – **30 days to 1 year**; fourth offense – **60 days to 1 year**; fifth and subsequent offenses – **6 months to 5 years.**
Injury related DWI offenses, Without great bodily harm – **30 days to 1 year**; With great bodily harm (including great bodily harm to an unborn child) (Class F felony) – Not more than **12 years** (Not more than 20 years if transporting a person <16 years old or an

[1286] A first DWI conviction is a "civil conviction." *Racine County v. Smith,* 362 N.W.2d 439 (Wis. App. 1984), *State v. Lawton,* 482 N.W.2d 142 (Wis. App. 1992) and *U.S. v. Devenport,* 131 F.3d 604 (7th Cir. 1997) (an Assimilative Crimes Act, 18 USC §13, case)

unborn child). §§346.63(1) and (2), 346.65(2), 346.65(3m), 939.50 and 940.25

Mandatory Minimum Term: Non-injury related DWI offense: first offense – **None**; second offense – **5 days**[1307]; third offense – **30 days**; fourth offense – **60 days**; fifth and subsequent offenses – **6 months**; Injury Related DWI offense (without great bodily harm) – **30 days.**[1308]

Fine:

Amount ($ Range): Non-injury related DWI offenses: first offense – $**150 to $300** Second DWI offense – $**350 to $1,100**; third offense – $**600 to $2,000**; fourth offense – $**600 to $2,000**; fifth and subsequent offenses – $**600 to $2,000.** Injury related DWI offenses, Without great bodily harm – $**300 to $2,000**; With great bodily harm (Class F felony) – Not more than **$25,000** (Not more than $20,000 if transporting a person <16 years old or an unborn child). Note: if conviction for > **.08** - 'driver improvement surcharge – $355, in addition to other penalties.

Increased Fines for higher BAC: I. If an offender's alcohol concentration was **.17 to .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)

Persons Under 21 Years Old: Sec. 346.63(2m) prohibits any person under 19 years old from operating a motor vehicle with a BAC/BrAC >.00 but <.08. There is a forfeiture of **$10** for a violation of this provision. (**Child Endangerment:** The forfeiture is $20 if the

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[1287] See §346.65 (2g)(d) and *State v.Eckola,* 648 N.W.2d 903 (Wis. App. 2001).

[1288] 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) and (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 days of community service is considered one day in jail. Both the defendant and the organization receiving the service must agree to any community service order issued by the court. §973.03(3) The law is not clear as to whether the defendant is able to serve community service in place of any minimum mandatory period of confinement.

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 (Wis. .App. 1995) affirmed 556 N.W.2d 673 (Wis 1996).

driver was transporting a child <16 years old). §346.65(2q)

Mandatory Min. Fine ($): Non-injury related DWI offense: first offense – $**150**; second offense – $**350**; third offense – $**600**; fourth offense – $**600**; fifth and subsequent offenses – $**600.** Injury Related DWI offense (without great bodily harm) – $**300.**

Other Penalties:

Community Service: **Yes** §346.65(2g)

Restitution (e.g., Victim's Fund): **Yes** Direct compensation by the defendant to a victim for some types of "pecuniary losses". §346.65(2r)(a) In addition, the State has a victims' compensation fund. §949.001et seq. Awards are limited to $40,000 for any one injury or death. §949.06(2)
An adult passenger may not receive an award from this fund if that person knew the driver was intoxicated or had an illegal per se level. §949.08(2)(e)

Surcharges: Persons convicted of a DWI offense must pay a driver improvement surcharge of **$355,** in addition to any other fine, forfeiture or assessment that may be imposed, unless BAC <0 .08. §346.655(1). In addition, under §§814.60 and 973.045, a defendant must pay a crime victim and witness assistance surcharge of $50 for a misdemeanor conviction and $70 for a felony conviction.
Home Detention: In lieu of imprisonment in the county jail, a defendant may be sentenced to "home detention". This detention is to be monitored by an electronic device worn by the defendant. §973.03(4)(a) 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. *State v. Shipler,* 630 N.W.2d 275 (Wis. App. 2001).
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 Per Se Law: **Yes.** I. If the person has had two or fewer prior DWI offense convictions or refusals, the admin action is based on a "prohibited alcohol concentration" **≥.08**. **Suspension 6 months** (not mand)[1309]
If the person has had three or more previous DWI offense convictions or refusals, the administrative action is based on a "prohibited alcohol concentration" **≥.02**. **Suspension 6 months** (not mand) §§34.01(46m) and 343.305(7) and (8)

Post DWI Conviction
Licensing Action
Type of Licensing Action (Susp/Rev): first offense – **Revocation**; second and subsequent offenses – **Revocation.** DWI injury related offenses, with or without great bodily harm – **Revocation** §§343.10, 343.30 and 343.31
Persons Under 21Years Old: BAC/BrAC >.00 but <.08 – **Suspension** §§343.30(1q) and 346.63(2m)

Term of License Withdrawal
(Days, Months, Years, etc.): Non-injury related DWI offenses; first offense – **Revocation 6 to 9 months**; second offense (within 10 years) – **Revocation 1 year-18 months**; subsequent offense – **Revocation 2 to 3 years** Note: A previous conviction includes refusals. Injury related DWI offenses without great bodily harm – **Revocation – 1 to 2 years**; With great bodily harm – **Revocation –**

[1289] A restricted occupational license is available via the courts at any time. §§343.10(4), 343.30(1q)(b)(2) and 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) and 343.38 A person is not eligible for an occupational license if his/her license has been either suspended or revoked for another offense within one year. §343.10(2)(a)1

2 years. Child Endangerment/Unborn Child: Revocation for 4 years if the driver was transporting a person <16 years old or an unborn child. §343.31(3)(f)).

Persons Under 21 Years Old: BAC/BrAC >.00 but <.08- **Suspension – 3months. Child Endangerment:** Suspension for 6 months if the driver was transporting a person <16 years old. §§343.30(1q) and 346.63(2m).

Mandatory Minimum Term of Withdrawal:

Non-injury related DWI offenses; first offense – **None**; second offense (within 10 years) – **60 days**[1310]; second offense (within 5 years) – **1 year**; subsequent offense – **90 days**; subsequent offense (within 5 years) – **1 year.** Injury related DWI offenses without great bodily harm – **60 days**; With great bodily harm – **120 days.**
Persons Under 21 Years Old: BAC/BrAC >.00 but <.08- **None** (An occupational license is available). §346.63(2m)

Rehabilitation:
Alcohol Education:

Yes. Persons who are either convicted of an injury-related DWI offense (without great bodily harm) or who 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. There is a license suspension if a person does not comply with an alcohol/drug assessment (DWI screening), education or treatment program. §§343.30(1q)(c) and (d) and 343.305(10)(d)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has an alcohol concentration ≥.04 (Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.), (2) is under the influence of an intoxicant (an alcohol concentration,

[1290] A restricted occupational license may be issued after this period of time. For subsequent offenses, the restricted license shall prohibit the person from operating a vehicle with any alcohol concentration (BAC/BrAC=.00). §343.10(5)(a) 2 Note: Under §343.30(1q)(h), the license suspension/revocation period for a DWI offense conviction is reduced by any suspension time imposed for a refusal (based on the same incident/occurrence). Also, license suspensions or revocations for DWI, refusal or admin per se which are based on the same incident/occurrence must run concurrently. §343.305(10)(g)

based on percent by weight of alcohol in the blood and grams of alcohol per 210 liters of breath, ≥.04 is *prima facie* evidence), any drug, a controlled substance or any combination of them, (3) is under the influence of any drug which renders the person incapable of driving safely or (4) refuses 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 years mand). In addition, a CMV operator who has an alcohol concentration >.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 .04 and .08 is subject to the following criminal sanctions: for non-injury offenses: first offense – forfeiture of $150 to $300; second offense (within 10 years) – jail 5 days to 6 months, fine – $300 to $1,000; third or subsequent offense – jail 30 days to 1 year, fine – $600 to $2,000. (**Child Endangerment:** If the CMV operator was transporting persons <16 years old, the minimum and maximum incarceration, forfeiture and fine sanctions for non injury offenses are **doubled**. §346.65(2j)(d)) For an injury offense: Jail-30 days to 1 year; fine – $300 to $2,000. For an offense where there has been "great bodily" injury (Class F felony): Jail – not more than 10 years; 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 years old or an unborn child). §§34.01(1v), 34.01(8), 34.01(13m), 34.01(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) and (5)(a), 939.50(3)(d) and 940.25.

Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:

Forfeiture: For a third or subsequent drunk driving offense, a person's vehicle may be **forfeited**. However, such action prohibited in hardship situations. §§343.305(10m) and 346.65(6)[1311]

Ignition Interlock/Immobilization: For a second or subsequent offense (within 5 years), a person's vehicles must be **immobilized or equipped with an ignition interlock device** for not less than 1 year nor more than the maximum period of license revocation. Immobilization begins on the day the revocation starts whereas ignition interlock usage starts 1 year after the revocation period. Note: Immobilization is prohibited in hardship situations. §§343.301(1) and (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) and (3)

[1291] 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. See also *State v. Michels,* 650 N.W.2d 322 (Wis. App. 2002).

II. For a drunk driving offense 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) and 343.31(3)(e)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law: **Yes.** Class G felony: Where a death, including a death to an unborn child, is caused by operating a vehicle with negligence; Class D felony: Where a death, including a death to an unborn child, is caused by operating a vehicle while under the influence of an intoxicant or with illegal per se levels (including operating a CMV ≥.04). §§343.10, 343.31(1)(a), (3)(a) and (c), (3m)(a), 939.50, 94.09 and 940.10

Sanctions:

Criminal Sanction:

Imprisonment (Term): Class G felony – Not more than **10 years**; Class D felony – Not more than **25 years.** §§343.10, 343.31, 939.50, 94.09 and 940.10

Mandatory Minimum Term: **None**

Fine ($ Range): Class G felony – Not more than **$25,000**; Class D felony – Not more than **$100,000.**

Mandatory Minimum Fine: **None** §§343.10 and 343.31

Length of Term of Licensing Withdrawal: Class G felony – **1 year**; Class D felony – **5 years** §§343.10 and 343.31

Mandatory Action--Minimum Length of License Withdrawal: Class G felony- **15 days**; Class D felony – **120 days.** A restricted occupational license may be issued after these periods. §§343.10 and 343.31

Other: **Special Note:** In lieu of a continuous prison sentence, a defendant may serve a series of periods of not less than 48 hours nor more than 3 days. §969.08(10)(b) and 973.03(5)
I. Class B felony offense: For an offense where there has been two prior refusals or drunk driving offenses – any type within 10 years, 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) and 94.09(1d)
II. Class B felony offense: For a fourth or sub. offense (a prior offense includes refusals and DWI offenses) – any type within 10 years, a person's vehicle shall be **forfeited**. §§343.305(10m), 346.65(6) and 94.09(1d)
III. **Child Endangerment/Unborn Child:** If the driver was transporting a person <16 years old or an unborn child, the maximum imprisonment and fine sanctions are doubled and the revocation period is 10 years. §§343.31(3)(c) and 94.09(1b)

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

Sanction:	
Criminal:	
Imprisonment (Term):	Operating While Suspended – **None** Operating While Revoked – Not more than **1 year** §343.44(2)(b)
Mandatory Minimum Term of Imprisonment:	**None**
Fine ($ Range):	Operating While Suspended – $**50 to $200** (forfeiture) §343.44(2)(a) Operating While Revoked- Not more than **$2,500** §343.44(2)(b)
Mandatory Minimum Fine:	**None**

*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.

Type of Licensing Action (Susp/Rev):	**Suspension/Revocation**[1312] §343.30(1g)
Length of Term of License Withdrawal Action:	First, second or third offense – Not more than **6 months** – (Revocation or Suspension)

[1292] 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) and (b) Out-of-Service Order: A person who drives a CMV after having received an out-of-service order is subject to the following CDL disqualifications: first violation – 90 days; second violation (within 10 years) – 1 year; and, third or subsequent violation (within 10 years) – 3 years. 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: first violation-180 days; and, second or subsequent violations (within 10 years) – 3 years. §343.315(2)(h) and (i)

	Fourth or subsequent offense – **6 months** (Revocation)
Mandatory Term of License Withdrawal Action:	**None**[1313]
Other:	**Impoundment:** An offender's vehicle may be impounded. The length of such impoundment is determined by the court. §343.44(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 offenses or 12 or more minor moving violations within 5 years. §351.02
Term of License Rev While Under Habitual Offender Status:	**5 years** §351.025(1) A hardship license[1314] may be issued after 2 years. §351.07
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:	**Misdemeanor**
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than **180 days**[1315] §351.08
Mandatory Minimum Term of Imprisonment:	
Fine ($ Range):	Not more than **$5,000**§351.08
Mandatory Minimum Fine ($):	See Footnote No [1316].
Licensing Actions (Specify):	**None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**Yes** §346.71(2)
BAC Chemical Test Is Given to the	

[1293] For either a first, second or third offense, licensing action is discretionary with the court. However, even for a fourth or subsequent offense, the court may order a period of revocation of less than 6 months provided it "places its reasons for ordering the lesser period of revocation on the record." §343.30(1q)(a) and (b)

[1294] A habitual offender issued a hardship license is subject to special sanctions for committing 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 percent of the maximum fine and/or not more than two times the maximum jail sentence for such offense. §§351.07

[1295] 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.

[1296] 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 pursuant to §§303.08 and 303.10.

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** §§125.02(8m), 125.07(1) and 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) and 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[1317and1318] Under this law, only a person who provides alcoholic beverages to minors is liable for the injures caused by these minors to third parties. The case law noted below may have been abrogated in part. However, *Meier v. Champ's Sports Bar,* 623 N.W.2d 94 (Wis. 2001) reconciles the statutes and the case law[1319, 1320 and 1321]
"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: *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 As noted above, under this law, only a person who provides alcoholic beverages to minors is liable for the injures

[1297] 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)

[1298] Under §125.035 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)

[1299] 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 by providing money for the purchase of alcoholic beverages given to the injury-causing minor. The act of providing money for the purchase of alcoholic beverages for a minor is considered an act of procuring such beverages for minor. *Miller v. Thomack,* 563 N.W.2d 891 (Wis. 1997)

[1300] Pursuant to §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)

[1301] A person who has been injured by an intoxicated minor cannot maintain a dram shop action against a licensee (who sold alcoholic beverages to the minor) as a third party if such person was also involved in procuring alcoholic beverages for the minor. *Meier Ex Rel Meier v. Champs Sprot Bar,* 623 N.W. 2d 94 (Wis. 2001). The *Meier* case presents a cohesive look at the case and statutory history of dram shop in Wisconsin.

	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.
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misdemeanor** §§125.07(2)(a) and (b) and 939.60
Term of Imprisonment:	Not more than **60 days**
Fine ($ Range):	**$100 to $500**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes Suspension /Revocation** §125.12
Length of Term of License Withdrawal:	Suspension – Not more than **90 days**; Revocation -at least **12 months**
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:	
Type of Criminal Action:	Civil Forfeiture/Misdemeanor[1322] §§125.07(1)(a) and (b) and 939.60
Term of Imprisonment:	First offense (Forfeiture) – **None**; second offense (within 30 months) (misdemeanor) – Not more than **30 days**; third offense (within 30 months) (misdemeanor) – Not more than **90 days**; subsequent offense (within 30 months) (misdemeanor) – Not more than **9 months.**
Fine ($ Range):	First offense (Forfeiture) – Not more than **$500**; second offense (within 30 months) (misdemeanor) – Not more than **$500**; third offense (within 30 months) (misdemeanor) – Not more than **$1,000**; subsequent offense (within 30 months) (misdemeanor) – 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	

[1302] A person who sells alcoholic beverages to a minor under 18 years old where the minor either dies or suffers great bodily harm as a result of consuming such beverages is subject to the following sanctions: if death occurs – jai l- not more than 10 years; fine – not more than $25,000; if injury occurs – jail – not more than 6 years, fine – not more than $10,000. §125.075

Withdrawn (Yes/No):	**Yes** for second and subsequent offenses §125.07(1)(b)
Length of Term License Withdrawal:	First offense – **None**; second offense (within 12 months) – Suspension not more than **3 days**; third offense (within 12 months) – Suspension **3 to 10 days**; fourth offense (within 12 months) – Suspension **15 to 30 days.** (Also, possible **Suspension/Revocation** under §125.12; Suspension – Not more than **90 days**; Revocation-at least **12 months**).
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) and (3)
Anti-Consumption Law (Yes/No):	**Yes** Driver and passengers §346.935(1){Does not apply to a motor bus.}

STATE:	**WYOMING**
General Reference:	Wyoming Statutes Annotated
Basis for a DWI Charge:	
Standard DWI Offence:	Under the influence of alcohol §31-5-233(b)(ii)(A)
Illegal Per Se Law (BAC/BrAC):	**≥.08**[1323 and 1324] §31-5-233(b)(i)
Presumption (BAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) a **Controlled Substance**[1325] or (2) a **Combination of Alcohol and Any Controlled Substance** §31-5-233(b)(ii)(B) and (C)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Law:	**No**[1326]
Implied Consent Law:	
Arrest Required (Yes/No):	**Yes** §§31-6-102(a)(i) and 31-6-108(a) (Implied consent to test for alcohol concentration for persons under 21 years old where there is probable cause that they are driving with a BAC/BrAC/UrAC ≥.02.)
Implied Consent Law Applies to Drugs (Yes/No):	**Yes** §31-6-102(a)(i)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal and Civil Cases) §§31-6-105(f) and 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**

[1322] 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 .08 or more. §31-5-233(a) and (b)(i)

[1323] 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) and 31-6-101(a)(i)

[1324] Includes glue, aerosol or other toxic vapor. §§31-5-233(a)(ii) and 31-6-101(a)(ii)

[1325] 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).

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.

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

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): First Refusal – **Suspension – 6 months** (Mandatory); second or subsequent Refusal[1327] – **Suspension** – 18 months (Mandatory). §§31-6-102(c), 31-6-107(a) and 31-7-105(d)
Special Note: If a person refuses to submit to chemical test but pleads guilty to a DWI offense within 10 days of arraignment, the suspension for refusal shall not take effect. §31-6-107(a)(iii)

Other: **Persons Under 21 Years Old:** A person under 21 years old who is arrested for driving with an alcohol concentration ≥.02 under §31-5-234 and who refuses to submit to a chemical test under §31-6-108 is subject to a **mandatory license suspension of 90 days**. §31-6-108(n)(i) Limited driving privileges based on "undue hardship" are not available unless there have been no priors within 5 years and the offender agrees to education or treatment. §31-7-105(f)(iii)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,

[1326] A person is also subject to this enhanced licensing sanction if convicted of a previous DWI offense. §31-6-107(a)(ii)(B)

Etc.): First offense: Misdemeanor – Not more than **6 months**; second offense (within 5 years) Misdemeanor **- 7 days to 6 months**[1328]; third or subsequent offense – (within 5 years) Misdemeanor – **30 days to 6 months.** Serious bodily injury offense: first offense – Misdemeanor – **6 months** to **1 year**; Subsequent offenses: felony – Not more than **20 years.** §§6-10-101 and 31-5-233(e), (h) and (g)

Mandatory Minimum Term: First offense – **None**; second offense (within 5 years) – **7 days**; third or subsequent offense (within 5 years) – **30 days or 15 days** if the offender completes an impatient treatment program. §31-5-233(e) Under §31-5-233(g), a defendant may be allowed out of jail long enough to complete actual hours of employment or education and a reasonable time to travel to and from employment or school (i.e., work/school release program). §31-5-234(e) and (g).
Persons Under 21: first offense – $750 fine; second offense (within 1 yr) – jail for not more than 1 month, fine of $750; third or subsequent offense within 2 years – jail for not more than 6 months, fine of $750.

Fine:
Amount ($ Range): First offense – Not more than **$750**; second offense – $**200 to $750**; third or subsequent offense – $**750 to $3,000.** Serious bodily injury DWI offense – first offense – $**2,000 to $5,000**; subsequent offense – not more than **$10,000.** §§6-10-101 and 6-10-102 A surcharge of $100 is assessed against convicted DWI offenders. This surcharge is used to help finance the Victims' Compensation fund. §1-40-119(a)(ii)

Mandatory Min. Fine ($): **None**

Other Penalties:
Community Service: **Possible.** Community service may be required as a condition of probation. §7-13-304

Restitution

[1327] 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).

(e.g., Victim's Fund) **Yes.** (1) The defendant may be ordered to pay restitution to a victim. §7-9-102 (2) The State has a Victims' Compensation Act. §1-40-101 et seq.

Other: **Cost of Incarceration:** A DWI offender 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

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **Yes. ≥.08BAC/BrAC/UrAC** – suspension **90 days**[1329]; Second or subsequent offense – **1 year.** §§31-5-1205(k), 31-6-101(a)(i), 31-6-102(e), 31-6-103(b), 31-7-105(d) and 31-7-138

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 the driver's license suspended under §31-6-102.

Other: **Persons Under 21 Years Old:** A person who is under 21 years old is subject to administrative suspension of their driver's license by operating a motor vehicle with an alcohol concentration **≥.02**. §31-5-234

First violation – **90-day suspension**; second violation[1330] within 2 years – **6-month suspension** §31-7-128(h)

An offender is eligible for hardship driving privileges. However, such privileges can only be granted once within a 5-year period. §31-7-105(f)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): First offense – **Suspension**; second offense within 5 years – **Suspension; third** and subsequent offenses (within 5 years) – **Revocation**

[1328] For a first admin per se action, the 90-day suspension may be modified to allow for limited driving privileges in hardship situations. §§31-6-103(b) and 31-7-105(d)(ii)

[1329] For purposes of license sanction enhancement, a previous violation includes a drunk driving conviction. §31-7-128(h)

DWI Serious bodily Injury offenses – **Revocation** §§31-7-105(d), 31-7-127(a)(ii) and 31-7-128(b)

Term of License Withdrawal

(Days, Months, Years, etc.): First offense – **90 days**[1331]; second offense (within 5 years) – **1 year**; third and subsequent offenses – **3 years.** DWI Serious bodily injury offenses.

Mandatory Minimum Term of Withdrawal: First offense – Hardship driving privileges are available[1332]; second offense (within 5 years) – **1 year**; third and subsequent offenses (within 5 years) – **3 years.** DWI Serious bodily injury offenses.

DWI Serious Bodily Injury Offenses: A conviction for a serious bodily injury DWI 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 year license revocation provisions of §31-7-127(a)(i) and (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-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 year in prison. §6-10-101 For a first DWI serious bodily injury offense conviction, the maximum prison term is only one year. §31-5-233(h)(i) Thus, this offense is not a felony. Of course, the three 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

[1330] 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)

[1331] **Limited Driving Privileges:** Persons who have had their licenses suspended may be granted limited driving privileges based on "undue hardship." Such privileges can only be granted once in a 5-year period. In addition, such privileges cannot be granted to anyone either who has been convicted of a drunk driving offense within a 5-year period or who has had his/her 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)

a 5-year period. As a result, arguably the law does not appear to provide for a specific license revocation period for a first DWI serious bodily injury offense.
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-year or a three-year period of revocation. Subsequent convictions for serious bodily injury DWI offenses are felony convictions since a defendant may be sentenced to serve up to 20 years in prison. §§6-1-101 and 31-5-233(h)(ii) Consequently, a license would be revoked for at least one year as noted above under §31-7-127(a)(i) and (b). However, as also noted above, if three or more subsequent DWI convictions occur within a 5-year period, a license could be revoked for years. 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, the three-year license revocation period applies to both types of offenses.

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 third or subsequent DWI offender may be reduced from 30 days to 15 days if the defendant completes an impatient 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 prescribed by the driver licensing agency. §31-7-105(f)(iii).

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **No**

Terms Upon Which Vehicle Will Be Released:

Other: For a subsequent DWI conviction (within 2 years), a defendant's vehicle registration shall be suspended for the same period as the driver's license revocation/suspension. §31-7-128(c)

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 vehicle in violation of the motor vehicle laws regulating traffic control -**Misdemeanor;** and 2.) Aggravated vehicle homicide if death caused via DWI – **felony.** §§6-2-106 and 6-10-101
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	1.) Death by a violation of the motor vehicle laws – Not more than **1 year**; 2.) Aggravated vehicle homicide via DWI – Not more than **20 years.**
Mandatory Minimum Term:	**None**
Fine ($ Range):	Death caused by a violation of the motor vehicle laws – Not more than **$2,000;** 2.) Aggravated vehicle homicide via DWI – **None.**
Mandatory Minimum Fine:	**None**

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 mandatory year (not less than 3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has an alcohol concentration ≥.04, (2) is under the influence of alcohol or a controlled substance or (3) refuses to submit to a chemical test for alcohol concentration. The disqualification provision (§31-7-305) applies only to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent provision (§31-7-307) 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 years mand). In addition, a CMV operator who has any alcohol in the system must be placed "out-of-service" for 24 hours. It appears to be a misdemeanor offense for a person to operate a CMV while having any alcohol in the system. The sanctions for this offense would seem to be an imprisonment term of not more than 90 days and/or a fine of not more than $750 for a first offense and an imprisonment term of not more than 6 months and/or a fine of not more than $750 for a subsequent one. §§31-7-102(a)(ii), (vi), (viii), (xiii) and (xxxii), 31-7-136, 31-7-305, 3-7-306 and 31-7-307.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Revocation** §§6-2-106(c), 31-7-127(a)(vii) and 31-7-127(b)
Length of Term of Licensing Withdrawal:	**1 year**
Mandatory Action--Minimum Length of License Withdrawal:	**1 year.**
Other:	**Surcharge:** An offender is assessed a surcharge of **$100**. This surcharge is in

	addition to any other sanction. §1-40-119(a)(i)
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:[1333]	§31-7-134.
Sanction:	
Criminal:	
Imprisonment (Term):	**Misdemeanor** – Not less than **7 days** not more than **6 months** §31-7-134(c)
Mandatory Minimum Term of Imprisonment:	**7 days**[1334] §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/Rev):	None additional
Length of Term of License Withdrawal Action:	N/A
Mandatory Term of License Withdrawal Action:	N/A
Habitual Traffic Offender Law:	
State Has Such a Law (Yes/No):	**No**
Other State Laws Related to Alcohol Use:	
Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
State Has Such a Law (Yes/No):	**No**
Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:	
Minimum Age (Years) Sale/Purchase:	**21** §12-6-101(a) and (c)
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**[1335and1336] §12-8-301

1332 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 a 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: first offense – 90 days (mand) to 1 year; second offense (within 10 years) – 1 year (mand) to 5 years; and, third or subsequent offense (within 10 years) – 3 years (mand) to 5 years. 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: first offense – 180 days (mand) to 2 years; second or subsequent offense (within 10 years) – 3 years (mand) to 5 years. §31-7-305(g)

1333 If the offender is under 21 years old and the alcohol concentration for the drunk driving offense was between .02 and .08, that person is not subject to the mandatory 7-day jail term but, is instead subject to a mandatory administrative license suspension for 30 days. §31-7-134(c)

1334 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

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	**No.** Note: Case law, *McClellan v. Tottenhoff,* 666 P.2d. 408 (Wyo. 1983), apparently abrogated by §12-8-301
Dram Shop Actions-Social Hosts:	**Yes Limited.** Social hosts who serve alcoholic beverages illegally, such as to persons who are under 21 years old and who are not their child or ward, etc., may be liable for the resulting damages. §12-8-301(c)
Other:	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).
Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
Type of Criminal Action:	**Misdemeanor** Limited Application Under §§12-5-301(a)(v) and 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 months**
Fine ($ Range):	Not more than **$750**
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** §12-7-101 Limited Application See §12-5-301(a)(v) and the statement above under criminal sanctions.
Length of Term of License Withdrawal:	A suspension is not to exceed the balance of the term for which the license was issued; as for revocation, 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:	**Misdemeanor** §§12-5-301, 12-6-101 and 12-8-101

Beverages, of the Wyoming Statutes.

[1335] 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

Term of Imprisonment:	Not more than **6 months**
Fine ($ Range):	Not more than **$750**

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	**Yes** Suspension or revocation where there is gross violation of the law. §12-7-101
Length of Term License Withdrawal:	A suspension is not to exceed the balance of the term for which the license was issued; as for revocation, no time period is specified in the statute. §12-7-102

Anti-Happy Hour Laws/Regulations: **No**

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

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

APPENDIX A

ITEM:	
Reference:	**UNIFORM VEHICLE CODE** (UVC) The UVC as revised by the National Committee on Uniform Traffic Laws and Ordinances in 2000.
Basis for a DWI Charge	
Standard DWI Offense:	Under the influence of alcohol[1337] § 11-902(a) (3)
Illegal Per Se Provision (BAC/BrAC):	≥ **O.O8**[1338]and [1339] §§11-902(a)(1) and (2) ≥ **O.16**[1340] §§1l-902(b)(1) and (2)
Presumption (BAC/BrAC):	**None**
Types of Drugs/Drugs and Alcohol:	
Other:	Under the influence of (I) Any Drug; (2) a Combination of Drugs[1341] or (3) a Combination of Alcohol and Drugs §11-902(a)(4) and (5)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Provision:	**Yes** §11-906
Implied Consent Provision:	**Yes** §11-904
Arrest Required (Yes/No):	**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 by a law enforcement officer under the following conditions: I. The officer either has arrested a person for or has probable cause to believe that a person has operated a vehicle under the influence of alcohol, drugs or controlled substances. II. The officer either has arrested a person <21 years old for or has probable cause to believe that such a person has operated a vehicle while having any measurable amount of alcohol in the system. §11-904(a)

[1337] "'Alcohol" is defined to mean any substance or substances containing any form of alcohol. (§1-102)
[1338] The UVC illegal per se provisions also make it an offense to operate a motor vehicle with a breath alcohol concentration of .08/ .16 or more.
[1339] Under §1-104, "alcohol concentration" means "either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath."
[1340] A person, who operates a vehicle with a BAC at or above this level, is considered to be under the "extreme influence of alcohol." §11-902(b)
[1341] Person rendered incapable of safely driving.

Implied Consent Provision Applies to Drugs (Yes/No):	**Yes** §11-904
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes** (Criminal andCivil Cases) §11-903(c)
Other Information:	A driver may be compelled to submit to a chemical test if they are involved in an accident resulting in either death or serious personal injury to another person and there is reason to believe that they are guilty of a DWI offense. §11-907
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	**Yes –** 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** Alcohol andDrug Screening Required §11-902(e) In addition, prior to sentencing, either an oral or a written victim's impact statement maybe 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**
Refusal to Take Implied Consent Chemical Test:	
Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Suspension/Revocation):	**Suspension – 1 year** §11-904(e)(1)

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 mandatory year (3 years mandatory if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥.04, (2) is under the influence of alcohol or any drug or (3) refuses to submit to a chemical test for either an alcohol concentration or the presence of drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 years mandatory). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. §§6-500(1), 6-514, 6-516 and 6-517

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years)	I. Under the Influence of Alcohol/Drugs and Illegal Per Se BAC ≥ .08 (misdemeanor): first offense – 10 days to 1 year; second and subsequent offense (within 5 years) – 90 days to 1 year §§11-902(c) and 17-101(a) II. Illegal Per Se BAC ≥ .16 (misdemeanor): first offense -30 days to 1 year; second and subsequent offense (within 5 years) – 120 days to 1 year §§11-902(d) 101(a) Note: For any drunk driving offense, incarceration may be served under home detention. §11-902(h)
Mandatory minimum term:	I. Under the Influence of Alcohol/Drugs and Illegal Per Se BAC ≥.08: **None** §11-902(c) II. Illegal Per Se BAC ≥.16: first offense – 30 days; second and subsequent offense (within 5 years) – 60 days §11-902(d)
Fine:	
Amount ($ Range):	I. Under the Influence of Alcohol/Drugs and Illegal Per Se BAC ≥.08: first offense – $250 to **$1,000; second** and subsequent offense (within 5 years) – $500 to **$1,000** §11-902(c) II. Illegal Per Se BAC ≥ .16: first offense – $500 to **$1,000; second** and subsequent offense **(within 5 years) – $1,000 to $2,000**

Mandatory Min. Fine ($):	**None**[1342]
Community Service:	**Yes –** The court may order ANY DUI offender to perform community service. §11-902(i))
Restitution (e.g. Victim's Fund)	**Yes –** Paid by the defendant to a victim :via a court order. §11- 902(i)
Costs of Incarceration/Home Detention:	**Yes –** Any offender may be required to pay the costs associated with incarceration or home detention. §11-902(i)
Pre-DWI Conviction Licensing Action	
Administrative Per Se Provision:	**Yes** I. (1) **BAC/BrAC .08)** or (2) driver arrested for Driving Under the Influence of Alcohol, Drugs, or Controlled Substances – **Suspension 180 days** §11-904(e)(2) and (3) II. Persons Under 21 Years Old. **BAC/BrAC .02 – suspension – 180 days § 11-905(a)**
Other:	Under §§6-207(a)(1) and 6-212(a), a person's license may be suspended for not more than 1 year if he/she has "committed" an offense requiring mandatory license revocation (e.g. DUI**).**
Post DWI Conviction Licensing Action	
Type of Licensing Action	**Suspension/Revocation** § 11-902(d)
Term of License Withdrawal	I. Under the Influence of Alcohol/Drugs and Illegal Per Se BAC ≥ .08: first offense – **Suspension – 180 days**; second and subsequent offense (within **5 years) – Revocation – 1 year** §11-902(c) II. Illegal Per Se BAC ≥ .16: first offense – **Revocation – 1 year; second** and subsequent offense (within 5 years) – **Revocation – 2 years** §11-902(d)
Mandatory Minimum Term of Withdrawal:	I. Under the Influence of Alcohol/Drugs and Illegal Per Se BAC ≥ .08: first

[1342] 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.

	offense – **Suspension** – 180 **days**; second and subsequent offense (within 5 years) **– Revocation – 1 year** § 11-902(c) II. Illegal Per Se BAC ≥ .16: first offense – **Revocation – 1 year**; second and subsequent offense (within 5 **years) – Revocation – 2 years** §11-902(d)
Rehabilitation:	
Alcohol Education:	**Yes –** any DUI offense §11-902(e)(2)
Alcohol Treatment:	**Yes –** any DUI offense §11-02(e)(2)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Provisions:	**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 specify a suspension period. § 17- 301
Ignition Interlock:	After the restoration of driving privileges, the court may order any drunk driver to operate only motor vehicles equipped with ignition interlock devices. §11-902(f)
Miscellaneous Sanctions Not Included Elsewhere:	After a revocation period, a new license may not be issued until the person satisfies the State licensing agency that it is reasonably safe to permit that person to drive. §6-210(b)
Other Criminal Actions Related to DWI:	
Homicide by Vehicle:	
UVC Has Such a Provision[1343]:	**Yes –** Misdemeanor or felony §1l-910 (a)
Imprisonment Term:	Three months to 1 year in the county jail or not less than 1 year nor more than 5 years in the penitentiary § 11-910 (b)

[1343] 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)

Mandatory Minimum Term:	**None -**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. **$500 to $2,000** §1l-910(b) {The fine sanction does not apply if the penitentiary imprisonment sanction is imposed.}
Mandatory Minimum Fine:	**None –** Under §17-103(c), a court may probate or suspend sanctions for any misdemeanor traffic offense unless such penalties are made specifically mandatory by other provisions.
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	**Revocation** §6-206(1)
Length of Term of Licensing Withdrawal:	**One year** §6-210(a)
Minimum Length of License Withdrawal:	**One year** §§6-206(1) and 6-210(a)
Vehicle Registration Suspension.	Following a conviction for vehicle homicide, the registrations of the vehicle or vehicles registered in the name of such person may be suspended. {The UVC does not recommend a suspension period.} §17-301
Driving While License Suspended or Revoked for a DWI Offense:	No criminal provisions in the UVC on this subject. Criminal sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.
Sanctions:	
Criminal:	
Imprisonment (Term):	**Misdemeanor – 2 days to 6 months** §6-303(a)
Mandatory Minimum Term:	**None**
Fine ($ Range):	Not more than **$500** §6-303(a)
Mandatory Minimum Fine:	**None**
Administrative Licensing Actions:	Discretionary suspension/revocation extension for one year from the date the suspension or revocation

	would have terminated. §6-303(b)
Mandatory Term of License Withdrawal:	**None** §6-303(b)
Vehicle Immobilization	The licensing agency is authorized to take possession of or other wise immobilize a vehicle for respectively – 30 days or 60 days – if such vehicle has been driven by a person whose license is still revoked for a first or second drunk driving offense conviction. However, the vehicle may be released, 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:	**No UVC provision**
Provisions Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:	
UVC Has Such a Provision (Yes/No):	**Yes** §10-116
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	**Yes** §10-116(a)
Vehicle Passengers:	**No**
Pedestrian:	**Yes –** For persons at least 16 years old §10-116(a) and (b)
Provisions Prohibiting: (1) The Possession of Open Containers of Alcoholic Beverages in a Vehicle Passenger Compartment:	**Yes** §11-901(b)
(2) The Consumption of Alcoholic Beverages by a driver of a motor vehicle:	**Yes** §11-901(a)

APPENDIX B

Reference	**MILLENNIUM DUI PREVENTION ACT** Model DUI law developed by the National Committee on Uniform Traffic Laws and Ordinances
Basis for a DUI Charge:	
Standard DUI Offense:	Under the influence of alcohol §102(a)(3)
Illegal per Se Provisions (BAC/BrAC):	I. **≥ .08**[1344]and[1345] §102(a)(1) and (2) II. Under the Extreme Influence of Alcohol- ≥**.16** §102(b)(1) and (2)
Presumption (BAC/BrAC):	**None**
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug, (2) a Combination of Drugs or (3) a Combination of Alcohol and Drugs §102(a)(4) and (5)
Chemical Breath Tests for Alcohol Concentration:	
Preliminary Breath Test Provision:	**Yes –** Justification: articulable grounds § 109
Implied Consent Provision:	Formal arrest is not required in all DUI 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 §107(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	**Yes –** (Criminal and Civil Cases) §103(c) A driver may be compelled to submit to a chemical test if 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:	**Yes** §107(a)
Urine:	**Yes –** Only for the Presence of Drugs §107(a)
Other:	"Other Bodily Substances" – Only for

[1344] 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 .08 or more or, in cases where drivers are "under the extreme influence of alcohol," .16 or more.

[1345] Under §212(c), "alcohol concentration" means "either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath."

the Presence of Drugs §107(a)

Adjudication of DWI Charges:

Mandatory Adjudication Provision (Yes/No):	**No**
Anti-Plea-Bargaining Provision (Yes/No):	**No**
Pre-Sentencing Investigation Provision (PSI)	**Yes –** Alcohol and Drug Screening required before sentencing §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**

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	**None**
Administrative Licensing Action (Suspension/Revocation):	**Suspension – 1 mandatory year** §107(e)(1)

Sanctions Following a Conviction for a DWI Offense[1346]:

Criminal Sanctions – Imprisonment[1347]:

Term (Day, Month, Years

I. DUI- Illegal per se: BAC >.08 – first offense – 10 days to 1 year; second and subsequent offense (within 5 years) – 90 days to 1 year §102(c)(1) and 2)

II. Under the Extreme Influence of Alcohol: Illegal per se BAC ≥ .16 – first offense – 30 days to 1 year; second and subsequent offense (within 5 years) – 120 days to 1 year §102(d)(1) and (2)

Mandatory Minimum Term: Under the Extreme Influence of Alcohol (Illegal per se BAC ≥ .16) first offense – 30 consecutive days; second and subsequent offense (within 5 years) – 60 consecutive days §102(d)(1) and (2)

Fine:

Amount ($ Range): First offense – $250 to $1,000; second and subsequent offense (within 5 years) – $500 to $1,000 §102(c)(1) and (2)

Under the Extreme Influence of Alcohol: (Illegal per se BAC ≥.16) – first offense – $500 to $1,000; second and subsequent offense (within 5 years) – $1,000 to $2,000 §102(d)(1) and (2)

Mandatory Min. Fine ($): First and subsequent offenses: $500.

[1346] The Millennium DUI Prevention Act does not classify DUI offenses. Under most State laws these offenses would be considered misdemeanors because incarceration does not exceed one year.

[1347] 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) and 212(i)

Other Penalties:	
Community Service:	The court may order an offender to perform community service. §102(i)
Restitution	**Yes –** The court may order an offender to pay restitution to victims. §102(i)
Other:	The court also may order an offender to pay the costs associated with (1) incarceration, (2) home detention, (3) alcohol-drug evaluation or (4) an alcohol-drug treatment program. §102(i)
Administrative Per Se Provision:	**Yes** (1) BAC/BrAC ≥.08 or (2) Probable Cause of Driving Under the Influence of Alcohol, Drugs or Controlled Substances – Suspension – 180 mandatory days §107(d) and (e)(2) and (3) Persons Under 21 Years Old: BAC/BrAC ≥.02[1348] Suspension – 180 mandatory days §108(a) and (f)(2)
Post DWI Conviction Licensing Action:	First offense – suspension; second and subsequent offense (within 5 years) – Revocation §102(c)(1) and (2) II. Under the Extreme Influence of Alcohol (Illegal per se BAC ≥.16) – first offense – Revocation; second and subsequent offense(within 5 years) – Revocation §102(d)(1) and (2)
Term of License Withdrawal :	First offense – 180 days; second and subsequent offense (within 5 years) – 1 year §102(c)(1) and (2) II. Under the Extreme Influence of Alcohol (Illegal per se BAC .16) – first offense – 1 year; second and subsequent offense (within 5 years) – 2 years §102(d)(1) and (2)
Mandatory Minimum Term of Withdrawal:	First offense – 180 days; second and subsequent offense (within 5 years) – 1 year §102(c)(1) and (2) II. Under the Extreme Influence of Alcohol (Illegal per se BAC ≥.16) – first offense – 1 year; second and subsequent offense (within 5 years) – 2 years §102(d)(1) and (2)
Other:	
Rehabilitation:	
Alcohol Education: Alcohol Treatment:	**Yes**[1349] (for all DUI offenses) This may include inpatient treatment at an appropriate facility or institution. §102(e)(2)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Provisions:	**No** {Covered by NCUTLO Safe Streets Act}

[1348] As measured by either a preliminary alcohol screening test or a test under the implied consent law. §103 and §108(a)

[1349] 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)

Ignition Interlock.	For any DUI offense, the court may order an offender to operate only motor vehicles equipped with ignition interlock devices. §102(f)

Provisions Prohibiting:	
(1) The Possession of Open Containers of Alcoholic Beverages in a Vehicle Passenger Compartment:	**Yes**[1350and1351] §11-901(b)
(2) The Consumption of Alcoholic Beverages by a driver of a motor vehicle:	**Yes**[1352] §11-901(a)

[1350] 'The sanctions for violating this prohibition are an imprisonment term for not more than 30 days and/or a fine of not more than $500. §211(c)

[1351] 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)

[1352] This provision prohibits the consumption of alcoholic beverages while operating a motor vehicle on a 'public highway'. §211(a)

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